

**MENTAL HYGIENE LAW**  
**TITLE E. GENERAL PROVISIONS**  
**ARTICLE 41. LOCAL AND UNIFIED SERVICES**

§ 41.01. Declaration of purpose

This article is designed to enable and encourage local governments to develop in the community preventive, rehabilitative, and treatment services offering continuity of care; to improve and to expand existing community programs for the mentally ill, the mentally retarded and the developmentally disabled, and those suffering from the diseases of alcoholism and substance abuse; to plan for the integration of community and state services and facilities for the mentally disabled; and to cooperate with other local governments and with the state in the provision of joint services and sharing of manpower resources.

In order to further the development, for each community in this state, of a unified system for the delivery of such services, this article gives to a local governmental unit the opportunity to participate in the state-local development of such services by means of a unified services plan. Such a plan is designed to be a mechanism whereby the department, department facilities, and local government can jointly plan for and deliver unified services to meet the needs of the consumers of such services. The unified services system will strengthen state and local partnership in the determination of the need for and the allocation of services and more easily provide for the most effective and economical utilization of new and existing state, local governmental, and private resources to provide services. A uniform ratio of state and local government responsibility for financing services under a unified services plan is established by this article to eliminate having the types of services provided in a community be determined by the local government's share of the cost of a particular program rather than the needs of the community.

It requires the direction and administration, by each local governmental unit, of a local comprehensive planning process for its geographic area in which all providers of services shall participate and cooperate in the provision of all necessary information. It also initiates a planning effort involving the state, local governments and other providers of service for the purpose of promoting continuity of care through the development of integrated systems of care and treatment for the mentally ill, mentally retarded and developmentally disabled, and for those suffering from the diseases of alcoholism and substance abuse.

§ 41.03. Definitions

When used in this article:

1. "local government" means a county, except a county within the city of New York, and the city of New York.
2. "charter government" means a local government which has its charter under article IX of the constitution and the municipal home rule law; and includes the city of New York.
3. "local services" includes services for the mentally ill, the mentally retarded, the developmentally disabled whose conditions, including but not limited to cerebral palsy and epilepsy, are associated with mental disabilities, and those suffering from alcoholism, alcohol abuse, substance abuse or substance dependence, which are provided by a local government or by a voluntary agency pursuant to a contract with a local governmental unit or the office of mental health.
4. "unified services" means local services and services provided by department facilities for residents of the local government pursuant to a unified services plan.
5. "local facility" means a facility offering local services and includes a community mental health and retardation facility as defined in section three of the facilities development corporation act and, for the purposes of this article, a mental hygiene facility, as defined in said section, to be made available for use in providing local services under lease, sublease, license or permit from the facilities development corporation to one or more local governmental units or to a voluntary agency at the request of a commissioner of an office [fig 1] in the department.

6. "local governmental unit" means the unit of local government given authority in accordance with this chapter by local government to provide local or unified services.

7. "board" means a community services board for services to the mentally ill, mentally retarded and developmentally disabled, those suffering from alcoholism, alcohol abuse, substance abuse, or substance dependence.

8. "director" means the director of community services, who is the chief executive officer of a local governmental unit, by whatever title known.

9. "capital costs" means the costs of a local government, a voluntary agency, or the [fig 1] facilities [fig 2] development corporation with respect to the acquisition of real property estates, interests, and cooperative interests in realty, their design, construction, reconstruction, rehabilitation and improvement, original furnishings and equipment, site development, and appurtenances of a local facility. Capital costs do not include [fig 3] any of the foregoing costs [fig 4] paid under provisions of law other than this chapter.

10. (a) "operating costs" means expenditures, excluding capital costs, incurred in the operation and maintenance of the community mental health, mental retardation, and alcoholism services board and of local facilities in accordance with this article and the regulations of the commissioner [fig 1] , by a local government or by a voluntary agency pursuant to a contract with a local governmental unit.

(b) Subject to the regulations of the commissioner [fig 1] , operating costs shall include [(i)] [n1] that part of rental costs paid to those community mental health, mental retardation, alcoholism, or substance abuse services companies, which represents interest accrued after January first, nineteen hundred eighty-one and is paid on obligations incurred by such companies, organized pursuant to article seventy-five of this chapter and which participated in mortgage financing in accordance with chapter one thousand thirty-four of the laws of nineteen hundred sixty-nine, (ii) rentals paid to the facilities development corporation, (iii) salaries of or per diem compensation to board members, (iv) costs for which state aid or reimbursement is claimed under provisions of law other than this article.

(c) Operating costs may include interest incurred on any obligation which is necessarily related to the efficient and economic delivery of approved services to persons with alcoholism, substance abuse addiction, mental illness or mental retardation and developmental disabilities, subject to the commissioner's [fig 1] certification of the reasonableness of the interest expense. Interest as authorized by this subdivision shall only include reasonable and competitive rates of interest incurred in accordance with regulations promulgated by the commissioner [fig 2] .

(d) Subject to the regulations of the commissioner [fig 1] , operating costs shall include rent incurred, or depreciation and interest expenditures incurred, in connection with the design, construction, acquisition, reconstruction, rehabilitation or improvement of a local facility; provided that where the rent, financing or refinancing of the design, construction, acquisition, reconstruction, rehabilitation or improvement of a local facility is through the facilities development corporation, operating costs shall include the debt service to be paid to amortize obligations, including principal and interest, issued by the New York state medical care facilities finance agency to finance or refinance the capital costs of such facilities.

11. "net operating costs" means operating costs from which have been deducted the following:

(a) revenues for operating costs received from other state agencies or another local government pursuant to an agreement to purchase local services.

(b) other income realized in the operation of a specified program, except for income realized by a voluntary not-for-profit agency from industrial contracts entered into pursuant to its operation of a sheltered workshop from which have been deducted the expenses of such workshop incurred in producing such income and which are claimed for state aid.

(c) federal aid received for operating costs.

(d) fees received from patients or on their behalf from private and public health insurance and medical aid programs.

12. "voluntary agency" means a corporation organized or existing pursuant to the not-for-profit corporation law for the purpose of providing local services.

13. "local services plan" means the plan of local services which is submitted by a local governmental unit and approved by the commissioner pursuant to section [fig 1] 41.18 of this article.

14. "unified services plan" means the plan of unified services which is submitted by a local governmental unit and approved by the commissioner pursuant to section [fig 1] 41.19 of this article.

15. "community support services" means clinical, social, rehabilitative and other mental health services, programs and related administrative activities designed to enhance the community living skills and prevent the unnecessary

hospitalization of the seriously impaired, chronically mentally ill population, who are eligible to receive services pursuant to section 41.47 of this article.

§ 41.04. Responsibilities of commissioners of the offices

(a) In order to prevent unnecessary fragmentation in the planning and financing of the care, treatment and rehabilitation of the mentally disabled, the commissioners of the offices in the department shall consult and cooperate with one another and shall meet from time to time with the New York state conference of local mental hygiene directors, to ensure that the procedural policies, forms, time frames for submission and approval of plans and rules and regulations governing the procedures for planning and financing of the care, treatment and rehabilitation of the mentally disabled adopted by each of the offices in the department are consistent with one another.

(b) Guidelines for the operation of local and unified services plans and financing shall be adopted only by rule or regulation. Such rules and regulations shall be submitted at least twenty-one days prior to the effective date thereof to the New York state conference of local mental hygiene directors for comment thereon; provided, however, if a commissioner finds that the public health, welfare or safety requires the prompt adoption of rules and regulations, he may dispense with such submission prior to the effective date thereof but, in such case, such commissioner shall submit such rules and regulations to the conference as soon as possible for their review within sixty days after the effective date thereof.

§ 41.05. Local governmental unit

(a) To be eligible for state aid pursuant to this chapter, a local government shall establish a local governmental unit, which shall be an identifiable entity within the local government.

(b) Each local governmental unit shall have a community services board for services to the mentally ill, the mentally retarded and developmentally disabled and those suffering from alcoholism and substance abuse which shall have separate subcommittees for mental health, mental retardation and developmental disabilities, and alcoholism, except that, at the discretion of the local government, a subcommittee for alcoholism and substance abuse may be substituted for a subcommittee for alcoholism.

(c) Each local governmental unit shall have a director who shall be its chief executive officer. Charter governments may vest policy-making functions in the director or they may vest all or some of such functions in the board. In all other cases, the policy-making functions shall vest in the board.

(d) Applications to the state for aid pursuant to this chapter shall be made by the respective local governmental units, except that an application for capital costs may be made by a voluntary agency in accordance with the provisions of this article.

(e) Each local governmental unit shall direct and administer a local comprehensive planning process for its geographic area, consistent with established statewide goals and objectives. All providers of services and department facilities shall participate in and provide information for this planning process. The department shall provide technical assistance as may be requested by such local governmental units, within available resources.

§ 41.07. Provision of services by the local governmental unit

(a) Local governmental units may provide local or unified services and facilities directly or may contract for the provision of those services by other units of local or state government, by voluntary agencies, or by professionally qualified individuals.

(b) Subject to the approval of the commissioners of the offices having jurisdiction over the services, local governments may arrange for the provision of services eligible for state aid outside their territorial jurisdictions or the state.

(c) Local governments may provide joint local or unified services and facilities through agreements, made pursuant to law, which may provide either that one local government provide and supervise these services for other local governments or that a joint board or a joint local department be established to administer these services for the populations of all contracting local governments.

§ 41.09. Director

(a) Charter governments may provide for appointment and removal of directors in a manner authorized by such governments. In all other local governments, the board shall appoint and remove the director. Salaries and allowable expenses shall be set by the appointing authority.

(b) Each director shall be a psychiatrist or other professional person who meets standards set by the commissioner for the position. If the director is not a physician, he shall not have the power to conduct examinations authorized to be conducted by an examining physician or by a director of community services pursuant to this chapter but he shall designate an examining physician who shall be empowered to conduct such examinations on behalf of such director. A director need not reside in the area to be served. The director shall be a full-time employee except in cases where the commissioner has expressly waived the requirement.

§ 41.10. State conference of local mental hygiene directors

(a) There is hereby created the New York state conference of local mental hygiene directors, hereinafter referred to as the conference.

(b) The conference shall be composed of all the directors of community services as defined in this chapter.

(c) The conference shall meet twice a year, or when called by the chairman, provided ten days' notice is given.

(d) The conference shall elect bi-annually, from among its members, a chairman, vice-chairman, secretary and treasurer who shall serve for two-year terms. An executive committee composed of, but not limited to, the above named officials shall be responsible for the convening of meetings, recording and distribution of minutes, and other administrative functions.

(e) The conference shall have the power to adopt, amend or repeal by-laws relating to its business and the conduct of its affairs.

(f) The conference shall have the following powers:

1. To review and comment upon rules or regulations proposed by any of the offices of the department for the operation of local and unified service plans and programs. Comments on rules or regulations approved by the conference shall be given to the appropriate commissioner or commissioners for review and consideration; and

2. To propose rules or regulations governing the operation of the local and unified services programs, and to forward such proposed rules or regulations to the appropriate commissioner or commissioners for review and consideration.

(g) The chairman of the conference may appoint, for the purpose of advising the commissioners, such other committees of the conference as he may from time to time deem necessary.

§ 41.11. Composition of boards

(a) [Expires and repealed March 31, 2010] In all local governments with a population less than one hundred thousand, community services [fig 1] boards, at the option of the local government, shall have either nine or fifteen members appointed by the local government. In all other local governments, a community services board shall have fifteen members appointed by the local government.

Whenever practicable at least one member shall be a licensed physician and one member shall be a certified psychologist and otherwise at least two members shall be licensed physicians, such members to have demonstrated an interest in the field of services for the mentally disabled. The other members shall represent the community interest in all the problems of the mentally disabled and shall include representatives from community agencies for the mentally ill, the mentally retarded and developmentally disabled, and those suffering from alcoholism and substance abuse. The community services board shall have separate subcommittees for mental health, mental retardation and developmental disabilities, and alcoholism or, at the discretion of the local government, alcoholism and substance abuse. Each separate subcommittee shall have no more than nine members appointed by the local government, except that each subcommittee for mental health shall have no more than eleven members appointed by the local government. Three of each such subcommittee shall be members of the board. Each separate subcommittee shall be composed of persons who have demonstrated an interest in the field of services for the particular class of mentally disabled and shall include former patients, parents or relatives of such mentally disabled persons and community agencies serving the particular class of mentally disabled, except that each subcommittee for mental health shall include at least two members who are or were consumers of mental health services, and at least two members who are parents or relatives of persons with mental illness. Each separate subcommittee shall advise the community services board and the director of community services regarding the exercise of all policy-making functions vested in such board or director, as such functions pertain to the field of services for the particular class of mentally disabled individuals represented by such subcommittee. In addition, each subcommittee for mental health shall be authorized to annually evaluate the local services plan or the unified services plan, as appropriate, and shall be authorized to report on the consistency of such plans with the needs of persons with serious mental illness, including children and adolescents with serious emotional disturbances. Any such report shall be forwarded annually to the community services board and the director of community services and a copy shall also be sent to the commissioner prior to the submission of the local services plan or unified services plan. Provided however that the provisions of this paragraph shall not apply to cities of over a million in population.

(b) [Expires and repealed March 31, 2010] In cities of over a million a community services board shall consist of fifteen members to be appointed by the mayor. There shall be at least two residents of each county within such cities on the board. At least one shall be a licensed physician and at least one shall be a certified psychologist. The other members shall represent the community interest in all of the problems of the mentally disabled and shall include representatives from community agencies for the mentally ill, the mentally retarded and developmentally disabled, and those suffering from alcoholism and substance abuse. The community services board shall have separate subcommittees for mental health, mental retardation and developmental disabilities, and alcoholism or, at the discretion of the local government, alcoholism and substance abuse. Each separate subcommittee shall have no more than nine members appointed by the local government, except that each subcommittee for mental health shall have no more than eleven members appointed by the local government. Three members of each such subcommittee shall be members of the board. Each separate subcommittee shall be composed of persons who have demonstrated an interest in the field of services for the particular class of mentally disabled and shall include former patients, parents or relatives of such mentally disabled persons and community agencies serving the particular class of mentally disabled, except that each subcommittee for mental health shall include at least two members who are or were consumers of mental health services, and two members who are parents or relatives of persons with mental illness. Each separate subcommittee shall advise the community services board and the director of community services regarding the exercise of all policy-making functions vested in such board or director, as such functions pertain to the field of services for the particular class of mentally disabled individuals represented by such subcommittee. In addition, each subcommittee for mental health shall be authorized to annually evaluate the local services plan or the unified services plan, as appropriate, and shall be authorized to report on the consistency of such plans with the needs of persons with serious mental illness, including children and adolescents with serious emotional disturbances. Any such report shall be forwarded annually to the community services board and the director of community services, and a copy shall also be sent to the commissioner prior to the submission of the local services plan or unified services plan.

(c) A person's public office or employment shall not bar appointment as a member of a board or subcommittee, nor shall membership serve as a bar to other public office or employment; provided, however, that no more than three employees of the department or of a department facility may hereafter be appointed as a member of a board or subcommittee.

