



### **Section 599.1. Background and intent**

(a) This Part establishes standards for the certification, operation and reimbursement of Mental Health Outpatient Treatment and Rehabilitative Service programs, serving adults and children.

Mental Health Outpatient Treatment and Rehabilitative Service programs serving adults serve individuals 18 years of age and older with a diagnosis of mental illness. Mental Health Outpatient Treatment and Rehabilitative Service programs serving children serve individuals up to 21 years of age and may include 21-year old individuals while such individuals are currently admitted to a Mental Health Outpatient Treatment and Rehabilitative Service program serving children with a diagnosis of emotional disturbance. Mental Health Outpatient Treatment and Rehabilitative Service programs may serve both adults and children. It is the intent of OMH to expand a Mental Health Outpatient Treatment and Rehabilitative Service program's option to provide peer support services, and off-site services.

(b) The goals of a Mental Health Outpatient Treatment and Rehabilitative Service program that serves adults are to diagnose and treat an individual's mental illness, to work with the individual in developing a treatment plan designed to minimize symptoms and adverse effects of illness, maximize wellness, and promote recovery toward the achievement of life goals such as, but not limited to, education and employment.

(c) The goals of a Mental Health Outpatient Treatment and Rehabilitative Service program that serves children are early assessment and identification of childhood emotional disturbances, and engagement of the child and family in the development of a treatment plan designed to minimize the symptoms and adverse effects of illness and prevent their progression, maximize wellness, assist the child in developing a resilient and hopeful approach to school, family, and community, and maintain the child in their natural environment.

(d) This Part supersedes Parts 587 and 588 of this Title as they relate to Mental Health Outpatient Treatment and Rehabilitative Services operated by or under the auspices of the Office of Mental Health, except where specifically noted in this Part.

### **Section 599.2. Legal base**

(a) Sections 7.09 and 31.04 of the Mental Hygiene Law grant 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 set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services for adults diagnosed with mental illness or children diagnosed with emotional disturbance, pursuant to an operating certificate.

(b) Section 31.02 of the Mental Hygiene Law prohibits the operation of outpatient programs providing services for persons with mental illness unless an operating certificate has been obtained from the Commissioner.

(c) Sections 31.07, 31.09, 31.13 and 31.19 of the Mental Hygiene Law further authorize the Commissioner or their representatives to examine and inspect such programs to determine their suitability and proper operation. Section 31.16 authorizes the Commissioner to suspend, revoke or limit any operating certificate, under certain circumstances.

(d) Section 31.11 of the Mental Hygiene Law requires every holder of an operating certificate to assist the Office of Mental Health in carrying out its regulatory functions by cooperating with the Commissioner in any inspection or investigation, permitting the Commissioner to inspect its facility, books and records, including an individual's records, and making such reports, uniform and otherwise, as are required by the Commissioner.

(e) Section 31.06 of the Mental Hygiene Law requires every holder of an operating certificate to develop policies and training programs in regard to reporting child abuse or neglect.

(f) Section 43.02(b) of the Mental Hygiene Law authorizes the Commissioner to request from operators of facilities licensed by the Office of Mental Health such financial, statistical and program information as the Commissioner may determine to be necessary.

(g) Article 33 of the Mental Hygiene Law establishes basic rights of persons diagnosed with mental illness.

(h) Section 364-j of the Social Services Law requires the establishment of managed care programs throughout the State and provides for the provision of special care services to enrollees in Medicaid managed care programs who require such services.

(i) Sections 364 and 364-a of the Social Services Law give the Office of Mental Health responsibility for establishing and maintaining standards for medical care and services in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

(j) Section 43.01 of the Mental Hygiene Law gives the Commissioner authority to set rates for outpatient services at facilities operated by the Office of Mental Health. Section 43.02 of the Mental Hygiene Law provides that payments under the medical assistance program for outpatient services at facilities licensed by the Office of Mental Health shall be at rates certified by the Commissioner of Mental Health and approved by the Director of the Budget.

(k) Title XIX of the Federal Social Security Act, as identified in section 1901 of such Title, authorizes Federal grants to states to fund medical assistance to needy persons in accordance with a State plan approved by the Federal Department of Health and Human Services.

(l) Article 41 of the Mental Hygiene Law gives the Local Governmental Unit the authority to direct and administer a local comprehensive planning process for its geographic area in which all providers of service shall participate and cooperate through the development of integrated systems of care and treatment for persons with mental illness.

(m) Section 41.13 of the Mental Hygiene Law establishes the powers and duties of the Local Governmental Unit.

(n) 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 Services, 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.

### **Section 599.3. Applicability**

(a) This Part applies to any provider of service that operates or proposes to operate a Mental Health Outpatient Treatment and Rehabilitative Service program in which staff is assigned on a regular basis to provide services for the treatment of individuals with a diagnosis of mental illness.

(b) This Part applies to Mental Health Outpatient Treatment and Rehabilitative Service Programs, Diagnostic and Treatment Centers and hospital-based Mental Health Outpatient Treatment and Rehabilitative Service Programs, as defined in this Part.

(c) This Part does not apply to the following activities which do not require an operating certificate issued by the Office:

(1) professional practice, on an individual or partnership basis, within the scope of professional licensure or certificate issued by an agency of the State;

(2) professional practice by a professional service corporation duly incorporated pursuant to the Business Corporation Law;

(3) pastoral counseling by a clergyman or minister as defined in section 2 of the Religious Corporation Law;

(4) non-residential services that are provided in accordance with licensure or other supervision by a State agency other than the Office;

(5) non-residential services that are provided in accordance with purposes authorized in a charter or certificate of incorporation issued pursuant to the Education Law; and

(6) designated partial capitation programs, including the Pre-Paid Mental Health Plan operated by the Office.

(d) Programs which provide medical services, other than health monitoring and health screening, that comprise more than five percent of total annual visits shall also be licensed by the Department of Health

### **Section 599.4. Definitions**

(a) For purposes of this Part:

1 After hours means before 8 a.m., 6 p.m. or later, or during weekends.

2 Ambulatory Patient Groups (APGs) means a defined group of outpatient procedures, encounters or ancillary services grouped for payment purposes. The groupings are based on the intensity of the services provided and the medical procedures performed.

3 Base rate means the numeric value that shall be multiplied by the weight for a given service to determine the Medicaid fee for a service.

(4) Clinical services contract means a written agreement between the governing authority 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.

(5) Clinical staff means staff members who provide services directly to individuals, including professional staff, non-licensed professional staff, paraprofessional staff, and student interns.

(6) Clinician means a person who is a member of the professional staff, or non-licensed professional staff.

(7) Collateral means a person who is a member of the individual's family or household, or other person who regularly interacts with the individual and is directly affected by or has the capability of affecting their condition, and is identified in the treatment plan as having a role in treatment and/or is necessary for participation in the evaluation and assessment of the individual prior to admission. A group composed of collaterals of more than one individual may be gathered together for purposes of goal-oriented problem solving, assessment of treatment strategies and provision of practical skills for assisting the individual in the management of their illness.

(8) Commissioner means the Commissioner of the New York State Office of Mental Health.

(9) Community education means activities designed to increase community awareness of the manifestations of mental illness and emotional disturbance and the benefits of early identification and treatment.

(10) Counseling means the provision of assistance and guidance in resolving personal, social, or psychological problems and difficulties

(11) Current Procedural Terminology (CPT) means codes used in a coding system for health care procedures as defined in the publication Current Procedural Terminology which is published by the American Medical Association (AMA).

(12) Designated mental illness means a disruption of cognitive, emotional, or behavioral functioning, which can be classified and diagnosed using the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), or the International Classification of Diseases (ICD), other than:

(i) substance use disorders in the absence of other mental health conditions defined in the DSM or ICD;

(ii) Neurodevelopmental disorders in the absence of other mental health conditions defined in the DSM or ICD except Attention-Deficit/Hyperactivity Disorder and Tic Disorders;

(iii) major neurocognitive disorder, traumatic brain injury, or mental disorders due to another medical condition; or

(iv) V-Codes. Other conditions that may be a focus of clinical attention (commonly described with Z codes), except Parent-Child Relational Problem (V61.20/Z62.820) for children.

(13) Diagnostic and treatment center, for the purposes of this Part, means an outpatient program licensed as a diagnostic and treatment center pursuant to article 28 of the Public Health Law which provides more than 10,000 mental health visits annually, or for which mental health visits comprise over 30 percent of the annual visits. A program providing fewer than 2,000 total visits annually shall not be required to be licensed by the Office.

(14) Director of Community Services shall mean the director of community services for the mentally disabled appointed pursuant to Mental Hygiene Law.

(15) Evidence-based treatment means an intervention for which there is consistent scientific evidence demonstrating improved outcomes.

(16) Health physical means the physical evaluation of an individual, including an age and gender appropriate history, examination, and the ordering of laboratory/diagnostic procedures, as appropriate.

(17) Health screening means the initial gathering and assessing of information concerning the recipient's medical history and current physical health status (including physical examination and determination of substance use) for purposes of informing an assessment and determination of its potential impact on a recipient's mental health diagnosis and treatment, and the need for additional health services or referral.

(18) Healthcare common procedure coding system (HCPCS codes) means a comprehensive, standardized coding and classification system for health services and products.

(19) Homebound individuals means people who have been determined by a licensed clinician to have a physical and/or mental illness that prevents them from leaving their residence to access mental health services or for whom a physician determines that leaving the residence to access mental health services would be detrimental to their health or mental health.

(20) Hospital-based Mental Health Outpatient Treatment and Rehabilitative Service Programs means a mental health program which is operated by a psychiatric hospital or a general hospital and is licensed under Article 28 of the Public Health Law and Article 31 of the Mental Hygiene Law, or is licensed solely under Article 28 of the Public Health Law and provides more than 10,000 mental health visits annually, or for which mental health visits comprise over 30 percent of the annual visits. A Mental Health Outpatient Treatment and Rehabilitative Service program licensed solely under Article 28 which provides fewer than 2,000 total visits annually shall not be required to be licensed by the Office.

(21) Injectable psychotropic medication administration with or without monitoring and education means the process of preparing and administering the injection of intramuscular psychotropic medications.

With monitoring and education it includes individual education related to the use of the medication, as necessary.

(22) Linkage with primary care means activities designed to promote coordination, continuity and efficiency of mental health services and primary care services received by the individual.

