



1. Part 511 of Title 14 NYCRR is renumbered Subpart 511-1 and a new Subpart 511-2 is added to 14 NYCRR to read as follows:

SUB-PART 511-2

Children's Mental Health Rehabilitation Services Program

Statutory authority: Mental Hygiene Law §§7.09, 31.04, 43.02;

Social Services Law §§364(3), 364-a (1), 364-j.

Sec.

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§ 511-2.1 Background and intent.

- (a) The purpose of this Part is to establish certification standards for the operation of Children's Mental Health Rehabilitation Services (CMHRS) programs.
- (b) The goals of CMHRS programs are to assist children and their families with significant mental health and behavioral challenges function successfully within their homes and community, ameliorate mental health symptoms and prevent the progression of mental health conditions by providing a coordinated array of clinical treatment, rehabilitative and support services.
- (c) CMHRS are primarily provided in nontraditional settings, to include in the home or community settings, to children and their families for whom a flexible approach to service provision is needed to facilitate engagement or therapeutic benefit.

(d) CMHRS shall be offered individually or as a comprehensive array of services provided in an integrated and coordinated manner. CMHRS programs shall establish protocols and procedures for the integration of service provision for children, whether all services are provided directly or through a formal agreement.

§ 511-2.2 Legal base.

- (a) Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of Mental Health (“the Commissioner”) the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction and to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services for persons experiencing symptoms of mental illness pursuant to an operating certificate.
- (b) Subdivision (a) of section 43.02 of the Mental Hygiene Law provides that payments under the Medical Assistance Program for programs approved by the Office of Mental Health shall be at rates certified by the Commissioner and approved by the Director of the Division of the Budget.
- (c) Subdivision (b) of section 43.02 of the Mental Hygiene Law gives the Commissioner authority to request from operators of facilities certified by the Office of Mental Health such financial, statistical and program information as the Commissioner may determine to be necessary.
- (d) Subdivision (c) of section 43.02 of the Mental Hygiene Law gives the Commissioner of Mental Health the authority to adopt rules and regulations relating to methodologies used in establishment of schedules of rates for payment.
- (e) Sections 31.07, 31.09, 31.13, and 31.19 of the Mental Hygiene Law authorizes the Commissioner 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.
- (f) 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 such commissioner to inspect its facility, books and records, including recipients’ records, and making such reports, uniform and otherwise, as are required by the commissioner.
- (g) 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.

- (h) Section 364-j of the Social Services Law requires the establishment of management 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.

§ 511-2.3 Applicability.

This Part shall apply to any provider that proposes to operate a CMHRS program of services that must be certified by the Office of Mental Health.

§ 511-2.4 Definitions.

For Purposes of this Part:

- (a) Child means a person no more than 21 years of age.
- (b) Collateral means a person who is a member of the child's family or household, or other individual who regularly interacts with the recipient and is directly affected by or has the capability of affecting his or her 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 recipient prior to admission.
- (c) Commissioner refers to the Commissioner of the New York State Office of Mental Health.
- (d) Crisis episode means an acute psychological/emotional change a child or family member is experiencing which results in a marked increase in personal distress and which exceeds the abilities and the resources of those involved (e.g., provider, family member) to effectively resolve it.
- (e) EPSDT means the Federal Early and Periodic Screening, Diagnostic, and Treatment benefit, which is a primary component of New York State's Medicaid program for children and adolescents. It affords a comprehensive array of preventive health care and treatments for Medicaid recipients from birth up until age 21 years.
- (f) Family means a child's primary caregiving unit, and is inclusive of a wide diversity of primary caregiving units such as birth, foster, adoptive, grandparents, siblings, other kinship caregivers, or a self-created unit of people with significant attachment to one another.
- (g) Licensed Practitioner of the Healing Arts (LPHA) means the following professional staff:
- (1) Creative Arts Therapist: an individual who is currently licensed as a creative arts therapist by the New York State Education Department;