(d) On initially constituted boards, and insofar as practicable, on subcommittees, one-third of the members shall be appointed for a two-year term, one-third for a three-year term and the remainder for a four-year term. Thereafter, each member shall be appointed for a four-year term. All terms shall begin to run from the first day of the year of the

appointment. Vacancies shall be filled for unexpired terms. No person may serve as a member of a board of a subcommittee for more than two terms consecutively unless otherwise provided by local law.

(e) Local governments shall reimburse board members for the reasonable expenses incurred in the performance of their duties and may also offer them a per diem compensation, but only their reasonable expenses are reimbursable as an operating cost pursuant to this article.

(f) Local governments may remove a board or subcommittee member for cause, after written notice of charges and an opportunity for the member to be heard.

#### § 41.13. Powers and duties of local governmental units

(a) Every local governmental unit shall:

1. review services and local facilities for the mentally disabled of the area which it serves and their relationship to local need; determine needs of the mentally disabled of such area; and encourage programs of prevention, diagnosis, care, treatment, social and vocational rehabilitation, special education and training, consultation, and public education on mental disabilities.

2. develop the program of local services for the area which it serves, establish long range goals of the local government in its programs for the mentally disabled, and develop intermediate range plans and forecasts, listing priorities and estimated costs. The office of mental health shall be responsible for such program development relating to community support services in areas where the responsible local governmental unit elects, pursuant to subdivision (c) of section 41.47 of this article, not to receive state aid for community support services. Local governmental units which elect not to receive such state aid for community support services shall integrate information relating to community support services into the comprehensive plan for services, as otherwise required by this article.

3. direct and administer the development of a local comprehensive plan for all services for mentally disabled residents of the area, which shall be submitted to the department and used in part to formulate a statewide comprehensive plan for services.

4. seek to assure that under the goals and plans required pursuant to this subdivision, all population groups are adequately covered, sufficient services are available for all the mentally disabled within its purview, that there is coordination and cooperation among local providers of services, that the local program is integrated and coordinated with the provision of community support services, that the local program is also integrated and coordinated with the programs of the department, and that there is continuity of care among all providers of services.

5. submit annually to the department for its approval and subsequent state aid, a report of long range goals and specific intermediate range plans as modified since the preceding report, along with a local services plan or unified services plan for the next local fiscal year.

6. have the power, with the approval of local government, to enter into contracts for the provision of services, including the provision of community support services, and the construction of facilities including contracts executed pursuant to subdivision (e) of section 41.19 of this article and have the power, when necessary, to approve construction projects.

7. establish procedures for execution of the local services plan or the unified services plan as approved by the local government and the commissioner, including regulations to guide the provision of services by all organizations and individuals within its program.

8. make policy for and exercise general supervisory authority over or administer local services and facilities provided or supervised by it whether directly or through agreements, including responsibility for the proper performance of the services provided by other facilities of local government and by voluntary and private facilities which have been incorporated into its comprehensive program.

9. further programs for special education and training, including career incentive and manpower and development.

10. have the power to conduct or contract for such research as may be useful for the discharge of its administrative duties and for the promotion of scientific knowledge of the mental disabilities.

11. serve as a center for the promotion of community and public understanding of mental disabilities and of the services necessary for their care and treatment.

12. seek the cooperation and cooperate with other aging, public health and social services agencies, public and private, in advancing the program of local or unified services.

13. have the powers necessary and proper for the effective performance of its functions and duties.

14. require the development of a written treatment plan as provided in rules and regulations of the commissioner which shall include, but not be limited to, a statement of treatment goals; appropriate programs, treatment or therapies to be undertaken to meet such goals; and a specific timetable for assessment of client progress as well as for periodic mental and physical reexaminations. In causing such a plan to be prepared or when such a plan is to be revised, the client or an authorized representative, to include the parent or parents if the client is a minor, shall be interviewed and provided an opportunity to actively participate in such preparation or revision.

15. [Expires and repealed June 30, 2010] administer, supervise or operate any assisted outpatient treatment program of a local governmental unit pursuant to section 9.60 of this chapter and provide that all necessary services are planned for and made available for individuals committed under the program.

16. [Expires and repealed June 30, 2010] identify and plan for the provision of care coordination, emergency services, and other needed services for persons who are identified as high-need patients, as such term is defined by the commissioner of mental health.

(b) The powers of the local governmental unit listed in subdivision (a) of this section shall be exercised pursuant to regulations of the commissioner.

(c) The director shall submit an annual report on programs and services to the board and other reports as requested.

(d) The local governmental unit shall have full powers necessary for administration and the execution of its duties to appoint and employ, with power of removal, full and part time officers, employees, and consultants, including employees of the department, in accordance with the standards, policies, and salary schedules provided by law or otherwise authorized.

(e) In the event that a local governmental unit shall refuse to enter into a contract with a voluntary agency applying for a contract for the rendition of services under this article, such agency shall have the right of appeal to the commissioner. If, after review, the commissioner upholds the appeal, the department may enter into a contract directly with the appealing agency for such services as this article permits.

(f) [Expired]

#### § 41.14. Optional plans for the provision of services

1. There shall be two alternatives to state-local participation in the provision of services for the mentally disabled of the community. A local governmental unit may submit a local services plan or, in the alternative, it may submit a unified services plan. No initial unified services plan may be submitted unless the local governmental unit has given notice in writing to the single agent jointly designated by the commissioners of the offices of its intent to submit such a plan at least six months prior to the time that the unified services plan is required by this article to be submitted to the commissioner, or commissioners having jurisdiction of the services, for approval.

2. The commissioner, or commissioners having jurisdiction of the services, upon receiving such notice, shall cause an evaluation to be made of the resources available for the planning of services in the area and shall direct the appropriate department facilities to cooperate with the local governmental unit, or units, in the development of such a plan. After a unified services plan has become effective for a local fiscal year, services for the area served by the local governmental unit which has adopted such plan shall be by means of a unified services plan for each local fiscal year thereafter.

#### § 41.15. Approved plans and state aid

(a) Net operating costs of programs incurred pursuant to either an approved local services plan or an approved unified services plan in accordance with the regulations of the commissioner or commissioners of the office or offices of the

department having jurisdiction of the services and approved by the commissioner or commissioners of the office or offices of the department having jurisdiction of the services shall be eligible for state aid.

(b) Long range goals, intermediate range plans, and annual plans shall meet requirements for comprehensive services set for each local government by the commissioners of the offices of the department after taking into consideration local needs and available resources. These services shall be concerned with diagnosis, care, treatment, social and vocational rehabilitation, community residential services licensed by the department of mental hygiene, research, consultation and public education, education and training of personnel, control and prevention of mental disabilities, and the general furtherance of mental capability and health. As part of the local services or unified services plans required to establish eligibility for state aid in accordance with the provisions herein, each local governmental unit shall submit a five-year plan and annual implementation plans and budgets which shall reflect local needs and resources, including the needs and resources available for the provision of community support services and the role of facilities in the department in the provision of required services. If the local government has developed community services assessments and plans pursuant to subdivision four of section four hundred nine-d and paragraph (b) of subdivision three of section four hundred twenty-three of the social services law covering the same time period covered by the five year plan and annual implementation plans and budgets required by this subdivision, then the five year plan and annual implementation plans and budget shall include those portions of the community services assessments and plans relating to the provision of mental health, alcoholism and substance abuse services and an estimate of funds to be made available by the social services district for the provision or purchase of these services.

(c) Subject to regulations for special circumstances as established by the commissioner or commissioners of the office or offices of the department having jurisdiction of the services, no annual plan or intermediate range plan of the local governmental unit shall be approved unless it indicates that reasonable efforts are being made to extend or improve local or unified services in each succeeding local fiscal year in accordance with the statewide long range goals and objectives of the department for the development and integration of state, regional, and local services for the mentally disabled.

(d) Beginning the first day of July, nineteen hundred seventy-eight, allocations of state aid for operating costs shall be made to eligible local governmental [governmental] [n1] units in advance no more than ten days after the beginning of each quarter. Such quarterly payments shall be adjusted, when necessary, to reflect actual eligible net operating costs, projected eligible net operating costs and appropriations available and shall be subject to audit and readjustment to comply with all applicable provisions of this article.

(e) Capital costs incurred by a local government or by a voluntary agency, pursuant to either an approved local services plan or an approved unified services plan and in accordance with the regulations of the commissioner or commissioners of the office or offices of the department having jurisdiction of the services and with the approval of the commissioner or commissioners having jurisdiction of the services, shall be eligible for state aid pursuant to the provisions of this article. Capital costs incurred by a voluntary agency shall be eligible for state aid only if incurred pursuant to an agreement between the voluntary agency and the local governmental unit where the construction is located. Such agreement shall contain the approval by the local governmental unit of such construction and an agreement by such unit to include the program of the voluntary agency in its plans and proposals.

(f) Services made available to or provided for children attending public schools, for which aid is sought pursuant to this chapter, shall be made available to or provided to all school children upon request by the authorities of their schools.

#### § 41.16. Local planning; state and local responsibilities

(a) Each of the offices of the department shall guide and facilitate the process of local planning so that plans for the provision of all services, including state and local services, can be formulated on the basis of approved local plans and federal guidelines related to services for the mentally disabled to reflect the distribution of needs and resources of areas of the state. All providers of services, including facilities of the offices of the department, directors of hospital based mental health services, directors of community mental health centers, and voluntary agencies shall participate in and provide information, including budget data, for local planning processes.

(b) In accordance with regulations established by the commissioner or commissioners of the offices of the department having jurisdiction of the services, which shall provide for prompt action on proposed local services and unified services plans, each local governmental unit shall:

1. establish long range goals and objectives consistent with statewide goals and objectives developed [fig 1] pursuant to section 5.07 of this chapter and develop or annually update the local services or unified services plan of the local governmental unit or units listing providers, estimated costs and proposed utilization of state resources, including facilities and manpower, which shall be used in part to formulate statewide comprehensive plans for services.

2. submit one local services plan or a unified services plan to the single agent of the department jointly designated by the commissioners of the offices of the department annually for approval by the commissioner or commissioners of the office or offices of the department having jurisdiction of the services.

(c) A local services plan or unified services plan shall be developed, in accordance with the regulations of the commissioner or commissioners of the office or offices of the department having jurisdiction of the services by the local governmental unit or units which shall direct and administer a local comprehensive planning process for its geographic area, consistent with statewide goals and objectives established pursuant to section 5.07 of this chapter. The planning process shall involve the directors of any department facilities, directors of hospital based mental health services, directors of community mental health centers, consumers, consumer groups, voluntary agencies [fig 1], other providers of services, and local correctional facilities and other local criminal justice agencies. The local governmental unit, or units, shall determine the proposed local services plan or unified services plan to be submitted for approval. If any provider of services including facilities in the department, or any representative of the consumer or community interests within the local planning process, disputes any element of the proposed plan for the area which it serves, the objection shall be presented in writing to the director of the local governmental unit. If such dispute cannot be resolved to the satisfaction of all parties, the director shall determine the plan to be submitted. If requested and supplied by the objecting party, a written objection to the plan shall be appended thereto and transmitted to the single agent of the department jointly designated by the commissioners.

(d) Each commissioner of an office in the department shall review the portion of the local services plan or unified services plan submitted over which his office has jurisdiction and approve or disapprove such plan in accordance with the procedures of subdivision (e) hereof.

(e) 1. There shall be a single process for plan review and approval by the offices of the department which shall provide local governmental units with a comprehensive response to the plans submitted. All portions of the plan to which a commissioner of an office of the department does not object shall be promptly approved and such approvals shall not be delayed pending approval of other portions of the plan which are substantially independent of the non-objectionable portion. Those portions approved by each of the commissioners of the offices of the department having jurisdiction of the services shall be deemed in effect for the period covered by the proposed plan. A portion of the plan, once approved, shall not be amended without the written concurrence of both the director of the local governmental unit or directors of the local governmental units and each of the commissioners of the offices of the department having jurisdiction over such portion of the plan.

2. A commissioner of an office of the department shall not disapprove any portion of the local services plan or unified services plan without providing the local governmental unit an opportunity to be heard regarding the proposed disapproval and to propose any modification of the plan. Pending the resolution of any dispute over approval of a portion of the plan, by final determination of the commissioner having jurisdiction over the services, new programs proposed shall not be implemented and programs previously implemented shall continue to be funded at existing levels. If a portion of the plan is disapproved, the commissioner of the office having jurisdiction over such portion shall notify the local governmental unit in writing stating reasons for such action.

#### § 41.17. State and local coordination

Each [fig 1] commissioner of an office in the department, consistent with the goals and objectives established by the [fig 2] advisory council of such office in cooperation with the New York state conference of local mental hygiene directors and providers of service including directors of hospital based mental health services, directors of community mental health centers, and voluntary agencies, shall:

(a) Within five years from the effective date of this chapter:

1. develop standards for admissions to all facilities for the care of the mentally ill, mentally retarded and developmentally disabled, and those suffering from the disease of alcoholism, alcohol abuse, substance abuse or substance dependence consistent with the requirements of articles nine, fifteen and twenty-one of this chapter taking into account characteristics of clients and providers;

2. develop standards for discharges from all facilities for the care of the mentally ill, mentally retarded and developmentally disabled, and those suffering from the disease of alcoholism, alcohol abuse, substance abuse or substance dependence taking into account the availability and adequacy of community residential and treatment services and the rights of the patient;

3. develop and recommend to the governor and legislature procedures giving local governmental units the opportunity to review all proposed admissions of residents of the local government to facilities in the department, consistent with the requirements of articles nine, fifteen and twenty-one of this chapter. The purpose of such review shall be to determine whether alternative community-based services are available or can be made available to such residents;

4. develop and recommend to the governor and legislature procedures giving local governmental units the opportunity to propose discharges and review proposed discharges and placements of residents of the local government from facilities of the department to programs in the community consistent with the requirements of articles nine, fifteen and twenty-one of this chapter;

5. develop and implement a uniform assessment, evaluation and reporting system as required by section 31.01 of this chapter;

6. develop allocable per patient rates for departmental facility programming and facility maintenance and support as required by section 43.01 of this chapter;

7. examine and develop in consultation with the recognized representative of employees of the offices of the department and recommend to the governor and legislature appropriate programs addressed to the labor and employment issues resulting from contraction of state operated services with such programs to be designed to provide opportunities for the retraining and continuation of employment of persons currently employed in the state mental hygiene department.

(b) Report to the governor and the legislature by March first of each year, on the progress made toward the implementation of the requirements specified by subdivision (a) of this section.

*The 1992 act deleted at fig 1 "of the commissioners of the offices" and at fig 2 "council for mental hygiene planning"*

#### § 41.18. Local services plan; state aid

(a) A local services plan is a plan for the rendition of local services. Such a plan must have been developed by the local governmental unit with the involvement of consumers, consumer groups, voluntary agencies and other providers of services, in accordance with the regulations of the commissioner and must be approved by the commissioner in order to be eligible for state aid. A local services plan shall contain a comprehensive proposal for annual and intermediate range plans and expenditures by the local governmental unit and by voluntary agencies pursuant to contract with such local governmental unit. A local services plan shall contain provisions to assure that there is planning and coordination with the delivery of community support services to mentally ill persons, in accordance with section 41.47 of this article. An annual plan must be supported by specific budgets.