(23) Local governmental unit (LGU) means the unit of local government authorized in accordance with Article 41 of the Mental Hygiene Law to provide and plan for local or unified services.

(24) Modifiers means payment adjustments made to Medicaid fees for specific reasons such as billing for services in languages other than English and services delivered after hours.

(25) Office means the New York State Office of Mental Health.

(26) Mental Health Outpatient Treatment and Rehabilitative Service Program means a program licensed as a Mental Health Outpatient Treatment and Rehabilitative Service program under Article 31 of the Mental Hygiene Law.

(27) Off-site Location means a location, other than MHOTRS site(s), at which services are delivered. Locations including but not limited to the community, or the individual's place of residence. The location in which the service is provided is determined by the individual's needs and goals documented in the individual's record.

(28) Peer group is a billing term that means a grouping of providers sharing similar features such as geography or auspice.

(29) Preadmission status means the status of an individual who is being evaluated to determine whether they are appropriate for admission to the Mental Health Outpatient Treatment and Rehabilitative Service program.

(30) Preadmission visit means visits provided prior to admission to a Mental Health Outpatient Treatment and Rehabilitative Service program.

(31) Primary clinician is the clinician responsible for the development and implementation of the treatment plan.

(32) Provider of service means the entity which is responsible for the operation of a program. Such entity may be an individual, partnership, association or corporation. For purposes of this Part, unless otherwise noted, the term also applies to a psychiatric center or institute operated by the Office of Mental Health.

(33) Quality improvement means a systematic and ongoing process for measuring and assessing the performance of a Mental Health Outpatient Treatment and Rehabilitative Service program and for conducting initiatives and taking action to improve safety, effectiveness, timeliness, person centeredness or other aspects of services.

(34) Satellite means a physically separate site to a certified Mental Health Outpatient Treatment and Rehabilitative Service program, which provides either a full or partial array of outpatient services on a regularly and routinely scheduled basis (full or part time).

(35) Serious emotional disturbance means a child or adolescent has a designated mental illness diagnosis according to the most current Diagnostic and Statistical Manual of Mental Disorders (DSM) and has experienced functional limitations due to emotional disturbance over the past 12 months on a continuous or intermittent basis. The functional limitations must be moderate in at least two of the following areas or severe in at least one of the following areas:

(i) ability to care for self (e.g., personal hygiene; obtaining and eating food; dressing; avoiding injuries); or

(ii) family life (e.g., capacity to live in a family or family like environment; relationships with parents or substitute parents, siblings and other relatives; behavior in family setting); or

(iii) social relationships (e.g., establishing and maintaining friendships; interpersonal interactions with peers, neighbors and other adults; social skills; compliance with social norms; play and appropriate use of leisure time); or

(iv) self-direction/self-control (e.g., ability to sustain focused attention for a long enough period of time to permit completion of age-appropriate tasks; behavioral self-control; appropriate judgment and value systems; decision-making ability); or

(v) ability to learn (e.g., school achievement and attendance; receptive and expressive language; relationships with teachers; behavior in school).

(36) Specialty Mental Health Outpatient Treatment and Rehabilitative Service means a program designated by the Commissioner as specializing in the provision of services to children who have a designated mental illness diagnosis and an impairment in functioning due to serious emotional disturbance.

(37) Supplemental payment means payments in addition to the service fee amount.

(38) Visit means an interaction consisting of one or more procedures occurring between an individual and/or collateral and the clinical staff on a given day.

(39) Weight means a numeric value that reflects the relative expected average resource utilization for each service as compared to the expected average resource utilization for all other services.

#### (b) Staffing Definitions

(1) Certified Peer Specialists, Credentialed Family Peer Advocates, and Credentialed Youth Peer Advocates are qualified by personal experience and will be certified or provisionally certified.

(i) Certified Peer Specialists will:

(a) Identify as being actively in recovery from a mental health condition or major life disruption and self-disclose one's mental health recovery journey; and

(b) Possess a certification from or are provisionally certified as a Certified Peer Specialist by an OMH-approved Certified Peer Specialist certification program.

(ii) Credentialed Family Peer Advocates (FPA) will:

(a) Demonstrate 'lived experience' as a parent or primary caregiver who has navigated multiple child-serving systems on behalf of their child(ren) with social, emotional, developmental, health and/or behavioral healthcare needs;

(b) Possess a credential from or are provisionally credentialed as a Family Peer Advocate by an OMH-approved Family Peer Advocate credentialing program;

(iii) Credentialed Youth Peer Advocate will:

(a) Demonstrate “lived experience” as a person with first-hand experience with mental health and/or co-occurring behavioral health challenges in juvenile justice, special education, and/or foster care settings who is able to assist in supporting young people attain resiliency/recovery and wellness; and

(b) Possess a valid credential from or are provisionally certified as a Youth Peer Advocate by an OMH-approved Youth Peer Advocate credentialing program.

(2) Licensed Practitioner of the Healing Arts (LPHA). Licensed practitioner of the healing arts (LPHA) means the following professional staff:

(i) nurse practitioner;

(ii) physician;

(iii) physician assistant;

(iv) psychiatric nurse practitioner;

(v) psychiatrist;

(vi) psychologist;

(vii) registered nurse;

(viii) licensed clinical social worker (LCSW); and

(ix) licensed master social worker (LMSW) if supervised by an LCSW, licensed psychologist, or psychiatrist employed by the agency.

(x) licensed mental health counselors (LMHC);

(xi) licensed marriage and family therapists (LMFT);

(xii) licensed psychoanalysts; and

(xiii) licensed creative arts therapists (LCAT).

(3) Limited permit means that the New York State Education Department has determined that permit holders have met all requirements for licensure except those relating to the professional licensing final examination, and that pending licensure limited permit holders are functioning under proper supervision as outlined in the New York State Education Department law governing each of the professions.

(4) Paraprofessional staff are individuals qualified by formal or informal training and professional experience in a mental health field or treatment setting and who are supervised by professional staff. Paraprofessional staff are at least 18 years of age and have a bachelor's degree, which may be substituted for a high school diploma or equivalent and 1-3 years of relevant experience working with individuals with mental illness or substance use disorders.



(5) Professional staff means practitioners possessing a license or a limited permit from the New York State Education Department who are qualified by credentials, training, and experience to provide direct services related to the treatment of mental illness and shall include the following:

(i) Creative arts therapist is an individual who is currently licensed as a creative arts therapist by the New York State Education Department or possesses a creative arts therapist permit from the New York State Education Department.

(ii) Licensed practical nurse is an individual who is currently licensed as a licensed practical nurse by the New York State Education Department or possesses a licensed practical nurse permit from the New York State Education Department.

(iii) Psychoanalyst is an individual who is currently licensed as a psychoanalyst by the New York State Education Department or possesses a permit from the New York State Education Department.

(iv) Psychologist is an individual who is currently licensed as a psychologist by the New York State Education Department or possesses a permit from the New York State Education Department.

(v) Marriage and family therapist is an individual who is currently licensed as a marriage and family therapist by the New York State Education Department or possesses a permit from the New York State Education Department.

(vi) Mental health counselor is an individual who is currently licensed as a mental health counselor by the New York State Education Department or possesses a permit from the New York State Education Department.

(vii) Nurse practitioner is an individual who is currently certified as a nurse practitioner by the New York State Education Department or possesses a permit from the New York State Education Department.

(viii) Nurse practitioner in psychiatry is an individual who is currently certified as a nurse practitioner with an approved specialty area of psychiatry (NPP) by the New York State Education Department or possesses a permit from the New York State Education Department.

(ix) Physician is an individual who is currently licensed as a physician by the New York State Education Department or possesses a permit from the New York State Education Department.

(x) Physician assistant is an individual who is currently licensed or possesses a permit to practice as a physician assistant issued by the New York State Education Department.

(xi) Psychiatrist is an individual who is currently licensed or possesses a permit to practice medicine in New York State.

(xii) Registered Professional Nurse is an individual who is currently licensed as a registered professional nurse by the New York State Education Department or possesses a permit from the New York State Education Department.

(xiii) Social worker is an individual who is either currently licensed as a licensed master social worker or as a licensed clinical social worker by the New York State Education Department, or possesses a permit from the New York State Education Department to practice and use the title of either licensed master social worker or licensed clinical social worker.

### (c) Service Component Definitions

(1) Assessment/Screening means services to identify an individual's needs, strengths and service needs, through evaluation and information gathering of an individual's current psychiatric, physical and behavioral health condition(s) and history for the purpose of establishing a diagnosis and determining appropriate services to meet their needs. Assessments include health screenings and physicals to determine the need for and referral to additional physical health services. Assessments also include interactions with an individual's collateral supports to obtain necessary information for the benefit of the treatment planning for the individual.

(2) Complex care management means time-limited interventions to restore functioning and address the symptoms of mental illness, including skill-building to help individuals identify solutions to problems that threaten recovery and care coordination services to help individuals connect with medical or other remedial services.

(3) Crisis Intervention Services, including crisis response, and crisis planning means services including medication and verbal therapy designed to address and remediate acute distress and associated behaviors and rehabilitate individuals who are experiencing or who are at risk of experiencing acute mental health crises and to avoid the need for emergency or inpatient psychiatric hospital services. Crisis intervention services also include:

(i) Crisis response services, which are services to safely and respectfully de-escalate situations of acute distress or agitation which require immediate attention; and

(ii) Crisis planning services, which are rehabilitative skills training services to assist individuals to effectively avoid or respond to mental health crises by identifying triggers that risk their remaining in the community or that result in functional impairments. Services assist the individual or family members, or other collaterals as necessary for the benefit of the individual, with identifying a potential psychiatric or personal crisis, developing a crisis management or safety plan, or as appropriate, seeking other supports to restore stability and functioning.

(4) Developmental testing means diagnostic services including the administration, interpretation, and reporting of screening and assessment instruments for children and adolescents to assist in the determination of the child's developmental level for the purpose of facilitating the mental health diagnosis and treatment planning processes.

(5) Health monitoring means diagnostic and therapeutic services for preventive medicine counseling and risk factor reduction interventions. These interventions are intended to address conditions associated with increased risk of medical illness and early death, including but not limited to blood pressure, body mass index (BMI), diet and exercise, alcohol, tobacco and other drug use, sexual practices, injury prevention, dental health, diagnostic and laboratory test results available at the time of the encounter. These interventions are also intended to address issues related to social determinants of health including but not limited to food insecurity, housing instability, poverty, exposure to violence.

