



**Repeal 14 NYCRR Part 551 and Replace with New Part 551 to read as follows:**

**551.1 Background and intent.**

(a) It is the purpose of this Part to establish minimum standards which will ensure that entities providing mental health services which seek an operating certificate from the Office of Mental Health will meet appropriate criteria for quality, safety and fiscal viability.

(b) It is the purpose of this Part to support the efforts of local governmental units in the process of planning and funding local systems of mental health service.

(c) It is the purpose of this Part to expedite the review of projects that are in conformance with the Statewide Plan and to allow for the development and operation of needed and appropriate programs.

(d) This Part establishes an efficient and timely process for the initial licensure of a program, as well as an effective process for notifying affected parties of changes to the local service system.

(e) This Part establishes a process to ensure that all entities applying for licensure are treated equally.

(f) The licensing process established in this Part will be linked to and coordinated with the pertinent licensing practices of other State agencies as appropriate, including but not limited to, the Department of Health, Office of Addiction Services and Supports, Office for People with Developmental Disabilities, and the State Education Department.

**551.2 Legal base.**

(a) Section 31.02 of the Mental Hygiene Law requires that a provider of services must be issued an operating certificate in order to engage in the following activities: a residential facility; a freestanding psychiatric inpatient facility; part of a general hospital providing inpatient or nonresidential services; outpatient or nonresidential program; residential treatment facility for children and youth; or comprehensive psychiatric emergency program which serves individuals diagnosed with a mental illness.

(b) Section 31.04 of the Mental Hygiene Law grants the Commissioner of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under their jurisdiction and to establish procedures for the issuance and amendment of operating certificates.

(c) Section 31.05 of the Mental Hygiene Law establishes criteria for the issuance of an operating certificate.

(d) Section 31.22 of the Mental Hygiene Law establishes criteria for the approval of certain certificates of incorporation.

(e) Section 31.23 of the Mental Hygiene Law establishes criteria for the approval of facility programs, services and sites.

### **551.3 Applicability.**

(a) This Part applies to any existing or proposed limited liability company, corporation or public or private agency which proposes a project described in section 551.6 of this Part.

(b) This Part applies to a provider of services or other organization which requires an operating certificate under article 31 of the Mental Hygiene Law, including those programs and services of an Office of Mental Health operated psychiatric center for which the commissioner has determined that an operating certificate is required. This Part does not apply to State-operated inpatient services.

(c) This Part applies to a facility that requires an operating certificate pursuant to both article 28 of the Public Health Law and article 31 of the Mental Hygiene Law.

(d) This Part does not apply to family care home providers or programs not required to obtain an operating certificate.

(e) This Part supersedes Part 51 of this Title as it relates to services operated by or under the auspices of the Office of Mental Health.

### **551.4 Definitions.**

(a) *Administrative action* means the classification of projects subject to prior approval review specified in section 551.6(d) of this Part.

(b) *Behavioral Health Services Advisory Council (BHSAC)* means a group of individuals appointed by the governor who advise the commissioner in matters related to mental health and addiction services in New York State, pursuant to section 7.05 of the Mental Hygiene Law.

(c) *Business days* are defined as days other than Saturdays, Sundays and legal holidays. In computing *business days*, the day that the application is received shall be day one.

(d) Capacity means the total number of beds listed on an inpatient or licensed housing program's operating certificate;

(e) *Capital project* means acquisition, construction, substantial renovation, or alteration of a building or property that is used, or will be used, by an existing or proposed program. A *capital project* does not include routine maintenance or minor repairs. A *capital project* includes one or more of the following:

(1) *acquisition* means obtaining property through purchase or donation or an interest in property through a lease;

(2) *construction* means erection of a new building or structural addition to an existing building;

(3) *substantial renovation* means all changes or rearrangements in a structural plan or architectural or mechanical component of a building within the scope of work whose cost exceeds 50 percent of the replacement cost of the building; and

(4) *alteration* means a change to a building or facility, other than a substantial renovation, that affects or could affect the fire safety or the usability of the building or facility or part thereof. Normal maintenance, re-roofing, painting or wall papering, or changes to mechanical and electrical systems are not alterations unless they affect the fire safety or the usability of the building or facility either during the capital project or after.