- (2) Marriage and Family Therapist: an individual who is currently licensed as a marriage and family therapist by the New York State Education Department;
- (3) Mental Health Counselor: an individual who is currently licensed as a mental health counselor by the New York State Education Department;
- (4) Nurse Practitioner: an individual who is currently certified as a nurse practitioner by the New York State Education Department;
- (5) Nurse Practitioner in psychiatry: an individual who is currently certified as a psychiatric nurse practitioner by the New York State Education Department. For purposes of this Part, nurse practitioner in psychiatry shall have the same meaning as psychiatric nurse practitioner, as defined by the New York State Education Department;
- (6) Physician: 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;
- (7) Physician's Assistant: an individual who is currently registered as a physician assistant or a specialist's assistant by the New York State Education Department;
- (8) Psychiatrist: an individual who is currently licensed as a physician by the New York State Education Department and who is certified by, or eligible to be certified by, the American Board of Psychiatry and Neurology;
- (9) Psychoanalyst: an individual who is currently licensed as a psychoanalyst by the New York State Education Department;
- (10) Psychologist: an individual who is currently licensed as a psychologist by the New York State Education Department;
- (11) Registered Professional Nurse: an individual who is currently licensed as a registered professional nurse by the New York State Education Department; and
- (12) Social Worker, which means an individual who is currently licensed as a master social worker or clinical social worker by the New York State Education Department.

(h) Medical Necessity means medical, dental, and remedial care, services, and supplies that are necessary to prevent, diagnose, correct, or cure conditions in the person that cause acute suffering, endanger life, result in illness or infirmity, interfere with such person's capacity for normal activity, or threaten some significant handicap and which are furnished an eligible person in accordance with state law.

(i) *Mental illness* means an affliction with a mental disease or mental condition which is manifested by a disorder or disturbance in behavior, feeling, thinking or judgment such an extent that the person afflicted requires care, treatment and rehabilitation.

(j) *Non-physician Licensed Behavioral Health Practitioner (NP-LBHP)* NP-LBHPs are licensed to practice independently and include the following:

- (1) Licensed Psychoanalyst: an individual who is currently licensed as a psychoanalyst by the New York State Education Department or possesses a permit by the NYS Education Department.
- (2) Licensed Clinical Social Worker (LCSW) an individual who is currently licensed as a licensed clinical social worker (LCSW) by the New York State Education Department.
- (3) Licensed Marriage & Family Therapist (LMFT) 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 NYS Education Department.
- (4) Licensed Mental Health Counselor (LMHC) an individual who is currently licensed as a mental health counselor by the New York State Education Department or possesses a permit from the NYS Education Department.
- (5) Licensed Master Social Worker (LMSW) an individual who is currently licensed as a licensed master social worker by the New York State Education Department and has a master's degree in social work from a program approved by the New York State Education Department, under supervision or direction of a Licensed Clinical Social Worker (LCSW), a Licensed Psychologist, or a Psychiatrist.

(k) *Office* means the Office of Mental Health.

(l) *Provider of Service* is the entity that is legally responsible for the operation of a program. Such entity may be an individual, partnership, association, limited liability corporation, or corporation

(m) *Rehabilitative Services* means for children under 21 years of age, rehabilitative services refer to behavioral health services that help a child keep, restore, or improve skills and functioning for daily living and skills related to communication that have been lost or impaired.

§ 511-2.5 Service Categories and Requirements.

- (a) CMHRS programs shall be responsible for assuring the delivery of the following services for children deemed eligible for receipt: Other Licensed Practitioner, Community Psychiatric

Supports and Treatment, Psychosocial Rehabilitation, Family Peer Support Services, and Youth Peer Support and Training.

(b) Each of the following services must be offered directly by CMHRS programs:

(1) Other Licensed Practitioner (OLP) services are clinical services provided by Non-Physician Licensed Behavioral Health Practitioners (NP-LBHP) as defined in this Part. OLP services are provided for children in need of assessment due to symptoms of mental illness for whom disorders have not yet been diagnosed, as well as for children with an existing diagnosis. OLP services include:

(i) Assessment is a service designed to identify a child's primary psychiatric condition and co-occurring health conditions, and the effects on the child's ability to function in specific life roles.

(ii) Treatment Planning is an ongoing process of assessing the mental health status and needs of a child, establishing his or her treatment and rehabilitative goals and determining what services should be provided to assist the child in accomplishing those goals.

(iii) Psychotherapy is therapeutic communication and interaction for the purpose of alleviating symptoms or functional limitations associated with a child's diagnosed mental health disorder, reversing or changing maladaptive patterns of behavior, encouraging personal growth and development, and supporting the child's capacity to achieve age-appropriate developmental milestones.

