



## Part 582 Operation of Hospitals for Persons with Mental Illness

### 582.1 Background and intent.

(a) This Part is intended to promote the application of the most effective methods, including the use of evidence-based practices, to assist persons diagnosed with mental illness achieve maximum ~~[self-sufficiency]~~ recovery while assuring their safety and general well-being.

(b) The provisions of this Part shall apply to the inpatient services of a freestanding psychiatric facility that has been certified by the Office of Mental Health to provide such services. Inpatient services provided in psychiatric inpatient units of general hospitals shall be governed in accordance with Part 580 of this Title. This Part shall not apply to any facility established by article 7 or article 10 of the Mental Hygiene Law.

(c) The Mental Hygiene Law requires the certification of any facility operated by an individual, association, corporation, or public or private agency to provide examination, diagnosis, care, treatment, rehabilitation or training to anyone with a disorder or disturbance in behavior, feeling, thinking or judgment so severe as to require care and treatment. Recognizing the differences between the methods usually applied in the care and treatment of persons with mental illness and persons with intellectual ~~[mental retardation]~~ or developmental disabilities, the [O]office intends this Part to apply only to inpatient services provided by hospitals for persons with mental illness.

(d) This Part prescribes standards for certification. Certification of itself does not confer eligibility to receive financial support from any governmental source.

(e) It is the intention of this Part to provide for a person-centered process, which, to the maximum extent possible, an individual participates in the planning of their services and makes informed choices about the services and supports that they receive. Compliance with this Part shall ensure that services are collaborative in nature and based on the individual's interests, preferences, strengths, and needs, are designed to empower the individual by fostering skills to achieve desired personal relationships, community participation, dignity, and respect and that the individual is satisfied with activities, supports, and services.

([e]f) It is the intent of this Part to foster increased responsibility of hospitals for persons with mental illness to evaluate and review their own services. However, such hospitals must: prepare an adequate plan for services which addresses modalities of care[,] within the realm of behavioral healthcare and its associated comorbidities; have and reinforce staff training rooted in mental health services and promoting active treatment and recovery-oriented care; ensure staff have appropriate credentials and commensurate experience[,] with the locus of care where they are working; [amount and coverage of staff, and,] promote patient rights shared decision-making, and person-centered care; define clear goals for admission and discharge preparedness [criteria]; and, [must furthermore] establish organizational policies and procedures which will facilitate implementation of the plan.

[(f)g] Section 582.8 of this Part supersedes Part 77 of this Title.

#### 582.2 Legal base.

(a) Section 31.02 of the Mental Hygiene Law prohibits any individual, association, corporation, or public or private agency from operating a residential facility, hospital or institution for the examination, diagnosis, care, treatment, rehabilitation or training of persons with mental disabilities, including mental illness, unless a operating certificate has been obtained from the [(C)]commissioner. Sections 31.07, 31.09, 31.13 and 31.19 further authorize the commissioner or [~~his or her~~]their representatives to examine and inspect such facilities to determine their suitability and proper operation. Sections 31.16 and 31.17 authorize the commissioner to suspend, revoke or limit any operating certificate.

(b) Section 31.04 of the Mental Hygiene Law empowers the commissioner to adopt regulations deemed necessary to carry out the provisions of article 31 of the Mental Hygiene Law, including establishing procedures for the issuance, amendment and renewal of operating certificates.

(c) Section 31.35 of the Mental Hygiene Law provides that each provider of mental health services subject to its requirements [~~must~~]shall request, through the Office of Mental Health, a criminal history background check for each prospective operator, employee, or volunteer of such provider of services.

(d) Section 29.15 of the Mental Hygiene Law establishes requirements for the discharge or conditional release of individuals [~~patients~~] from hospitals operated by the Office of Mental Health or from psychiatric inpatient services subject to licensure by such office.

~~[(e) Section 365-m of the Social Services Law authorizes the Commissioner of the Office of Mental Health and the Commissioner of the Office of Alcoholism and Substance Abuse Service, in consultation with the Department of Health, to contract with regional behavioral health organizations to provide administrative and management services for the provision of behavioral health services.]~~

#### 582.3 Definitions. For purposes of this Part.

(a) *Abused child in residential care* means a child in residential care who:

(1) is subjected to any of the following acts, regardless of whether such act results in injury, when such act is committed by a custodian of the child, is not accidental and does not constitute emergency physical intervention necessary to protect the safety of any person:

punched, shaken, cut or bitten;

(ii) the display of a weapon, or other object that could reasonably be perceived by the child as a means for the infliction of pain or injury, in a manner that constitutes a threat of physical pain or injury;

(iii) the use of corporal punishment;

(iv) the withholding of nutrition or hydration as punishment; or

(v) the unlawful administration of any controlled substance as defined by article 33 of the Public Health Law, or any alcoholic beverage, as defined by section 3 of the Alcoholic Beverage Control Law, to the child; or

(2) is inflicted, by other than accidental means, with a reasonably foreseeable injury that causes death or creates a substantial risk of death, serious or protracted disfigurement, serious or protracted impairment of his or her physical, mental or emotional condition, or serious or protracted loss or impairment of the function of any organ; or

(3) is subjected to a reasonably foreseeable and substantial risk of injury, by other than accidental means, which would be likely to cause death, serious or protracted disfigurement, serious or protracted impairment of his or her physical, mental or emotional condition, or serious or protracted loss or impairment of the function of any organ; or

(4) is the victim of any sexual offense, as described in the Penal Law.

~~[(b) Behavioral health organization or BHO shall mean an entity selected by the Commissioner of the Office of Mental Health and the Commissioner of the Office of Alcoholism and Substance Abuse Services pursuant to section 365-m of the New York State Social Services Law to provide administrative and management services for the purposes of conducting concurrent review of behavioral health admissions to inpatient treatment settings, assisting in the coordination of behavioral health services, and facilitating the integration of such services with physical health care.]~~

(b) *Managed Care (MCO)* shall mean an organization certified under article 44 of the Public Health Law or article 43 of the Insurance Law, including organizations certified to provide comprehensive health services plans to individuals eligible for the medical assistance program under title 11 of article 5 of the Social Services Law or Child Health Plus under title 1-A of article 25 of the Public Health Law. For purposes of this section, MCO shall also mean any other insurer or entity authorized to issue health insurance policies or which provides health insurance benefits within or outside the State of New York, or an entity administering benefits on the insurer or entity's behalf, or a plan providing services under title XVIII of the federal Social Security Act, that provides or administers coverage to an individual receiving inpatient treatment in a facility licensed pursuant to this section

(c) *Child*, for purposes of this Part, means an individual under 18 years of age.