(6) Neurobehavioral Status Examination is a clinical assessment of thinking, reasoning and judgment, including attention, language, memory, problem solving and visual spatial abilities and interpretation of the results for treatment planning.

(7) Peer and Family Peer Recovery Support Services means services for adults and children/youth, including age-appropriate psychoeducation, counseling, person-centered goal planning, modeling effective coping skills, and facilitating community connections and crisis support to reduce symptomology and restore functionality. Family Peer Recovery Support Services also include engagement, bridging support, parent skill development, and crisis support for families caring for a child who is experiencing social, emotional, medical, developmental, substance use and/or behavioral challenges in their home, school, placement, and/or community to promote recovery, self-advocacy, and the development of natural supports and community living skills.

(8) Psychiatric consultation means an evaluation of a recipient by a physician, nurse practitioner, or physician's assistant, including the preparation, evaluation, report or interaction between the practitioner and a referring practitioner for the purposes of diagnosis, integration of treatment and continuity of care.

(9) Psychological testing means a psychological evaluation, including psychological testing evaluation services and test administration and scoring, using standard assessment methods and instruments to assist in mental health assessment and the treatment planning processes.

(10) Psychotherapy means therapeutic services for the purpose of alleviating symptoms or dysfunction associated with an individual's mental health condition or emotional disturbance, reversing or changing maladaptive patterns of behavior, encouraging personal growth and development, and supporting the individual's capacity to develop or restore age-appropriate developmental milestones. Services include tobacco use disorder treatment services.

(11) Medication treatment means monitoring and evaluating target symptom response to treat the individual's mental illness and/or substance use disorder, ordering and reviewing diagnostic studies, writing prescriptions and consumer education as appropriate, preparing, administering and monitoring the injection of intramuscular medications.

(12) Screening, Brief Intervention and Referral to Treatment (SBIRT) is an evidence-based assessment, counseling, and referral services which provide: (1) screening to identify individuals exhibiting or who are at risk of substance use-related problems; (2) early intervention, including counseling and skills restoration services to modify risky consumption patterns and behaviors; and (3) referral to appropriate services for individuals who need more extensive, specialized treatment to address such substance consumption patterns and behaviors.

(13) Treatment planning is an ongoing, collaborative and person-centered process directed by the individual in collaboration with the individual's family or other collaterals, as appropriate and approved by the individual and a licensed clinician, resulting in the development of treatment and rehabilitative goals, based on needs, preferences, capacities and desired outcomes for the provision of services.

### **Section 599.5. Certification**

(a) A provider of service intending to operate a Mental Health Outpatient Treatment and Rehabilitative Program must obtain an initial operating certificate issued by the Office in accordance with procedures

established in Part 551 of this Title. Renewals of such operating certificates shall be issued for terms of up to three years.

(b) Each Mental Health Outpatient Treatment and Rehabilitative Service program site shall be authorized by a separate operating certificate. The operating certificate shall specify for each site:

(1) the program type (Mental Health Outpatient Treatment and Rehabilitative Service program) to be operated;

(2) the location of the program;

(3) the hours of operation of the program;

(4) the population to be served;

(5) the term of the operating certificate; and

(6) any approved optional services to be provided.

(c) Each Mental Health Outpatient Treatment and Rehabilitative Service program authorized by an operating certificate pursuant to this Part shall be clearly identifiable. Each Mental Health Outpatient Treatment and Rehabilitative Service program shall have sufficient program space to provide safety, and to allow for a reasonable degree of privacy consistent with the effective delivery of services. Program space may be shared with other programs, pursuant to a plan approved by the Office. Non-program space, including but not limited to waiting rooms, restrooms, may be shared with other programs.

(d) Mental Health Outpatient Treatment and Rehabilitative Service programs may provide services at satellite locations.

(1) To the extent that such services are provided in a given location on a regularly and routinely scheduled basis (full or part time), such site shall be considered a satellite location and shall be in compliance with this section.

(2) In determining the regular and routine nature of services at a given site, the Office shall take into consideration the volume of services, the number of individuals receiving services, the number of staff assigned, the range of services provided, and whether the site will be utilized on a permanent or temporary basis.

(e) Satellite locations which are determined by the Office to be satellite locations of a primary program shall meet the following requirements:

(1) the satellite must be approved and certified by the Office in accordance with procedures established in Part 551 of this Title prior to operation;

(2) there shall be an explicit clinical and administrative linkage between the satellite and the primary program which includes, but is not limited to, methods of staff supervision, treatment planning, review of treatment plans, maintenance of the records of individuals receiving services and utilization review;

(3) there shall be adequate and sufficient staff to provide services at the satellite. The full range of the primary program's services must be available as clinically appropriate to individuals who utilize the satellite location, but not all services must be available at the satellite; and

(4) satellite locations must meet the physical plant requirements for program space set forth in section 599.12 of this Part.

(f) Establishment of a new program or changes to the operating certificate requires prior approval of the Office in accordance with Part 551 of this Title.

(g) Changes in the hours of operation of a program may be made upon notification to the Office and the Office's determination that the changes will not negatively affect the program, consistent with the provisions of Part 551 of this Title.

(h) An operating certificate may be limited, suspended or revoked by the Office pursuant to Part 503 of this Title. The operating certificate is the property of the Office and as such shall be returned to the Office if it should be revoked.

(i) The provider of service shall frame and display the operating certificate within the Mental Health Outpatient Treatment and Rehabilitative Service program site in a conspicuous place which is readily accessible to the public.

(j) The provider of service shall cooperate with the Office or the local governmental unit during any review or inspection of the Mental Health Outpatient Treatment and Rehabilitative Service program.

(k) The county director of community services shall be responsible for identifying specific licensed Mental Health Outpatient Treatment and Rehabilitative Service programs that may be designated by the Commissioner as specialty Mental Health Outpatient Treatment and Rehabilitative Service programs serving children in accordance with the identified need within the county.

(l) The Commissioner shall have the authority to designate and approve demonstration projects for purposes of examining innovative program and administrative configurations, regulatory flexibility and alternative funding methodologies.

#### **Section 599.6. Organization and administration**

(a) The provider of service shall identify a governing body which shall have overall responsibility for the operation of the program. The governing body may delegate responsibility for the day-to-day management of the program to appropriate staff pursuant to an organizational plan approved by the Office.

(b) In programs operated by not-for-profit corporations other than hospitals licensed pursuant to article 28 of the Public Health Law, no person shall serve both as a member of the governing body and of the paid staff of the Mental Health Outpatient Treatment and Rehabilitative Service program without prior written approval of the Office.

(c) The governing body shall be responsible for the following duties:

(1) to meet at least four times a year;

(2) to review, approve and maintain minutes of all official meetings;

(3) to develop an organizational plan which indicates lines of accountability and the qualifications required for staff positions. Such plan may include the delegation of the responsibility for the day-to-day management of the program to a designated professional who is qualified by training and experience to supervise program staff;

(4) to review the program's compliance with the terms and conditions of its operating certificate, applicable laws and regulations;

(5) to ensure that the design and operation of the program is consistent with and appropriate to the ethnic and cultural background of the population served. This can include ethnic representation on the staff and board and inclusion of culturally and ethnically relevant content in service programs;

(6) to ensure that planning decisions are based upon input from individuals and, where appropriate, their family members;

(7) to develop, approve, and periodically review and revise as appropriate all programmatic and administrative policies and procedures. Such policies and procedures shall include, but are not limited to, the following:

(i) written criteria for admission, and discharge from the program. Admission policies should include a mechanism for screening individuals at the time of referral and assuring that those referred from inpatient, forensic, or emergency settings, those determined to be at high risk, and those determined to be in urgent need by the Director of Community Services receive services within five business days, and if indicated, are admitted to the Mental Health Outpatient Treatment and Rehabilitative Service program or referred to an appropriate provider of services. The county may establish, subject to the approval of the Office, categories of individuals to be considered in urgent need of services;

(ii) policies and procedures for conducting initial and ongoing risk assessments and for development of plans to address identified areas of elevated risk, including procedures to ensure that any health or mental health issues identified are treated appropriately by the Mental Health Outpatient Treatment and Rehabilitative Service program or that an appropriate referral to a treatment provider and subsequent follow up is made;

(iii) policies and procedures addressing individual/family engagement and retention in treatment, including, at minimum, plans for outreach and re-engagement efforts commensurate with an individual's assessed risk;

(iv) policies and procedures for providing off-site services;

(v) policies to address personal safety of staff and provide appropriate training in de-escalation techniques;

(vi) policies and procedures for age appropriate health monitoring, which describe whether such monitoring will be performed by the provider or, if not, how the provider will seek to ascertain relevant health information. Such policies and procedures must include a requirement that an individual's refusal to provide access to such information be documented in the case record;

(vii) policies and procedures for screening for use of or dependence on alcohol, tobacco or other drugs;

(viii) policies and procedures ensuring that a reasonable effort shall be made to obtain records from prior recent episodes of treatment;

(ix) policies and procedures ensuring that a reasonable effort shall be made to communicate with family members, current service providers, and other collaterals, as appropriate;

(x) written policies and procedures to ascertain whether individuals are currently receiving or are eligible to receive Medicare or Medicaid or other form of reimbursement for services provided. If it is determined that an individual is eligible for any such program but not currently enrolled, the policies and procedures shall include means of facilitating the enrollment of such individual in such program;

(xi) written policies and procedures concerning the prescription and administration of medication which shall be consistent with applicable Federal and State laws and regulations and which includes procedures for ensuring that individuals are receiving prescribed medications and using them appropriately;

(xii) written policies and procedures governing an individual's records which ensure confidentiality consistent with sections 33.13 and 33.16 of the Mental Hygiene Law and 45 CFR parts 160 and 164, and which provide for appropriate retention of such records pursuant to section 599.11 of this Part;

(xiii) written policies and procedures describing an individual grievance process which ensures the timely review and resolution of individual complaints and which provides a process enabling recipients to request review by the Office when resolution is not satisfactory;

(xiv) written personnel policies which guide efforts to reduce disparities in access, quality of care and treatment outcomes for underserved/unserved and/or marginalized populations, including but not limited to: people of color, members of the LGBTQ+ community, older adults, pregnant persons, Veterans, individuals who are hearing impaired, individuals with limited English proficiency, immigrants, individuals with intellectual/developmental disabilities and all justice system-involved populations;