(2) Community Psychiatric Supports and Treatment (CPST) is a comprehensive service that includes intensive rehabilitative interventions and service components that are supportive in nature to educate and assist families regarding mental health challenges and barriers. Components of this service include:

(1) Intensive Interventions are counseling interventions with the child, or child and family, to assist the child with developing and implementing social, interpersonal, self-care, daily living and independent living skills to restore stability, to support functional gains and to adapt to community living.

(2) Crisis Avoidance are interventions to assist the child and family in developing the capacity to prevent a crisis episode from occurring or reducing the intensity and duration of an active crisis.

(3) Intermediate Term Crisis Management provides post-crisis assistance to stabilize the child in the home and natural environment and assist with goal setting to focus on the issues identified from mobile crisis or emergency room intervention, and other referral sources.

- (4) Rehabilitative Psychoeducation is a service designed to provide information, clinical guidance and support to the child and collaterals to assist the capacity of a child and/or collateral to facilitate recovery.
 - (5) Strengths Based Service Planning assists the child and family or other collaterals with identifying strengths and needs, resources, natural supports and developing goals and objectives to utilize personal strengths, resources and natural supports to address functional deficits associated with their mental illness.
 - (6) Rehabilitative Supports is designed to provide restoration, rehabilitation, and support to minimize the negative effects of mental health symptoms that interfere with the child's daily living.
- (c) Each of the following services shall be offered by CMHRS programs, either directly or through an agreement with a designated provider:
- (1) Psychosocial Rehabilitation (PSR) is a skill building service to restore, rehabilitate, and support a child's developmentally appropriate functioning to enhance community integration. PSR must include assisting the child to develop and apply skills in natural settings. PSR assists youth to implement interventions on their treatment plan to compensate for, or eliminate, functional deficits associated with their mental health condition(s).
 - (2) Family Peer Support Services (FPSS) are activities and supports provided by NYS Credentialed Family Peer Advocates (FPA) to families for the benefit of a child experiencing mental health challenges in their home, and/or community. FPSS assists with developing and linking with formal and informal supports; assisting in the development of goals; serving as an advocate, mentor, and teaching skills necessary to improve coping abilities for the benefit of the child.
 - (3) Youth Peer Support and Training (YPST) services are provided by NYS Credentialed Youth Peer Advocates (YPA) to children who are experiencing mental health challenges in their home, and/or community. YPST provides training and support necessary to ensure engagement and active participation of the child in the treatment planning process and with the ongoing implementation and reinforcement of skills through activities including, but not limited to: skill building, coaching, transition support, self-advocacy, empowerment and connection to community resources.
- (d) CMHRS program providers shall deliver services in accordance with the Medicaid State Plan Children and Family Treatment and Support Services Provider Manual for Children's Behavioral Health Early and Periodic Screening and Diagnostic Treatment (EPSDT) Services in addition to guidance issued by The Office.

§ 511-2.6 Certification.

- (a) A provider of service intending to operate a CMHRS program must obtain an initial operating certificate issued by the Office in accordance with this Part. Renewals of such operating certificates shall be issued for terms of up to three years.
- (b) Designated providers of FPSS, YPST and PSR who are not providing OLP and CPST do not require certification under this Part.
- (c) Each CMHRS program shall be authorized by an operating certificate. In addition, if a program is operating from multiple sites, each site shall be authorized by a discrete operating certificate. For each site, the operating certificate shall specify:
 - (1) the CMHRS services to be provided;
 - (2) the location of the program's site;
 - (3) the hours of operation of the program;
 - (4) the program's capacity; and
 - (5) the term of the operating certificate.
- (d) The Office of Mental Health shall be notified of any desired changes to the initial operating certificate issued pursuant to subdivision (d) of this section.
- (e) An operating certificate may be limited, suspended or revoked by the Office pursuant to Part 573 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.
- (f) The Commissioner may reduce a program's capacity when it is determined that such program is not providing services at a reasonable level or is not providing reasonable access to services in accordance with section of this Part.
- (g) The provider of service shall frame and display the operating certificate within the program site in a conspicuous place that is readily accessible to the public.
- (h) The Commissioner is authorized to make inspections and examine all records of CMHRS programs. Such examination may include, but is not limited to, any medical, service (quality assurance), financial or contractual record. The provider of service shall cooperate with the Office during any such inspection or examination.
- (i) An operating certificate pursuant to this Part shall not be issued in the absence of an NYS Provider Designation Approval and OMH Authorization developed in accordance with section 511.5 of this Part.
- (j) Upon a determination that a provider of service is in violation of this Part or upon a determination that a provider of service has failed to otherwise comply with the terms of its operating certificate or with the provisions of any applicable statute, rule or regulation, the