(d) *Collaterals* means an individual who is a member of the individual's family or household, or other individual who interacts with the individual and is directly affected by or has the capability of affecting their condition and is identified in the individual's treatment plan as having a role in treatment and/or is necessary for participation in the evaluation and assessment of the recipient prior to admission, including housing providers, and shall also include any psychiatric advance directive (PAD).

~~[(d)]~~ *Commissioner* means the Commissioner of Mental Health.

(f) *Credentialed Alcoholism and Substance Abuse Counselor (CASAC)* means an individual who has a current valid credential issued by the New York State Office of Addiction Services and Supports (OASAS), or a comparable credential, certificate or license from another recognized certifying body as determined by the OASAS.

(g) *Individual with Complex Needs* shall mean individuals who have one or more of the following:

- (1) Demonstrates high utilization of inpatient, crisis, or emergency services, as indicated by:
- (i) three or more mental health inpatient hospitalizations in the past year; or
  - (ii) four or more mental health presentations to an emergency department (ED) or comprehensive psychiatric emergency program (CPEP) in the past year; or
  - (iii) three or more medical/surgical hospitalizations in the last year and carrying a diagnosis of schizophrenia or bipolar disorder.
- (2) Discharge from an office-licensed residential treatment facility (RTF) in the past year.
- (3) Discharge from inpatient level of care where the length of stay was greater than 60 days at an office-operated psychiatric center in the past year.
- (4) Current enrollment in, or discharge from in the past year, Assertive Community Treatment (ACT), including but not limited to Adult ACT, Youth ACT, Young Adult ACT, Shelter-partnered ACT, Forensic ACT.
- (5) Currently receiving services from Critical Time Intervention (CTI), Safe Options Supports (SOS), Pathway Home, Intensive Mobile Treatment (IMT), Home Based Crisis Intervention, or other high-intensity ambulatory services.
- (6) Eligible for or current enrollment in Health Home Plus Care Management Services
- (7) Eligible for or current enrollment in High Fidelity Wrap around Care Management in Health Homes Serving Children; eligible for or current enrollment in Children's Home and Community Based Services Waiver for children with Serious Emotional Disturbance (SED)
- (8) An active Assertive Outpatient Treatment order or an order that expired in the past year.
- (9) Experiencing high-risk social needs, including, but not limited to, current homelessness, criminal or juvenile justice involvement, and child welfare involvement in the past [year] six months.
- (10) Clinical determination by staff in the licensed program that on presentation the individual has an elevated risk of suicide, violence, and/or overdose.
- (11) Has a current complexity clinical flag in the Psychiatric Services and Clinical Knowledge Enhancement System (PSYCKES).
- (12) Experiencing other factors that the licensed program determines would significantly interfere with the individual's ability to maintain stability in the community after discharge.

(h[d]) [~~Concurrent~~] Utilization review shall mean the review [of the clinical necessity for continued inpatient behavioral] to determine whether health care services[, resulting in a non-binding recommendation regarding the need for such continued inpatient services] that have been provided, are being provided or are proposed to be provided to an individual, whether undertaken prior to, concurrent with or subsequent to the delivery of such services are medically necessary.

(i[f]) *Custodian* means the director, operator, employee or volunteer of a hospital or a consultant or an employee or volunteer of a corporation, partnership, organization or governmental entity which provides goods or services to the hospital pursuant to a contract or other arrangement that permits such person to have regular and substantial contact with children in residential care, as such term is defined in section 412-a of the Social Services Law.

(j) *Governing Body* shall mean a group of people who are legally responsible for establishing and implementing policies related to the operations and management of the facility.

(k[g]) *Hospital* means the in-patient services of a psychiatric center under the jurisdiction of the Office of Mental Health or other psychiatric in-patient facility in the office, a psychiatric in-patient facility maintained by a political subdivision of the State for the care or treatment of the mentally ill, a ward, wing, unit, or other part of a hospital, as defined in article 28 of the Public Health Law, operated as a part of such hospital for the purpose of providing services for the mentally ill pursuant to an operating certificate issued by the Commissioner of Mental Health, or other facility providing in-patient care or treatment of the mentally ill which has been issued an operating certificate by such commissioner. ~~any residential facility or institution providing a program of 24-hour professional care and treatment of persons with mental illness.~~

(l) *Interventional Therapies* shall mean procedural-based treatments that aim to identify and then correct dysfunctional brain circuits, including, but not limited to, electroconvulsive therapy (ECT), transcranial magnetic stimulation (TMS), magnetic seizure therapy (MST), deep brain stimulation (DBS), vagus nerve stimulation (VNS), and transcranial direct current stimulation (tDCS).

(m) *Intensive Care Management* shall mean a care management program that provides mobile, community-based support, with duration and frequency of visit meeting client needs. Services are provided in clients home or residence, community settings, health care settings including emergency department, hospital, and primary care settings to support access, engagement, quality, and coordination of care to meet clients' health care and basic needs. Examples of Intensive Care Management include Critical Time Intervention, Assertive Community Treatment, and Health Home Plus services, and other services as designated by the office as meeting criteria for Intensive Care Management.

(n) *I-STOP/PMP* shall mean Internet System for Tracking Over-Prescribing/Prescription Monitoring Program.

(o[h]) *Maltreated child* means a child under the age of 18 years who is in residential care and identified as a neglected child.

(p[i]) *Mental or emotional injury or impairment and impairment of mental or emotional condition*, means a substantial diminution of a child's psychological or intellectual functioning which is determined by a physician, psychologist, psychiatric nurse practitioner, licensed clinical or master social worker, or licensed mental health counselor.