(xv) written personnel policies which shall prohibit discrimination on the basis of race or ethnicity, religion, disability, gender identity or sexual orientation, marital status, age, documentation status, or national origin, as well as, written policies on affirmative action which 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;

(xvi) written policies for the availability of crisis intervention services at all times. After-hours coverage shall include, at a minimum, the ability to provide brief crisis intervention services provided pursuant to a plan approved by the local governmental unit or the Office. Such services shall be provided either directly or pursuant to a Clinical Services Contract. Such contract shall include, at a minimum, provisions assuring that, in the event of a crisis, the nature of the crisis and any measures taken to address such crisis are communicated to the primary clinician or other designated clinician involved in the individual's treatment at the Mental Health Outpatient Treatment and Rehabilitative Service program, or the individual's primary care or other mental health care provider, if known, on the next business day. At the request of the local governmental unit, State-operated Mental Health Outpatient Treatment and Rehabilitative Service programs shall consult with the local governmental unit or units in their service

area in the development of such Mental Health Outpatient Treatment and Rehabilitative Service program's crisis response plan;

(xvii) written policies for the performance of Criminal history information reviews required pursuant to Section 31.35 of the Mental Hygiene Law, Sections 424-a and 495 of the Social Services Law, and 14 NYCRR 550. Such reviews shall be conducted in accordance with such laws and regulations and any guidance issued by the Office. All prospective employees, contractors and volunteers who have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted contact with Recipients shall submit to a criminal history information review. All staff with the potential for regular and substantial contact with Recipients in performance of their duties shall submit to clearance by the New York Statewide Central Register of Child Abuse and Maltreatment. Mental Health Outpatient Treatment and Rehabilitative Service program Staff who have not been screened by the New York Statewide Central Register of Child Abuse and Maltreatment shall not perform duties requiring contact with individuals unless there is another staff member present.

(xviii) written policies regarding the selection, supervision, and conduct of students accepted for training in fulfillment of a written agreement between the Mental Health Outpatient Treatment and Rehabilitative Service program and a State Education Department accredited higher education institution, as well as requesting the Office to perform criminal history record checks in accordance with Part 550 of this Title;

(xix) written policies regarding the employment, supervision and privileging of nurse practitioners and physician assistants. Such policies shall ensure that physician assistants have responsibilities related to physical health only. Such policies shall ensure compliance with Part 550 of this Title concerning the requirement for criminal history record checks, for obtaining clearance from the New York State Central Register of Child Abuse and Maltreatment for persons who have the potential for regular and unsupervised or unrestricted contact with children, and for appropriate consideration and confidentiality of such information;

(xx) written policies which shall establish that contracts with third party contractors that are not subject to the criminal history background check requirements established in section 31.35 of the Mental Hygiene Law include reasonable due diligence requirements to ensure that any persons performing services under such contract that will have regular and substantial unsupervised or unrestricted contact with patients of the Mental Health Outpatient Treatment and Rehabilitative Service program do not have a criminal history that could represent a threat to the health, safety, or welfare of the patients of the Mental Health Outpatient Treatment and Rehabilitative Service program, including, but not limited to, the provision of a signed, sworn statement whether, to the best of their knowledge, such person has ever been convicted of a crime in this State or any other jurisdiction; and

(xxi) written policies and procedures regarding the mandatory reporting of child abuse or neglect, reporting procedures and obligations of persons required to report, provisions for taking a child into protective custody, mandatory reporting of deaths, immunity from liability, penalties for failure to report, and obligations for the provision of services and procedures necessary to safeguard the life or health of the child. Such policies and procedures shall address the requirements for the identification and reporting of abuse or neglect regarding recipients who are children, or who are the parents or guardians of children; and



(8) to ensure the establishment and implementation of an ongoing training program for current and new employees and volunteers that addresses the policies and procedures regarding child abuse and neglect described in paragraph (7) of this subdivision.

(d) A provider of service shall ensure that no individual who is otherwise appropriate for admission is denied access to services solely on the basis of having a co-occurring non-mental health diagnosis, or a diagnosis of HIV infection, AIDS, or AIDS-related complex.

(e) The provider of service shall establish mechanisms to ensure that priority access is given to individuals referred to the provider, who are enrolled in an assisted outpatient treatment program established pursuant to section 9.60 of the Mental Hygiene Law, in accordance with the following:

(1) The provider of service shall cooperate with the local governmental unit or the Commissioner, or their authorized representatives, in ensuring priority access by such individuals, and in the development, review and implementation of treatment plans for such individuals.

(2) Prior to discharge by a provider of service of an individual who is also enrolled in an assisted outpatient treatment program, the provider of service shall notify the individual's case manager and the director of the assisted outpatient treatment program for the county.

(3) Any and all related information, reports and data that may be requested by the Commissioner or the local governmental unit shall be furnished by the provider of service. Any requests for clinical records from persons or entities authorized pursuant to section 33.13 or 33.16 of the Mental Hygiene Law, regarding individuals who are the subject of, or under consideration for, a petition for an order authorizing assisted outpatient treatment shall be given priority attention and responded to without delay.

(f) The provider of service shall establish mechanisms to ensure priority access for individuals receiving ACT and transitioning, for continuity of care for such individuals, including the provision of appropriate services and medications, including injectable medications.

(g) The provider of service shall establish mechanisms for the meaningful participation of individuals, family representatives either through direct participation on the governing body, or through the creation of a recipient advisory board. If a recipient advisory board is used, the provider of service shall ensure a mechanism for the recipient advisory board to make recommendations to the governing body.

(h) The provider of service shall develop and make available to recipients and collaterals, a plan which will assure an appropriate response to recipients admitted to the program and their collaterals who need assistance when the program is not in operation. Such plan shall include the ability to speak with a member of the licensed staff of the Mental Health Outpatient Treatment and Rehabilitative Service program or a licensed staff person working under the auspices of the Mental Health Outpatient Treatment and Rehabilitative Service program pursuant to a plan approved by the local governmental unit or, for county-operated providers, by the Office.

(i) A provider of service shall ensure that any Mental Health Outpatient Treatment and Rehabilitative Service program subject to this Part does not:

(1) utilize restraint or seclusion for any purpose, including, but not limited to, as a response to a crisis situation, provided, however nothing in this section shall be construed to prohibit the use of reasonable

physical force when necessary to protect the life and limb of any person where alternative procedures and methods have failed; and

(2) perform electroconvulsive therapy or aversive conditioning therapy for any purpose, including, but not limited to, as a treatment intervention.

(j) A provider of service shall ensure that an individual's participation in research only occurs in accordance with applicable Federal and State requirements.

(k) A provider of service shall ensure the development, implementation and ongoing monitoring of a Risk Management Program that includes the requirements for identification, documentation, reporting, investigation, review, and monitoring of incidents pursuant to the Mental Hygiene Law and Part 524 of this Title.

(l) There shall be emergency procedures including but not limited to an emergency evacuation plan and staff shall be knowledgeable about such procedures.

(m) There shall be a written utilization review in accordance with procedure to ensure that all recipients are receiving appropriate services and are being served at an appropriate level of care. Such utilization review procedure shall provide for:

(1) a review of the appropriateness of admission to a Mental Health Outpatient Treatment and Rehabilitative Service program; and

(2) a review of the need for continued treatment in a Mental Health Outpatient Treatment and Rehabilitative Service program within seven months after admission and every six months thereafter unless the individual is:

(i) discharged out of the program and subsequently readmitted, wherein the cycle begins again; or

(ii) receiving psychotropic medication treatment and medication education services only, wherein the need for continued treatment shall be reviewed every 12 months thereafter.

(n) The provider of service shall participate as requested by the local governmental unit in the local planning processes pursuant to article 41 of the Mental Hygiene Law.

(o) The provider of service shall cooperate with the Office and the local governmental unit in monitoring the access to services of individuals or groups determined to be in urgent need of services pursuant to this section.

(p) In programs that are not operated by State government, there shall be an annual audit of the service provider, pursuant to a format prescribed by the Office, and in accordance with Generally Accepted Auditing Principles, of the financial condition and accounts of the provider, or in accordance with requirements established by the Department of Health for programs operated by agencies operated pursuant to article 28 of the Public Health Law. This audit shall be performed by a certified public accountant who is not a member of the governing body or an employee of the program. In addition, the provider is required to submit an annual Consolidated Fiscal Report to the Office of Mental Health, signed by the Chief Executive Officer, and meet all requirements for submission as described in the instructions for this Report. Government-operated programs shall comply with applicable laws concerning financial accounts and auditing requirements. The Office shall utilize the applicable

schedules to the annual Consolidated Fiscal Report to the Office of Mental Health to determine provider compliance with the indigent care requirements contained in section 599.15 of this Part.

(q) A provider of services required to comply with the indigent care requirements contained in section 599.15 of this Part shall ensure that no individual who is otherwise appropriate for admission is denied access to services solely because the individual does not have creditable coverage or the means to pay the provider's private pay rates or sliding fee scale.

(r) Programs operated by hospitals, including psychiatric centers operated by the State, or hospitals licensed pursuant to article 31 of the mental hygiene law or article 28 of the public health law, which are Medicare certified and provide outpatient services reimbursed by Medicare, shall ensure services are provided consistent with applicable Medicare certification and coverage standards and policies, in addition to any other requirement contained in this Part.

### **Section 599.7. Rights of recipients**

(a) Recipients admitted to a Mental Health Outpatient Treatment and Rehabilitative Service program certified pursuant to this Part are entitled to the rights defined in this subdivision. A provider of service shall be responsible for ensuring the protection of these rights.

(1) Recipients have the right to an individualized plan of treatment services and to participate to the fullest extent consistent with the recipients' capacity in the establishment and revision of that plan.

(2) Recipients have the right to a full explanation of the services provided in accordance with their treatment plan.

(3) Participation in treatment in a Mental Health Outpatient Treatment and Rehabilitative Service program is voluntary and recipients are presumed to have the capacity to consent to such treatment. The right to participate voluntarily in and to consent to treatment shall be limited only pursuant to a court order or in accordance with applicable provisions of law.