commissioner may revoke, suspend or limit the provider's operating certificate and designation or impose fines in accordance with Mental Hygiene Law, section 31.16 and Parts 573 and 503 of this Title.

- (k) Nothing in this section shall limit or preclude the commissioner from taking whatever immediate measures may be necessary, including the exercise of her authority under Mental Hygiene Law, sections 31.16(b) and 31.28, in the event that a child's health or safety is in imminent danger or there exists any condition or practice which poses imminent danger to the health or safety of any recipient or the public.
- (l) Each provider of services shall comply with Part 552 of this Title--Audits of Office of Mental Health Licensed or Operated Facilities, Programs or Units, which established standards for the administration of audits.

§ 511-2.7 Program Operations.

(a) Admission

- (1) To be eligible for admission to the CMHRS program, an individual must:
 - (i) be under the age of 21;
 - (ii) have a mental health diagnosis consistent or corresponding with the current edition of the DSM or be exhibiting symptoms of mental illness; and
 - (iii) be recommended for admission by a licensed practitioner of the healing arts (LPHA). The recommendation must be in writing, must be signed and dated, and must include an explanation of the medical necessity for a CMHRS program service.
- (2) Upon a decision to admit a child to a CMHRS program, documentation shall be written to include the following:
 - (i) recommendation for service(s) from a LPHA that is signed and dated and includes an explanation of the medical need for the service based on a assessment of needs;
 - (ii) primary service-related needs and service components to meet those needs;
 - (iii) admission diagnosis, if applicable; and
 - (iv) signature of a CMHRS staff.
- (3) When admission is not indicated, a notation shall be made of the following:
 - (i) the reason for not admitting the individual; and
 - (ii) any referrals made to other programs or services
 - (iii) notification to the referral source or recommending LPHA of the determination not to admit and of any referrals made to other programs or services.
- (4) Admission criteria must conform to applicable state and federal law governing non-discrimination. Admission criteria shall not exclude a child because of past histories of

incarceration or substance abuse. A provider of service shall not deny access to services by an otherwise appropriate child solely on the basis of multiple diagnoses or a diagnosis of HIV infection, AIDS, or AIDS-related complex.

- (5) The program's admission process, including any criteria governing participation in the program, shall be clearly described and available for review by the child, their family or other collaterals.
- (6) Providers of service shall not use coercion in regard to program admission or discharge, referrals to other programs, or the level of service provision, provided that nothing in this paragraph shall be interpreted to affect or otherwise impact the delivery of services to a child under a court order issued pursuant to section 9.60 of the Mental Hygiene Law.

(b) Staffing

- (1) A provider of service shall continuously have an adequate number and appropriate mix of staff to carry out the objectives of the program and to assure the outcomes of the program. The provider shall have a staffing plan with the appropriate qualified staff to meet the needs of population served.
- (2) Agency must maintain documentation of staff qualifications, including training, clinical experience with children diagnosed with or experiencing symptoms of a mental health disorder.
- (3) Agency must provide regular supervision. Such supervision shall address quality of care provided and ongoing staff development.
- (4) Agency must maintain an adequate and appropriate number of qualified staff in proportion to the number of children served.
- (5) Staffing shall be provided in accordance with required qualifications outlined in the *Medicaid State Plan Children and Family Treatment and Support Services Provider Manual for Children's Behavioral Health Early and Periodic Screening and Diagnostic Treatment (EPSDT) Services.*

§ 511-2.8 Treatment Planning.