(q[j]) *Neglected child in residential care* means a child who:

- (1) experiences an impairment of his or her physical, mental or emotional condition or is subjected to a substantial risk of such impairment because he or she has not received:

(i) adequate food, clothing, shelter, medical, dental, optometric or surgical care, consistent with the rules or regulations of the office, provided that the facility has reasonable access to the provision of such services and that necessary consents to any such medical, dental, optometric or surgical treatment have been sought and obtained from the appropriate individuals;

(ii) access to educational instruction in accordance with the provisions of article 65 of the Education Law; or

(iii) proper supervision or guardianship, consistent with the rules or regulations of the office; or

(2) is inflicted with a physical, mental or emotional injury, excluding a minor injury, by other than accidental means, or is subjected to the risk of a physical, mental or emotional injury, excluding minor injury, by other than accidental means, where such injury or risk of injury was reasonably foreseeable; or

(3) is inflicted with a physical, mental or emotional injury, excluding minor injury, by other than accidental means, or is subjected to the substantial risk of a physical, mental or emotional injury, excluding minor injury, by other than accidental means, as a result of a failure to implement an agreed upon plan of prevention and remediation; or

(4) is subjected to the intentional administration of any prescription or non-prescription drug other than in substantial compliance with a prescription or order issued for the child by a licensed, qualified health care practitioner.

(r[k]) *Office* means the New York State Office of Mental Health.

(s[l]) *Physical injury or impairment and impairment of physical condition*, means any confirmed harm, hurt, or damage resulting in a significant worsening or diminution of the child's condition.

(t) *Person-centered process* shall mean that an individual participates to every extent possible, in the planning of their services and makes choices about the services and supports that they receive.

(u) *On duty*, for purposes of this Part, shall include the individual being physically present or on-call and available which includes the ability to come on-site as needed.

(v) *Psychiatric advance directive (PAD)* shall mean a legal document that details a person's preferences for future mental health treatment decisions and/or names an individual to make treatment decisions if the person is [in a crisis and] unable to make decisions.

(w) *PSYCKES* shall mean the Psychiatric Services and Clinical Knowledge Enhancement System, a secure, HIPAA-compliant web-based platform developed by the office for sharing Medicaid billing claims and encounter data, other health-related data, and other data and documents entered by providers and individuals.

(x[m]) *Residential care* means care provided to a child in a hospital, as such term is defined in this section.

(y) Shared decision making shall mean a process whereby staff and the individual work together to select treatments and services based on the individual's preferences, interests, strengths, needs, clinical evidence, and are designed to empower the individual.

(z) SHIN-NY/QE shall mean the Statewide Health Information Network for New York which facilitates the secure electronic exchange of individual health information, connects healthcare professionals statewide and connects New York's qualified entities (QEs) and regional health information organization networks (RHIOs) that store and share individual health information.

#### 582.4 Certification.

(a) No hospital for persons with mental illness may be operated without a valid operating certificate issued by the New York State Office of Mental Health.

(b) Application for new and renewal certificates shall be submitted as directed by the [O]office in accordance with Parts 551 and 573 of this Title.

(c) A certificate valid for a period not to exceed three years shall be issued to hospitals which satisfactorily meet the conditions stated in this Part. The duration of the operating certificate shall be based upon the degree to which the unit meets applicable regulations and standards, upon review of the [O]office.

(d) The current certificate shall be framed and displayed in a conspicuous place which is readily accessible to the public.

(e) Certificates shall remain the property of the [O]office and expired, invalidated, revoked or terminated certificates shall be returned to the [O]office.

(f) The certificate holder shall obtain prior approval by the office for all projects subject to prior approval review in accordance with Part 551 of this Title.

(g) Pursuant to Part 551 of this Title, [F]the certificate holder shall notify the [O]office of any intention to terminate voluntarily its services to persons with mental illness. This notice of intention to terminate voluntarily shall include a detailed statement of the actions which will be taken to assure appropriate referral of persons receiving care or treatment, to preserve the confidentiality and availability of records, and to settle financial accounts according to preexisting individual arrangements. No program shall terminate its services until written approval from the [O]office to do so is obtained and individuals [patients] have been appropriately transferred or discharged, and records have been appropriately preserved and stored, all to the satisfaction of the office. Failure to obtain the required approval from the office may subject the certificate holder to civil penalties.

#### 582.5 Organization and administration.

(a) Organization.

(1) The governing body shall be responsible for the overall operation and management of the hospital.

(2) The governing body shall establish and maintain a current [a] plan of organization for the hospital which clearly indicates lines of accountability, the nature of professional responsibility to be exercised according thereto, and the professional qualifications required.

(3) The governing body shall develop, and revise as necessary, written policies for the quantity, quality, scope, goals, objectives and evaluation of all programs, policies for the accomplishment of stated purposes, and personnel policies. Personnel policies shall prohibit discrimination on the basis of race or ethnicity, religion, color, creed, disability, sex, marital status, age, national origin, gender identity or sexual orientation. ~~[Personnel policies and procedures shall provide for verification of employment history, personal references, work record and qualifications. Such policies shall also provide for securing a signed sworn statement whether, to the best of his/her knowledge, the applicant has ever been convicted of a crime in this State or any other jurisdiction and shall include provisions implementing criminal history record checks in accordance with Part 550 of this Title.]~~Such policies shall include but not be limited to:

(i) Policies governing affirmative action that are consistent with the affirmative action and equal employment opportunity obligations imposed by title VII of the Civil Rights Act, Federal Executive Order 11246, the Rehabilitation Act of 1973, section 504, as amended, and the Vietnam Era Veteran's Readjustment Act.

(ii) Personnel policies and procedures shall provide for verification of employment history, personal references, work record and qualifications. Such policies shall also provide for securing a signed sworn statement whether, to the best of their knowledge, the applicant has ever been convicted of a crime in this State or any other jurisdiction.

(iii) Written policies and procedures governing patient records that ensure confidentiality consistent with the Mental Hygiene Law, sections 33.13, 33.14 and 33.16, 45 C.F.R. parts 160 and 164 and which provide for appropriate retention of such records pursuant to this Part.