(4) While a recipient's full participation in treatment is a central goal, an individual/guardian's objection to their treatment plan, or disagreement with any portion thereof, shall not, in and of itself, result in their termination from the program unless such objection renders continued participation in the program clinically inappropriate or would endanger the safety of the individual or others.

(5) The confidentiality of recipients' clinical records shall be maintained in accordance with applicable State and Federal laws and regulations, which may include, but are not limited to section 33.13 of the Mental Hygiene Law, article 27-F of the Public Health Law, the Health Insurance Portability and Accountability Act (HIPAA), and 42 CFR part 2.

(6) Recipients shall be assured access to their clinical records, including their mental illness diagnosis, consistent with section 33.16 of the Mental Hygiene Law and applicable Federal requirements.

(7) Recipients have the right to receive clinically appropriate care and treatment that is suited to their needs and skillfully, safely and humanely administered with full respect for their dignity and personal integrity.

(8) Recipients have the right to receive services in such a manner as to ensure nondiscrimination.

(9) Recipients have the right to be treated in a way that acknowledges and respects their cultural environment including the provision of language assistance services at no cost to the Individual and/or collaterals and shall make all necessary documents available in the recipient's preferred language.

(10) Recipients have the right to a reasonable degree of privacy consistent with the effective delivery of services.

(11) Recipients have the right to freedom from abuse and mistreatment by employees.

(12) Recipients have the right to be informed of the provider's grievance policies and procedures, and to initiate any question, complaint or objection accordingly.

(b) A provider of service shall provide a notice of recipients' rights as described in subdivision (a) of this section to each individual upon admission to a Mental Health Outpatient Treatment and Rehabilitative Service program. Such notice shall be provided in writing and posted in a conspicuous location easily accessible to the public. The notice shall include the address and telephone number of the Justice Center, the nearest regional office of the Protection and Advocacy for Mentally Ill Individuals Program, the nearest chapter of the Alliance on Mental Illness of New York State and the Office of Mental Health.

#### **Section 599.8. Mental Health Outpatient Treatment and Rehabilitative Services**

(a) Eligibility for admission to a Mental Health Outpatient Treatment and Rehabilitative Service program shall be based on a designated mental illness diagnosis.

(b) Mental Health Outpatient Treatment and Rehabilitative Service programs shall offer each of the following services, to be provided consistent with recipients' conditions and needs:

(1) Assessment, (including health screening).; [FN1]

(2) Psychiatric assessment;

(3) Crisis intervention services;

(4) Treatment Planning;

(5) Psychotropic medication treatment, for adults only, including injectable psychotropic medication administration;

(6) Psychotherapy, to include individual, group, family, and collateral;

(7) Complex Care Management.

(c) Optional Services. Mental Health Outpatient Treatment and Rehabilitative Service programs may offer, at its option, any of the following services:

(1) Peer/Family Support Services;

(2) Health monitoring;

(i) Health Physical

(3) Psychiatric consultation; and

(4) Screening, Brief Intervention and Referral to Treatment (SBIRT)

(5) Injectable psychotropic medication administration (for clinics serving only children); and

(6) Injectable psychotropic medication administration with monitoring and education (for clinics serving only children).

(d) Optional Services requiring prior approval. Mental Health Outpatient Treatment and Rehabilitative Service Programs may offer, at its option, with prior approval by OMH: Testing Services, including Developmental Testing, Neurobehavioral Status Examination, and Psychological Testing.

(e) Mental Health Outpatient Treatment and Rehabilitative Services Programs may obtain prior approval from the Office to provide Intensive Outpatient Program. Intensive Outpatient Program means providing additional and intensive outpatient services to individuals who may benefit from more intensive, time-limited treatment.

#### **Section 599.9. Staffing**

(a) A provider of service shall continuously have an adequate number and appropriate mix of staff to carry out the objectives of the Mental Health Outpatient Treatment and Rehabilitative Service program and to assure the outcomes of the program. The provider shall have a staffing plan that documents the staff qualifications, including training, clinical experience with adults diagnosed with mental illness or children diagnosed with emotional disturbance, and supervisory experience in a clinical setting, the appropriateness of the mix of staff, the assignment of staff to the primary program site and any approved satellite locations, and the supervisory relationships among the staff. The plan shall also detail any proposed use of students, non-licensed staff, or paraprofessional staff and their supervision and oversight. Such plan shall be subject to review and approval by the Office at the time of issuance or renewal of the program's operating certificate, and shall demonstrate sufficient coverage by qualified psychiatrists and medical staff to meet the needs of program enrollees.

(b) The following individuals may provide services:

(1) Professional Staff within their defined scopes of practice or as otherwise permitted by law;

(2) Licensed Practitioners of the Healing Arts within their defined scopes of practice or as otherwise permitted by law;

(3) Paraprofessional Staff supervised by Professional Staff;

(4) Certified Peer Specialists, Credentialed Family Peer Advocates, and Credentialed Youth Peer Advocates;

(5) Students, provided they are participating in a program approved by the New York State Education Department that leads to a degree or license in one of the Mental Health Outpatient Treatment and

Rehabilitative Service program's professional disciplines, reflective of Professional Staff as defined in this Part, and in accordance with the following:

(i) Students must be supervised and evaluated according to a signed agreement between the Mental Health Outpatient Treatment and Rehabilitative Service program provider and a New York State Education Department-approved educational program, and pursuant to the Mental Health Outpatient Treatment and Rehabilitative Service program provider's policies and procedures for student placements and clinical supervision;

(ii) Students must be part of a staffing plan that is approved by the Office;

(c) All Mental Health Outpatient Treatment and Rehabilitative Service program staff of providers licensed solely under Article 31 of the Mental Hygiene Law who are directly involved in providing services shall submit to criminal background checks. All Mental Health Outpatient Treatment and Rehabilitative Service program staff with the potential for or may be permitted, regular and substantial unsupervised or unrestricted contact with children in performance of their duties shall submit to clearance by the New York Statewide Central Register of Child Abuse and Maltreatment. Mental Health Outpatient Treatment and Rehabilitative Service program staff members who have not been screened by the New York Statewide Central Register of Child Abuse and Maltreatment shall not perform duties requiring contact with children unless there is another screened staff member present.

(d) The Office may approve other qualified staff, as appropriate.

(e) The Office may approve the transition of programs to heightened licensure requirements set by the New York State Education Department or other licensing or credentialing authority to the extent permitted by law.

(f) Programs operated by hospitals, including psychiatric centers operated by the State, or hospitals licensed pursuant to article 31 of the mental hygiene law or article 28 of the public health law, which are Medicare certified and provide outpatient services reimbursed by Medicare, shall ensure services are provided under the supervision and direction of a physician, consistent with applicable Medicare certification and coverage standards and policies.

#### **Section 599.10. Treatment planning**

(a) Treatment planning includes, where appropriate, a means for determining when the individual's goals have been met to the extent possible in the context of the program, and planning for the appropriate discharge of the individual from the clinic. The treatment planning process is a means of reviewing and adjusting the services necessary to assist the individual in reaching the point where he or she can pursue life goals such as employment or education, without impediment resulting from their illness.

(b) For recipients who are Medicaid Fee-for-service beneficiaries, the initial Treatment Plan shall be completed not later than 30 calendar days after admission. For any other payer or plan, initial treatment plans shall be completed pursuant to such other payer or plan's requirement as shall apply.

(c) The treatment plan shall include identification and documentation of the following:

(1) the individual's designated mental illness diagnosis or a notation that the diagnosis may be found in a specific assessment document in the individual's case record;

(2) the individual's needs and strengths;

(3) the individual's treatment goals, and objectives;

(4) the name and title of the individual's primary clinician in the program, and identification of the types of personnel who will be furnishing services;

(5) the recommended and agreed upon Mental Health Outpatient Treatment and Rehabilitative Service(s) and the projected frequency and duration for each service;

(6) where applicable, documentation of the need for the provision of off-site services, and special linguistic arrangements; and

(7) the signature of the treating clinician, as appropriate. For recipients who are Medicaid Fee-for-service beneficiaries, treatment plans shall be signed by a psychiatrist, Nurse Practitioner of Psychiatry, or other physician. For all other payers or plans, treatment plans containing prescribed medications shall be signed by a psychiatrist, other physician or nurse practitioner in psychiatry and treatment plans which do not contain prescribed medications shall be signed by a psychiatrist, other physician, licensed psychologist, nurse practitioner in psychiatry, licensed clinical social worker, or other licensed practitioner to the extent permitted by such other payer or plan's requirements.

(d) Treatment plans shall be reviewed no less frequently than annually based on the date of admission, the most recent treatment plan review, or additionally as determined by the individual's primary clinician. Treatment plan reviews shall include the input of relevant staff, as well as the individual, family members and collaterals, as appropriate. The Treatment Plan Review shall be documented and include the following:

(1) assessment of the progress of the individual in regard to the mutually agreed upon goals in the treatment plan; and

(2) adjustment of goals and treatment objectives, time periods for achievement, intervention strategies or initiation of discharge planning, as appropriate.

(e) Treatment plans shall be updated when new services are added, service intensity is increased or as necessary as determined by the recipient's treating clinician. When the treatment plan is updated the treating clinician as appropriate, pursuant to paragraph (7) of subdivision (c) of this section, shall sign the updated treatment plan. All other changes to information in the treatment plan shall only require the treating clinician's signature and may be recorded in progress notes.

(f) Individual participation in the treatment planning process, including initial treatment planning and treatment plan reviews, shall be documented by notation in the record of the participation of the individual or of the person who has legal authority to consent to health care on behalf of the individual, or, in the case of a child, of a parent, guardian, or other person who has legal authority to consent to health care on behalf of the child, as well as the child, where appropriate. The individual's family and/or collaterals should participate as appropriate in the development of the treatment plan. Family and/or

collaterals participating in the development of the treatment plan shall be specifically identified in the plan.

(g) Progress notes shall be recorded by the clinical staff member(s) who provided services to the individual upon each occasion of service. These notes must summarize the service(s) provided, update the individual's progress toward their goal(s), and include any recommended changes to the elements of the individual's treatment plan. The progress notes shall also document the date and duration of each service provided, the location where the service was provided, whether collaterals were seen, and the name and title of the staff member providing each service.