- (a) Treatment planning shall be an ongoing assessment process. The services included within a treatment plan are those determined medically necessary by a licensed practitioner in collaboration with the child and family, in accordance with, and individualized to, the child and family's unique needs, goals and preferences.
- (b) The Treatment Plan for a child shall be developed by the CMHRS program. For any rehabilitative service(s) provided pursuant to formal agreement with a designated provider,

the development and ongoing review of the Treatment Plan shall include regular collaboration and coordination in accordance with protocols and procedures outlined in such agreement.

- (c) The treatment plan shall include identification and documentation of the following:
 - (1) The child's mental health diagnosis or symptoms of a mental illness exhibited by the child; or a notation that the diagnosis may be found in a specific assessment document in the child's case record;
 - (2) The child's needs and strengths;
 - (3) The child's treatment goals and objectives and the specific services, service components or activities necessary to accomplish those goals and objectives, as well as their projected frequency and duration;
 - (4) The name and title of the staff providing the specific services; and
 - (5) Criteria for determining when the child should be discharged from the services.

- (d) Treatment plans shall be completed no later than 30 days after admission, or for services provided to a child enrolled in a managed care plan which is certified by the Commissioner of the Department of Health or commercial insurance plan which is certified or approved by the Superintendent of the Insurance Department, pursuant to such other plan's requirement as shall apply.

- (e) The treatment plan for a child receiving services reimbursed by Medicaid through a managed care plan or on a fee-for-service basis shall be signed by licensed practitioner and shall include a projected schedule for service delivery and the projected frequency and duration of each type of planned therapeutic session or encounter.

- (f) The child and family's participation in treatment planning shall be documented by the signature of the child or the signature of the person who has legal authority to consent to health care on behalf of the child.
 - (1) Reasons for non-participation by the individual are documented in the treatment plan.
 - (2) The child's family and/or collaterals may participate as appropriate in the development of the treatment plan. Collaterals participating in the development of the treatment plan shall be specifically identified in the plan.

- (g) Treatment plans shall be reviewed and updated as necessary based upon the child's progress, changes in circumstances, the effectiveness of services, or other appropriate considerations. Such reviews shall occur no less frequently than every 90 days, or the next provided service, whichever shall be later and include the participation of CMHRS services provided directly by the program and/or pursuant to formal agreement. The periodic review of the treatment plan shall include the following:
 - (1) assessment of the progress of the child regarding the mutually agreed upon goals in the treatment plan;

- (2) adjustment of goals and treatment objectives, time periods for achievement, intervention strategies or initiation of discharge planning, as appropriate;
 - (3) recommendation/inclusion of additional or other services such as other rehabilitative or support services within CMHRS, where appropriate; and
 - (4) the signature of licensed practitioner within his/her scope of practice, as defined by NYS State Education Law, involved in or recommending the treatment.
- (h) For services provided to a child enrolled in a managed care plan which is certified by the Commissioner of the Department of Health or commercial insurance plan which is certified or approved by the Superintendent of the Insurance Department, treatment plans may be reviewed pursuant to such other plan requirement as shall apply.
- (i) Progress notes shall be recorded and signed by the staff member(s) who provided services to the child upon each occasion of service. Progress notes shall include, at a minimum:
- (1) the date and duration of each service provided;
 - (2) a summary of the service(s) provided and modality;
 - (3) a description of the progress made toward the child's goals;
 - (4) identification of any necessary changes to the elements of the child's treatment plan;
 - (5) the location where the service was provided, whether collaterals were seen;
 - (6) the name and title of the staff member providing each service; and
 - (7) A progress note must also be completed for any significant event and/or unexpected incident.

§ 511-2.9 Case Records.

- (a) The CMHRS Program shall maintain a case record for each child admitted and receiving CMHRS services provided directly and/ or pursuant to formal agreement with a designated provider. In the case of agreements between a CMHRS program and designated provider, the designated provider may also maintain a separate case record for the purposes of quality assurance, monitoring and billing.
- (b) The CMHRS program shall ensure proper exchange of information between providers to facilitate coordination of care.
- (c) There shall be a complete case record maintained for each child admitted to the program. Such case record shall be maintained in accordance with recognized and acceptable principles of recordkeeping as follows:
- (1) Case record entries shall be legible and non-erasable;
 - (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;
 - (3) Case records shall be periodically reviewed for quality and completeness; and
 - (4) All entries in case records shall be dated and signed by appropriate staff.

