

14 NYCRR Part 588.9

Regulatory Impact Statement

1. **Statutory Authority:** Section 43.02 of the Mental Hygiene Law grants the Commissioner of Mental Health the authority to certify fees or rates of payment made by government agencies pursuant to title 11 of article 5 of the Social Services Law for services provided by any facility licensed by the Office of Mental Health. Section 7.15 of the Mental Hygiene Law grants the Commissioner of Mental Health the authority to plan, promote, establish, develop, coordinate, evaluate, and conduct programs and services of prevention, diagnosis, examination, care, treatment, rehabilitation, training, and research for the benefit of persons with mental illness. Such section further authorizes the Commissioner to take all actions that are necessary, desirable, or proper to implement these programs and services within the amounts made available therefor by appropriation, grant, gift, devise, bequest, or allocation from the Mental Health Services Fund established under section 97-f of the State Finance Law.

2. **Legislative Objectives:** OMH wishes to advance these amendments to establish reimbursement methodologies to ensure that treatment provided to recipients is of high quality and efficacy and that the personal and civil rights of persons are adequately protected. This rule is necessary to ensure that mental health services are not subject to limitations which exceed comparable limitations on medical or surgical services, as required by federal and State Mental Health Parity laws. These amendments establish reimbursement methodologies which ensure that treatment provided to recipients is of high quality and efficacy and that the personal and civil rights of persons are adequately protected.

3. **Needs and Benefits:** This rule making amends Title 14 NYCRR, specifically section 588.9 - Standards pertaining to reimbursement for partial hospitalization programs. The purpose of the proposal is to remove a quantitative limitation on Medicaid payment for Partial Hospitalization Services that exceed 180 hours per

course of treatment per recipient or 360 hours per calendar year per recipient. This rule is necessary to ensure that mental health services are not subject to limitations which exceed comparable limitations on medical or surgical services, as required by federal and State Mental Health Parity laws. To wit, the Federal Mental Health Parity and Addiction Equity Act (MHPAEA) states that a plan may not impose any treatment limitation to mental health or substance use disorder benefits in any classification that is more restrictive than the predominant treatment limitation of that type applied to substantially all medical or surgical benefits in the same classification. MHPAEA is incorporated into State law in its entirety. A quantitative treatment limitation is a benefit limit that can be expressed numerically, including a specific number of visits or hours of services that cannot be exceeded pursuant to the policy.

4. Costs:

(a) cost to State government: There are no new costs to State government as a result of these amendments.

(b) cost to local government: There are no new costs to local government as a result of these amendments.

(c) cost to regulated parties: There are no new costs to providers as a result of these amendments.

5. Local government mandates: These regulatory amendments will not involve or result in any additional imposition of duties or responsibilities upon county, city, town, village, school, or fire districts.

6. Paperwork: There is no additional paperwork as a result of these amendments.

7. Duplication: These regulatory amendments do not duplicate existing State or

federal requirements.

8. Alternatives: OMH wishes to advance these amendments to establish reimbursement methodologies to ensure that treatment provided to recipients is of high quality and efficacy and that the personal and civil rights of persons are adequately protected and to comply with Centers for Medicare and Medicaid Services (CMS) requirements. The rule is that a plan cannot impose a quantitative treatment limitation to a mental health or substance use disorder benefits. Federal law required the assessment of Medicaid Managed Care benefits for parity compliance in 2017, it was determined that there were quantitative treatment limitations for certain mental health and substance use disorder services that had to be removed for parity compliance.
9. Federal standards. These amendments are aligned with federal standards.
10. Compliance schedule: The amendments would be effective upon publication of the Notice of Adoption in the State Register.

Section 1. Paragraph (3) of subdivision (a) of section 588.9 of Title 14 NYCRR is hereby REPEALED, paragraphs (4) and (5) are renumbered as paragraphs (3) and (4) and paragraphs (1) and (2), are amended to read as follows:

(a) Partial hospitalization visits shall be reimbursed on the basis of duration of hours provided as follows:

(1) Reimbursement shall be provided **on an hourly basis** for visits of at least four hours in duration and not more than seven hours per recipient per day.

(2) ~~Reimbursement for partial hospitalization shall be limited to no more than 180 hours per course of treatment per recipient within a partial hospitalization program.~~ A course of treatment shall not exceed six calendar weeks, unless ~~during the course of treatment, the recipient is admitted to an inpatient psychiatric facility~~ **determined to be clinically necessary during the course of treatment.** ~~[Such course of treatment may be extended to include the number of days of inpatient treatment, up to a maximum of 30 days.]~~ Each course of treatment is a new admission.