#### **Section 599.11. Case records**

(a) There shall be a complete case record maintained for each person admitted to a Mental Health Outpatient Treatment and Rehabilitative Service program. Such case records shall be maintained in accordance with recognized and accepted principles of recordkeeping as follows:

- (1) hard copy case record entries shall be made in non-erasable ink or typed, and shall be legible;
- (2) electronic records which use accepted mechanisms for clinician signatures and are maintained in a secure manner, may be utilized. Such records may be kept in lieu of a hard copy case record; and
- (3) all entries in case records shall be dated and signed by appropriate staff.

(b) The case record shall be available to all staff of the Mental Health Outpatient Treatment and Rehabilitative Service program who are participating in the treatment of the individual and shall include the following information:

- (1) individual demographics, identifying information, and history;
- (2) preadmission screening notes, as appropriate;
- (3) admission note;
- (4) diagnosis;
- (5) assessment of the individual's needs;
- (6) reports of all mental and physical diagnostic exams, mental health assessments, screenings, tests, and consultations, including risk assessments, health monitoring, and evaluative reports concerning co-occurring developmental, medical, substance use or educational issues performed by the program;
- (7) Treatment Plans;
- (8) dated progress notes that relate to goals and objectives of treatment;
- (9) dated progress notes that relate to significant events and/or incidents;
- (10) treatment plan reviews;
- (11) dated and signed records of all medications prescribed by the Mental Health Outpatient Treatment and Rehabilitative Service program; and other prescription medications being used by the individual if known;



(12) discharge plan; and referrals to other programs and services, if applicable;

(13) consent forms, if applicable;

(14) record of contacts with collaterals if applicable; and

(15) discharge summary.

(c) The discharge summary shall be transmitted to the receiving program, where applicable, prior to the arrival of the individual, or within two weeks, whichever comes first. When circumstances interfere with a timely transmittal of the discharge summary, notation shall be made in the record of the reason for delay.

(d) When an individual is transferred between programs offered by the same provider, a consolidated record format that follows the individual may be used.

(e) Records must be retained for a minimum period of six years from the last date of service and in accordance with Office record retention policy.

(f) Information in Mental Health Outpatient Treatment and Rehabilitative Service program case records that is subject to the confidentiality protections of Mental Hygiene Law section 33.13 may be shared between facilities, agencies and programs responsible for the provision of services pursuant to an approved local or unified services plan (including programs that receive funding from the Office disbursed via a State Aid letter); the Office and any of the psychiatric centers and programs that it operates; and facilities, agencies, and programs that are not licensed by the Office and are not participants in an approved local or unified services plan, but are responsible for the provision of services to any patient pursuant to a written agreement with the Office as a party, provided, however, if a case record contains HIV or AIDS information that is protected by Public Health Law article 27-F, or information provided by a federally-funded alcoholism/substance abuse provider that is protected under 42 CFR part 2, such information shall only be redisclosed as permitted by such law or regulation.

#### **Section 599.12. Premises**

(a) A provider of service shall maintain premises that are adequate and appropriate for the safe and effective operation of a Mental Health Outpatient Treatment and Rehabilitative Service program in accordance with the following:

(1) Programs shall provide for sufficient private and group rooms consistent with the number of people served and activities offered. There shall also be a sufficient number of restroom facilities to accommodate the population utilizing the Mental Health Outpatient Treatment and Rehabilitative Service program service.

(2) Programs shall provide for controlled access to and maintenance of medications and supplies in accordance with all applicable Federal and State laws and regulations.

(3) Programs shall provide for controlled access to and maintenance of records.

(4) Programs shall ensure accessibility for persons with disabilities to program and bathroom facilities. Programs shall adjust service environments, as needed, for recipients who are blind, deaf or otherwise disabled.

(5) Programs shall have sufficient and appropriate furnishings maintained in good condition and appropriate program related equipment and material for the population served.

(6) Program space shall be sufficient to provide safety, and to allow for a reasonable degree of privacy consistent with the effective delivery of services. Program space may be shared with other programs, pursuant to a plan approved by the Office. Non-program space may be shared with other programs without such approval.

(7) There should be sufficient separation and supervision of various treatment groups to ensure the safety of the population receiving Mental Health Outpatient Treatment and Rehabilitative Service program services.

(b) The provider of service shall ensure life safety on the premises by possession of a certificate of occupancy in accordance with the Building Code of New York State and the Property Maintenance Code of New York State (19 NYCRR Chapter XXXIII, Subchapter A, Parts 1221 and 1226) or comparable local codes.

(c) Off-site services shall be provided in settings that are conducive to meeting treatment goals and objectives, be accommodating to the conditions and needs of those being served, be safe and accessible for all, and assure privacy for the delivery of services.

#### **Section 599.13. Medical assistance Mental Health Outpatient Treatment and Rehabilitative Service program reimbursement system**

(a) Reimbursement for Mental Health Outpatient Treatment and Rehabilitative Service programs procedures will be fee based.

(b) A weight for each Mental Health Outpatient Treatment and Rehabilitative Service program procedure shall be established by the Department of Health in conjunction with the Office which reflects the relative anticipated resource utilization for such procedure. For some procedures, fees shall be enhanced pursuant to section 599.14 of this Part through the use of billing modifiers for such things as procedures delivered after hours, services provided in languages other than English, and services of a minimum duration of 15 continuous minutes delivered by a physician or nurse practitioner in psychiatry.

(c) Providers will be categorized into peer groups pursuant to this section. The Office will establish a base fee for reimbursement for each peer group. Such fee shall be reduced by 25 percent during the period in which any such provider retains an operating certificate with a duration of less than six months as a result of having been determined to be deficient in meeting applicable standards and requirements, pursuant to this Part.

(d) Peer group specific base fees may be adjusted as applicable by the Office. Provider specific fee adjustments may be made to reflect pay for performance enhancements, penalties resulting from the

Office inspection and certification process, or for other reasons described in the regulations of the Office.

(e) Payments for procedures will be determined by multiplying the assigned weight for the appropriate procedure code set forth at 10 NYCRR Part 86 by the base fee, and adjusting such fee for modifiers and discounts, as appropriate. When a modifier or discount is expressed as a percentage, it will adjust the payment by its percentage of the procedure weight. When more than one procedure applies to a visit, the highest value procedure shall be paid at its full fee value.

(1) Payments for additional procedures related to the visit will be discounted by 10 percent, except for Mental Health Outpatient Treatment and Rehabilitative Service Programs approved by the Office to provide Intensive Outpatient Program (IOP) where there will be no discounted services for additional procedures.

(2) Payments will be reduced by 25 percent for any visit in excess of 30, excluding crisis intervention services, off-site visits, complex care management, peer/family support services, any services that are provided as part of IOP, and any services that are counted as health services, provided during a state fiscal year to any individual who is 21 years of age or older on the first day of such fiscal year, and 50 percent for any visit in excess of 50, excluding crisis intervention services, off-site visits, complex care management, peer/family support services, any services that are provided as part of IOP, and any services counted as health services, provided during such fiscal year to any individual, for fiscal years commencing on or after April 1, 2011, except that effective January 1, 2015, this reduction in payment will not apply to court-mandated services.

(f) The Office will annually review procedure weights, modifier values, peer groupings and the base fees for each of the peer groupings, and will update them as needed. Any changes will be published in the State Register and posted on the Office's website.

(g) The Office will establish and make public a list of weights associated with all CPT and HCPCS procedure codes which can be used to bill specific mental health Mental Health Outpatient Treatment and Rehabilitative Service program procedures through Medical Assistance. The Office will update this list as needed.

(h) Providers licensed solely under article 31 of the Mental Hygiene Law shall be classified by the following peer groups.

(1) Upstate. All non-Local Governmental Unit operated Mental Health Outpatient Treatment and Rehabilitative Service programs operating solely under an Office of Mental Health operating certificate and located in the following counties shall be considered to be included in the upstate peer group: Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming, and Yates counties.

(2) Downstate. All non-Local Governmental Unit operated Mental Health Outpatient Treatment and Rehabilitative Service programs operating solely under an Office of Mental Health operating certificate and located in the following counties shall be considered to be included in the downstate peer group:

Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Dutchess, Orange, Putnam, Rockland and Westchester counties.

(3) Local Governmental Unit-Operated. All Mental Health Outpatient Treatment and Rehabilitative Service programs operated by a local governmental unit which are operating solely under an operating certificate from the Office.

(4) State-operated. All hospital-based Mental Health Outpatient Treatment and Rehabilitative Service programs operated by the Office.

(i) Hospital-based providers licensed under article 28 of the Public Health Law and article 31 of the Mental Hygiene Law shall be classified by the following peer groups. The base rates will be calculated pursuant to 10 NYCRR Part 86.

(1) Upstate hospital - All hospital-based Mental Health Outpatient Treatment and Rehabilitative Service programs in Albany, Allegheny, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren and Washington, Wayne, Wyoming, and Yates counties.

(2) Downstate hospital- All hospital-based Mental Health Outpatient Treatment and Rehabilitative Service programs in Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Dutchess, Orange, Putnam, Rockland and Westchester counties.

(3) The fee paid to new Mental Health Outpatient Treatment and Rehabilitative Service programs, or Mental Health Outpatient Treatment and Rehabilitative Service programs commencing service in a new county, shall be calculated pursuant 10 NYCRR 86-8.6.

(j) Diagnostic and treatment center (D&TC) providers licensed under Article 28 of the Public Health Law and Article 31 of the Mental Hygiene Law shall be classified by the following peer groups. The base rates will be calculated pursuant to this Part.

(1) Upstate D&TC - All diagnostic and treatment centers in Albany, Allegheny, Broome, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Ontario, Orleans, Oswego, Otsego, Rensselaer, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, St. Lawrence, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren and Washington, Wayne, Wyoming, and Yates counties.

(2) Downstate D&TC - All diagnostic and treatment centers in Bronx, Kings, New York, Queens, Richmond, Nassau, Suffolk, Dutchess, Orange, Putnam, Rockland and Westchester counties.

(k) D&TCs and hospitals - Where a corporation operates a hospital and a D&TC, the Office will determine the primary relationship between the mental health program and the hospital or D&TC and assign the Mental Health Outpatient Treatment and Rehabilitative Service program to the appropriate peer group.

(l) Supplemental Payments.

Provider peer group base fees paid pursuant to this section shall be supplemented as appropriate for individual providers participating in the Office of Mental Health quality improvement initiative, or other performance initiatives developed by the Office.