- (d) The case record shall be available to all staff of the CMHRS program who are participating in the treatment of the child and shall include the following information:
- (1) Child identifying information and history;
 - (2) Diagnosis; or symptoms of a mental illness exhibited by the child
 - (3) Recommendation for service(s) from a LPHA based on assessment of the child's mental health needs;
 - (4) Reports obtained of any mental and physical diagnostic exams, assessments, tests, and consultations;
 - (5) The treatment plan and crisis management plan, if applicable;
 - (6) Referrals to other programs and services;
 - (7) Consent forms;
 - (8) Record and date of contacts with the child, the type of service provided, and the duration of contact;
 - (9) Record and date of all contacts with collateral providers for coordination of care;
 - (10) Dated progress notes which relate to goals and objectives of treatment;
 - (11) Dated progress notes which relate to significant events and/or untoward incidents;
 - (12) Periodic treatment plan reviews;
 - (13) Discharge plan; and
 - (14) Discharge Summary within three business days of discharge.
 - (i) The discharge summary shall be transmitted to the receiving program, where applicable, prior to the arrival of the child, or within two weeks, whichever comes first.
 - (ii) When circumstances interfere with a timely transmittal of the discharge summary, notation shall be made in the record of the reason for delay. In such circumstances, a copy of all clinical documentation shall be forwarded to the receiving program, as appropriate, prior to the arrival of the child.
 - (iii) When a child is transferred between programs offered by the same provider, a consolidated record format that follows the child may be used.
 - (15) Records must be retained for a minimum period of six years from the date of the last service provided to child or, in the case of a minor, for at least six years after the last date of service or three years after he/she reaches majority whichever time period is longer.
 - (16) Information in 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 approval local or unified services plan (including programs that received 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 approval 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 it 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 re-disclosed as permitted by such law or regulation.

§ 511-2.10 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 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 design and operate services 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 the child and, where appropriate, their family members;
 - (7) to develop, approve, and periodically review and revise, as appropriate, all program and service 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.
 - (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 or that an appropriate referral to a treatment provider and subsequent follow up is made;
 - (iii) policies and procedures addressing child engagement and retention in treatment, including, at minimum, plans for outreach and re-engagement efforts commensurate with a child's assessed risk;
 - (iv) policies and procedures for screening for abuse or dependence on alcohol or other substances;

- (v) policies and procedures ensuring that a reasonable effort shall be made to obtain records from prior recent episodes of treatment;
- (vi) policies and procedures ensuring that a reasonable effort shall be made to communicate with family members, current service providers, and other collaterals, as appropriate;
- (vii) written policies and procedures describing an individual grievance process which ensures the timely review and resolution of child complaints and which provides a process enabling the child to request review by the office when resolution is not satisfactory;
- (viii) written personnel policies which shall prohibit discrimination on the basis of race, color, creed, disability, sex, marital status, age, national origin or sexual orientation, HIV status, military status, predisposing genetic characteristics and the applicable obligations imposed by: Title VII of the Civil Rights Act; Federal Executive Order 11246; the Rehabilitation Act of 1973, section 504; the Vietnam Era Veteran's Readjustment Act; the Federal Age Discrimination in Employment Act of 1967; the Federal Equal Pay Act of 1963; the Americans with Disabilities Act of 1990; and the State Human Rights Law (Executive Law, Article 15);
- (ix) for programs that will provide services to minors, written policies which shall provide for screening of employees, through the New York Statewide Central Register of Child Abuse and Maltreatment, verification of employment history, personal references, work record and qualifications as well as requesting the office to perform criminal history record checks.
- (x) written volunteer policies which shall provide for screening of volunteers, through the New York Statewide Central Register of Child Abuse and Maltreatment, verification of employment history, personal references, work history, and supervision of volunteers, as well as requesting the office to perform criminal history checks, in accordance with Part 550 of this Title.
- (xi) written policies regarding the selection, supervision, and conduct of students accepted for training in fulfillment of a written agreement between the agency 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.
- (xii) 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 of the program do not have a criminal history that could represent a threat to the health, safety, or welfare of a child in the program, including, but not limited to, the provision of a signed, sworn statement whether, to the best of his or her knowledge, such person has ever been convicted of a crime in this State or any other jurisdiction; and