(f) *Census* means the number of individuals currently served by a given outpatient program.

(g) *Clinical services contract* means a written agreement between the sponsor of an existing or proposed provider of services and another organization separate from the provider of services for the purpose of obtaining some of the clinical services or some of the clinical staff necessary to operate the program in compliance with requirements for an operating certificate.

(h) *Commissioner* means the Commissioner of the New York State Office of Mental Health, or their designee.

(i) *Comprehensive Prior Approval Review (PAR)* means the classification of projects subject to prior approval review that are specified in section 551.6(b) of this Part and reviewed pursuant to section 551.9(b)(1) of this Part.

(j) *E-Z Prior Approval Review (PAR)* means the classification of projects subject to prior approval review that are specified in section 551.6(c) of this Part and reviewed pursuant to section 551.9(b)(2) of this Part.

(k) *Health systems agency (HSA)* means a corporation organized, approved and operating pursuant to section 2904-b of the Public Health Law.

(l) *Inpatient program* is a part of a hospital, as defined in article 28 of the Public Health Law or hospital licensed pursuant to article 31 of the Mental Hygiene Law, which is operated for the purpose of providing a program of 24-hour professional care and treatment to individuals diagnosed with a mental illness. This definition includes a psychiatric inpatient unit of a general hospital, a hospital for persons with mental illness, and a residential treatment facility for children and youth. This definition does not include outpatient programs or licensed housing.

(m) *Licensed housing* means all residential programs licensed by OMH pursuant to Parts 589, 594, 595 of this Title or any other applicable regulations.

(n) *Local governmental unit (LGU)* means the unit of local government given the authority in accordance with article 41 of the Mental Hygiene Law to provide and plan for local or unified services.

(o) *Management contract* means a written agreement between the sponsor of an existing or proposed provider of services and another organization separate from the provider of services for the purpose of delegating management of all, or part, of the day-to-day non-clinical operations of a program.

(p) Office shall mean the Office of Mental Health.

(q) *Outpatient program* includes but is not limited to a Mental Health Outpatient Treatment and Rehabilitative Services, Children's Mental Health Rehabilitation Services, continuing day treatment, partial hospitalization, day treatment, comprehensive psychiatric emergency program, personalized recovery-oriented services, assertive community treatment. This definition does not include inpatient programs or licensed housing.

(r) *Program* means planned services for the purpose of meeting specified needs of individuals with mental illness, the operation of which requires approval and issuance of an operating certificate granted by the commissioner.

(s) *Project* means one or more activities or actions specified in section 551.6 of this Part which require approval of the commissioner prior to initiation, implementation, completion, operation, or issuance of an operating certificate.

(t) *Provider of services* means an entity, as defined pursuant to section 1.03 of the Mental Hygiene Law, which is responsible for the operation of a program or network of programs. Such entity may be an individual, partnership, association, corporation, limited liability company, or public or private agency, other than an agency, office or department of the State.

(u) *Public funds* means Medicaid, Medicare, or any funding appropriated pursuant to article 41 of the Mental Hygiene Law, including local assistance, State aid, community reinvestment funds, and capital funds.

(v) *Satellite* means a physically separate adjunct site to a certified Mental Health Outpatient Treatment and Rehabilitative Services program, continuing day treatment program, day treatment program serving children or intensive psychiatric rehabilitation treatment program which provides either a full or partial array of outpatient services on a regularly and routinely scheduled basis (full or part time).

(w) *Sponsor* means the provider of service as defined in subdivision (t) of this section or an entity that substantially controls or has the ability to substantially control the provider of services. For the purpose of this Part, factors used to determine whether there is substantial control shall include but not be limited to:

- (1) the right to appoint and remove directors or officers;
- (2) the right to approve bylaws or articles of incorporation;
- (3) the right to approve strategic or financial plans for a provider of service; or
- (4) the right to approve operating or capital budgets for a provider of services.

(x) *Volume of services* means the total units of service a program provides over a given period of time.