(b) (i) Local governments shall be granted state aid, in accordance with the provisions of this subdivision, for approved net operating costs pursuant to an approved local services plan at the rate of fifty percent of the amount incurred during the local fiscal year by such local governments and by voluntary agencies pursuant to contract with such local governments; provided, however, that a local government having a population of less than two hundred thousand shall be granted state aid at the rate of seventy-five percent for the first one hundred thousand dollars of its approved net operating costs. Notwithstanding the foregoing, local governments shall be granted state aid of one hundred percent of the net operating costs expended by such local governments and by voluntary agencies pursuant to contract with such local governments for services to mentally retarded or developmentally disabled persons who were patients in a state facility for a continuous period of five or more years following the first day of January, nineteen hundred sixty-nine, provided that such services are rendered in accordance with an approved local services plan. Such one hundred percent state aid for services to such persons shall be also provided to a voluntary agency pursuant to a direct contract between such agency and an office of the department whenever such services provided pursuant to such direct contract are

rendered in accordance with an approved local services plan for servicing such clients. For purposes of determining whether a person has been a patient in such a facility for a continuous period of five years or more, if a person who has been discharged or released from such a facility is thereafter returned to such a facility within ninety days of the discharge or release, the period of time between such discharge or release and such return shall not constitute an interruption of, and shall be counted as part of, the continuous period.

(ii) Notwithstanding the foregoing, local governments shall be granted state aid of one hundred percent of the net operating costs expended by such localities and by voluntary agencies pursuant to contract with such local governments for approved demonstration projects, not to exceed three years, for the purpose of conducting alcoholism and alcohol abuse preventive, rehabilitative and treatment services; provided, however, that the [fig 1] commissioner of alcoholism and substance abuse services may extend the demonstration project for one additional year if it is determined that such extension is necessary and would serve the public interest.

(iii) Notwithstanding the foregoing, local governments and voluntary agencies shall be granted state aid of one hundred percent of the net operating costs expended by such localities and by voluntary agencies pursuant to [fig 1] contracts with such local governments or with the office of alcoholism and substance abuse services for alcohol crisis centers [fig 2] , chemical dependency programs for youth, residential services for recovering alcoholics and substance abusers and for alcoholism AIDS coordinators. Such state aid may also be granted to programs transferred from the task force on integrated projects for youth and chemical dependency. Such state aid shall also be granted for non-residential services determined to be necessary to serve the public interest by the commissioner of alcoholism and substance abuse services provided by local governments having a population of one hundred twenty-five thousand or less as determined by the last preceding federal census, or by voluntary agencies pursuant to contracts with such local governments.

(iv) The [fig 1] commissioner shall file a written explanation for action taken pursuant to paragraphs (ii) and (iii) of this subdivision with the director of the division of the budget, the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Such one hundred percent state aid for approved demonstration projects, alcohol crisis centers, chemical dependency programs for youth, and non-residential rural alcoholism programs, shall also be provided to a voluntary agency pursuant to a direct contract between such agency and the [fig 2] office of alcoholism and substance abuse services whenever such services provided pursuant to such direct contract are rendered in accordance with an approved local services plan for alcoholism and alcohol abuse preventive, rehabilitative and treatment services. Upon completion of the approved demonstration project under paragraph (ii) of this subdivision such program shall be eligible for transitional funding so that the percentage of local contribution for such project does not exceed twenty percent of the cost of such project during the first year of transition, thirty-five percent of such costs during the second year of transition, or fifty percent of such costs during the third year of transition.

For purposes of this section, "chemical dependency program for youth" shall mean a voluntary drug free setting for persons between the ages of twelve and eighteen certified [fig 1] by the [fig 2] office of alcoholism and substance abuse services.

(v) Notwithstanding the foregoing, local governments and voluntary agencies may be granted state aid of up to one hundred percent of the net operating costs expended by such localities and by voluntary agencies pursuant to contracts with the office of mental health for programs transferred from the task force on integrated projects for youth and chemical dependency established pursuant to chapter eight hundred twelve of the laws of nineteen hundred eighty-seven. Such aid may include funds transferred from such task force to the office of mental health.

(c) Local governments and voluntary agencies shall be granted state aid for capital costs pursuant to an approved local services plan at a rate not to exceed fifty percent of the amount eligible for state aid; provided, however, that state aid for capital costs for that portion of a general hospital which provides inpatient psychiatric services to the mentally ill pursuant to an approved local services plan shall be reimbursed at the rate of thirty-three and one-third percent.

(d) The liability of the state in any state fiscal year for state aid pursuant to this section shall exclude chemical dependence services, which are subject to article twenty-six of this chapter, and shall be limited to the amounts appropriated for such state aid by the legislature for such state fiscal year.

(e) In order to qualify for the state aid available as described in subdivisions (b) and (c) of this section, a local services plan must include provisions for the development of appropriate residential accommodations, consistent with the present and anticipated needs of the mentally disabled with the jurisdiction of the local governmental unit.

(f) No voluntary agency receiving state funds pursuant to this article shall expend any state moneys except for value received and shall not make any charitable contribution of state funds or use any state funds to pay above market value for any goods or services, except as authorized by the offices [fig 1] of the department.

§ 41.19. Unified services plan; general provisions

(a) 1. A unified services plan is a plan for the rendition of unified services which is designed to provide a broad range of services for all the mentally disabled of the area or part of the area over which a local government has jurisdiction. Such a plan must have been developed, in accordance with the regulations of the commissioner, by the joint and continuous planning of the local governmental unit, the department, and, with respect to any part of the area covered by the plan which is served by department facilities, the directors of such facilities and with the involvement of consumers, consumer groups, voluntary agencies and other providers of services. The plan must be submitted by the local governmental unit and approved by the commissioner. The plan must provide for the rendition of appropriate services in department facilities for all persons coming from such area needing such services. If there has been disagreement in the development of the plan by the director of a department facility providing services to the area, the disagreement shall be brought to the attention of the commissioner who shall evaluate the issues and make a determination resolving them.

2. The department regularly shall conduct evaluation studies on a statewide or representative sample basis to determine the relative costs and effectiveness of different types and patterns of services being provided under unified service plans. Such information developed shall be used to determine standards for program requirements and priorities and to establish guidelines for the allocation of funds.

(b) Unified services plans may be approved for local fiscal years beginning on or after the first day of April next succeeding the year in which this act shall have become law. Local governmental units electing to provide services pursuant to a unified services plan must submit such plan to the commissioner at least six months, or such shorter period as is authorized by the commissioner, prior to the beginning of the local fiscal year in which such plan is to become effective. If a unified services plan of a local governmental unit is approved, subsequent unified services plans for such local governmental unit for ensuing local fiscal years must be submitted at least six months, or such shorter period as is authorized by the commissioner, prior to the beginning of each such ensuing local fiscal year.

(c) The commissioner shall review each unified services plan submitted to him and approve or disapprove such plan. In reaching his decision, the commissioner shall give consideration to the following:

(1) whether the plan complies with the requirements of this article and with the rules and regulations issued hereunder.

(2) whether the plan arranges for the most effective and economical provision of services, including effective utilization of voluntary agencies.

(3) whether the plan has been developed with involvement of consumers, consumer groups, voluntary agencies and other providers of services.

(4) whether the plan has been developed by joint and continuous planning with the department and, with respect to any part of the area covered by the plan which is served by department facilities, the directors of such facilities.

(5) whether the plan represents the concurrence of the directors of the department facilities serving the area and the local governmental unit.

(6) whether the plan contains adequate provisions for review and evaluation of the services to the area covered by such plan.

(d) The director of community services shall be responsible for submitting a unified services plan to the commissioner. The parts of the plan pertaining to services to be delivered by department facilities shall be supported by copies of the proposed contracts for the purchase by the local governmental unit of such services, as agreed to by the local governmental unit and the directors of such department facilities.

(e) After approval of a unified services plan, services for the mentally disabled of the area served by a local governmental unit which are provided by such local governmental unit or any of the department's facilities shall be in

accordance with and pursuant to such unified services plan. Services (including both inpatient and out-patient services) provided by department facilities pursuant to a unified services plan shall be provided pursuant to contracts between the department or its facilities and the local governmental unit. Alternatively, if the department and a local governmental unit agree, state facilities may, in whole or in part, be used by or leased, rented, or sold to such local governmental unit or to a voluntary agency, in accordance with applicable state law, for operation by or through it pursuant to a unified services plan. Such local governmental unit may lease a facility or facilities for the department if the program to be housed in such facility is part of the approved unified services plan.

(f) No person suffering from a mental disability shall be admitted to an inpatient facility providing services pursuant to a unified services plan without having been examined for purposes of admission or referral in the manner indicated in such plan.

#### § 41.21. Unified services plan; requirements

(a) A unified services plan shall set forth priorities for unified services for the next local fiscal year and, commencing with plans to be submitted subsequent to the first approved plan, the long-range goals for such services and priorities for the five-year period commencing with the next local fiscal year. Such plan shall contain a comprehensive proposal and proposed fiscal plan for such services during the next local fiscal year, which proposed fiscal plan shall include estimated expenditures and sources and amounts of revenue including estimated local and state government funds to be provided pursuant to this article, and, commencing with plans to be submitted subsequent to the first approved plan, intermediate-range plans, projected needs and projected fiscal plans for the five-year period commencing with the next local fiscal year.

(b) The development of each unified services plan shall be a continuous planning and evaluation process among the department, the department facilities providing services to the area, and the local governmental unit. Such process shall involve the providers of services and representatives of consumers of services and nongovernmental organizations and groups concerned with mental disability. The director of any department facility providing services pursuant to such plan shall submit a copy of such plan to the department as part of the justification for such facility's annual budget. After approval by the commissioner, a unified services plan shall be a joint commitment between the department and the local governmental unit, subject to state and local legislative appropriations, for services to be provided pursuant thereto.

(c) A unified services plan shall (i) arrange, in accordance with the plan's priorities for unified services to the area, for the most effective and economical provision of such services and (ii) provide the basis for state and local government financing of such services pursuant to this article. To this end a unified services plan shall allow for the integration by mutual agreement of all facilities serving the area, whether publicly or privately operated and shall include participation as appropriate by all department facilities and local governmental facilities serving the area. The services rendered by general and psychiatric hospitals, city, county and state aging, health and social services agencies, facilities offering mental retardation services and alcoholism programs, probation departments, physicians, psychologists, social workers, public health nurses, and other public and private agencies and personnel may be included in such plan.

(d) The unified services plan shall provide an inventory of all public and private resources for the mentally disabled serving the local area.

(e) The unified services plan shall present an estimate of the number of the persons covered by such plan who will be treated by facilities operated by the department during the next local fiscal year, the costs of care for such persons and all sources and amounts of revenue for the care of such persons. The department shall provide local governmental units with information upon which to base this estimate.

(f) The unified services plan shall specify all unified services and the estimated operating costs of such services for the next local fiscal year. Such unified services may include any of the following:

- (1) Inpatient services.
- (2) Out-patient services.
- (3) Partial hospitalization services, such as day care, night care, or weekend care.

- (4) Emergency services.
- (5) Consultation and education services to community agencies and professional and associated personnel and information services to the general public.
- (6) Preventive services.
- (7) Diagnostic and referral services.
- (8) Rehabilitative services, including vocational, educational, and training programs.
- (9) Precare and aftercare services in the community, including foster home placement and home visiting.
- (10) Staff training.
- (11) Research and evaluation.
- (12) Activities involved in bringing the needs of the mentally disabled to the attention of governmental and private providers of services.
- (13) Such other services as may be approved by the commissioner.

(g) The unified services plan shall set forth a program for the acquisition, construction, renovation, rehabilitation, and improvement of local and state facilities used for provision of services pursuant to such plan.

(h) The unified services plan shall include provisions for evaluation of programs together with detailed descriptions of persons to be served, priority of target groups, direct service programs, indirect and supportive services and methodology for monitoring and evaluating costs and effectiveness of different types and patterns of service.

(i) The unified services plan shall contain provisions to assure that personnel required to provide unified services are appropriately recruited, developed, shared, deployed, and compensated.

(j) The unified services plan shall include provisions for the development of appropriate residential accommodations, consistent with the present and anticipated needs of the mentally disabled within the jurisdiction of the local governmental unit.

(k) The unified services plan shall contain provisions to assure that there is planning and coordination with the delivery of community support services to mentally ill persons, in accordance with the provisions of section 41.47 of this article.

#### § 41.23. Unified services plan; financing

(a) [fig 1] With the exception of chemical dependence services, which are subject to article twenty-six of this chapter, aggregate costs incurred pursuant to an approved unified services plan shall be funded pursuant to the provisions of this section. For the purposes of this section, the term "aggregate costs" shall mean the sum of net operating costs, as defined in section [fig 2] 41.03, and the costs of services rendered by department facilities pursuant to a unified services plan. Costs of services rendered by department facilities shall be determined on the basis of rates established pursuant to article forty-three, less all income received from or on behalf of such patient, or otherwise provided by law.

(b) Upon approval of a unified services plan, expenditures pursuant to such plan for the next local fiscal year shall be financed as follows:

(1) Subject to the provisions of subdivision (c) of this section, aggregate costs shall be apportioned between the state and the local government on the basis of the population of each local government as determined by the last preceding federal census. The aggregate costs shall be determined for each local government and there shall be deducted therefrom a local population credit of ten dollars per capita for the first one hundred thousand of the population of the local government and five dollars per capita for the remaining population of such local government. If such aggregate costs are less than such local population credit, the aggregate costs shall be financed on the basis of one hundred percent state funds, up to the amount of such aggregate costs. If the amount of such aggregate costs exceeds such local population credit, the balance of such aggregate costs over the local population credit, up to thirteen dollars per capita, shall be financed on the basis of eighty percent state funds and twenty percent local contribution with all

remaining aggregate costs financed on the basis of sixty-five percent state funds and thirty-five percent local contributions. Aggregate costs shall not include the cost of community support services provided under section 41.47 of this article or the cost of services given to any persons (i) who are patients in a state facility and not residents of the particular local government or (ii) who are patients in a state facility whose last date of admission or readmission to such facility was earlier than five years prior to the first day of April next succeeding the date on which the first unified services plan for such local government becomes effective or (iii) mentally retarded or developmentally disabled persons who were patients in a state facility for a continuous period of five or more years following the first day of January, nineteen hundred sixty-nine, and who were subsequently released or discharged from such facility, provided that the unified services plan contains a plan for the care and treatment of such prior admitted patients who are residents of the local government. The state shall pay one hundred percent of the net operating costs expended by the local government and by voluntary agencies pursuant to contract with such local government or by the state for services to such prior admitted patients, if rendered in accordance with an approved unified services plan.

