

**Part 823 is amended as follows effective December 18, 2019:**

14 NYCRR Part 823  
Children's services

(Statutory authority: Mental Hygiene Law §§ 19.07(e), 19.09(b), 32.01; 42 U.S.C. § 1396d(r)(5);  
18 NYCRR 505.38)

Section:

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**§823.1 Background and intent**

This regulation contains requirements applicable to rehabilitative health and behavioral health services available to children/youth, up to age twenty-one (21) and their families through the federal Early Periodic Screening, Diagnostic and Treatment (EPSDT) program in New York. The services defined herein focus on preventing the need for more restrictive placement settings and higher intensity services, by increasing culturally and linguistically appropriate, trauma-informed services provided in the most integrated setting possible. Providers must be certified to provide such services when medically necessary and recommended by a practitioner of the healing arts.

**§823.2 Applicability**

The certification of providers pursuant to this Part is not a substitute for possessing any other required state license, certification, authorization or credential. The provisions of this Part are applicable to all programs and providers funded or certified by the Office who seek certification by the Office to offer rehabilitative health and behavioral health services for children/youth as such services are defined in this Part.

### **§823.3 Legal base**

- (a) Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services (Commissioner) to adopt standards including necessary rules and regulations pertaining to chemical dependence services.
- (b) Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.
- (c) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.
- (d) 42 U.S.C. § 1396d(r)(5) defines EPSDT services available under Medicaid to correct or ameliorate physical and mental illnesses and conditions that are detected in Medicaid-eligible children/youth.
- (e) 18 NYCRR 505.38 promotes the expansion of children's health and behavioral health services.

### **§823.4 Definitions**

For purposes of this Part, the following terms are defined:

- (a) "Certified Recovery Peer Advocate - Family Peer Advocate" (CRPA-FPA) means a parent or caregiver with lived experience who is authorized by the Office.
- (b) "Certified Recovery Peer Advocate - Youth Peer Advocate" (CRPA-YPA) means a self-identified consumer recipient of behavioral health services, aged 18-28, who is authorized by the Office.
- (c) "Child/youth" or "children/youth" means a person or persons aged twenty-one (21) and under for purposes of the services as defined in this Part.
- (d) "*Children's Behavioral Health and Health Services Transformation Medicaid State Plan Provider Manual*" (*Manual*) means the guide describing six children's health and behavioral

health benefits approved pursuant to the Medicaid State Plan (the *Manual* is incorporated by reference pursuant to Part 800 of this Title).

(e) “Children’s services” means health and behavioral health services as defined in 18 NYCRR Part 507 and authorized by the NYS Department of Health to be provided by certified treatment providers pursuant to rules and regulations of the Office.

(f) “Crisis plan” means a plan developed in consultation with the child/youth, their family and their crisis intervention provider; it may also be shared with other providers with the family’s consent. The crisis plan is developed to reduce or manage crisis related symptoms, promote healthy behavior, address safety concerns, and prevent or reduce the risk of harm or diffusion of dangerous situations.

(g) “Early Periodic Screening and Diagnostic Treatment” (EPSDT) means the provision of comprehensive and preventive health and behavioral health services for children/youth under age twenty-one (21) enrolled in Medicaid. EPSDT is intended to ensure that such children/youth receive appropriate preventive, dental, health, behavioral health, developmental and specialty services.

(h) “Evidence based practice” (EBP) means an intervention for which there is rigorous scientific evidence demonstrating their effectiveness or efficacy in improving child/youth outcomes.

(i) “Family” means the primary caregiving unit and is inclusive of the wide diversity of primary caregiving units such as birth, foster and adoptive parents or a self-created unit of people with significant attachment to one another.

(j) “Licensed practitioner of the healing arts” (LPHA) means an individual who is licensed and practicing within the scope of their state license and may recommend rehabilitative services.

A Licensed practitioner of the healing arts includes:

- (1) A Registered Professional Nurse;
- (2) Nurse Practitioner;
- (3) Psychiatrist;
- (4) Licensed Psychologist;
- (5) Licensed Clinical Social Worker (LCSW);

(6) Mental Health Practitioner including: a licensed mental health counselor (LMHC), a marriage and family therapist (LMFT), a creative arts therapist (LCAT), and licensed psychoanalyst.

(7) Physician.

(8) A Licensed Master Social Worker and Physician Assistant who are licensed and practicing within the scope of their state license may recommend rehabilitation services only where noted in the *Manual*.

(k) “State Agencies” means the New York State Department of Health (DOH), the Office of Mental Health (OMH), the Office of Children and Family Services (OCFS) and this Office, for purposes of this part.

### **823.5 General program standards**

(a) Policies and procedures. The provider must approve written policies, procedures and methods governing the provision of services in compliance with Office regulations, including a description of each service to be provided. These policies, procedures and methods must address, at a minimum:

(1) Admission and discharge, including transfer and referral procedures;

(2) Treatment/recovery plans, including service plans where appropriate;

(3) staffing, in compliance with Office regulations, the Manual and the Standards of Care;

(4) screening and referral for associated physical or psychiatric conditions;

(5) a schedule of fees for services rendered;

(6) infection control procedures;

(7) cooperative agreements with other chemical dependence providers and other providers of services a patient may require;

(8) compliance with other requirements of state and federal laws, regulations and OASAS guidance including HIV/AIDS education, testing and counseling and the use of alcohol and other drug screening and toxicology tests, and medication and the use of medication supported recovery;

- (9) quality improvement and utilization review;
  - (10) procedures for emergencies;
  - (11) incident reporting and review;
  - (12) record keeping and record retention policies specific to the provision of service provided;
  - (13) staff training;
  - (14) confidentiality and disclosure of patient records in accordance with state and federal laws;
- (b) Authorized services provided. Each authorized service to be provided must be identified. Policies, procedures and methods established for the provision of those specific services must comply with all existing OASAS regulations as well as any requirements set forth in the Manual
- (c) Emergency medical kit: All providers must maintain an emergency medical kit containing basic first aid and at least one Narcan emergency overdose prevention kit.