(1) In order to be enrolled in such quality improvement initiative or other Office of Mental Health performance-based payment system, the program shall execute an agreement with the Office under which the provider agrees to participate in such initiative, and undertake such measures as shall be developed by the Office.

(2) Any program eligible to receive supplemental medical assistance reimbursement for participation in a quality improvement initiative, which fails at any time to meet the requirements set forth in the agreement, shall have its quality improvement supplement to its peer group base fee suspended until such time as the program meets such requirements, as determined by the Office.

#### **Section 599.14. Medical assistance billing standards**

(a) Medicaid claims for individuals who have been admitted to a Mental Health Outpatient Treatment and Rehabilitative Service program shall include, at a minimum, the Medicaid identification number of the individual, the designated mental illness diagnosis, the procedure code or codes corresponding to the procedure or procedures provided, the location of the service, specifically the licensed location where the service was provided or the clinician's regular assigned licensed location from which the clinician departed for an off-site procedure, and the National Provider Identification or equivalent Department of Health-approved alternative as appropriate of the attending clinician. The provider must also comply with the requirements associated with any procedure code being billed.

(b) Medicaid claims may be reimbursed for up to three pre-admission procedures per adult individual, excluding Peer/Family Support Services which has no pre-admission reimbursement limit, no more than one of which may be a collateral procedure. For children, claims may be reimbursed for up to three pre-admission visits per child/family, excluding visits solely for Peer Support Services. For pre-admission visits at least the code for unspecified illness must be entered on the claim.

(c) Medicaid claims may be submitted for no more than three services, comprising of two mental health services and one health service, per day for any individual, not including crisis intervention, complex care management, peer support services, or any services that are provided as part of IOP. For the purposes of this subdivision, psychotropic medication treatment, injectable psychotropic medication administration, injectable psychotropic medication administration with monitoring and education, and complex care management services may be counted as either health services or psychiatric services. No more than one health physical may be claimed in one year.

(d) Billing services.

(1) Assessment services consist of two types of assessment--Initial Assessment and Psychiatric Assessment. No more than three initial assessment procedures may be reimbursed by Medicaid. Additional initial assessment procedures are eligible for Medicaid reimbursement when more than 365 days have transpired since the most recent Medicaid reimbursed visit to the Mental Health Outpatient Treatment and Rehabilitative Service program.

(i) initial assessment Services shall include performance or consideration, as applicable, of the Health Screening.

(ii) The Mental Health Outpatient Treatment and Rehabilitative Service program must document a minimum of 45 minutes face-to-face contact with the individual or family or other collaterals. For school-based services, the duration of such services may be that of the school period, provided the school period is of a duration of at least 40 minutes.

(iii) Mental Health Outpatient Treatment and Rehabilitative Service programs may bill the physician modifier when psychiatrists, nurse practitioners in psychiatry, or physicians approved pursuant to Section 599.9 of this Part spend at least 15 minutes serving the individual during the time the initial assessment is being conducted by another licensed practitioner.

(iv) A Psychiatric Assessment may be provided to either an individual being assessed for admission to the Mental Health Outpatient Treatment and Rehabilitative Service program, or an individual who is currently admitted. Psychiatric assessments may be performed for admitted recipients where medically necessary without limitations. Psychiatric Assessments may include such elements as a diagnostic interview and treatment plan development.

(a) A Psychiatric Assessment may be provided by a physician, psychiatrist, nurse practitioner in psychiatry, or physician assistant with specialized training approved by the Office to an individual who has been admitted to the Mental Health Outpatient Treatment and Rehabilitative Service program, or one for whom the appropriateness of admission is being assessed.

(b) A Psychiatric Assessment of at least 30 minutes of documented face-to-face interaction between the individual, or family or other collaterals, and the physician, psychiatrist, or nurse practitioner in psychiatry, shall be billed as a Brief Psychiatric Assessment.

(c) A Psychiatric Assessment of at least 45 minutes of documented face-to-face interaction between the individual, or family or other collaterals, and the physician, psychiatrist or nurse practitioner in psychiatry, shall be billed as an Extended Psychiatric Assessment.

(d) Programs shall comply with the most recent applicable AMA coding guidelines regarding the appropriate use of Current Procedural Terminology (CPT) codes for Psychiatric Assessment services, including minimum duration standards for the provision of psychotherapy services provided by physicians and nurse practitioners. Where clinically appropriate and consistent with applicable AMA coding guidelines for service duration ranges for Current Procedural Terminology (CPT) codes, programs may bill for Brief or Extended Psychiatric Assessments for shorter service durations than those specified in this subparagraph.

## (2) Psychiatric Consultation.

(i) Psychiatric Consultation may be provided by a Physician, Psychiatrist, Nurse practitioner, or Psychiatric nurse practitioner to a referring physician for the purposes of assisting in the diagnosis, integration of treatment, or assistance in ensuring continuity of care, for an individual receiving services from a referring physician.

(ii) Psychiatric Consultation services must be face-to-face with the individual, or using telehealth, where approved by the Office and shall be billed by the Program in the same manner as Psychiatric Assessments pursuant to paragraph (1) of this subdivision.

(3) Crisis Intervention.

(i) The Mental Health Outpatient Treatment and Rehabilitative Service program may make contractual arrangements for after-hours crisis coverage by clinicians, but contracts for this service must be approved by the local governmental unit in which the Mental Health Outpatient Treatment and Rehabilitative Service program is located, or by the Office for county-operated Mental Health Outpatient Treatment and Rehabilitative Service programs.

(ii) Crisis Intervention Services consist of three billable levels of service.

(a) Crisis Intervention--Brief. Brief Crisis Intervention Services shall be done in person or via telehealth. For services of a duration of at least 15 minutes, one unit of service shall be billed. For each additional service increment of at least 15 minutes, an additional unit of service may be billed, up to a maximum of six units per day.

(b) Crisis Intervention--Complex. Complex Crisis Intervention requires a minimum of one hour of face-to-face contact by two or more clinicians. Both clinicians must be present for the majority of the duration of the total contact. Certified Peer Specialists, Credentialed Family Peer Advocates, and Credentialed Youth Peer Advocates, or paraprofessional staff may substitute for one clinician. Mental Health Outpatient Treatment and Rehabilitative Service program may be reimbursed for crisis intervention-complex services provided to individuals who have not engaged in services for a period of up to two years.

(c) Crisis Intervention--Per Diem. Per Diem Crisis Intervention requires three hours or more of face-to-face contact by two or more clinicians. Both clinicians must be present for the majority of the duration of the total contact. Certified Peer Specialists, Credentialed Family Peer Advocates, and Credentialed Youth Peer Advocates, or paraprofessional staff may substitute for one clinician. Mental Health Outpatient Treatment and Rehabilitative Service programs may be reimbursed for crisis intervention-per diem services provided to individuals who have not engaged in services for a period of up to two years.

(4) Injectable Psychotropic Medication Administration services are reimbursed for in person contact between a clinician and the individual.

Injectable Psychotropic Medication Administration Services consist of two billable levels of service.

(i) Injectable Psychotropic Medication Administration service has no minimum time limit. This service includes medication injection.

(ii) Injectable Psychotropic Medication Administration with Monitoring and Education requires a minimum of 15 minutes. This service includes medication injection, monitoring and individual education, as necessary.

If the Injectable Psychotropic Medication Administration with Monitoring and Education Service is provided to an individual by a Psychiatrist, Physician, Nurse practitioner, or Psychiatric Nurse Practitioner, it shall not be claimed in addition to an evaluation and management service (including

psychiatric assessment and psychotropic medication treatment) received by that individual on the same day. In this case, the Mental Health Outpatient Treatment and Rehabilitative Service program may claim reimbursement for an Injectable Psychotropic Medication Administration procedure instead.

(5) Psychotropic Medication Treatment services are reimbursed for face-to-face contact of at least 15 minutes in duration between a Psychiatrist, Physician, Nurse practitioner, or Psychiatric Nurse Practitioner, and the individual.

(6) Psychotherapy services. Psychotherapy services consist of the following levels of billable service.

(i) Psychotherapy services--individual shall be reimbursed as follows:

(a) A psychotherapy service provided face to face with the individual with a documented duration of 30 minutes shall be billed as a brief psychotherapy service.

(b) A psychotherapy service provided face to face with the individual with a documented duration of 45 minutes shall be billed as an extended psychotherapy service.

(c) Brief and Extended Psychotherapy services may be billed where more than half of the minimum service duration is spent providing services to the individual and the remainder of the minimum service duration is spent providing service to a collateral.

(d) Programs shall comply with applicable AMA coding guidelines regarding the appropriate use of Current Procedural Terminology (CPT) codes for Psychotherapy services. Where clinically appropriate and consistent with applicable AMA coding guidelines for service duration ranges for Current Procedural Terminology (CPT) psychotherapy codes, programs may bill for Brief or Extended Psychotherapy for shorter service durations than those specified in this subparagraph.

(ii) Psychotherapy--Family/Collateral with the individual requires documented cumulative, continuous face-to-face service with the individual and the collateral of a minimum duration of 50 minutes, during which time the individual shall be present for at least the majority of the time.

(iii) Psychotherapy--Family/Collateral Without the individual requires documented face-to-face service with the collateral of a minimum duration of 30 minutes. For this service, the individual may also be present for some or all of the time. Where clinically appropriate and consistent with applicable AMA coding guidelines for service duration ranges for Current Procedural Terminology (CPT) codes, programs may bill for Psychotherapy--Family/Collateral Without the Individual for shorter service durations than those specified in this subparagraph.

(iv) Psychotherapy--Multi-Individual Group requires documented face-to-face service with a minimum of two recipients and a maximum of 12 recipients for services of a minimum duration of 60 minutes. For services of a duration of at least 40 minutes and less than 60 minutes, reimbursement will be reduced by 30 percent.

(v) Psychotherapy--Multi-Family/Collateral Group requires documented face-to-face service with a minimum of two multifamily/ collateral units and a maximum of eight multifamily/ collateral units in the group, with a maximum total number in any group not to exceed 16 individuals, and a minimum duration of 60 minutes of service. For services of a duration of at least 40 minutes and less than 60 minutes, reimbursement will be reduced by 30 percent.



(7) Testing Services, including Developmental Testing, Neurobehavioral Status Examination, and Psychological Testing. Medical Assistance may reimburse for this service solely for individuals admitted to the Mental Health Outpatient Treatment and Rehabilitative Service program. Developmental Testing services must be face-to-face with the individual.