(iv) Written policies that ensure the protection of patients' rights. At a minimum these policies shall establish and describe a patient grievance procedure. The provider shall post a statement of patients' rights in a conspicuous location easily accessible to the public. The statement shall be provided in the individual's preferred language, and be accessible to the blind and visually impaired.

(4) The governing body shall establish written staff development and training policies which address orientation and ongoing staff development and training which shall include but not be limited to, behavioral management interventions, techniques and alternative methods of safely handling crisis situations, and safety and security procedures. In addition, in those hospitals serving children, staff training shall include the principles of child development and developmentally-appropriate interventions, family engagement, ~~[behavioral management interventions, techniques and alternative methods of safely handling crisis situations, techniques of group and child management,]~~ the laws and regulations governing child abuse

reporting and the protection of children from child abuse and maltreatment. Such training in those hospitals serving children shall include preemployment orientation and continuing education.

(5) The governing body shall establish written volunteer policies and procedures. Such policies and procedures shall provide for screening of volunteers and verification of employment history, personal references, and work history; supervision of volunteers; training in accordance with paragraph (4) of this subdivision. Such policies shall also provide for securing a signed sworn statement whether, to the best of their[his/her] knowledge, the volunteer has been convicted of a crime in this State or any other jurisdiction and shall include provisions implementing criminal history record checks in accordance with Part 550 of this Title.

(6) The governing body shall establish procedures to assure the health and safety of the individuals [~~patients~~] in the program and shall develop, implement, and regularly monitor clinical risk management programs including but not limited to reviews of the use of restraint and seclusion and treatment over objection, in order to protect the health and safety of individuals [~~patients~~] and enhance their quality of care.

(7) The governing body shall meet as often as necessary to properly execute its functions, and in no event less often than quarterly. Minutes of all official meetings of the governing body shall be maintained as permanent record of the decisions made in relation to the operation of the hospital.

(8) Ongoing direction and control of the program of the hospital shall be delegated by the governing body to a physician whose qualifications in psychiatry are appropriate to the program. For purposes of this Part, this person shall be known as the director.

(9) Administrative management of the hospital may be delegated by the governing body to an appropriately qualified administrator.

(b) Administration.

(1) The governing body shall cause to be made an annual written evaluation of the total program to assess effectiveness and efficiency and to indicate any required changes in policies or services of the hospital.

(2) The governing body shall cause to be made an annual audit of the financial condition and accounts of the hospital by a certified public accountant who is not a member of the governing body or an employee of the hospital.

(3) The governing body shall establish admission policies, including those pertaining to eligibility for service, and a description of available services which shall be written and made available to staff members, persons served and their families, cooperating agencies and the general public.

(i) All admission policies shall prohibit discrimination on the basis of race or ethnicity, religion, creed, sex, age, national origin, sexual orientation, gender identity, physical disability, previous hospitalization in a licensed or State-operated psychiatric facility or ability to pay fees, provided, however, nothing in this subparagraph shall be interpreted to prevent a facility from making admission or discharge decisions based upon the

functional, clinical and behavioral needs of an individual ~~[patient]~~ which are relevant to its program.

(ii) No facility shall deny care and treatment to, or otherwise discriminate against, persons who are Limited English Proficient ~~[non-English speaking]~~, deaf or hard-of hearing, in accordance with section 527.4 of this Title.

(iii) A facility shall not deny access to a person who otherwise meets requisite admission criteria solely on the basis of multiple diagnoses or a diagnosis of HIV infection, other chronic medical comorbidity, history of suicide attempt, history of violence, criminal and juvenile justice system involvement, personality disorder, substance use disorder, or intellectual or developmental disability ~~[AIDS, or AIDS-related complex]~~.

(4) The governing body shall cause to be procured and maintained for reference by the governing body and staff members an up-to-date copy of this Part and copies of any guideline instruction or information manuals or other communications as may be prescribed by the [O]office.

(5) The governing body shall appoint a special review committee, including members of the professional clinical staff, which shall:

(i) develop a written special review plan subject to approval by the governing body and the [O]office. This plan shall provide for review of all incidents in accordance with Part 524 of this Title and extra-risk procedures administered. Extra-risk procedures may include, but not be limited to, interventional ~~[somatic]~~ therapies, experimental treatment modalities, and restraint or seclusion;

(ii) review and evaluate incidents and extra-risk procedures in accordance with Part 524 of this Title and the plan;

(iii) determine the facts in any incident reviewed, review ongoing practices and procedures in relation to such incidents and extra-risk procedures, and recommend changes in policies, practices or procedures which may be indicated;

(iv) include, either on a regular membership basis or by special arrangement as indicated, the participation of appropriately qualified and experienced physicians; and

(v) meet as often as necessary to properly execute its functions, and in no event less often than quarterly, keeping written minutes of its deliberations and submitting reports to the governing body as necessary.

(6) The governing body shall provide for the following in those hospitals which provide services to children:

(i) procedures for notification of the child's parent or guardian of alleged child abuse or maltreatment involving the child or other incidents as required by law, including but not limited to Mental Hygiene Law section 33.23 and 33.25; and

(ii) procedures for the proper reporting of all incidents of alleged child abuse or maltreatment as follows, in accordance with the Mental Hygiene Law and Part 524 of this Title:

(a) to the Statewide Central Register of Child Abuse and Maltreatment immediately;

(b) to the appropriate Office of Mental Health field office, within two weeks, using forms designated by the Office of Mental Health;

(c) to the ~~[Commission on Quality of Care and Advocacy for Persons with Disabilities within 72 hours]~~ Justice Center; and

(d) to the Mental Hygiene Legal Service within the next working day.

(7) The governing body shall cause to be written, made known to all employees and maintain current a plan for safeguarding all individuals ~~[patients]~~ in the event of a major natural disaster or civil disturbance.