Such one hundred percent state aid for services to such persons shall also be provided to a voluntary agency pursuant to a direct contract between such agency and an office of the department whenever such services provided pursuant to such direct contract are rendered in accordance with an approved unified services plan for servicing such clients. For purposes of determining whether a person has been a patient in such a facility for a continuous period of five years or more, if a person who has been discharged or released from such a facility is thereafter returned to such a facility within ninety days of the discharge or release, the period of time between such discharge or release and such return shall not constitute an interruption of and shall be counted as part of the continuous period. Notwithstanding the foregoing, local governments shall be granted state aid of one hundred percent of the net operating costs expended by such localities and by voluntary agencies pursuant to contract with such local governments for approved demonstration projects, not to exceed three years, for the purpose of conducting alcoholism and alcohol abuse preventive, rehabilitative and treatment services; provided, however, that the [fig 1] commissioner of alcoholism and substance abuse services may extend the demonstration project for one additional year if it is determined that such extension is necessary and would serve the public interest. The [fig 2] commissioner shall file a written explanation for such action with the director of the division of the budget, the chairman of the senate finance committee and the chairman of the assembly ways and means committee. Such one hundred percent state aid for approved demonstration projects shall also be provided to a voluntary agency pursuant to a direct contract between such agency and the [fig 3] office of alcoholism and substance abuse services whenever such services provided pursuant to such direct contract are rendered in accordance with an approved unified services plan for alcoholism and alcohol abuse preventive, rehabilitative and treatment services. Upon completion of the approved demonstration project such program shall be eligible for transitional funding so that the percentage of local contribution of such project does not exceed twenty percent of the cost of such project during the first year of transition, thirty-five percent of such costs during the second year of transition, or fifty percent of such costs during the third year of transition.

The term "local contribution" for the purposes of this section shall mean the sum of funds for net operating costs of services actually provided by (i) any local government acting under such plan and (ii) any voluntary agency providing services under such plan pursuant to a contract with the local governmental unit.

Notwithstanding the foregoing, local governments and voluntary agencies shall be granted state aid of one hundred percent of the net operating costs expended by such localities and by voluntary agencies pursuant to contracts with such local governments or with the office of alcoholism and substance abuse services for alcohol crisis centers [fig 1], chemical dependency programs for youth, residential services for recovering alcoholics and substance abusers and for alcoholism AIDS coordinators. Such state aid may also be granted to programs transferred from the task force on integrated projects for youth and chemical dependency. Such state aid shall also be granted for non-residential services determined to be necessary to serve the public interest by the commissioner of alcoholism and substance abuse services provided by local governments having a population of one hundred twenty-five thousand or less as determined by the last preceding federal census, or by voluntary agencies pursuant to contracts with such local governments. Such state aid may also be granted to programs transferred from the task force on integrated projects for youth and chemical dependency. The commissioner shall file a written explanation for such determination with the director of the division of the budget, chairman of the senate finance committee and chairman of the assembly ways and means committee. Such one hundred percent state aid shall also be provided to a voluntary agency pursuant to a direct contract between such agency and the office of alcoholism and substance abuse services whenever such services provided pursuant to such direct contract are rendered in accordance with an approved local services plan for alcoholism and alcohol abuse preventive, rehabilitative and treatment services.

Notwithstanding the foregoing, local governments and voluntary agencies may be granted state aid of up to one hundred percent of the net operating costs expended by such localities and by voluntary agencies pursuant to contracts with the office of mental health for programs transferred from the task force on integrated projects for youth and chemical dependency established pursuant to chapter eight hundred twelve of the laws of nineteen hundred eighty-seven. Such aid may include funds transferred from such task force to the office of mental health.

For purposes of this section, "residential chemical dependency program for youth" shall mean a voluntary drug free residential setting for persons between the ages of twelve and eighteen certified [fig 1] by the [fig 2] office of alcoholism and substance abuse services.

(2) The state shall pay fifty percent of all capital costs after deducting from such costs all amounts received as federal aid which are incurred by a local government or voluntary agency and included in a unified services plan. In the event that construction by a voluntary agency has been included in a unified services plan, reimbursement for the capital costs thereof shall be made by the department directly to such voluntary agency.

(3) The state shall pay one hundred percent of all capital costs incurred by the department for state facilities.

(4) The liability of the state in any state fiscal year for state funding pursuant to this section shall be limited to the amounts appropriated for this purpose by the legislature for such state fiscal year.

(5) With respect to a local government which has provided joint unified services and facilities through agreement with other local governments, expenditures subject to financing pursuant to this section shall mean the prorated expenditures of such agreement.

(c) (1) As used in this subdivision:

(i) "Aggregate costs" and "local contribution" shall have the meanings assigned thereto in paragraph (1) of subdivision (b) of this section.

(ii) "Base year local contribution" shall mean that portion of the funds for net operating costs of local services actually provided by a local government and by any voluntary agency providing services pursuant to a contract with the local governmental unit under a local services plan during the year immediately preceding the first effective date of a unified services plan for such local government.

(2) To reduce any adverse fiscal impact on local governments wherever the local contribution as calculated for the first local fiscal year under paragraph one of subdivision (b) of this section exceeds the base year local contribution, the local contribution shall be reduced by the amount of such difference in the first local fiscal year, eighty percent of the same amount in the second local fiscal year, sixty percent of the same amount in the third fiscal year, forty percent of the same amount in the fourth fiscal year and twenty percent of the same amount in the fifth fiscal year. Thereafter, the local contribution shall be determined pursuant to paragraph one of subdivision (b) of this section.

(3) To reduce any adverse fiscal impact on the state wherever the local contribution as calculated for the first local fiscal year under paragraph one of subdivision (b) of this section is less than the base year local contribution, the local contribution shall be increased by eighty percent of the amount of such difference in the first local fiscal year, sixty percent of the same amount in the second local fiscal year, forty percent of the same amount in the third fiscal year and twenty percent of the same amount in the fourth fiscal year. Thereafter, the local contribution shall be determined pursuant to paragraph one of subdivision (b) of this section.

(d) Nothing in subdivisions (b) or (c) of this section shall prevent a local government or local governments acting jointly from appropriating additional funds for unified services which increase the proportion of the local contribution of costs incurred under a unified services plan.

#### § 41.24. Study on alternative to net deficit funding

On or before April fifteenth, nineteen hundred ninety, the commissioner shall submit to the legislature a study and recommendations for a proposed alternative to net deficit funding established pursuant to article forty-one of this chapter that includes the following:

(a) A cost-related funding methodology which adequately pays for services necessary to provide appropriate care, which recognizes geographic distinctions as they relate to cost and which ensures that providers are reimbursed for the

fixed or uncontrollable operational costs such as interest, depreciation, property, capitalized development costs, insurance and reasonable and necessary personnel costs.

(b) A guarantee of minimum maintenance of local government tax levy financial participation at current levels.

(c) A system of incentives to promote the maximization of alternative funding sources including but not limited to contract income and charitable contributions.

(d) An evaluation of the relationship between net deficit funded programs and other non-residential programs, excluding day treatment, and a determination whether or not to incorporate the funding of all such programs into a unified funding methodology.

(e) Information relating to a demonstration project undertaken by the office in certain developmental disabilities services offices to examine possible modifications in the use of medical assistance funding for programs and services pursuant to the provisions of a federal grant. Such information shall include specific recommendations for applying the results of such demonstration project to programs and services operated by voluntary providers.

(f) An examination of the implications of department of mental hygiene consolidated fiscal reporting process and an incorporation, as appropriate, of such implications into the formulation of recommendations.

Such study shall be prepared in conjunction with a council of not more than ten persons which shall include not for profit provider organizations, parents of persons with developmental disabilities, representatives of local government and others to be appointed by the commissioner.

#### § 41.25. Fees

(a) As a prerequisite for state aid, local governmental units and voluntary agencies shall establish fee or payment schedules for clinical services and may establish fee or payment schedules for other services reflecting costs of services, pursuant to regulations of the commissioner.

(b) Fees charged or payments requested shall take into account costs and ability to pay, considering resources available from private and public health insurance and medical aid programs.

(c) No person shall be denied services for the mentally disabled because of inability to pay.

(d) Every effort shall be made to assure that the process of fee establishment and collection does not interfere with the therapeutic program.

#### § 41.27. State aid procedures

(a) State aid shall not be granted for capital costs unless:

1. appropriations authorizing them have been requested by the commissioner;
2. these appropriations have been recommended by the governor in a budget bill which specifies the facility to be acquired, constructed, or improved, the total estimated cost for each facility, and estimated date of completion; and
3. the budget bill has been approved by the legislature for the state fiscal year for which it was submitted.

(b) Claims for state aid shall be made in a manner and on forms prescribed by the regulations of the commissioner and shall be for expenditures or costs incurred in accordance with previously approved state aid applications supported by specific budgets as required by this chapter.

(c) When certified by the commissioner, state aid shall be paid upon the audit and warrant of the comptroller.

#### § 41.29. Liability of local government

Any local government which has established a local governmental unit shall save harmless and protect the members of the board and officers and employees of such unit from financial loss arising out of any claim, demand, suit, or

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judgment by reason of alleged negligence or other act resulting in accidental bodily harm or injury to any person, provided such board member, officer, or employee at the time of the accident or injury was acting in the discharge of his duties within the scope of his employment under this article. No action shall be maintained under this section against such a local government, board member, officer, or employee unless a notice of claim shall have been made and served in compliance with section fifty-e of the general municipal law.

## § 41.31. Publication of records

Every local governmental unit shall make available in its office, as a public record, copies of its state-approved plans and proposals, and of its rules, regulations, and contracting procedures.

## § 41.32. Transitional provisions for local assistance funding of federally funded demonstration projects for treatment of alcoholics

Notwithstanding any inconsistent provision of law, whenever demonstration projects for treatment of alcoholics are converted to local assistance formula funding from federal funding such conversion shall be adjusted so that the percentage of local contribution for such project does not exceed twenty percent of the cost of such projects during the first year of transition, thirty-five percent of such costs during the second year of transition or fifty percent of such costs during the third year of transition.

## § 41.33. Community residences for the mentally disabled

The commissioner shall have the power to operate or cause to be operated community residential facilities for the mentally disabled. Within amounts available therefor and subject to regulations established by him and notwithstanding any other provisions of this article, he may provide state aid to local governments and to voluntary agencies (i) in an amount not to exceed fifty percent for acquisition or construction of such community residences, and (ii) in an amount not to exceed fifty percent for the total operating costs of community residences except community residences for the mentally ill. Such state aid to voluntary agencies shall not be granted unless there has been prior approval of the proposed community residence by the local governmental unit.

## § 41.34. Site selection of community residential facilities

(a) For the purposes of this section, the following definitions shall apply:

(1) "Community residential facility for the disabled" means a supportive living facility with four to fourteen residents or a supervised living facility subject to licensure by the office of mental health or the office of mental retardation and developmental disabilities which provides a residence for up to fourteen mentally disabled persons, including residential treatment facilities for children and youth.

(2) "Sponsoring agency" means an agency or unit of government, a voluntary agency or any other person or organization which intends to establish or operate a community residential facility for the disabled.

(3) "Municipality" means an incorporated village if a facility is to be located therein, a town if the facility is to be located therein and not simultaneously within an incorporated village, or a city, except that in the city of New York, the community board with jurisdiction over the area in which such a facility is to be located shall be considered the municipality.

(4) "Commissioner" means the commissioner of the office of the department responsible for issuance of license and operating certificate to the proposed community residential facility.

(b) If a sponsoring agency intends to establish a residential facility for the disabled within a municipality but does not have a specific site selected, it may notify the chief executive officer of the municipality in writing of its intentions and include in such notice a description of the nature, size and community support requirements of the program. Provided, however, nothing in this subdivision shall preclude the proposed establishment of a site pursuant to subdivision (c) of this section.

(c) (1) When a site has been selected by the sponsoring agency, it shall notify the chief executive officer of the municipality in writing and include in such notice the specific address of the site, the type of community residence, the number of residents and the community support requirements of the program. Such notice shall also contain the most recently published data compiled pursuant to section four hundred sixty-three of the social services law which can reasonably be expected to permit the municipality to evaluate all such facilities affecting the nature and character of the area wherein such proposed facility is to be located. The municipality shall have forty days after the receipt of such notice to:

(A) approve the site recommended by the sponsoring agency;

(B) suggest one or more suitable sites within its jurisdiction which could accommodate such a facility; or

(C) object to the establishment of a facility of the kind described by the sponsoring agency because to do so would result in such a concentration of community residential facilities for the mentally disabled in the municipality or in the area in proximity to the site selected or a combination of such facilities with other community residences or similar facilities licensed by other agencies of state government, including all community residences, intermediate care facilities, residential care facilities for adults and residential treatment facilities for individuals with mental illness or developmental disabilities operated pursuant to article sixteen or article thirty-one of this chapter and all similar residential facilities of fourteen or less residents operated or licensed by another state agency, that the nature and character of the areas within the municipality would be substantially altered.

Such response shall be forwarded to the sponsoring agency and the commissioner. If the municipality does not respond within forty days, the sponsoring agency may establish a community residence at a site recommended in its notice.

(2) Prior to forwarding a response to the sponsoring agency and the commissioner, the municipality may hold a public hearing pursuant to local law.

(3) If the municipality approves the site recommended by the sponsoring agency, the sponsoring agency shall seek to establish the facility at the approved site.

(4) If the site or sites suggested by the municipality are satisfactory with regard to the nature, size and community support requirements of the program of the proposed facility and the area in which such site or sites are located does not already include an excessive number of community residential facilities for the mentally disabled or similar facilities licensed by other state agencies, the sponsoring agency shall seek to establish its facility at one of the sites designated by the municipality.

If the municipality suggests a site or sites which are not satisfactory to the sponsoring agency, the agency shall so notify the municipality which shall have fifteen days to suggest an alternative site or sites for the proposed community residential facility.

(5) In the event the municipality objects to establishment of a facility in the municipality because to do so would result in such a concentration of community residential facilities for the mentally disabled or combination of such facilities and other facilities licensed by other state agencies that the nature and character of areas within the municipality would be substantially altered; or the sponsoring agency objects to the establishment of a facility in the area or areas suggested by the municipality; or in the event that the municipality and sponsoring agency cannot agree upon a site, either the sponsoring agency or the municipality may request an immediate hearing before the commissioner to resolve the issue. The commissioner shall personally or by a hearing officer conduct such a hearing within fifteen days of such a request.

In reviewing any such objections, the need for such facilities in the municipality shall be considered as shall the existing concentration of such facilities and other similar facilities licensed by other state agencies in the municipality or in the area in proximity to the site selected and any other facilities in the municipality or in the area in proximity to the site selected providing residential services to a significant number of persons who have formerly received in-patient mental health services in facilities of the office of mental health or the office of mental retardation and developmental disabilities. The commissioner shall sustain the objection if he determines that the nature and character of the area in which the facility is to be based would be substantially altered as a result of establishment of the facility. The commissioner shall make a determination within thirty days of the hearing.

(d) Review of a decision rendered by a commissioner pursuant to this section may be had in a proceeding pursuant to article seventy-eight of the civil practice law and rules commenced within thirty days of the determination of the commissioner.

(e) (1) A licensing authority shall not issue an operating certificate to a sponsoring agency for operation of a facility if the sponsoring agency does not notify the municipality of its intention to establish a program as required by subdivision (c) of this section. Any operating certificate issued without compliance with the provisions of this section shall be considered null and void and continued operation of the facility may be enjoined.

(2) The office of mental health and the office of mental retardation and developmental disabilities shall not issue an operating certificate for the operation of a supportive living facility or a supervised living facility of more than fourteen residents if the agency or unit of government, voluntary agency or any other person or organization which intends to establish or operate such a facility does not notify the chief executive officer of the municipality in which that facility is to be established in writing of the intention to establish such facility and include in such notice the specific address of the site, the type of residence, the number of residents and the community support requirements of the program; provided, however, that nothing contained in this paragraph shall either be construed to require facilities of more than fourteen beds to meet any other requirement of this section, or to deem such facilities family units for the purposes of local laws and ordinances.