- (xiii) written policies and procedures regarding the mandatory reporting of child abuse or neglect, reporting procedures and obligations of persons required to report, 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 individuals who are children, or who are the parents or guardians of children; and
 - (xiv) to ensure the establishment and implementation of training for current and new employees and volunteers that addresses the policies and procedures regarding child abuse and neglect.
- (8) A provider of service shall ensure that no child 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.
- (9) Written policies and procedures governing the child'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.
- (10) The provider of service shall establish mechanisms for the meaningful participation of child and/or family representatives either through direct participation on the governing body, or through the creation of an individual advisory board. If an individual advisory board is used, the provider of service shall ensure a mechanism for the individual advisory board to make recommendations to the governing body.
- (11) The provider of service shall develop and make available to individuals and collaterals, a plan which will assure an appropriate response to individuals admitted to the agency and their collaterals who need assistance when the program is not in operation.
- (12) A provider of service shall ensure that any program subject to this Part does not:
- (i) utilize restraint or seclusion for any purpose, including, but not limited to, as a response to a crisis situation, provided, however, that in situations in which alternative procedures and methods not involving the use of physical force cannot reasonably be employed, 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; and
 - (ii) perform electroconvulsive therapy or aversive conditioning therapy for any purpose, including, but not limited to, as a treatment intervention.
- (13) A provider of service shall ensure that individual participation in research only occurs in accordance with applicable Federal and State requirements.

- (14) 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.
- (15) A provider of service has written emergency preparedness and response plan for all of its services and locations that includes responses to environmental and natural disasters and staff shall be trained about it procedures.
- (16) A provider of service has written protocols to address personal safety of staff and provides appropriate training in de-escalation techniques
- (17) There shall be a written utilization review procedure to ensure that the child is receiving appropriate services and are being served at an appropriate level of care. Such policies and procedures shall include provisions ensuring that utilization review is performed and shall be performed only by professional staff trained to do such reviews, or by staff who are otherwise qualified by virtue of their civil service standing, and shall ensure to the maximum extent possible that the designated utilization review authority functions independently of the clinical staff that is treating the individual under review. Such utilization review procedure shall provide for:
- (i) a review of the appropriateness of admission to services; and
 - (ii) a review of the need for continued treatment

§ 511-2.11 Individual rights.

- (a) A child receiving services pursuant to this Part are entitled to the rights as defined in 527.5 regulation. A provider of service shall be responsible for ensuring the protection of these rights.
- (1) A child and family has the right to an individualized plan of treatment services and to participate to the fullest extent consistent with the individual's capacity in the establishment and revision of that plan.
- (2) A child and family has the right to a full explanation of the services provided in accordance with their treatment or rehabilitation service plan.
- (3) Participation in treatment is voluntary and the child is 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 to the extent that:
- (i) Section 33.21 of the Mental Hygiene Law provides for the surrogate consent of a parent or guardian of a minor;
 - (ii) a child is enrolled in an assisted outpatient treatment program established pursuant to section 9.60 of the Mental Hygiene Law; or
 - (iii) a child engages in conduct which poses a risk of physical harm to himself or

- others.
- (iv) While a child's full participation in treatment is a central goal, a child or their parent/ guardian's objection to the child's treatment or rehabilitation service plan, or disagreement with any portion thereof, shall not, in and of itself, result in his or her termination from the program unless such objection renders continued participation in the program clinically inappropriate or would endanger the safety of the child or others.
- (4) A child shall be assured access to their clinical records consistent with section 33.16 of the Mental Hygiene Law.
- (5) A child has 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.
- (6) A child has the right to receive services in such a manner as to assure nondiscrimination.
- (7) A child has the right to be treated in a way which acknowledges and respects their cultural environment.
- (8) A child has the right to a maximum amount of privacy consistent with the effective delivery of services.
- (9) A child has the right to freedom from abuse and mistreatment by staff.
- (10) A child has the right to be informed of the provider's recipient grievance policies and procedures, and to initiate any question, complaint or objection accordingly.
- (11) A provider of service shall provide a notice of individuals' rights as described in subdivision (a) of this section to each child upon admission to a 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 for the Protection of People with Special Needs, 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.