(8) The governing body shall require staff of the facility to participate with the local governmental unit in local planning processes as required by sections 41.05(e) and 41.16 of the Mental Hygiene Law. Such participation ~~[must]~~ shall be documented in the approved local services or unified services plan of each local governmental unit served by the facility. At a minimum, facility participation shall include:

(i) provision of budgeting and planning data as requested by the local governmental unit;

(ii) identification of the population being served by the facility;

(iii) identification of the geographic area being served by the facility;

(iv) description of the facility's relationship to other providers of services who serve the same geographic area, including, but not limited to, written agreements to ensure expeditious access to programs by persons who need them. At a minimum, these agreements shall provide a process for prompt referral, evaluation, and, as necessary, admission to cooperating programs; specify mechanisms for coordinated development of service plans for individuals ~~[patients]~~ being served by more than one program; and provide a mechanism for sharing information about individuals ~~[patients]~~ being served; and

(v) attendance at planning meetings as may reasonably be required by the local governmental unit.

(c) Education program.

(1) If any children of legal school age are served, an appropriate instructional program approved by the New York State Education Department ~~[must]~~ shall be made available to them by the hospital.

(2) The treatment program in those hospitals which provide services to children shall include the means for providing instruction to individuals [~~patients~~] under the age of 18, and, when required pursuant to an Individualized Education Plan, to certain individuals [~~patients~~] over the age of 18, consistent with their age, needs and clinical condition, as well as the needs and circumstances within the facility or program, in techniques and procedures which will enable such individuals [~~patients~~] to protect themselves from abuse and maltreatment.

#### 582.6 Program.

##### (a) General.

(1) The program of services shall be provided through a person-centered process with shared decision making.

(2) The program of services shall be informed by the understanding that implicit bias may affect the assessment, diagnosis, treatment, and discharge planning of Black, Indigenous, People of Color (BIPOC) and other marginalized individuals.

~~(1)3~~ (3) The program of services shall be provided in accordance with the principle of continuity of care whereby a single number of the professional clinical staff shall exercise primary responsibility for each individual [~~patient~~] at all times.

~~(2)4~~ (4) Direct service to individuals [~~patients~~] shall be provided in accordance with an individual written plan of care and rehabilitation, specifying the nature of the conditions and the disabilities found to be present and those which are to be affected, relating these to the methods of care, treatment and rehabilitation to be provided, identifying the intended benefits of care and treatment, and providing for appropriate review and revision.

~~(3)5~~ (5) A single case record which contains current information regarding diagnosis, treatment, and evaluation of results of care or treatment for each individual [~~patient~~] shall be available to all professional staff involved in the care or treatment of that person.

~~(4)6~~ (6) The programs provided by the hospital shall include diagnostic and active treatment, including but not limited to individual and group psychotherapy, acceptable interventional therapies, pharmacological therapies, psychiatric nursing care and a therapeutic milieu [~~The treatment programs provided by the hospital shall include active therapeutic services, including but not limited to individual and group psychotherapy and psychiatric nursing care~~].

(7) Hospitals shall utilize best practices and person-centered approaches on the screening, assessment, treatment, and disposition of individuals presenting to the hospital with acute psychiatric needs necessitating emergency and inpatient services, in accordance with office guidance.

~~(8)5~~ (5) A physician and a nurse shall be on duty at the hospital at all times, and other medical staff shall be available on call as needed.

~~(9)6~~ (6) The hospital shall have continuously in force a written policy regarding prescription dispensing and administration of medications, including appropriate time limits for prescriptions

or drug orders, requirements for review by the physician responsible, and the use of a formulary.

(b) Admissions.

(1) All admissions shall be conducted in accordance with the provisions of article 31 of the Mental Hygiene Law in a form and format designated by the [O]office.

(2) The certified bed capacity of the hospital shall not be exceeded at any time. Provided, however, in extraordinary circumstances, such capacity may be exceeded upon written approval of the office, on a situational and time-limited basis.

(3) If minors under the age of 18 are admitted to the hospital, they shall not be commingled with adults in areas of the hospital where the adults reside, nor shall they receive services in groups which include adults. In extraordinary circumstances, such commingling may be permitted upon written approval of the office on a situational and time-limited basis.

(4) Admission requirements. When an individual is admitted to a hospital, clinical staff shall:

(i) review documentation of assessments, treatment, and other services provided in referring outpatient, emergency, or hospital program;

(ii) review documentation of prior presentations to the hospital unit and attempt to obtain medical records from other hospitals where the individual received services;

(iii) in accordance with HIPAA and section 33.13 of the Mental Hygiene Law, attempt to obtain the authorization of the individual or someone authorized to make health care decisions on the individual's behalf to access, use and disclose personal health information from collaterals or other data sources as outlined in this subdivision. If the authorization of the individual cannot practicably be obtained due to incapacity or emergency circumstance, unit staff may, in the exercise of professional judgment, determine whether the access, use, or disclosure is necessary to prevent imminent, serious harm to the individual. If so, only that PHI that is necessary to protect the individual from the anticipated harm or which is in the best interest of the individual may be accessed, used, or disclosed. The reasons for the access, use, or disclosure must be appropriately documented in the clinical record;

(iv) attempt to obtain collateral information on all admitted individuals;

(v) review all individuals in PSYCKES regarding admitted individuals prior psychiatric and medical history and contact information for outpatient treatment teams and care managers with consent as required. In the event of incapacity or emergency circumstance, staff may temporarily access a PSYCKES clinical profile for the limited purposes authorized by this section and in accordance with PSYCKES policy or as authorized by other policy, law or regulation;

(vi) review information in any other available information network databases regarding admitted individuals with consent as may be required in accordance with the database policy or as authorized by other policy, law or regulation; and

(vii) check to see if the individual has a PAD or other Wellness plan and preferred contacts in PSYCKES. Staff shall obtain consent as required to access the full view of PAD, Wellness Plan, or preferred contacts. In the event of incapacity or emergency circumstance, staff may temporarily access a PSYCKES clinical profile, for the limited purposes authorized by this section. If the individual does not have a PAD, clinical staff shall provide a copy and explanation of a PAD. If the individual chooses to complete a PAD, it shall be placed in their chart.