(f) A community residence established pursuant to this section and family care homes shall be deemed a family unit, for the purposes of local laws and ordinances.

*Section 41.34 is commonly referred to as the Padavan law. In passing the law the legislature expressed it's intent as follows:*

*“The legislature hereby finds and determines that mentally disabled individuals have the right to attain the benefits of normal residential surroundings. It is further found that the opportunities for mentally disabled individuals will be enhanced, and the delivery of services improved, by providing these individuals with the least restrictive environment that is consistent with their needs, and that such environment will foster the development of maximum capabilities. It is the intention of this legislation to meet the needs of the mentally disabled in New York state by providing, wherever possible, that such persons remain in normal community settings, receiving such treatment, care, rehabilitation and education, as may be appropriate to each individual. It is further intended that communication and cooperation between the various state agencies, local agencies and local communities be fostered by this legislation, and that this will be best achieved by establishment of clearly defined procedures for the selection of locations for community residences, to best protect the interests of the mentally disabled and ensure acceptance of community residences by local communities. In the establishment of such community residences, the legislature recognizes the need to avoid, wherever practicable, a disproportionate distribution of community residences and other similar facilities.”*

#### § 41.35. Demonstration programs

(a) The commissioners of the offices in the department shall cause to be developed plans for three or more time-limited demonstration programs, the purpose of which shall be to test and evaluate new methods or arrangements for organizing, financing, staffing and providing services for the mentally disabled in order to determine the desirability of such methods or arrangements. Subject to regulations established by the commissioners and notwithstanding any other provision of law, such programs may include but shall not be limited to comprehensive organizational structures to serve all mentally disabled persons within the purview of a local governmental unit, innovative financing and staffing arrangements and specific programs to serve the mentally disabled. Such demonstration programs shall be consistent with established statewide goals and objectives and local comprehensive plans, shall be developed in conjunction with the local comprehensive planning process, and shall be submitted to the single agent jointly designated by the commissioners of the department for review and approval by the commissioner or commissioners having jurisdiction of the services.

(b) The demonstration programs required to be developed pursuant to this section shall include at least one single system program for comprehensive services for all mentally disabled persons or all services to one or more of the following classes of mentally disabled: the mentally ill; the mentally retarded and developmentally disabled; those suffering from alcohol abuse or alcoholism; or alcoholics, alcohol abusers and substance abusers. Such comprehensive services provided pursuant to a single system program shall be provided by a local governmental unit or group of local

government units or an approved non-governmental agent or a combination of providers of service and a local governmental unit or units.

(1) A local governmental unit or group of local governmental units may propose that such unit or units, or a non-governmental agent designated by such unit or units, or a combination of providers of service and a local governmental unit assume responsibility for provision of comprehensive services. A plan embodying such a proposal shall be submitted to the single agent jointly designated by the commissioners of the offices of the department in accordance with regulations of the commissioners. Such a plan shall provide that the local governmental unit or units or a designated non-governmental agent, or a combination of providers of service and local governmental unit or units shall be responsible for the provision of and shall direct the operation of all facilities and programs or portions thereof serving the class or classes of mentally disabled in the area for whom the unit or non-governmental agent proposes to provide comprehensive services.

(2) A proposed plan submitted in accordance with the provisions of this subdivision shall contain at least the following with respect to the class or classes of mentally disabled covered by the plan:

A. a commitment to provide necessary comprehensive services for all residents, regardless of diagnostic category or severity of disability or ability to pay, subject to availability of funds, of the local government or local governments submitting such plan throughout the course of their mental disability.

B. a commitment to provide comprehensive services which shall include, but not be limited to, preventive services, emergency services, acute, intermediate and long-term services, including both hospital and non-hospital based inpatient and outpatient services, day care, night care and weekend care services, diagnostic and referral services, residential and non-residential services, vocational, educational and training programs, staff training, consultive services, necessary manpower and support services.

C. an assurance that comprehensive services will be provided to all mentally disabled residents regardless of age, income or area of residence in all age and population groups, including all such residents receiving service irrespective of the location and auspices under which such services are provided at the time of the plan's submission.

D. a statement describing the proposed administrative organization of the system under which comprehensive services to mentally disabled residents of the locality or localities are to be provided, including a description of the respective roles and relationships of all providers, governmental and non-governmental.

E. an inventory of all public and private resources available to the class or classes of mentally disabled residents of the local area and a statement of their responsibilities.

F. a proposed fiscal plan for comprehensive services during the next local and state fiscal years, which proposed fiscal plan shall include, but not be limited to, all projected needs; a breakdown of services to be provided by disability and service category; estimated expenditures by purpose; estimated revenues by source and amounts, including estimated local, state and federal government funds; and a comparison of proposed expenditures and revenues with those of the existing year.

G. a projected utilization rate of services and programs of facilities of the offices of the department including any planned expansion or contraction of such services and programs.

H. a plan, developed in consultation with the recognized representative of employees of the offices of the department, for the retraining and continuation of employment of persons whose employment in a program of a facility of an office may be terminated because of planned contraction of such program, and for the continuation of all employment-related benefits vested by contract, by state or local law, or by rule or regulation in the persons employed by the offices in the department in facilities to be transferred to the control of the local governmental unit or units or the non-governmental agent of such unit or units, as long as those persons shall continue to be employed pursuant to the single system plan or until such employment-related benefits are modified or superseded pursuant to law or successor agreements.

I. a commitment that all facilities will comply with all applicable state and federal standards, including accreditation standards and standards required to be met as a condition for eligibility for federal funds.

J. a statement of the mechanisms to be utilized in evaluating the effectiveness of comprehensive services to the mentally disabled and describing the conditions and procedures under which responsibility for programs and services of facilities in the offices of the department at the time of submission of the plan shall revert to the state.

(3) Each commissioner of an office in the department shall review the portion of the single system plan for comprehensive services to the mentally disabled over which his office has jurisdiction and approve or disapprove such portion of the plan. In acting upon such portion of the plan, each commissioner shall consider whether it offers a reasonable expectation of improved services to the particular class of the mentally disabled over which his office has jurisdiction; whether the plan as a whole assures comprehensive services to mentally disabled persons who suffer from

more than one disability; whether the plan provides for the efficient use of available funds and existing services; and whether such plan adequately meets the conditions set forth in paragraph two of this subdivision.

(4) Each commissioner of an office in the department who has approved a single system plan is authorized to take such actions as may be necessary, in accordance with applicable state law, including, but not limited to, the delegation of administrative responsibility to a director of community services in order to facilitate the implementation of the approved single system plan. If a commissioner of an office in the department and one or more local governmental units mutually agree, state facilities of such office may, in whole or in part, be used by, leased, or rented, to such local governmental unit or units, to an approved non-governmental agent, or to a combination of providers of service and the local governmental unit or units in accordance with applicable state law, for operation by or through it pursuant to the single system plan approved in accordance with the provisions of this article. Such local governmental unit or units or an approved non-governmental agent or combination of providers of service and the local governmental unit or units may lease a facility or facilities from an office in the department, if the program to be housed in such facility is part of the single system plan for comprehensive services to the mentally disabled approved in accordance with the provisions of this article.

(5) Each commissioner of an office in the department shall conduct evaluation studies of approved single system plans, or portions thereof, over which his office has jurisdiction to determine the relative costs and effectiveness of different types and patterns of services being provided under such plans. The results of such studies shall be used to determine standards for statewide program requirements and priorities [fig 1] .

(c) Upon approval of a plan for a demonstration program by a commissioner or commissioners of the office having jurisdiction over the services, said commissioner or commissioners shall, in cooperation with the appropriate representative or representatives of the local governmental unit or units, prepare for submission to the director of the budget for inclusion in the executive budget, a request for the appropriations of funds and authorization for implementation of the demonstration program.

(d) Quarterly reviews and evaluations of the program shall be undertaken and a final report shall be developed by representatives of the commissioner or commissioners having jurisdiction over the services and the local governmental unit assessing the program, indicating its potential for continuation or use elsewhere, and making any further recommendations related to the program. Copies of such quarterly evaluations and final reports shall be sent to the director of the division of the budget, and the chairmen of the senate finance committee and the assembly committee on ways and means.

(e) A local governmental unit may file a notice of intent to submit a single system plan with the single agent jointly designated by the commissioners of the offices. The commissioner or commissioners having jurisdiction of the services are authorized to make grants of funds, from appropriations specifically made for such purpose, to any such local governmental unit in an amount not to exceed seventy-five percentum of the local government costs approved by the commissioner and the director of the budget, of preparing a single system plan; provided, however, that in the case of a local government receiving state aid at the rate of seventy-five percent of its approved net operating costs, such grant of funds may not exceed ninety percent of the approved local government's costs of preparing the single system plan.

#### § 41.36. Community residential facilities

(a) As used in this section:

1. "Community residential facility" means any facility subject to licensure by the office of mental retardation and developmental disabilities which provides a supervised residence or residential respite services for mentally disabled persons. Such term does not include family care homes.

2. "Reimbursable services" means services, other than intermediate care services, comprehensive medicaid case management and personal care services for which funding is available under Title XIX of the federal social security act, provided at a community residential facility described by regulations of the commissioner of mental retardation and developmental disabilities for which fees or rates may be paid to a provider of services pursuant to this section.

3. "Income" means revenues received by a provider of services incidental to the operation of a community residential facility and includes:

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(i) revenues received from other units of state, local or federal government in consideration for the provision of care to a mentally disabled person, excluding that portion of such revenue specifically intended to offset capital costs and that portion of such revenue received pursuant to Title XIX of the federal social security act as payment for personal care services or comprehensive medicaid case management services;

(ii) charges [fig 1] received from residents or on their behalf from third party insurers or medical assistance programs; and

(iii) other funds received in the operation of the community residential facility.

4. "Provideof services" means a local government, voluntary agency or other entity or person that provides reimbursable services at a community residential facility.

5. "Commissioner" means the commissioner of mental retardation and developmental disabilities.

(b) The commissioner shall establish, by rules or regulations, descriptive listings of reimbursable services at community residential facilities for which payments may be made pursuant to this section. Such services shall include direct care and support staff services, housing, administrative services and other than personal services.

(c) The commissioner shall establish standards for programs funded under this section and shall by rule or regulation, subject to the approval of the director of the budget, establish fees or rates at least annually for each reimbursable service to be paid to providers of services. Fees or rates may be varied for geographic or other reasons [fig 1] .

(d) Each local governmental unit shall include in its annual local or unified services plan a review of existing community residential facilities providing reimbursable services and a recommendation of anticipated needs for the development of such facilities, consistent with the needs of the mentally retarded and developmentally disabled within the jurisdiction of the local governmental unit.

(e) Notwithstanding any inconsistent provision of this chapter, the commissioner may, from monies appropriated by the legislature for state aid for services provided pursuant to this article, grant state aid [fig 1] for the operation of a community residential facility through the payment of fees or rates for reimbursable services provided at such facility.

(f) Providers of services may apply to the commissioner pursuant to this section [fig 1] to receive payment of fees or rates for the provision of reimbursable services at community residential facilities.

(g) The commissioner may, after consideration of the service needs of the area in which a community residential facility is to operate, the capacity of the facility to meet those needs, the availability of services in the area, the annual comprehensive plan of the local governmental unit, the recommendations of the local governmental unit and the availability or resources therefor, grant state aid to a provider of services [fig 1] for the payment of fees or rates for [fig 2] reimbursable services, subject to the provisions of subdivision (h) of this section.

(h) Payments for reimbursable services shall be made monthly. The commissioner shall each month advance to providers of services an equal monthly proration of fees or rates which may be paid for reimbursable services estimated to be provided during the fee or rate period, from which shall be deducted income received during the preceding months and rent charged clients. At the end of each fee or rate period, an adjustment shall be made so that payments of fees or rates for reimbursable services provided during the fee or rate period shall equal fees or rates for reimbursable services provided during the fee or rate period less income received and the rent charged clients as required in this subdivision.

(i) No client shall be denied services because of inability to pay. Voluntary agencies and local governments may charge clients [fig 1] for the provision of reimbursable services and shall charge rent in accordance with the client's ability to pay and the availability to the client of health insurance or other third party reimbursement for the provision of such services. [fig 2] Charge and rental schedules shall be developed by the commissioner and approved by the director of the budget. Providers shall bill third party insurers and other state or local agencies directly if payments are available from such parties and report to the commissioner claims made against them and any billings of clients for whom such reimbursement is not available. Providers shall make reasonable efforts to collect such billings. In the event payment of [fig 3] charges is not received after such efforts, the provider shall assign the commissioner the right to enforce the claim and receive payment. Every effort shall be made to assure that the process of collection of [fig 4] charges from clients does not interfere with the therapeutic program.

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(j) Providers of service shall be reimbursed for capital costs in accordance with the provisions of this section.

(k) Payments pursuant to this section shall be made in lieu of state aid for operating costs payable pursuant to any other provision of this article.

(l) The operator of a community residential facility may appeal to the commissioner or his designee for reconsideration of his decision regarding authorization of payments to the facility and establishment of fees or rates for reimbursable services provided at the facility. The commissioner, after hearing such appeal or consideration of the recommendations of his designee, may amend such decision, subject to the approval of the director of the budget.

(m) The commissioner shall issue regulations as necessary to implement the provisions of this section. Public hearings shall be held prior to final issuance of such regulations.

(n) The commissioner shall establish a procedure, subject to the approval of the state comptroller, whereby payments in addition to the client's personal allowance may be made to providers of services for one or more of the following needs of clients residing in such facilities, limited to two hundred fifty dollars per client per year and paid semi-annually in the manner specified by such procedures:

1. Replacement of necessary clothing;
2. Personal requirements and incidental needs of clients;

3. Recreational and cultural activities of clients. Such payments may be made from monies appropriated to the office for this purpose. Such payments shall be audited by the office pursuant to an audit plan approved by the comptroller.

(o) Notwithstanding any inconsistent provision of this article, the commissioner may reimburse voluntary agencies for the reasonable cost of rental of a community residential facility less any income received from a state or federal agency or third party insurer which is specifically intended to offset the cost of rental of the facility or housing a client at the facility, subject to the availability of appropriations therefor and the commissioner's certification of the reasonableness of the rental cost, with the approval of the director of the budget.

#### § 41.37. Community residence and residential treatment facility for children and youth development grants

(a) The commissioner of the office of mental health or the commissioner of the office of mental retardation and developmental disabilities is authorized, within appropriations made therefor, to make grants to local governmental units and voluntary nonprofit agencies developing a community residence as defined in subdivision twenty-eight of section 1.03 of this chapter. The commissioner of the office of mental health is authorized, within appropriations made therefor, to make grants to voluntary nonprofit agencies developing a residential treatment facility for children and youth. Such grants shall be limited to the development costs incurred prior to the operation of a community residence or a residential treatment facility for children and youth, or for development costs incurred to expand the capacity to provide services at such residences and facilities.

Development costs which may be eligible for up to one hundred percent reimbursement under this grant include:

1. reasonable professional fees and other fees for services which are necessary for project development;
2. initial staffing;
3. up to six months rent, construction loan or permanent mortgage payments, together with other necessary costs associated with rental or ownership of property;
4. reasonable and necessary fees paid to secure financing;
5. furniture; and
6. reasonable rehabilitation costs.