#### **551.5 Project planning and consultation.**

(a) It is the intent of this Part to expedite the review of projects to allow the operation of needed and appropriate projects without undue delay. For those projects that require issuance of an operating certificate, the applicant is expected to be knowledgeable about the requirements for operation of the program for which an operating certificate is sought.

(b) It is the intent of this Part to avoid unnecessary expenditures for the development of a project application. An applicant planning an extensive and expensive project is advised to ascertain the public need for the project within the existing system of mental health programs and services in the county or counties to be served by the project prior to submission of an application to the office in accordance with this Part. The applicant may be required to obtain a Memorandum of Understanding (MOU) whenever a project is physically hosted by another service provider in the same building.

(c) The applicant shall consult with the local governmental unit through its director of community services or designee in the county or counties to be served by the project prior to submission of an application to the office in accordance with this Part. The applicant shall provide sufficient information to the local governmental unit regarding the project being planned to enable appropriate consultation and advice.

(1) EZ-PAR applicants shall be required to obtain a letter of support from the local governmental unit-of the county where the program is to be established or located. If the applicant is unable to obtain a response from the local government unit in a timely fashion, the applicant shall consult with the office. If the project affects other counties, it is expected that the applicant will notify the other local governmental units.

(2) Program proposing an administrative action as described under section 551.6(d) of this Part shall advise the local governmental unit of their intent but are not required to obtain a letter of support.

(d) The applicant shall consult with designated staff of the office prior to the submission of an E-Z PAR or Comprehensive PAR application.

#### **551.6 Project subject to prior approval review.**

(a) All projects subject to prior approval review will be classified as a comprehensive, E-Z PAR, or administrative action project. If a project consists of two or more components that fall within separate classifications, the entire project shall be reviewed under the classification that is determined to be most appropriate by the office. All time frames referenced within this section shall begin upon receipt of a complete application as determined by the office. The commissioner shall charge a review fee to

applicants for projects authorized pursuant to this Part in accordance with the most recent fee schedule published on the office's website.

(b) Projects classified as comprehensive review projects pursuant to this Part include:

(1) establishment of a new program by an applicant who is not currently licensed by the office or who has been licensed for less than six months;

(2) establishment or closure of licensed psychiatric inpatient beds or reduction of licensed psychiatric inpatient beds by whichever is less:

(i) 15% or greater of the licensed capacity of this site; or,

(ii) more than 10 beds;

(3) change of sponsor of a program licensed by the office, where the new sponsor does not currently operate a program licensed by the office or has been licensed for less than twelve months:

(i) If the agency ceasing operation of the program is separate from the agency that is assuming operation, an E-Z PAR to close is required of the agency ceasing operation.

(4) a project otherwise eligible for an administrative action or E-Z PAR review that is reclassified as a comprehensive review project pursuant to section 551.9(c) of this Part.

(c) Projects classified as E-Z PAR review projects pursuant to this Part include:

(1) outpatient program projects submitted by an applicant who currently operates one or more programs that are currently licensed by the office, including:

(i) establishment of a new outpatient program;

(ii) establishment of a new satellite;

(iii) relocation of a licensed outpatient program or satellite to a location outside of the county in which such program or satellite is currently located;

(iv) expansion or reduction of a Mental Health Outpatient Treatment and Rehabilitative Services (MHOTRS) program that results in a staffing change greater than 5.5 full-time equivalent staff;

(v) expansion or reduction of the approved census of an outpatient program, excluding MHOTRS programs, over any contiguous 12-month period by 15 percent or more;

(vi) closing an outpatient program;

(vii) closing of an outpatient satellite with greater than 5.5 full-time equivalent staff;

(viii) substantial change in population served, services provided, or program type; and

(ix) other projects that may have a substantial impact on outpatient mental health services;

(2) licensed housing projects submitted by an applicant who currently operates a program which has been licensed by the office, including:

- (i) expansion or reduction of licensed capacity;
- (ii) relocation of licensed housing, excluding licensed apartment treatment units;
- (iii) establishment of new licensed housing; and
- (iv) closure of licensed housing programs.