(5) Screening requirements on admission. The following screenings shall take place on admission and documented in the individual's chart:

(i) All individuals shall be screened for suicide risk using a validated instrument. Positive screens shall be followed by a suicide risk assessment by a licensed professional trained in assessing suicide risk.

(ii) Each hospital shall have policies regarding violence risk screening and assessment. All individuals shall be screened, and the hospital policy shall describe a process for subsequent assessment and intervention in the case of a positive screen. As part of the screening, all individuals shall be asked about access to firearms or other weapons.

(iii) All individuals above the age of 12 shall be screened for substance use using a validated instrument. Positive screens shall be followed by an assessment for high risk substance use and substance use disorder by a licensed professional or CASAC working within their scope of practice

(iv) A determination shall be made as to whether an individual has complex needs.

(c) Discharge[s] Requirements.

(1) All discharges shall be conducted in accordance with the provisions of section 29.15 of the Mental Hygiene Law, in a form and format designed by the [O]office.

(2) The discharge plan shall be developed through shared decision making in a person-centered process. The discharge plan shall reflect individual strengths and level of social support and address psychiatric, substance use disorder, chronic medical, and social needs. The plan shall also address relevant concerning information obtained from collateral sources of information.

(3) For discharges of individuals with complex needs, the discharging unit shall provide a verbal clinical sign-out on the day of discharge, or as soon as possible thereafter, to the receiving outpatient behavioral health treatment program and if applicable, residential program licensed or funded by the office or Office of Addiction Services and Supports, Office for Persons with Developmental Disabilities or the Department of Health where the individual will reside. This must be done in accordance with section 33.13 of the Mental Hygiene Law.

(4) The unit shall send a discharge summary detailing the presenting history of present illness (HPI), hospital course, and other relevant information to the outpatient, residential, or long-

term care treatment program(s) within seven days of discharge in accordance with section 33.13 of the Mental Hygiene Law.

(5) Prior to discharge, and in accordance with section 33.13 of the Mental Hygiene Law, the hospital shall schedule and confirm a follow up appointment with an identified provider to occur within seven calendar days following discharge. If, after making diligent efforts, a hospital cannot identify an aftercare provider with an available appointment within seven calendar days, the hospital shall document its efforts and schedule the appointment for as soon as possible thereafter. A referral to a walk-in intake clinic is insufficient to meet this requirement.

Individuals who are leaving the hospital against medical advice, or who state they do not wish to receive aftercare services, shall be provided information about available treatment options and have an appointment scheduled whenever possible.

(6) For individuals with complex needs enrolled in outpatient or residential care management, the unit shall coordinate discharge plan details and timing with care managers, including supporting on unit pre-discharge visits.

(7) For eligible individuals with complex needs who are not enrolled in intensive care management or are enrolled in care management but need more intensive care management, hospital staff shall make a referral to an intensive care management provider, in accordance with office guidance.

(8) All individuals shall be screened for suicidality prior to their discharge. Individuals with an elevated risk of self-harm or suicide shall have a community suicide safety plan completed before discharge. Lethal means shall be identified and a plan for restriction addressed in the safety plan. The unit shall document their work with collaterals to implement the plan to restrict lethal means and confirm completion prior to discharge.

(9) Discharge of individuals with an elevated risk of violence shall include, to every extent possible, close collaboration with the county DCS if applicable, current and new outpatient treatment providers, residential providers if applicable, and school if applicable, to incorporate strategies to address violence risk factors and access to weapons into the overall discharge plan in accordance with section 33.13 of the Mental Hygiene Law.

(10) When determining whether an individual is ready for discharge and the most appropriate discharge setting, the whole clinical presentation and history, as well as the availability of existing services in the individual's community, shall be considered.

(11) Individuals who meet criteria for any substance use disorder shall be offered appropriate pharmacological interventions and referred to a new or existing provider who can continue treatment for their substance use disorder.

(12) Individuals who require treatment with an antipsychotic medication but have history of difficulty with consistently taking oral medications, shall be considered, through shared decision making, for treatment with a long-acting injectable medication.

(13[2]) A hospital shall be prohibited from discharging any person with serious mental illness to a transitional adult home, as defined in regulations of the Commissioner of Health, unless the

person was a resident of the home immediately prior to ~~his or her~~their current period of hospitalization.

#### 582.7 Staffing.

(a) The governing body shall continuously employ an adequate number of appropriately qualified staff to carry out the program of examination, diagnosis, care, treatment and rehabilitation effectively. A written rationale for the staffing pattern utilized shall be developed for approval by the Office of Mental Health. The written rationale shall include a plan for appropriate supervision of staff and volunteers. The plan shall include procedures for periodic supervisory conferences for staff and volunteers and procedures for written performance evaluations consistent with collective bargaining requirements.

(b) The director and all staff physicians shall be currently registered and licensed to practice medicine in the State of New York; their qualifications shall be reported to the [O]office at the time of their employment.

(1) The hospital shall not permit physicians in training to perform a service for which a license is required by the State of New York except as a part of an approved training program and unless authorized by a temporary certificate to practice medicine at the hospital and they are at the time under the direct control and supervision of a currently registered and licensed physician.

(i) A training program to be approved ~~[must]~~shall be accredited by the Accrediting Committee for Graduate Medical Education (ACGME)~~[Council on Medical Education of the American Medical Association]~~, the appropriate specialty boards or any other recognized approval body based on standards acceptable to the [O]office.

(ii) With respect to the care of persons eligible for health insurance and medical assistance only, training programs ~~[must]~~shall comply with the requirements of applicable rules and regulations of the Secretary of Health and Human Services pertaining to resident, intern and medical student training programs enacted pursuant to Titles XVIII and XIX of the Social Security Act ~~[the Health Insurance for the Aged Act]~~.

(2) All direct service, other than in an emergency, provided by interns, house officers, residents or physicians with equivalent titles ~~[must]~~shall be provided as specified in paragraph (1) of this subdivision or ~~[must]~~shall be provided by a physician currently registered and licensed to practice in New York State.

(c) The nursing service shall be under the direction of a nurse practitioner or registered nurse experienced in the care of individuals ~~[patients]~~ with mental illness and in the administration of psychiatric nursing services.