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(b) Application for grants shall be made in the manner and on forms prescribed by the appropriate commissioner. Each commissioner shall establish schedules, subject to the approval of the director of the division of the budget, indicating the maximum development cost per bed for such community residences and residential treatment facilities for children and youth. Such schedules may include varying rates for distinct geographic areas of the state, if in the determination of the commissioner the location of an eligible community residence or residential treatment facility for children and youth has direct bearing on the level of development costs. The commissioner may also establish varying rates based on the size of an eligible community residence or residential treatment facility for children and youth.

(c) No grant will be awarded by the commissioner if the projected per bed development cost for the community residence or residential treatment facility for children and youth exceeds the schedule established in subdivision (b) of this section.

(d) No such grant will be awarded unless there is prior approval by the local governmental unit of the area in which such community residence or residential treatment facility for children and youth is to be located.

(e) The state comptroller, or his legally authorized representative, is authorized and empowered to examine the books and accounts of the offices relating to program development grants and from time to time to examine the books and accounts of each local governmental unit or voluntary nonprofit agency receiving such grants, including its receipts, disbursements, contracts, leases, loans and any other moneys relating to its financial operation.

#### § 41.38. Rental and mortgage payments of community residential facilities for the mentally ill

Notwithstanding any inconsistent provision of this article, the commissioner may reimburse voluntary agencies for the reasonable cost of rental of or the reasonable mortgage payment or the reasonable principal and interest payment on a loan for the purpose of financing an ownership interest in, and proprietary lease from, an organization formed for the purpose of the cooperative ownership of real estate, together with other necessary costs associated with rental or ownership of property, for a community residence or a residential care center for adults under his jurisdiction less any income received from a state or federal agency or third party insurer which is specifically intended to offset the cost of rental of the facility or housing a client at the facility, subject to the availability of appropriations therefor and such commissioner's certification of the reasonableness of the rental cost, mortgage payment, principal and interest payment on a loan as provided in this section or other necessary costs associated with rental or ownership of property, with the approval of the director of the budget.

#### § 41.39. [fig 1] Vocational programs; sheltered workshop industrial contract income

(a) The commissioner of mental health and the commissioner of mental retardation and developmental disabilities shall, consistent with the state integrated employment implementation plan developed pursuant to subdivision two of section one thousand four-b of the education law, and subject to appropriations made therefor, to develop and support services that provide individuals with mental disabilities the opportunity to learn and develop employment related skills and work experience, including but not limited to sheltered workshops and integrated employment opportunities, including supported employment, as provided pursuant to sections one thousand four-a and one thousand four-b of the education law. Such programs shall, to the extent possible:

1. be integrated with and not duplicate employment programs provided through the state education department and shall ensure that funding provided pursuant to this subdivision is not used for the provision of services that are the responsibility of other state agencies pursuant to the plan developed pursuant to subdivision two of section one thousand four-b of the education law;

2. provide an array of rehabilitation and support services necessary to meet the individual's vocational and career developmental needs;

3. integrate the office's vocational programs and other needed support services including but not limited to: clinical, social, case management, residential and transportation services to ensure flexibility in meeting the needs of individuals in transition between program models; and

4. provide each individual with the appropriate supports to achieve and maintain employment in the most integrated setting appropriate, while maximizing each individual's personal strengths and preferences.

(b) Notwithstanding any other provisions of this article, income realized by a voluntary not-for-profit agency from industrial contracts entered into pursuant to its operation of a sheltered workshop shall be matched dollar for dollar by an office of the department of mental hygiene through direct contract with the agency provided that no part of the expenses of such sheltered workshop are claimed through a contract with the local governmental unit which is receiving funding for reimbursement of such expenses from the same office of the department provided that such sheltered workshop is operating in accordance with an approved local or unified services plan. In no event shall any combination of income including state aid exceed the total cost of operation of such sheltered workshop.

#### § 41.40. Small community residential facilities

The commissioner of the office of mental retardation and developmental disabilities is directed to submit to the governor and the legislature no later than January first, nineteen hundred ninety-one, a report and recommendations of actions necessary to encourage the development of small community residential programs including programs of ten beds or less. Such report and recommendations shall consider:

1. adequate operating costs associated with such facilities for each geographic region of the state;
2. a capital reimbursement methodology to promote and facilitate the development of small community residential facilities;
3. the need for individuals who are severely disabled to live in small community residential facilities; and
4. the need of local providers of service to make determinations regarding the size, structure and character of new community residential facilities in order to make such facilities compatible with the character of local neighborhoods.

#### § 41.41. Rights of mentally retarded and developmentally disabled

1. Each person who resides in a community residence has the same basic and legal rights as all other persons of the same age. Such rights are in no way diminished by the fact that such persons who are mentally retarded or otherwise developmentally disabled live in a community residence.

2. In order to ensure that such residents are able to lead a life of dignity, the commissioner shall include in rules and regulations promulgated for community residence a statement of the rights of persons living in such community residences which shall include, but not be limited to:

- (a) The right to request an alternative residential setting, either a new residence or change in roommates, and to be involved in decisions regarding such changes.
- (b) The right to privacy, and sufficient space for personal belongings.
- (c) The right to receive visits by families, friends and guardians and to make such visits; such right includes the right to privacy during such visits.
- (d) The right to receive and send communications freely.
- (e) The right to be free from physical or psychological restraints or pressure, subject to the provisions of section 33.04 of this chapter.
- (f) The right to engage in appropriate activities although some risk may be involved.
- (g) The right to a balanced and nutritious diet.
- (h) The right to appropriate medical and dental care and the right, either personally or through parents or guardians, in the choice of physician and dentist.
- (i) The right to appropriate clothing for age and season, and the right to be involved in the selection.
- (j) The right to meaningful and productive activities within his or her capacity.
- (k) The right to be informed regularly of their financial status and to be provided assistance in the use of their resources, as appropriate.

- (l) The right to the use of their personal money and property.
- (m) The right of access to meaningful recreation and community programs, and the right to participate in the planning of such activities.
- (n) The right to participate in the religion of their choice, on an individual as well as a group basis.
- (o) The right to receive assistance and guidance from staff.
- (p) The right to vote; and the right to participate in activities that educate the mentally retarded and developmentally disabled in their civic responsibilities.
- (q) The right to participate with staff in the establishment of house rules.
- (r) The right of the resident, their parents or guardians, to be informed of the resident's rights under law and regulation, and the guaranty that such rights shall not be abridged.
- (s) The right of the residents, their parents or guardians to express grievances, concerns and suggestions, without fear of reprisal.

§ 41.42. Family support programs[; mental health] [n1]

The commissioner of mental health, directly or through contract, and within amounts made available therefor, shall establish a family support program. The purpose of the program shall be to examine the impact of the provision of educational and support services on the incidence of hospitalization. Such services shall be provided to family members caring for chronically, mentally ill relatives at home and shall include but not be limited to ongoing psychoeducational training which will enhance the family's ability to care for disabled relatives at home by assisting them in understanding the nature and cause of the mental illness and providing them with the knowledge of strategies for handling the symptoms and behavior of disabled family members. The commissioner may authorize the development of a training curriculum, and a staff training program to implement this program and to design and carry out an evaluation of this program.

§ 41.43. Family support [fig 1] services

(a) The commissioner of the office of mental retardation and developmental disabilities, directly or through contract, and within amounts made available therefor, shall establish a family-directed, statewide system of comprehensive family support [fig 1] services. The purpose of [fig 2] family support services will be to enhance a family's ability to provide in-home care to their [fig 3] family members with a developmental disability. [fig 4]

(b) In administering family support services, the commissioner may, to the extent practicable, establish standards for outcome assessment and performance reviews of the goods and services obtained whether such goods and services are purchased pursuant to contract with the state, through reimbursement of families, through the issuance of vouchers to families for the purchase of goods and services, or through other means.

(c) For purposes of this section, family supports are goods, services, and subsidies, determined by the family and the commissioner of the office of mental retardation and developmental disabilities, which are provided to meet the goals of: (i) providing a quality of life comparable, to the extent practicable, to that of similarly situated families without a family member having a developmental disability; (ii) maintaining family unity; (iii) preventing premature or inappropriate out-of-home placement; (iv) reuniting families; (v) enhancing parenting skills; and (vi) maximizing the potential of the family member with a developmental disability.

(d) The mental retardation and developmental disabilities advisory council created by section 13.05 of this chapter shall establish a committee pursuant to the provisions of paragraph one of subdivision (c) of section 13.05 of this chapter, comprised of members selected by the commissioner, to be called the committee on family support services. The committee shall (i) provide information to the commissioner on the needs of families caring at home for a family member with a developmental disability; (ii) advise the commissioner on policies related to family supports and services; and (iii) offer advice to the commissioner on the design, implementation and monitoring of family support services. Members of the committee shall include persons with a developmental disability, family members of persons with a developmental disability, and professionals and others with an interest in the care of persons with developmental

disabilities. A majority of the committee shall be family members of persons with developmental disabilities. Members shall only receive reimbursement for expenses incurred in connection with their duties on the committee.

(e) The commissioner, in consultation with the committee on family support services, shall submit by January first, nineteen hundred ninety-three, and annually thereafter for four years, reports to the governor and the legislature concerning family support services. Such reports shall include, but not be limited to, the following: an analysis of family support services provided by contract agencies and those provided by the state, the amounts and sources of funds expended annually for family support services by region and by type of service, the number of families receiving services, the number of families estimated to be in need of family support services, the results of consumer and family member assessments of family support services, and a description of any new initiatives and recommendations for future action.

#### § 41.44. Community residential services for the mentally ill

(a) The commissioner of mental health is authorized, within appropriations made therefor, to establish a continuum of community residential services for the mentally ill.

(b) The commissioner shall establish standards for the operation and funding of community residential services, including but not limited to:

1. criteria for admission to and continued residence in each type of community residence;
2. periodic evaluation of services provided by community residences;
3. staffing patterns for each type of community residence; and
4. guidelines for determining state aid to community residences, as described in subdivision (c) of this section.

(c) Within amounts available therefor and subject to regulations established by him and notwithstanding any other provisions of this article, the commissioner may provide state aid to local governments and to voluntary agencies in an amount not to exceed one hundred percent of net operating costs of community residences for the mentally ill. The commissioner shall establish guidelines for determining the amount of state aid provided pursuant to this section. The guidelines shall be designed to enable the effective and efficient operation of such residences and shall include, but need not be limited to standards for determining anticipated revenue, for retention and use of income exceeding the anticipated amount and for determining reasonable levels of uncollectible income. Such state aid to voluntary agencies shall not be granted unless there has been prior approval of the proposed community residence by the local governmental unit.

(d) The commissioner shall establish standards for the operation and funding of residential care centers for adults, including but not limited to:

1. criteria for admission to and continued residence in residential care centers for adults, including curfews, restrictions against on-site use of alcohol and controlled substances and criminal involvement. For residential care centers for adults licensed or established after April first, nineteen hundred eighty-eight criteria for admission shall also include but not be limited to, in the case of centers on the grounds of existing state operated psychiatric hospitals, the availability of at least twenty-five percent of the placements for community clients. In the case of community based residential care centers for adults, a minimum of fifty percent of the placements within a region shall be reserved for community clients. For the purposes of this section a community client is any person who, immediately prior to admission to the residential care center for adults, was not a resident of a state operated psychiatric hospital for more than thirty consecutive days, or if such person was residing in the community immediately prior to admission to the residential care center for adults, was not a resident of a state operated psychiatric hospital within the previous thirty days;

2. provision of on-site services by residential care centers for adults which shall include but not be limited to, case management, medication management, and development of a recommended service plan for each resident for necessary social, vocational and clinical services;

3. periodic review of services provided by residential care centers for adults;

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4. staffing patterns for residential care centers for adults which shall be sufficient to provide on-site supervision twenty-four hours per day at each facility; and

5. guidelines for determining state aid to residential care centers for adults as described in subdivisions (e) and (f) of this section.

(e) Within amounts available therefor and notwithstanding any other provisions of this article, the commissioner may provide state aid to local governments and to voluntary agencies for the operation of residential care centers for adults in accordance with paragraph one of this subdivision, and may provide state aid to local governments, voluntary agencies, and other individuals or organizations certified to operate residential care centers for adults, in accordance with paragraph two of this subdivision.

1. The commissioner may provide state aid in an amount not to exceed one hundred percent of net operating costs of residential care centers for adults. The commissioner shall establish guidelines for determining the amount of state aid provided pursuant to this paragraph.

2. The commissioner may provide state aid through the payment of fees for reimbursable services. For purposes of this paragraph, reimbursable services include, but are not limited to, room and board. The commissioner shall establish standards for programs funded under this section and shall by rule or regulation annually establish fees for each reimbursable service, subject to the approval of the director of the budget. Fees may be varied for geographic reasons or for other good cause shown.

(f) Within amounts available therefor, the commissioner may provide state aid to local governments and voluntary agencies for capital costs for residential care centers for adults at the rate of up to fifty percent of such capital costs; provided, however, that no such state aid shall be granted unless the recipient enters into an agreement in a form acceptable to the commissioner guaranteeing that the residential care center for adults will be operated by the recipient or made available at no cost to another provider of services or the office of mental health for no less than twenty years, and grants the state such security and real property interests as the commissioner may require.

(g) No psychiatric center shall have more than one residential care center for adults on its grounds unless the commissioner of mental health submits a report to the legislature and the governor demonstrating the appropriateness of such additional residential care center for adults. After October first, nineteen hundred eighty-seven, the commissioner shall not convert inpatient buildings on the grounds of a psychiatric center to a residential care center for adults unless such buildings are vacant, nor cause such buildings to be vacated solely for the purposes of establishing a residential care center for adults.

#### § 41.45. Development grants for residential care centers for adults

The commissioner of mental health is authorized, within appropriations made therefor, to make grants to local governmental units and voluntary agencies for up to one hundred percent of the reasonable pre-operational costs associated with efforts to establish residential care centers for adults, including legal fees and initial management staffing.

#### § 41.46. Disclosure by members, officers and employees

In the event that an agency licensed by the office of mental retardation and developmental disabilities, the office of mental health or the office of alcoholism and substance abuse services enters into an agreement or has entered into an agreement for the purchase, lease, rehabilitation or improvement of real property or a cooperative share in real property, any employee who receives an annual salary in excess of thirty thousand dollars, or any board member, or officer of such agency who has a direct or indirect interest either financial or beneficial in such property including the interest of any person for whom he or she is related by consanguinity or affinity, shall disclose such interest prior to the making of such agreement or at the time of acquisition of such interest. Disclosure pursuant to this section shall be made in writing to the board of directors of such agency and shall indicate the material facts as to the member's, officer's, employee's or relative's interest in such property or cooperative share. Such disclosure shall be filed with the secretary of the corporation and entered on the minutes of a meeting of the board. Such disclosure shall also be forwarded in writing to the appropriate commissioner and to the director of community services of the local governmental unit within which the property or cooperative share is located prior to the approval of public funding related to the property or cooperative

share which is the subject of disclosure made pursuant to this section or at the time of the acquisition of such interest, whichever occurs later.

§ 41.47. Community support services program

(a) As used in this section:

(1) "Approved reimburseable rate" means the maximum rate of payment per unit of service established by the commissioner of mental health pursuant to subdivision (e) of this section, or the actual unit cost of providing community support services, whichever is less, minus revenue.