(3) inpatient programs that involve:

(i) expansion or reduction of licensed psychiatric inpatient beds by whichever is less:

- (a) 5% to 15% of the licensed capacity of this site; or,
- (b) a maximum of 10 beds;

(ii) request for waiver requiring the admission of individuals in emergencies pursuant to section 9.39 of the Mental Hygiene Law as provided in section 31.04 of the Mental Hygiene Law and section 551.12(b) of this Part;

(4) change of sponsor of an agency or program currently licensed by the office where the new sponsor currently operates a program which has been licensed by office for at least 12 months and is in substantial compliance with office standards, as determined by the office;

(i) if the agency ceasing operation of the program is separate from the agency that is assuming operation, an E-Z PAR to close is required of the agency ceasing operation;

(5) significant change in the terms and conditions of an operating certificate such as program type, population served, special populations served, services or hours of operation by the licensed program or by a discrete component of the licensed program;

(6) all capital projects unless otherwise determined by the office;

(i) all capital projects, including those determined by the office require a PAR application, shall require a site visit at the completion of the project;

(7) a project proposing:

(i) a change in ownership of the stock of a business corporation or membership certificates of a limited liability company, in any amount, that changes the controlling interest of the corporation or limited liability company pursuant to Part 573 of this Title;

(ii) a change in ownership of the stock of a business corporation or membership certificates of a limited liability company, in any amount, to a new stockholder, member or partner pursuant to Part 573 of this Title;

(8) a project otherwise eligible for an administrative action or comprehensive PAR that is reclassified as an E-Z PAR review project pursuant to section 551.9(c) of this Part.

(d) Projects classified as administrative action review projects pursuant to this Part include:

(1) changes in the operation of a licensed program including but not limited to:

(i) expansion or reduction of licensed psychiatric inpatient beds by whichever is less:

(a) less than 5% of the licensed capacity of this site; or,

(b) less than 10 beds;

(ii) expansion or reduction of a MHOTRS program that results in a staffing change less than 5.5 full-time equivalent staff and/or a change in physical space;

(iii) expansion or reduction of the approved census of an outpatient program, excluding MHOTRS programs, up to 15 percent over any contiguous 12-month period;

(iv) minor change in terms and conditions of an operating certificate including but not limited to authorized services, population served or days and hours of operation that do not change the overall terms and conditions of the license;

(v) program consolidation with no major program expansion or reduction;

(vi) utilization of a management contract;

(vii) utilization of a clinical services contract; or

(viii) change of satellite location to a full program;

(2) changes in the location of a licensed program that involve:

(i) relocation of an existing outpatient program or satellite within the area currently served by the program or within a service area defined by the local governmental unit;

(ii) consolidation of programs or satellite locations without substantial reduction in the overall capacity, caseload, volume of services, or area served by the program; or

(iii) closure of an outpatient satellite with 5.5 full-time equivalent staff or less;

(3) a project proposing a change in ownership of the stock of a business corporation, in any amount, if that transfer is to an existing stockholder, member or partner and does not result in a change to the controlling interest of the corporation pursuant to Part 573 of this Title;

(4) approval of a certificate of incorporation, articles of organization, bylaws or any amendments thereto pursuant to subdivision (e) of this section; and

(5) actions pertaining to licensed programs or proposed programs in response to unplanned or emergency situations.

(e) An application of a project pertaining to a certificate of incorporation or articles of organization as defined in the Not-for-Profit Corporation Law or the Business Corporation Law or the Limited Liability Company Law or bylaws of either type of entity that requests approval of such documents by the commissioner shall be reviewed in accordance with the following:

(1) A certificate of incorporation or articles of organization may include, among its powers or purposes, operation of one or more facilities, programs, or services that requires an operating



certificate from the office. If the entity has not been issued such operating certificate, the request for approval of the certificate of incorporation or articles of organization shall be included within the application for a project classified in subdivisions (b) and (c) of this section.