(d) The medical recordkeeping shall be under the direction of a registered records librarian or in accordance with consultation by a person eligible for registration by the American Medical Records Association.

(e) All staff members providing services as members of professions, the practice of which is by law required to be licensed, certified or registered, shall file documentation of compliance with the

governing body; this documentation shall be retained on file and made available to the office upon request.

(f) All staff members providing services as members of professions, the practice of which does not by law require licensure, certification or registration, shall file documentation of their training and experience with the governing body.

(g) All other program staff shall have qualifications appropriate to their assigned responsibilities as set forth in written policies of the governing body, and shall be subject to appropriate professional staff supervision.

(h) There shall be properly trained personnel adequate for continuous maintenance and housekeeping of buildings, grounds, equipment, and for all other duties necessary for the administration of the hospital.

(i) The certificate holder shall submit reports to the [O]ffice, as required, of the staff employed by and available in the hospital.

#### 582.8 Premises.

##### (a) Safety.

(1) All facilities shall be safe and suitable for the comfort and care of the individual [patient]. Facilities shall be maintained in a state of good repair and sanitation.

(i) A facility maintenance plan, including provision for routine inspections of the physical plant, shall be developed, maintained, and shall be immediately available for office review upon request.

(ii) A process ~~[must]~~shall be established and implemented at all facilities by which staff can notify administration of any unsafe conditions. Facility staff ~~[must]~~shall routinely be made aware of such process.

(2) Patient areas for children ~~[must]~~shall be separate and distinct from patient areas for adults.

##### (b) Code compliance.

Facilities shall be and remain in compliance with applicable State and local building codes and regulations.

(1) Prior to construction or renovation of a facility, a building permit from the applicable local authority ~~[must]~~shall be obtained, and proof of same ~~[must]~~shall be made available to the office upon request.

(2) A current and effective copy of a Certificate of Occupancy at a facility ~~[must]~~shall be maintained at each facility location.

##### (c) Construction standards.

(1) Facilities shall be and remain in compliance with the provisions of the appropriate section(s) of the current recognized edition of the National Fire Prevention Association-101 Life Safety Code (LSC).

(2) Facilities shall be and remain in compliance with applicable sections of the current recognized edition of the Guidelines for Design and Construction of Health Care Facilities published by the American Institute of Architects (AIA), provided, however, that this provision shall apply only to facilities constructed, or which have undertaken major renovations, on or after April 1, 2010, or the effective date of this paragraph, whichever is later. Facilities constructed, or which have completed major renovations, prior to that date in accordance with Part 77 of this Title, shall be deemed to be in compliance with this paragraph.

(3) Facilities shall be and remain in compliance with applicable sections of the [The] Americans with Disabilities Act of 1990 (ADA) and implementing regulations (28 CFR parts 35 and 36).

(d) Provisions for unplanned events.

(1) Facility administration [~~must~~shall] evaluate the potential for specific unplanned events including but not limited to: power outages, heat loss, water shortages, extreme temperatures, floods, earthquakes, winds, fires and explosions.

(2) Facilities shall have policies and procedures in place which establish a reaction plan with respect to management of the facility in the event of unplanned events and potential disasters.

(i) Such policies and procedures shall include provisions designed to ensure staff are made aware of, and are familiar with, the reaction plan.

(ii) The reaction plan shall be periodically reviewed and updated as needed.

(e) Fire safety.

(1) Training. Facilities shall provide fire safety training to all staff. Fire safety training shall address topics including, but not limited to:

(i) fire prevention;

(ii) discovering a fire;

(iii) operating the fire alarm system;

(iv) use of firefighting equipment; and

(v) building evacuation, including fire drill protocols that identify staff roles and locations where individuals [~~patients must~~shall] assemble (i.e., assembly points).

(2) Fire drills. On a quarterly basis, facilities shall conduct fire drills in each building that houses patients. At least 50 percent of such drills [~~must~~shall] be unannounced.

(i) For each quarter, each such building [~~must~~shall] have a minimum of one practice fire drill per shift.

(ii) Facilities [~~must~~shall] direct all staff members on all shifts to participate in fire drills.

(iii) Drills ~~[must]~~shall be scheduled at varying times during a shift.

(iv) Use of alternative exits ~~[must]~~shall be practiced during fire drills.

(v) Whenever practicable, drills shall involve the actual evacuation of individuals ~~[patients]~~ to an assembly point as specified in the fire drill protocols. Consistent with Life Safety Code standards, in larger facilities that are subdivided into separate smoke compartments to limit the spread of fire and smoke and move individuals ~~[patients]~~ without leaving the building or changing floors, evacuation may include relocation of ~~[patients]~~individuals to such compartments.

(vi) Properly documented actual or false alarms may be used for up to 50 percent of required drills for each shift, if all elements of the facility's fire plan were implemented.

(vii) Facilities ~~[must]~~shall document and maintain records regarding fire drill performance which include an evaluation of the results of the fire drill, any corrective action that may be required, and completion of steps taken to achieve such corrective action.

(3) Tests and inspections. Facilities ~~[must]~~shall routinely test and inspect all fire safety equipment according to applicable codes, regulations and manufacturer's recommendations.

(i) All tests and inspections, and the dates conducted, shall be documented.

(ii) Facilities shall immediately correct, and document correction of, any deficiency noted during inspection and testing.

(4) Prohibited items.

(i) The following items are prohibited from use within any buildings on the grounds of the facility:

(a) devices for heating, cooking, or lighting which use kerosene, gasoline, wood, or alcohol;

(b) portable electric hot plates; and

(c) barbeque grills, which may only be used outside the building if located further than 30 feet away of any building structure, including overhangs, canopies or awnings.

(ii) The use of portable space heating devices is prohibited in patient sleeping and treatment areas of the facility, as well as in facility administrative offices. Use of a portable space heating device in any other building on the grounds of a facility shall be in accordance with guidelines of the [O]office, provided that:

(a) the unit has an Underwriters Laboratories (UL) certification mark;

(b) the unit is thermostat-controlled and has a tip-over cutoff device;

(c) the unit is plugged directly into a wall receptacle (no extension cords);

- (d) combustible materials are not stored around or near the unit;
- (e) at least a three-foot clearance around the unit is maintained; and
- (f) the unit is not placed underneath a desk, furniture or other combustible items.