(2) "Core services" means the daily managing and monitoring of the implementation of the community support services program within a defined geographical area.

(3) "Designated adult home" means an adult care facility which is licensed by the commissioner of social services pursuant to article seven of the social services law, and which has been designated by the commissioner of mental health as containing a significant number of mentally ill persons who are in need of community support services.

(4) "Designated shelter for the homeless" means a shelter for the homeless which is licensed by the commissioner of social services pursuant to article seven of the social services law, and which has been designated by the commissioner of mental health as containing a significant number of mentally ill persons who are in need of community support services.

(5) "Designated single room occupancy residence" means a single room occupancy, as such term is defined in the multiple dwelling law or multiple residence law, whichever is applicable, which has been designated by the commissioner of mental health as containing a significant number of mentally ill persons who are in need of community support services.

(6) "Functionally disabled as a result of mental illness" means a person who has a severe, chronic disability which;

- (i) is caused by a medically determined mental illness, as evidenced by a primary psychiatric diagnosis;
- (ii) is likely to continue for a prolonged period; and
- (iii) results in substantial functional limitations in three or more of the following areas: (A) self-care, (B) social functioning, (C) activities of daily living, (D) economic self-sufficiency, (E) self-direction, and (F) ability to concentrate.

(7) "Provider of services" means the local governmental unit, voluntary agency, proprietary agency, association, or corporation which provides the community support services.

(8) "Qualified residence" means a community residence, residential care center for adults, family care home, or residential treatment facility for children and youth which is licensed or operated by the office of mental health.

(9) "Revenue" shall include:

- (i) reimbursement for operating costs for community support services received from other local governmental units or from state agencies other than the office of mental health, provided that revenue shall not include money received from any source, in the form of grants, awards or contracts, for purposes other than the support of such operating costs;
- (ii) federal aid received for such operating costs;
- (iii) fees received from patients, or on their behalf, from public and private health insurance and medical aid programs;
- (iv) other income received from the operation of the community support services program; and
- (v) interest and dividends accruing from funds received pursuant to this section.

(b) The community support services program shall include services and programs such as: case management services, advocacy services, clinic services, day treatment, day training, continuing treatment, homemaker services, housekeeping services, on-site rehabilitation services, sheltered workshop and other vocational programs, psychosocial clubs, neighborhood drop-in centers, transportation services, non-residential crisis services, outreach services, and other services approved by the commissioner.

(c) (1) The commissioner may, upon the application of a local governmental unit, and within the limits of appropriation therefore, grant state aid to such local governmental unit for one hundred percent of the approved costs of providing community support services to eligible persons, which shall not exceed the approved reimbursable rate, and the approved costs of providing core services. Local governmental units which receive state aid pursuant to this subdivision

either shall directly provide community support services or shall enter into contracts with providers of services for the provision of such services. Such local governmental units may also provide core services or contract with voluntary agencies for the provision of such core services.

(2) Persons who are otherwise ineligible to receive community support services pursuant to subdivision (d) of this section, shall be considered to be eligible to receive such services for purposes of paragraph one of this subdivision, if they are certified pursuant to subdivision (d) of this section to be eighteen years of age or older, to be functionally disabled as a result of mental illness and to have an ability to remain in the community which would be seriously jeopardized without the provision of community support services, but who do not meet the eligibility criteria of paragraph two or three of subdivision (d) of this section, provided however, that the provider of services shall make a reasonable effort to determine such persons' eligibility and, provided further, that no more than ten percent of the persons served by a local governmental unit or a provider of services which directly contracts with the office of mental health shall be otherwise ineligible persons.

(d) (1) Persons who shall be eligible for community support services shall include individuals who are eighteen years of age and older, who are functionally disabled as a result of mental illness, whose ability to remain in the community would be seriously jeopardized without the provision of community support services, and who satisfy the criteria in either paragraph two or three of this subdivision. [fig 1] Such eligibility shall be certified by a licensed psychiatrist, nurse, psychologist, licensed clinical social worker or a licensed master social worker under the supervision of a physician, psychologist or licensed clinical social worker who is approved by a local governmental unit, a core service agency, or the commissioner to certify individuals as being eligible for community support services.

(2) Persons who may be certified as permanently eligible to receive community support services pursuant to paragraph one of this subdivision shall include individuals who are determined to be eligible pursuant to regulations promulgated by the commissioner of mental health and shall include but not be limited to: (i) persons who have received inpatient psychiatric services in a hospital, or who have resided in a qualified residence or a designated adult home for a period or periods of time as established in such regulations of the commissioner; (ii) persons who are in receipt of supplemental security income benefits or social security disability insurance benefits pursuant to the federal social security act, provided that individuals who are in receipt of supplemental security income benefits must have been determined to be eligible for such benefits prior to reaching sixty-five years of age; (iii) persons who are receiving community support services on the effective date of this act pursuant to the regulations of the commissioner in effect on such date, who were determined to be eligible for such services based upon a prior history of inpatient hospitalization; and (iv) other persons who have received specified psychiatric services, as established pursuant to the regulations of the commissioner.

(3) Persons who may be certified as eligible to receive community support services pursuant to paragraph one of this subdivision shall include individuals who are residing in a designated adult home, a designated shelter for the homeless, a designated single room occupancy residence, a qualified residence, or who are homeless mentally ill persons. Such persons shall be considered eligible for community support services for the duration of their participation in such community support services, and such persons who need such services shall continue to be eligible to receive such services for a period of one year after receiving any such services.

(4) Notwithstanding the provisions of paragraph three of this subdivision, persons who are residing in designated adult homes or in designated shelters for the homeless, or who are homeless persons, may receive on-site rehabilitation services or outreach services provided under this section without a determination of eligibility as otherwise required under this subdivision.

(e) (1) The commissioner shall annually establish a schedule of maximum rates of payment per unit of service for reimbursable community support services. In establishing such maximum rates of payment per unit of service the commissioner may consider geographical variations and other relevant considerations. Such rates shall equal the medical assistance rates established pursuant to section 43.02 of this chapter, when applicable. Upon the application of the local governmental unit or a provider of services which directly contracts with the office of mental health to provide community support services, the commissioner may authorize additional reimbursement for a period of three local fiscal years after the effective date of this act, upon a showing of extraordinarily high costs of providing community support services and extraordinarily high revenue receipts, which have been demonstrated to be appropriate.

(2) The commissioner shall establish revenue goals for services, provided, however, the commissioner may approve local or unified services plans or may enter into direct contracts with providers of services which substitute alternative

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revenue goals for individual providers of services based upon appropriate documentation and justification, as required by the commissioner.

(f) Prior to entering into contracts for the provision of community support services, the office of mental health and local governmental units shall consider the following:

(1) the service needs of mentally ill persons in the geographical area in which the community support services program operates;

(2) the capacity of the program to meet identified service needs;

(3) the current availability of services for mentally ill persons in the area, including the special needs of ethnic minorities and non-English speaking mentally ill persons;

(4) the extent to which community support services authorized by the contract will be integrated with other available services in the area to more effectively maintain mentally ill persons in the community;

(5) the availability of resources for such services;

(6) the extent to which the community support services authorized by the contract are consistent and integrated with the applicable local or unified services plan of the area to be served; and

(7) the extent to which such contracts conform with the minimum contractual requirements as established by the commissioner.

(g) The commissioner may enter into a direct contract for the provision of community support services when the commissioner determines, after the approval of the local or unified services plan and the allocation of state aid therefore, that such direct contract is necessary to assure that additional community support services are available to persons who are functionally disabled as a result of mental illness and are eligible for community support services. Before entering into a direct contract with a provider located within the geographic area of a local governmental unit which receives state aid for community support services pursuant to this section, the commissioner shall notify the local governmental unit and give the director of the local governmental unit an opportunity to appeal the need for such direct contract. Such appeals shall be informal in nature and the rules of evidence shall not apply.

(h) In order to qualify for one hundred percent state aid pursuant to this section in any local fiscal year local governmental units shall assure that the local tax levy share of expenditures for net operating costs pursuant to an approved local services plan for services provided to mentally ill persons pursuant to section 41.18 of this article, when applicable, shall be equal to or greater than the local tax levy share of such expenditures under an approved local services plan in the last complete local fiscal year preceding the effective date of this section, and when applicable, such local tax levy share of net operating costs for local governmental units submitting unified services plans pursuant to section 41.23 of this article, as adjusted to reflect changes in the rate of state reimbursement for approved expenditures, shall be equal to or greater than the local tax levy share of the net operating costs for expenditures under the approved unified services plan in the last complete local fiscal year preceding the effective date of this section, provided, however, any such required maintenance of expenditures under this subdivision for local governmental units may be reduced to reflect the local governmental share of revenue applicable to increased payments made by governmental agencies pursuant to title eleven of article five of the social services law, which are a result of increased efficiencies in the collection of such revenue and which represent an increased proportion of the total local or unified services operating costs from the prior local fiscal year. The commissioner shall be authorized to reduce payments made to local governmental units pursuant to this article, in the following local fiscal year, for failure to maintain expenditures in accordance with this subdivision.

(i) The provisions of subdivision (h) of this section shall not apply to a local governmental unit in any local fiscal year in which the total amount of state aid granted to the local governmental unit for net operating costs under section 41.18 or section 41.23 of the article is less than such amount of state aid granted in the local fiscal year preceding the effective date of this section, or in any local fiscal year in which the total amount of state aid granted to the local governmental unit under this section, plus the total amount of direct contracts entered into between the commissioner and providers of services for the provision of community support services to eligible residents of such local governmental unit, shall be less than the total amount of such aid and direct contracts in the first local fiscal year following the effective date of this section.

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(j) The commissioner is authorized and empowered to make inspections and examine records of a local governmental unit receiving state aid under this section or a provider of services which directly contracts with the office of mental health for the provision of community support services. Such examination shall include all medical service and financial records, receipts, disbursements, contracts, loans and any other moneys relating to the financial operation of the community support services program.

(k) A local governmental unit in receipt of a grant for the provision of community support services pursuant to subdivision (c) of this section, which is a unit of a local government with a population of less than one hundred thousand or which has total program expenditures for mentally ill persons under this article equal to five hundred thousand dollars or less in a local fiscal year, shall be permitted to commingle such funds and the clients receiving community support services with other local mental health program funds or clients, including local mental health program funds and clients of other local governmental units. Such local governmental unit shall be required to submit a plan to the commissioner which shall describe how the goals and objectives of the community support services program shall be maintained under such an arrangement, and such plan must be approved by the commissioner prior to its implementation.

(l) No provision of this section shall be interpreted to create an entitlement for any individual to receive community support services.

(m) The commissioner is authorized to promulgate regulations to implement the provisions of this section.

#### § 41.48. Real property acquisition options

(a) Notwithstanding any inconsistent provision of this article and within appropriations made therefor, the commissioners of the offices of mental health and mental retardation and developmental disabilities are authorized upon the application of voluntary agencies, to make payments for the reasonable price of options to acquire an interest in real property, for the purpose of establishing a community mental hygiene facility. Such applications shall be made in the manner and on forms prescribed by the appropriate commissioner. Sellers of real property who are required to disclose financial or other beneficial interests in such property under section 41.46 of this article shall not be eligible to receive payments under this section.

(b) The comptroller is authorized, pursuant to section one hundred fifteen of the state finance law, to establish a cash advance account for the purpose of payment of options under this section. Such payments may only be made by a bonded employee, designated by the appropriate commissioner, from the cash advance account established for such purpose.

(c) As used in this section the term "reasonable price" shall mean an amount that is not in excess of guidelines developed by the commissioner of the office of mental health or mental retardation and developmental disabilities and approved by the director of the budget and the state comptroller.

#### § 41.49. [n1]Adolescent suicide prevention program

1. Within amounts appropriated, the office of mental health is hereby authorized and directed to establish and conduct, in consultation with and upon the approval of the council on children and families, a special program, the purpose of which shall be to provide grants to public or private not-for-profit organizations, or public or private schools, acting alone or in concert with others, in order to educate the general population, and in particular parents, teachers, clergy, health and mental health professionals and adolescents themselves of the positive actions that can be taken to identify and treat adolescents who are at high risk for suicide. For purposes of this section, the term "adolescent" shall mean any person under the age of twenty-one.

2. The commissioner shall in consultation with and upon the approval of the council on children and families promulgate standards to determine the eligibility of applicants for the grants herein authorized and be entitled to receive on appropriate forms such information as he deems necessary and relevant in making such determination. Such application to the extent possible shall include:

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- a. the projected impact and effectiveness of the program in meeting the community's need for adolescent suicide prevention programs;
- b. coordination with other community and/or school services;
- c. other sources of revenue available;
- d. the start up and continuing operating costs of such program;
- e. the number and age of youth expected to be reached by such program;
- f. the range and type of services to be offered and the number and types of personnel to be employed;
- g. a description of an outreach component of the program;
- h. methods to be used to increase the sensitivity of professionals and the public toward identifying youth at risk of suicide; and
- i. such other information as deemed pertinent by the commissioner.

3. The commissioner in consultation with the council on children and families shall specify methods to evaluate the effectiveness of proposed projects. The commissioner in consultation with and upon the approval of the council on children and families shall review and where necessary, require modifications and upon such modifications, approve or disapprove applications within thirty days of the receipt of the initial or modified application, whichever is appropriate. All applications approved by the commissioner in consultation with the council on children and families shall include a commitment to use appropriate accounting and fiscal control procedures which shall include the filing of an annual financial statement by each provider so as to ensure:

- a. the proper disbursement and accounting for funds received;
- b. appropriate written records regarding the population served and type and extent of services rendered by the provider;
- c. confidentiality standards so as to ensure the confidentiality of records of persons receiving services; and
- d. other funds, public or private, whenever resources are available.

4. Upon approval of each grant the commissioner shall contract with each grantee for a period of time not to exceed one year, but can extend such contract for one year periods when the commissioner after consulting the council on children and families determines it is appropriate.

5. Each grantee receiving payments hereunder shall submit to the commissioner within thirty days prior to the expiration of the contract a report following guidelines prepared by the commissioner which shall include:

- a. the information specified in subdivision two of this section;
- b. an assessment of the impact of the program on adolescents who are at high risk for suicide attempts;
- c. the extent to which the program coordinated services with other community programs; and
- d. any other information deemed relevant by the commissioner.

6. The commissioner shall prepare a summary of the reports required by subdivision five of this section, and forward this summary to the council on children and families for inclusion in its annual report and shall include such information in the annual report of the office of mental health.

7. The commissioner in consultation with the council on children and families shall promulgate such rules and regulations necessary and proper to implement the provision of this section.

§ 41.49. [n1]Community based mental health services for seriously emotionally disturbed children

- 1. As used in this section:

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"Seriously emotionally disturbed children" shall mean persons under the age of eighteen who have a serious, persistent disability which:

- (i) is caused by a medically determined mental illness as evidenced by a primary psychiatric diagnosis by a physician, or is caused by other serious emotional disturbance as defined by regulations of the commissioner of mental health;
- (ii) has continued or is likely to continue for a period of at least one year;
- (iii) would cause substantial risk of psychiatric hospitalization in the absence of community based mental health services; and
- (iv) results in substantial functional limitations in two or more of the following areas: (A) self-care at an appropriate developmental level, (B) receptive and expressive language, (C) learning, (D) self-direction, and (E) capacity for living in a family environment.