(2) A certificate of incorporation or articles of organization may include, among the powers or purposes of the entity, operation of one or more facilities, programs, or services that require an operating certificate from the office. If the entity has been issued such operating certificate and the proposed change to the certification of incorporation or articles of organization does not substantially affect the powers or purposes for which the operating certificate was issued, the request for approval shall be classified as an administrative action pursuant to subdivision (d) of this section, together with a copy of the bylaws.

(3) A certificate of incorporation or articles of organization may include, among the powers or purposes of the entity, the solicitation of contributions specifically for operation of one or more facilities, programs, or services that require an operating certificate from the office. If the certificate of incorporation or articles of organization does not include the power or purpose to operate such facility, program, or service, the request for approval shall be classified as an administrative action pursuant to subdivision (d) of this section.

(4) A certificate of incorporation or articles of organization that does not include among the powers or purposes of the entity the operation of a facility, program, or service that requires an operating certificate from the office, or that includes solicitation of contributions specifically for such purpose, shall not require submission or review pursuant to this Part.

(5) A business corporation, not-for-profit corporation or limited liability company which has been issued an operating certificate from the office, shall submit a request to approve changes to its bylaws when such changes relate to any transfer, assignment or other disposition of 10 percent or more of the stock, membership interest, or voting rights. Additionally, any transfer, assignment, or other disposition of the stock or voting rights which results in the ownership or control of more than 10 percent of the stock, ownership, or voting rights of such entity, must also be approved by the office.

(f) For administrative action review, the office may determine that the scope or impact of the proposed action is substantial and, therefore, shall require the submission of an E-Z PAR or Comprehensive PAR application pursuant to subdivision (a) of this section. The office will notify applicant of such determination.

#### **551.7 Standards for approval of projects.**

(a) A project subject to prior approval review of the office shall be proposed in accordance with this Part through submission of an application as required by the office. The review of the application shall base approval upon consideration of the extent to which:

(1) the members of the board of directors, officers, owners, partners, members of limited liability companies, and stockholders are of such character, experience, competence, and standing in the community as to give reasonable assurance of their ability to responsibly manage the affairs of the organization and to provide services consistent with the needs, goals, and best interests of recipients, taking into consideration the criminal history record of any natural person operator, if any, obtained in accordance with Part 550 of this Title. Regulatory

compliance of existing programs and services will be taken into consideration during review of the application;

(2) the project is consistent with local or unified services plans for mental health services, as applicable;

(3) there is public need for the project at the time and place and under the circumstances proposed;

(4) the project is or will be linked within a system of mental health services and with other service systems, including the local system of mental health services;

(5) there is reasonable assurance that funds will be available to finance operating expenses and to finance construction, renovation, and acquisition expenses;

(6) the facility will be safe and appropriate for the type of project proposed;

(7) the program and services proposed are accessible, safe, appropriate, and will comply with requirements for issuance of an operating certificate;

(8) the project will appropriately and competently serve, or arrange to be served, the target population of the program in a manner which addresses individual cultural and ethnic characteristics;

(9) there are no facilities, programs, and services available that may serve as alternatives or substitutes for all or part of the proposed project;

(10) the project demonstrates appropriate and reasonable availability and use of public funds;

(11) if a project proposes closure or termination, the agency will ensure that recipients of mental health services will be linked to appropriate services based on individual need and follow-up will be provided by the applicant to confirm linkages of recipients to services; transportation needs of current recipients will be addressed; and recipient records and financial accounts will be safeguarded;

(12) the project increases the availability of necessary service to the poor and the medically indigent;

(13) if the project proposes to utilize a management contract or a clinical services contract:

(i) the management or clinical services organization and its principals, officers, and directors are of such character, experience, competence, and standing in the community as to give reasonable assurance of their ability to responsibly carry out the requirements of the contract;

(ii) the provider of services, as the holder of the operating certificate, retains sufficient authority and responsibility to demonstrate effective control of the overall program, including the delivery of services, the quality of services, fiscal stability, and compliance with the requirements of the office;

- (iii) the terms and conditions of the contract are reasonable and will not jeopardize the continued operation of the program; and
- (iv) the scope of responsibility of the management or clinical services organization under the contract is sufficiently limited such that the organization does not effectively become, in the judgement of the commissioner, the provider of services as defined in section 551.4 of this Part.