§ 511-2.12 Medicaid Reimbursement

Reimbursement for children's behavioral health and health services must be in accordance with the rates established by the Department and approved by the Director of the Division of Budget. The rates can be found on the New York State Department of Health website.

§ 511-2.13 Premises.

- (a) The CMHRS program may deliver services in the home, community-based or other site-based settings when appropriate, in order to provide for individualized service delivery consistent with the child's conditions and needs.
- (b) The CMHRS program shall provide services in settings that are adequate and appropriate in accordance with the following:
- (1) All CMHRS programs shall allocate adequate space for the number of persons served by the program when provided on site.
 - (2) All CMHRS programs shall provide for sufficient types and arrangements of spaces to provide individual and group activities consistent with the program's capacity and purpose.
 - (i) All CMHRS shall provide for controlled access to and maintenance of records.
 - (ii) All CMHRS programs shall provide for appropriate furnishings and equipment consistent with the purpose of the program.
 - (3) All CMHRS programs shall provide services in settings that are conducive to meeting treatment goals/objectives, accommodating to the child's conditions and needs, safe and accessible for the child and staff, and assure privacy for the delivery of services.
 - (4) The provider of service shall possess 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.
 - (5) The provider of service shall consider the use of appropriate features and equipment that enable the accessibility of persons with physical disabilities, consistent with the population being served by the program.

§ 511-2.14 Quality Improvement.

- (a) The provider of service shall have an organized quality assurance program designed to enhance individual care through the ongoing objective assessment of important aspects of the child's care and the correction of identified problems. The quality assurance program shall provide for the following:
- (1) identification of problems or concerns related to the care of individuals including, but not limited to, compliance with the treatment plan;
 - (2) objective assessment of the cause and scope of the problems or concerns, including the determination of priorities for both investigating and resolving problems and concerns.

Priorities shall be related to the degree of adverse impact on the care provided to individuals that can be expected if the problems or concerns remain unresolved;

- (3) recommendations related to implementation of decisions or actions that are designed to eliminate, insofar as possible, identified problems; and
 - (4) monitoring to assess whether or not the desired result has been achieved and sustained.
- (b) Each provider of service shall prepare a written quality assurance plan designed to ensure that there is an ongoing quality assurance program that includes effective mechanisms for reviewing and evaluating individual care and provides for appropriate response to findings. The written quality assurance plan shall address at a minimum:
- (i) the individual or group with the overall responsibility to administer or coordinate the quality assurance program;
 - (ii) the individuals or organizational entities to whom responsibility will be delegated for specific activities or mechanisms;
 - (iii) the activities or mechanisms for reviewing and evaluating care;
 - (iv) the activities or mechanisms for assuring the accountability of the staff for the care they provide;
 - (v) the individuals or organizational entities to whom responsibility will be delegated for responding to findings or implementing corrective actions designed to eliminate, insofar as possible, identified problems; and
 - (vi) the activities or mechanisms for monitoring whether or not the corrective actions have been implemented, and whether or not the desired result has been achieved and sustained.
- (c) CMHRS programs shall have procedures for internal monitoring of program performance. Performance should be monitored against the criteria stated in the program's functional program. The results of this internal monitoring shall be used to identify problems in client care and opportunities to improve care and shall be regularly reviewed and acted on by the governing body.
- (d) The Office of Mental Health shall have responsibility for monitoring the quality of CMHRS programs. Upon a determination that a provider of service is in violation of this Part or upon a determination that a provider of service has failed to otherwise comply with the terms of its operating certificate or with the provisions of any applicable statute, standard, rule or regulation, the commissioner may revoke, suspend or limit the provider's operating certificate or impose fines in accordance with Mental Hygiene Law, section 31.16 and Parts 53 and 503 of this Title.

§ 511-2.15 Local Planning.

The provider of service shall participate as required with the local governmental unit in local planning processes pursuant to sections 41.05 and 41.16 of the Mental Hygiene Law.

§ 511-2.16 Audit.

In programs which are not operated by State or local government, there shall be an annual audit, pursuant to a format prescribed by the Office of Mental Health, of the financial condition and accounts of the program performed by a certified public accountant who is not a member of the governing body or an employee of the program. Government-operated programs shall comply with applicable laws concerning financial accounts and auditing requirements.