2. The commissioner of mental health is authorized, within appropriations made therefor, to make grants to local governmental units for one hundred percent of the net operating costs of community based programs approved by his office to serve seriously emotionally disturbed children. Grants provided under this section shall only be used to expand existing services or to create new services for seriously emotionally disturbed children and shall not supplant existing services for such individuals. The commissioner shall promulgate rules and regulations for the operation and funding of such programs. Such rules and regulations shall include but not be limited to, eligibility and program requirements, and standards for reimbursement. Such programs shall be designed to provide mental health services to seriously emotionally disturbed children in the community who, absent such services, would experience substantial risk of new or additional psychiatric hospitalization, or would experience substantial risk of serious functional disability as a result of their mental illness.

3. Nothing in this section shall be deemed to diminish the education department's responsibility for the education of children with handicapping conditions.

4. Notwithstanding any other provision of this article, in order to qualify for one hundred percent state aid pursuant to this section, local governmental units shall assure that local contributions for expenditures in any local fiscal year for local or unified services provided to mentally ill persons made pursuant to this article, as applicable, shall be equal to or greater than the amount expended by such local governmental unit in the last complete local fiscal year preceding the effective date of this section. The commissioner shall be authorized to reduce payments made to local governmental units which have received grants pursuant to this section, in the following local fiscal year, for failure to maintain expenditures in accordance with this subdivision.

5. The commissioner of mental health shall, no later than October first, nineteen hundred eighty-nine and every year thereafter, issue a report to the governor and the legislature regarding the implementation of the section.

§ 41.50. [Expires and repealed July 1, 2012] Development grants for comprehensive psychiatric emergency programs

The commissioner of mental health may, subject to the approval of the director of the budget, make grants to local governmental units, voluntary agencies, and general hospitals licensed pursuant to article twenty-eight of the public health law, for up to one hundred percent of the reasonable preoperational costs associated with efforts to establish comprehensive psychiatric emergency programs, including reasonable professional fees, reasonable and necessary fees paid to secure financing, other fees for services which are necessary for project development, initial staffing, furniture, equipment, reasonable rehabilitation costs, and other reasonable development costs approved by the commissioner of mental health.

§ 41.51. [Expires and repealed July 1, 2012] State aid for costs of comprehensive psychiatric emergency programs

(a) Notwithstanding any inconsistent provision of this article, local governments may be granted state aid, subject to appropriations made therefor, for up to one hundred percent of the net operating costs incurred during the local fiscal year by such local governments, or by voluntary agencies pursuant to contract with such local governments, for the operation of comprehensive psychiatric emergency programs licensed by the commissioner of mental health.

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(b) The commissioner of mental health may, subject to the approval of the director of the budget, directly contract with general hospitals licensed pursuant to article twenty-eight of the public health law, to reimburse approved operating and capital costs of comprehensive psychiatric emergency programs operated by such general hospitals. Before entering into a direct contract with a general hospital, the commissioner shall notify each local governmental unit located within the program's catchment area and give the director of the local governmental unit an opportunity to appeal the need for such direct contract. Such appeals shall be informal in nature and the rules of evidence shall not apply.

## § 41.52. Community residential services for alcoholism

(a) The [fig 1] commissioner of alcoholism and substance abuse services is authorized, within appropriations made therefor, to establish a continuum of community residential services for alcoholism.

(b) The [fig 1] commissioner shall establish standards for the operation and funding of community residential services, including but not limited to:

- (1) criteria for admission to and continued residence in each type of community residence;
- (2) periodic evaluation of services provided by community residences;
- (3) staffing patterns for each type of community residence; and
- (4) guidelines for determining state aid to community residences, as described in subdivision (c) of this section.

(c) Within amounts available therefor and subject to regulations established by the [fig 1] commissioner and notwithstanding any other provisions of this article, the [fig 2] commissioner may provide state aid to local governments and to voluntary agencies in an amount up to one hundred percent of net operating costs of community residences for alcoholism services. The [fig 3] commissioner shall establish guidelines for determining the amount of state aid provided pursuant to this section. The guidelines shall be designed to enable the effective and efficient operation of such residences and shall include, but need not be limited to, standards for determining anticipated revenue, for retention and use of income exceeding the anticipated amount and for determining reasonable levels of uncollectible income. Such state aid to voluntary agencies shall not be granted unless the proposed community residence is consistent with the relevant local services plan adopted pursuant to section 41.18 of this article.

## § 41.53. Community residence development grants for alcoholism services

(a) The [fig 1] commissioner of alcoholism and substance abuse services is authorized, within appropriations made therefor, to make grants to local governmental units and voluntary nonprofit agencies developing an alcoholism community residence as defined in subdivision thirty-eight of section 1.03 of this chapter. Such grants shall be limited to the development costs incurred prior to the operation of a community residence. Development costs which may be eligible for up to one hundred percent reimbursement under this grant include:

- (1) reasonable legal and other professional fees;
- (2) initial staffing;
- (3) up to six months rent;
- (4) furniture; and
- (5) reasonable rehabilitation costs within guidelines established by the division of the budget.

(b) Application for grants shall be made in the manner and on forms prescribed by the [fig 1] commissioner. The [fig 2] commissioner shall establish a schedule, subject to the approval of the director of the division of the budget, indicating the maximum development cost per bed for such community residences. Such schedule may include varying rates for distinct geographic areas of the state, if in the determination of the [fig 3] commissioner the location of an eligible community residence has direct bearing on the level of development costs. The [fig 4] commissioner may also establish varying rates based on the size of an eligible community residence.

(c) No grant will be awarded by the [fig 1] commissioner if the projected per bed development cost for the community residence exceeds the schedule established in subdivision (b) of this section.

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(d) No such grant will be awarded unless the community residence is consistent with the local services plan or the unified services plan, as appropriate, pursuant to this article.

(e) The state comptroller, or his legally authorized representative, is authorized and empowered to examine the books and accounts of the offices relating to program development grants and from time to time to examine the books and accounts of each local governmental unit or voluntary nonprofit agency receiving such grants, including its receipts, disbursements, contracts, leases, loans and any other moneys relating to its financial operation.

(f) Payments pursuant to this section shall be made in lieu of state aid for operating costs payable pursuant to any other provision of this article.

§ 41.54. [n1]Roles and responsibilities of certain board members

Within appropriations made therefor, the commissioner of the appropriate office within the department of mental hygiene shall provide appropriate information to members of boards of directors of organizations licensed to provide services to mentally disabled persons relevant to their appropriate roles and responsibilities as members of such boards as defined in applicable laws, rules and regulations. This information may be in the form of a training manual made available to such boards of directors.

*[n1] There are two sections 41.54.*

§ 41.54. [n1]Employee assistance programs

(a) The director of the division of alcoholism and alcohol abuse may, within appropriations made therefor, provide assistance in establishing and maintaining employee assistance programs.

(b) Such assistance may be provided to a consortium, a not-for-profit corporation that provides employee assistance program services to two or more of the following:

- (1) an employer of less than seven hundred fifty employees;
- (2) a labor organization;
- (3) a professional organization;
- (4) a community organization; or

(5) an employer of an economically distressed industry or located in an economically distressed region, or a business owned by or employing a high proportion of women or minorities.

(c) The division of alcoholism and alcohol abuse shall adopt rules and regulations to effectuate the provisions of this section, in consultation with other appropriate state agencies. Such rules and regulations shall include, but not be limited to, provisions relating to:

(1) the establishment of an advisory board, which shall work in consultation with the advisory council on alcoholism [fig 1] and [fig 2] substance abuse services, and whose membership shall include, but not be limited to, individuals from the occupational programs, professions and representatives of small businesses and labor organizations, and whose duties shall include, but not be limited to, recommendation of criteria for funding, and methods of determining program accountability;

(2) procedures for approval of funding for a program, including, but not limited to, elements necessary for the development and implementation of, and qualifications necessary for the staffing of, employee assistance program services;

(3) criteria for the confidentiality and maintenance of records; and

(4) minimum program standards for the operation of effective and appropriate employee assistance programs.

(d) Within amounts available therefor and subject to regulations established by the [fig 1] commissioner and notwithstanding any other provisions of this article, financial assistance to an employee assistance program shall not exceed [fig 2] eighty-five percent of the non-capital expenditures of the program's first year of operation for such year, [fig 3] seventy percent of such expenditures for the program's second year of operation, [fig 4] fifty percent for the program's third year of operation, and thirty percent of such expenditures for the fourth year of operation. No program shall receive financial aid under this section after completion of the fourth year.

(e) Applications for assistance shall be made in the manner prescribed by the director.

§ 41.55. [Expires and repealed March 31, 2010] Community mental health support and workforce reinvestment program

(a) Community mental health support and workforce reinvestment funds shall be annually allocated by the commissioner based upon the following criteria:

(1) the efficiency and effectiveness of the use of funding within the local governmental unit for the delivery of services to persons with serious mental illness in order to assure that resources are made available to fund mental health services to persons discharged into the community; and

(2) other relevant factors that require the maintenance of existing mental health services and the development of new mental health services.

(b) Amounts provided pursuant to this section shall only be used to fund mental health workforce related activities, including recruitment and retention initiatives and training programs, and other general programmatic activities to help ensure a stable mental health system. Such grants and other funds shall not be used for capital costs associated with the development of community mental health support and workforce reinvestment services.

(c) Prior to entering into contracts for the provision of services funded pursuant to subdivision (b) of this section, the office of mental health and any local governmental unit receiving such funds shall consider the following:

(1) the service needs of persons with serious mental illness, including children and adolescents with serious emotional disturbances, in the geographical area in which the community mental health support and workforce reinvestment program operates;

(2) the capacity of the program to meet identified service needs and specified performance standards related to access, admission, referral, and service coordination and delivery;

(3) the extent to which community mental health support and workforce reinvestment services authorized by the contract are consistent and integrated with the plan prepared and approved pursuant to section 41.16 of this article and other applicable provisions of this article; and

(4) the reliability and capability of the provider, including its expertise, prior experience, financial responsibility, record of adherence to law, record of providing quality care and services, and ability to deliver appropriate services in a cost-effective and efficient manner to persons with serious mental illness. The commissioner is authorized to promulgate regulations to establish minimum contractual obligations in accordance with the provisions of this subdivision.

(d) The commissioner is authorized and empowered to make inspections and examine records of a local governmental unit receiving state aid under this section or a provider of services funded pursuant to subdivision (b) of this section. Such examination shall include all medical, service and financial records, receipts, disbursements, contracts, loans and other moneys relating to the financial operation of the provider.

(e) The amount of community mental health support and workforce reinvestment funds for the office of mental health shall be determined in the annual budget and shall include the amount of actual state operations general fund appropriation reductions, including personal service savings and other than personal service savings directly attributed to each child and adult non-geriatric inpatient bed closure. For the purposes of this section a bed shall be considered to be closed upon the elimination of funding for such beds in the executive budget. The appropriation reductions as a result

of inpatient bed closures shall be no less than seventy thousand dollars per bed on a full annual basis, as annually recommended by the commissioner, subject to the approval of the director of the budget, in the executive budget request prior to the fiscal year for which the executive budget is being submitted. The commissioner shall report to the governor, the temporary president of the senate and the speaker of the assembly no later than October first, two thousand three, and annually thereafter, with an explanation of the methodologies used to calculate the per bed closure savings. The methodologies shall be developed by the commissioner and the director of the budget. In no event shall the full annual value of community mental health support and workforce reinvestment programs attributable to beds closed as a result of net inpatient census decline exceed the twelve month value of the office of mental health state operations general fund reductions resulting from such census decline. Such reinvestment amount shall be made available in the same proportion by which the office of mental health's state operations general fund appropriations are reduced each year as a result of child and adult non-geriatric inpatient bed closures due to census decline.

(f) Additional reinvestment amounts shall be made available for appropriation in the executive budget based upon state operation general fund appropriations directly attributed to the co-location or closure of psychiatric centers made pursuant to law. Such amount shall be made available at the same proportion by which the office of mental health state operations general fund appropriations are reduced each year as a result of facility co-locations and closures.

(g) The annual community mental health support and workforce reinvestment appropriation shall reflect the amount of state operations general fund appropriation reductions resulting from subdivisions (e) and (f) of this section. Within any fiscal year where appropriation increases are recommended for the community mental health support and workforce reinvestment program, insofar as projected inpatient census decline or facility co-locations or closures do not occur as estimated, and state operations general fund savings do not result, then the reinvestment appropriations shall be made available, as needed, for transfer from the office of mental health general fund-aid to localities account to the office of mental health general fund-state purposes account to pay for any necessary inpatient expenses. The total community mental health support and workforce reinvestment appropriation also may include such additional appropriations, as shall be determined to be needed and approved by the legislature, to fund all the provisions of this section.

(h) The commissioner shall report to the governor, the temporary president of the senate and the speaker of the assembly, no later than October first, two thousand four, and annually thereafter, with a long term capital plan for the future uses of all state mental health facilities, and shall include recommendations of the state interagency council on mental hygiene property utilization and local facility task forces on future uses of local state-operated hospital property, as established pursuant to sections twenty-two and twenty-three, respectively, of chapter seven hundred twenty-three of the laws of nineteen hundred ninety-three. Such plan shall, consistent with the provisions of section 5.07 of this chapter, include any proposed state mental health facility closures or consolidations. Further, such plan shall include the amount of actual state operation general fund appropriation reductions anticipated to be directly related to each proposed facility closure or consolidation approved by the legislature.

(i) Amounts made available to the community mental health support and workforce reinvestment program of the office of mental health shall be subject to annual appropriations therefor. Up to fifteen percent of the amounts so appropriated shall be made available for staffing at state mental health facilities and at least seven percent of the remaining funds may be allocated for state operated community services pursuant to this section.

(j) For purposes of this section, the term "state operations general fund" shall mean the office of mental health state operations general fund appropriations before any offset from the special revenue funds - other miscellaneous special revenue fund or mental hygiene patient income account.

(k) No provision in this section shall create or be deemed to create any right, interest or entitlement to services or funds that are the subject of this act, or to any other services or funds, whether to individuals, localities, providers or others, individually or collectively.

(l) The commissioner of mental health shall report to the governor, the temporary president of the senate and the speaker of the assembly, no later than October first, two thousand four, and annually thereafter, with a long-term plan for state employee utilization and their role in the provision of an integrated and comprehensive system of treatment and rehabilitation for persons with mental illness.

(m) All appropriations for community mental health support and workforce reinvestment services shall be adjusted in the following fiscal year to reflect the variance between the initial and revised estimates of census decline.

§ 41.57. Compulsive gambling education and treatment program

Notwithstanding any inconsistent provisions of this article and within amounts made available therefor by appropriation, the commissioner is authorized to develop, expand, operate or cause to be operated compulsive gambling education and treatment programs. The commissioner may employ any consultants deemed necessary to effectuate the purpose of this section and enter into contract with any not-for-profit corporation for provision of appropriate services. On the thirtieth day of January after the effective date of this section and each January thirtieth thereafter, the commissioner shall submit to the governor and the legislature a report detailing the implementation of this section and making recommendations for future development of compulsive gambling education and treatment programs.