(b) Since components of a project may progress at different rates, the review criteria of this Part shall be applied by the office as appropriate in the application review process.

**551.8 Application for prior approval review – project scope.**

(a) Applicants proposing projects shall submit applications in a form and format prescribed by the office.

(b) The application shall include information as specified by the office which is relevant to the scope of the proposed project to enable review in accordance with the requirements of this Part.

(c) Projects that are subject to prior approval by the Department of Health under the Public Health Law shall also submit an application as prescribed by the Department of Health.

(d) An applicant, currently licensed by the office, shall be in good standing with the office and must demonstrate the ability to comply with regulatory requirements in currently licensed programs prior to the office approving such application.

**551.9 Review of application for prior approval.**

(a) The office shall review the application for completeness of information.

(1) For E-Z PAR applications, a completeness review will be made within three business days. The applicant shall be notified of any lack of information within five business days of receipt of the application. The applicant shall have 10 business days to provide the additional information. Failure to provide such information within the 10 business days, without an approved extension shall constitute withdrawal of the application. If a review is not able to be conducted within the timeframes outlined above, the office may provide a written acknowledgment of the receipt of the application and provide a statement of the approximate date, which shall be reasonable under the circumstances of the request, when the application will be reviewed.

(2) For comprehensive PAR applications, a completeness review will be made within five business days. The applicant shall be notified of any lack of information within seven business days of receipt of the application. The applicant will have 20 business days to provide the additional information. Failure to provide such information shall constitute the withdrawal of the application.

(3) If no additional information is requested, the application shall be considered as complete.

(4) Provide a written acknowledgment of the receipt of the request and a statement of the approximate date, which shall be reasonable under the circumstances of the request, when the request will be granted or denied. If the records access officer determines to grant a request in

whole or in part, and if circumstances prevent disclosure to the person requesting the record or records within 20 business days from the date of the acknowledgment of the receipt of the request, the records access officer shall state, in writing, both the reason for the inability to grant the request within 20 business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part. Failure by the records access officer to conform to the provisions of this paragraph shall constitute a denial.

(b) Upon the receipt of a complete application, the office shall notify the applicant that review has begun.

(1) For projects undergoing comprehensive PAR review, the office shall notify all reviewers the application is ready for review. Reviewers shall include the field office, appropriate local governmental unit, health systems agency and other reviewers as appropriate. All reviewers shall have 20 business days to review the application and submit comments and recommendations to the office. Lack of response by any such reviewer shall be considered by the office to be a “no objection” and the office shall proceed with its review of the application. Reviewers may request an extension for cause.

(2) For projects undergoing E-Z PAR review, the office shall notify all reviewer the application is ready for review. Reviewers may include the field office, appropriate local governmental unit, health systems agency and other reviewers as appropriate. All reviewers shall have 10 business days to review the application and submit comments and recommendations to the office. Lack of response by any such reviewer shall be considered by the office to be a “no objection” and the office shall proceed with its review of the application. Reviewers may request an extension for cause.

(3) If a review is not able to be conducted within the timeframes outlined above, the office may provide a written acknowledgment of the receipt of the application and provide a statement of the approximate date, which shall be reasonable under the circumstances of the request, when the application will be reviewed.

(c) Prior to issuing a decision, the office may reclassify a project for review. A project subject to E-Z PAR review may be considered for administrative action or comprehensive review and a project subject to administrative action may be considered for an E-Z PAR review. A project subject to a comprehensive review may be considered for an E-Z PAR review. The determination to reclassify may include but not be limited to the following considerations:

(1) impact upon the local service system;

(2) complexity of the project;

(3) expenditure of state or local resources to support the project.

(d) After review by the local governmental unit, health systems agency and other reviewers as appropriate, the office shall provide the Behavioral Health Services Advisory Council a reasonable opportunity to review comprehensive PAR projects and to submit recommendations to the commissioner. Such projects shall be reviewed by the Behavioral Health Services Advisory Council as soon as practicable after the review of the project pursuant to subdivision (b) of this section. A

construction of a facility for which approval from the commissioner is required and subject to E-Z PAR review may be reviewed by the Behavioral Health Services Advisory Council upon request of the Chairperson of the Council or as determined by the office.