(5) Smoking. Facilities ~~[must]~~shall not permit smoking within any buildings on the grounds of the facility. If smoking is permitted on the grounds of the facility, it shall be contained to a specific location(s) equipped with an approved non-combustible ash receptacle. Smoking shall not be permitted within 30 feet of any building structure, including overhangs, canopies or awnings.

(f) Interventional therapies, including Electroconvulsive therapy (ECT).

(1) Facilities administering ECT or other interventional therapies ~~[must]~~shall have a treatment room and recovery space that is specifically dedicated for the~~[is]~~ service and which meets applicable [F]federal and State safety and health standards and applicable standards of practice.

(2) Facilities administering ECT or other interventional therapies shall remain current with standards of practice supported by the American Psychiatric Association related to treatment and administration of this service consistent with such standards.

(3) ECT may not be used as an emergency procedure.

(4) No facilities shall use restraint or seclusion without a written plan for the use of restraint or seclusion in accordance with section 526.4 of this Title.

(5) No facilities shall use extraordinary risk procedures. Extraordinary risk procedures include, but are not limited to, experimental treatment modalities and aversive conditioning.

582.9 Records and statistics.

(a) Case records.

(1) There shall be an individual record for each person admitted to the hospital.

(2) Each case record shall include:

(i) legal admission documents;

(ii) identifying information on the individual and their~~[his]~~ family, and as applicable, guardian;

(iii) source of referral, date of commencing service and name of staff member carrying overall responsibility for treatment and care;

(iv) initial, intercurrent and final diagnoses including psychiatric, alcohol or substance ~~[ab]~~use disorder, or intellectual ~~[mental retardation]~~ or developmental disability diagnoses in official terminology;

(v) reports of all diagnostic examinations and evaluations, including findings and conclusions;

(vi) reports of all special studies performed, including X-ray, clinical laboratory tests, ~~clinical~~ developmental and psychological testing, electroencephalograms, and psychometric tests;

(vii) record of communication with family, outpatient providers, and other significant sources of collateral information;

(viii) the individual written plan of care, treatment and rehabilitation prepared in accordance with section 582.6(a)(2) of this Part;

~~(ix)~~ (viii) progress notes written, dated, and signed by all staff members having significant participation in the program of treatment and care;

(ix) summaries of case conferences and special consultations;

(xi) notes which relate to special circumstances and untoward incidents including but not limited to, the use of any seclusion or restraints;

(xii) dated and signed prescriptions or orders for all medications, with notation of termination dates;

(xiii) a closing summary of the course of treatment and care;

(xiv) autopsy findings if an autopsy is performed; ~~and~~

(xv) documentation of any referrals within the hospital or to another agency; and

(xvi) documentation of voluntary or involuntary status and other information as requested by the office.

(b) Patient records shall be safeguarded for confidentiality and be accessible only to authorized persons and shall be otherwise maintained in accordance with applicable State and [F]federal laws and regulations governing the privacy of individually identifying health information.

(c) Statistical records and reports.

(1) Such statistical and case record information shall be prepared and maintained as may be necessary for optimally effective operation of the hospital, and as may be required by the office.

(2) Admissions, discharges and other statistical and case record information shall be reported to the office as required and in a form and format designated by the [O]office. Statistical reporting shall be the responsibility of an appropriately qualified employee, whose name and title shall be made known to the [O]office.

(3) Summaries of statistical information shall be reviewed at least annually by the governing body.

#### 582.10 Community relations.

- (a) The hospital shall integrate its services with other relevant community services for purposes of providing comprehensive and coordinated care.
- (b) The hospital shall assure, through agreements with other community resources, the availability of necessary services not provided at the hospital. In determining necessity, the hospital shall take account of clinical laboratory services, special medical, diagnostic or treatment services, partial hospitalization, care management and rehabilitation services.
- (c) The hospital shall participate appropriately in local, areawide, regional and State planning related to treatment programs for persons with mental ~~[disabilities]~~illness.
- (d) Significant changes in the hospital program shall take into account studies of needs and resources in the geographic area served by the hospital.

#### 582.11 ~~[Behavioral health]~~Managed Care organizations.

The facility shall cooperate with ~~[designated]~~ managed care ~~[regional behavioral health]~~ organizations (MCO). Such cooperation shall include, but not be limited to:

- (a) notifying the appropriate MCO ~~[behavioral health]~~ organization of an admission for a behavioral health condition for which coverage is provided by Medicaid, Child Health Plus, Essential Plan, or any other government-sponsored or private coverage~~[on a fee-for-service basis]~~ to an individual who is not also enrolled in the Medicare program or for individuals enrolled in the Medicare program, to an MCO providing services under title XVIII of the federal Social Security Act. Such notification shall be provided within two business days~~[24 hours]~~ of such admission ~~[or, for an admission occurring on a Friday, Saturday, Sunday, or public holiday, by 5:00 p.m. on the next business day following such admission]~~. When Medicaid coverage cannot be determined at the time of admission, notification shall be provided as soon as practicably possible after confirmation of coverage~~[Medicaid eligibility, but in no event more than 24 hours after such confirmation or, for a confirmation made on a Friday, Saturday, Sunday or public holiday, later than 5 p.m. of the next business day following such confirmation]~~;
- (b) cooperating with utilization ~~[concurrent]~~ review activities;
- (c) ensuring that the discharge plan for such an individual includes consideration of physical health needs and services;
- (d) notifying such MCO ~~[behavioral health]~~ organization no later than 24 hours subsequent to the discharge of such an individual or by 5:00 p.m. the next business day following Friday, Saturday, Sunday and public holiday discharges;
- (e) receiving and providing physical and mental health information, pursuant to section 33.13 (d) of the Mental Hygiene Law; and
- (f) seeking to obtain, ~~[as needed,]~~ such individual's consent to receive and provide information regarding such individual's substance use disorder treatment~~[problems]~~ as may be required pursuant to federal law.