### **823.6 Authorized services**

(a) *Authorized services.* Authorized services as further defined in 18 NYCRR 505.38 and/or the *Manual* include:

(1) Crisis intervention (CI): CI services are provided to a child/youth and his/her family, who is experiencing a behavioral health (psychiatric or substance use) crisis and are designed to:

- (i) Interrupt and/or ameliorate the crisis;
- (ii) Include a culturally and linguistically appropriate assessment;
- (iii) Result in immediate crisis resolution and de-escalation;
- (iv) Develop a crisis plan.

(2) Other licensed practitioner (OLP): OLP is a non-physician licensed behavioral health practitioner (NP-LBHP) licensed to practice in New York State and operating within their scope of practice in a setting permissible by state law. A NP-LBHP includes an individual licensed and able to practice independently as:

- (i) a Licensed Mental Health Practitioner including a licensed mental health counselor (LMHC), a marriage and family therapist (LMFT), and licensed psychoanalyst;
- (ii) Licensed Clinical Social Worker (LCSW);

(iii) Licensed Master Social Worker (LMSW), when practicing under the supervision or direction of a LCSW, Licensed Psychologist or Psychiatrist.

(3) Community Psychiatric Support and Treatment (CPST): CPST are goal-directed supports and solution-focused interventions intended to achieve identified goals or objectives as set forth in a treatment/recovery plan. CPST is designed to provide community-based services to children/youth and families who may have difficulty engaging in formal office settings but can benefit from community based rehabilitative services. This includes the implementation of EBP with prior authorization from the State Agencies.

(4) Psychosocial Rehabilitation (PSR): PSR services are task-oriented interventions, outlined in the treatment/recovery plan, designed to compensate for or eliminate functional deficits and interpersonal and/or environmental barriers associated with behavioral health needs. The intent of PSR is to restore, rehabilitate, and support a child/youth's functional level as much as possible and as necessary for the integration of the child/youth as an active and productive member of their community and family with minimal ongoing professional interventions.

(5) Family Peer Support Services (FPSS): FPSS includes formal and informal services and supports provided to families of children/youth experiencing social, emotional, developmental, medical, substance use, and/or behavioral challenges in their home, school, placement, and/or community.

(6) Youth Peer Support and Training (YPST): YPST services are formal and informal services and supports provided to children/youth experiencing social, emotional, medical, developmental, substance use and/or behavioral challenges in their home, school, placement and/or community and are intended to ensure the active engagement and participation of children/youth in the treatment planning and implementation process.

(b) *Approved Modality and Setting.* (1) Modality. Unless otherwise authorized, services should include face-to-face interaction with the child/youth and their family, as appropriate. Any such interactions, or the reason(s) such interaction could not be completed, should be documented in the patient treatment/recovery plan and case record.

(2) Setting. Services may be provided in a variety of settings, including an emergency room, health or behavioral health clinic setting, or other community location where the child/youth lives, attends school, works or engages in social activities. Services should be offered in the best setting suited for the desired outcomes and as referenced in the *Manual*.

### **823.7 Application Process**

(a) Request for Designation.

(1) Applicants must first apply for designation by confirming they are a provider in good standing with an OASAS or OMH field office and identify any existing license or certification provided by OASAS or OMH.

(2) Designated providers will be categorized according to the following:

- (i) Existing OASAS certified or OMH licensed providers; or
- (ii) All other providers or proposed new providers.

(b) Programs will be certified pursuant to Part 810 of this Title and will have noted on the operating certificate each of the services approved for delivery. The process for certification will be as follows:

(1) Existing OASAS certified or OMH licensed providers. Existing OASAS certified or OMH licensed providers may follow the procedure to file an application requiring administrative review in accordance with Part 810.6, to provide services pursuant to this Part, and in accordance with the criteria as set-forth in the *Manual*.

(2) All other providers or proposed new providers. All other providers or proposed new providers must follow the procedure to file an application requiring full review in accordance with Part 810.5, to provide services pursuant to this Part, and in accordance with the criteria as set-forth in the *Manual*.

### **823.8 Standards pertaining to Medicaid reimbursement**

Reimbursement for children's health and behavioral health services must be in accordance with the rates and fees established by the State Agencies and approved by the Director of the Budget.

### **823.9 Incorporation by Reference**

The provisions of the Children's Health and Behavioral Health Services Transformation Medicaid State Plan Provider Manual which have been incorporated by reference in this Part, have been filed in the Office of the Secretary of the State of New York, the publication so filed

being the document entitled: *Children's Health and Behavioral Health Services Transformation Medicaid State Plan Provider Manual*, published in March 2016 and any subsequent updates. This document incorporated by reference may be examined at the Office of the Department of State, 99 Washington Avenue, Albany, NY 12231 or obtained from the Office of Alcoholism and Substance Abuse Services, 1450 Western Avenue, Albany, NY 12203.

**823.10 Severability**

If any provision of this Part or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Part that can be given effect without the invalid provisions or applications, and to this end the provisions of this Part are declared to be severable.