(e) The commissioner or their designee shall make a decision or proposed decision on the application, based upon the reports of the office staff, local governmental unit, and where required, the recommendations of the Behavioral Health Services Advisory Council, within 30 business days for E-Z PAR applications and 90 business days for comprehensive PAR applications from the time a complete application was received by the office, whenever possible. If a decision is not able to be issued within the timeframes outlined above, the office may provide a statement of the approximate date, which shall be reasonable under the circumstances of the request, a decision may be issued. The commissioner's decision may be:

- (1) approval of the project and authorization to proceed;
- (2) approval of the project but denial of public funds;
- (3) conditional approval, with or without authorization to proceed; or
- (4) disapproval of the project.

(f) If the commissioner proposes to disapprove the project, the applicant and other interested parties shall be notified in writing and the applicant shall be afforded an opportunity to be heard in accordance with Part 503 of this Title before the decision is final.

(g) If the commissioner proposes a decision contrary to a recommendation of approval or disapproval by the local governmental unit, the commissioner shall afford the local governmental unit an opportunity to request a public hearing. The request for a hearing shall be submitted within 10 days of notification of the decision.

(h) When a decision is reached, after a hearing if necessary, the commissioner shall notify the applicant and all reviewers of the decision and shall advise the applicant of the procedure to be followed in submitting additional information as set forth in this Part.

(i) Unless otherwise specified, project approvals shall be time limited to six months. Prior to the end of six months, an applicant may request in writing an extension of the approval. An applicant who asks for an extension of the six-month period must demonstrate to the commissioner's satisfaction that the project under which the conditional approval was granted have not substantially changed and that the project is moving, or will move, forward toward implementation within one year from the requested extension.

(j) Failure to respond on a timely basis to conditions of approval as required by this Part shall result in the application being withdrawn.

#### **551.10 Review of physical facility.**

(a) If the project includes acquisition, construction, substantial renovation, or alteration as defined in section 551.4 of this Part, the applicant shall submit information as required by the office to assure compliance with appropriate building, safety, and design standards.

(b) If the premises are to be leased but not owned by the applicant, the applicant shall identify the owners of the premises and, if the owner is a corporation, include the names of all incorporators and directors. The lease or proposed lease shall include the following language:

“The landlord acknowledges that rights of reentry into the premises set forth in this lease do not confer on the landlord the authority to operate on the premises a facility for the mentally disabled, as defined in article 1 of the Mental Hygiene Law.”

(c) The office shall review the submission required by this section and advise the applicant if additional information is required. When satisfied that the applicant has demonstrated the project will comply with applicable regulations and standards, the office shall notify the applicant that he/she is approved to proceed with the project.

(d) Approval to proceed does not imply that the office or any other State agency will be responsible for financing some or all costs associated with the project. The provider is responsible to ensure adequate funding is available.

(e) If there is no substantial progress toward completion within six months from when conditional approval was issued or if a project falls six months behind the approved development schedule, conditional approval of a capital project may be rescinded or the application may be withdrawn at the discretion of the office unless an extension of the approval is requested in writing and granted.

(f) The applicant shall request prior approval of any changes relating to the scope of the project or significant increase in the cost of the project.

(g) Upon completion of approved construction or renovations, the applicant shall submit a statement by the architect or engineer that all work has been completed in accordance with applicable codes and plans approved by the office.

(h) Upon completion of the project, and prior to initiation of an approved program, an inspection of the site may be made by the office to assure that the project has been completed in compliance with approved plans and is otherwise ready to be issued an operating certificate, if applicable. The office may conduct such inspections prior to completion of the project.