(8) Complex care management must be provided no later than within 14 calendar days following a face-to-face psychotherapy, psychotropic medication treatment, or crisis intervention mental health outpatient program service. A maximum of four units of at least five consecutive minutes of complex care management may be billed following each face-to-face psychotherapy, psychotropic medication treatment, or crisis intervention service. Each full five-minute unit may be provided on separate days within the 14-calendar day limit, with a maximum of four full five-minute units associated with each eligible Mental Health Outpatient Treatment and Rehabilitative Service program visit. The time spent documenting the provision of complex care management or in other documentation activities shall not be included in the calculation of time for the purposes of billing of complex care management.

(9) Peer/Family Support Services may be provided to individuals, family or other collaterals, or groups of individuals not to exceed 12. For services of a duration of at least 15 minutes, one unit of service shall be billed. For each additional service increment of at least 15 minutes, an additional unit of service may be billed, up to twelve units per day, or 3 hours maximum. Multiple units of Peer/Family Support Services may be provided consecutively or at different times of the day.

(e) Modifiers. Billing modifiers, including modifiers paid as supplementary rates to visits, are available pursuant to this section as indicated in the modifier chart included in this subdivision.

**Modifier Chart for Services Provided On-Site**

<b>Office of Mental Health Service Name</b>	<b>After Hours</b>	<b>Language other than English</b>	<b>Physician/NPP</b>
Complex Care Management	x	x	
Crisis Intervention Service -brief	x	x	
Crisis Intervention Service - Complex	x	x	
Crisis Intervention Service - Per Diem	x	x	
Peer/Family Support Services	x	x	
Developmental, Neurobehavioral Status Exam, and Psychological Testing	x	x	
Injectable Psychotropic Medication Administration with Monitoring and Education	x	x	
Psychotropic Medication Treatment	x		
Initial Mental Health Assessment, Diagnostic Interview, and Treatment Plan Development	x	x	x

Psychiatric Assessment - brief	x	x	
Psychiatric Assessment - extended	x	x	
Individual Psychotherapy - brief	x	x	x
Individual Psychotherapy - extended	x	x	x
Group and Multifamily/Collateral Group Psychotherapy	x	x	x
Family Therapy/Collateral w/o patient	x	x	x
Family Therapy/Collateral with patient	x	x	x

(f) A Mental Health Outpatient Treatment and Rehabilitative Service program may not be reimbursed for services provided to an individual currently enrolled in another program licensed by the Office for which Medicaid reimbursement is being made except as provided in this subdivision.

(1) Reimbursement shall be made for up to three pre-admission visits when an individual is in transition from another outpatient program, except another Mental Health Outpatient Treatment and Rehabilitative Service program. After completion of the three preadmission visits, a Mental Health Outpatient Treatment and Rehabilitative Service program provider may not bill Medical Assistance for a service unless it is medically necessary, performed pursuant to a treatment plan approved pursuant to this Part, and, except as specified in this subdivision, the individual has been discharged from the other outpatient program.

(2) Reimbursement shall be made for an individual currently admitted to a continuing day treatment program in accordance with Part 587 of this Title when such individual shall also be admitted to a Mental Health Outpatient Treatment and Rehabilitative Service program solely for the purpose of clozapine medication therapy. Reimbursement shall be made for no more than five clozapine medication treatment visits per month per individual.

(3) Reimbursement shall be made for services provided, including preadmission visits, without regard to an individual's enrollment in more than one, different Mental Health Outpatient Treatment and Rehabilitative Service programs, except reimbursement shall not be made to more than one program for the same service on the same date of service.

(4) Reimbursement shall not be made for services rendered by a Mental Health Outpatient Treatment and Rehabilitative Service program to residents of a residential health care facility. Reimbursement shall be made to the Mental Health Outpatient Treatment and Rehabilitative Service program by the residential health care facility.

(g) The Office will only consider requests for revisions of fees calculated under the provisions of this Part due to errors made by the Office in its calculation.

(1) A request for revision of a fee calculated in accordance with this section shall be sent to the Commissioner by registered or certified mail and shall contain a detailed statement of the basis for the requested revision together with any documentation that the provider of service wishes to submit.

(2) A request for revision must be submitted within 120 days of receipt by the provider of service of the rate computation.

(3) The provider of service shall be notified in writing of the Commissioner's determination, including a statement of the reasons therefor.

(h) Miscellaneous billing rules.

(1) Services provided by Mental Health Outpatient Treatment and Rehabilitative Service programs operated by agencies licensed under article 28 of the Public Health Law, which are also licensed pursuant to article 31 of the Mental Hygiene Law, shall not be considered to be specialized services pursuant to section 2807 of the Public Health Law.

### **Section 599.15. Indigent care**

(a) The indigent care program for Mental Health Outpatient Treatment and Rehabilitative Service programs has been established by New York State to offset a portion of the losses from uncompensated care experienced by diagnostic and treatment centers licensed by the New York State Department of Health and mental health Mental Health Outpatient Treatment and Rehabilitative Service programs licensed by the Office that are not also licensed by the New York State Department of Health and/or not directly operated by the Office.

(b) Eligible mental health Mental Health Outpatient Treatment and Rehabilitative Service programs for purposes of this section shall mean non-profit or county-sponsored Mental Health Outpatient Treatment and Rehabilitative Service programs that can demonstrate losses from a disproportionate share of uncompensated care during a base period two years prior to the grant period; with the exception of the transition period to be established by the Office in guidance. Non-profit mental health Mental Health Outpatient Treatment and Rehabilitative Service programs meeting or exceeding profit margins and total net assets established pursuant to subsection (k) of this section shall not be eligible for allocations pursuant to this section.

(c) Uncompensated care need, for purposes of this section, means the following, subject to limitations to be provided in guidance by the Office:

(1) Self pay, including partial pay or no pay visits;

(2) Required or optional mental health Mental Health Outpatient Treatment and Rehabilitative Service program procedures provided but NOT covered under a Mental Health Outpatient Treatment and Rehabilitative Service program's agreement with a third-party payer;

(3) Unreimbursed Mental Health Outpatient Treatment and Rehabilitative Service program visits/procedures appropriately provided to an insured individual by a Mental Health Outpatient Treatment and Rehabilitative Service program staff member not approved for payment by a third party payer in contract with the Mental Health Outpatient Treatment and Rehabilitative Service program; or

(4) Unreimbursed Mental Health Outpatient Treatment and Rehabilitative Service program visits/procedures appropriately provided to an insured individual by a Mental Health Outpatient Treatment and Rehabilitative Service program staff member when the procedure is not reimbursed by a

third party payer not in contract with the Mental Health Outpatient Treatment and Rehabilitative Service program.

(d) To be eligible for an allocation of funds pursuant to this section, a mental health program must demonstrate that a minimum of five percent of total Mental Health Outpatient Treatment and Rehabilitative Service program visits reported during the applicable base year period meet the eligibility requirements for the pool. For Mental Health Outpatient Treatment and Rehabilitative Service programs operated by an agency that operates more than one Mental Health Outpatient Treatment and Rehabilitative Service program, to be eligible for an allocation of funds pursuant to this section, the agency must demonstrate that a minimum of five percent of its total Mental Health Outpatient Treatment and Rehabilitative Service program visits meets these requirements. To be eligible, Mental Health Outpatient Treatment and Rehabilitative Service programs must further demonstrate that they maintain a sliding fee scale for uninsured individuals.

(e) Documentation of uncompensated care need must be retained by the Mental Health Outpatient Treatment and Rehabilitative Service program and will be subject to an audit by the New York State Office of the Medicaid Inspector General or other party empowered to conduct such audits.

(f) Rules for the reporting of data on uncompensated care visits to the Office will be established in guidance. Providers participating in the uncompensated care pool that do not submit annual data by dates to be established by the Office will be excluded from the pool for that year.

(g) A mental health program qualifying for a distribution pursuant to this section shall provide assurances satisfactory to the Commissioners of Health and Mental Health that it shall undertake reasonable efforts to maintain financial support from community and public funding sources and reasonable efforts to collect payments for services from third-party insurance payers, governmental payers and self-paying patients.

(h) To be eligible for reimbursement pursuant to this section, claims must be consistent with the Medical Assistance billing standards set forth in this Part. Payments from the indigent care pool shall be made in accordance with the payment rules established by the Office and the Department of Health.

(i) The allocations of funds to a mental health Mental Health Outpatient Treatment and Rehabilitative Service program may be reduced if the Office determines that provider management actions or decisions have caused a significant reduction for the grant period in the delivery of mental health services to uncompensated care residents of the community.

(j) The value of uncompensated care payments will be established in guidance issued by the Office.

(k) Except as provided in subdivisions (1) and (2) of this subsection and excluding mental health Mental Health Outpatient Treatment and Rehabilitative Service programs operated by hospitals licensed pursuant to Article 28 of the Public Health Law, providers operating mental health Mental Health Outpatient Treatment and Rehabilitative Service programs generating net profits from the Mental Health Outpatient Treatment and Rehabilitative Service program in excess of fifteen percent of total revenue and which report total net assets in excess of two times their total annual operating budget, as determined by the provider's submissions pursuant to subsection (o) of section 599.6 of this Part, shall implement a provider-specific indigent care compliance plan approved by the Office to serve individuals without creditable coverage or the ability to pay the provider's private pay or sliding fee scale, Such

indigent care compliance plan shall include terms regarding the acceptance of referrals to serve such individuals from the Office, Local Government Unit, or community and remain in effect until the Office determines that net profits and assets no longer exceed the levels established in this subsection. A provider that fails to fully comply with this subsection may have limitations placed on its operating certificate or other sanctions imposed, in accordance with state law and regulations.

(1) Providers required to comply with this subsection may submit documentation to the Office outside of the applicable Consolidated Fiscal Report reporting period to demonstrate that net profits and assets no longer exceed the levels established in this subsection. Redeterminations regarding the applicability of this subsection prior to the submission of the next Consolidated Fiscal Report shall be at the discretion of the Office based on an assessment of the provider's overall financial situation and compliance with Part 513 of this Title.

(2) Non-profit providers that demonstrate losses from the operation of other OMH-licensed programs shall not be required to comply with this subsection if such losses result in net profits of less than fifteen percent of total revenue for all OMH licensed programs operated by the provider.