#### **551.11 Licensed Housing.**

(a) Projects which include new construction or substantial renovation as defined in section 551.4 of this Part shall meet the following requirements:

(1) the facility shall be designed and constructed to be readily accessible to, and usable by, persons with physical disabilities;

(2) the design of the facility shall meet the most current requirements of the applicable sections of the Americans with Disabilities Act and the ADA Standards for Accessible Design (28 CFR parts 35 and 36);

(3) all common use space shall be accessible; and

(4) no less than five percent of the facility's occupancy, or at least one bedroom, whichever is greater, shall be accessible.

**551.12 Additional criteria for inpatient programs.**

(a) In addition to the criteria of sections 551.7 and 551.10 of this Part, applications for inpatient program shall be reviewed against criteria in this section.

(b) No application for the issuance of an operating certificate of a psychiatric inpatient unit which is operated as part of a hospital as defined in article 28 of the Public Health Law, shall be effective until such hospital is granted approval to admit patients in emergencies for immediate observation, care and treatment pursuant to Part 580 of this Title, except as provided in section 31.04(a)(4) of the Mental Hygiene Law and as outlined below.

(1) The commissioner shall waive this requirement for two-year periods upon determination that:

(i) there is no public need for additional beds for emergency psychiatric admission in the service area. In determining such need, the factors which the commissioner shall consider include, but shall not be limited to:

(a) the current and projected population characteristics of the service area, including the prevalence of mental illness in the population;

(b) the current patterns of utilization of psychiatric services and the service demands of the service area; and

(c) the existence and availability of psychiatric and crisis resources available in the community;

(ii) the hospital lacks the physical capacity to reasonably accommodate such emergency admissions without extensive structural changes. For the purpose of this section, extensive structural changes shall consist of any project for which the costs of accommodating emergency admissions will unreasonably increase the psychiatric inpatient rate of the hospital;

(iii) the hospital does not and reasonably could not provide the scope of services necessary to assure adequate and appropriate psychiatric care and treatment for patients in emergency situations; or

(iv) the hospital has agreed to accept referrals of involuntary psychiatric patients under an emergency admissions system which has been approved by the commissioner. In determining whether such a proposed system should be approved, the commissioner, in consultation with the local governmental unit, shall consider whether such proposal:

(a) defines the specific area to be served;

(b) provides for sufficient beds for emergency psychiatric admissions to meet the public needs identified for the service area pursuant to subparagraph (i) of this paragraph;

(c) describes the manner in which the patterns of admission in the service areas will be altered;

(d) projects the number of admissions that will occur at the hospitals covered under the proposal; and

(e) effectively addresses the availability of emergency psychiatric admissions to meet the projected public needs.

(2) No hospital without an on-site emergency room shall be required to accept patients in need of emergency observation, care and treatment. No application for the issuance of an operating certificate for a psychiatric inpatient unit of such hospital shall be accepted until the hospital has agreed to accept referrals of involuntary psychiatric patients under an emergency admission system which has been approved by the commissioner, except the commissioner may waive this requirement for two-year periods pursuant to paragraph (1) of this subdivision.

(3) Nothing in this Part shall prevent the commissioner from requiring a hospital to admit patients under section 9.39 of the Mental Hygiene Law on an emergency basis if the health or welfare of the public so requires.

(4) Prior to granting a waiver to a hospital, the commissioner shall consider the comments of the director of the local governmental unit of the specific service area.

(c) In reviewing projects for inpatient beds, the office shall consider:

(1) the advice and recommendations of the local governmental unit;

(2) current or anticipated psychiatric treatment alternatives to acute psychiatric inpatient care which lessen the need for inpatient care;

(3) whether the project improves the network of services available to patients in the service area;

(4) for projects serving children and adolescents:

(i) conformance with admission and utilization review practices which emphasize the shortest lengths of stay clinically appropriate in order to prevent the child's or adolescent's estrangement from family and community;

(ii) conformance with discharge practices which emphasize planning for discharge from the time of admission, prevention of family or community estrangement, and post discharge follow-up responsibility for all patients; and

(iii) conformance with the policy of developing smaller, specialized children/adolescents units that serve children and adolescents as close to their own communities as possible to facilitate support system engagement. Specifically, the office will consider location of beds, number of beds, travel distances to obtain service in the proposed service area, public transportation, other access factors, and service area plans for children and adolescent beds.