

Pursuant to the authority vested in the Commissioner of Health by section 4403 of the Public Health Law, Part 98 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to be effective July 1, 2025, to read as follows:

Subdivision (p) of section 98-1.13 is added to read as follows:

A MCO shall meet standards for network adequacy and access standards for mental health and substance use disorder treatment services set forth in Subpart 98-5.

Subpart 98-5 is added to read as follows:

Subpart 98-5 Network Adequacy and Access Standards for Mental Health and Substance Use Disorder Treatment Services

Section 98-5.1 Purpose.

Section 98-5.2 Applicability.

Section 98-5.3 Definitions.

Section 98-5.4 Network provider type standards.

Section 98-5.5 Appointment wait time standards.

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Section 98-6.0 Effective date.

## Section 98-5.1 Purpose

Part II of chapter 57 of the Laws of 2023 amended the Public Health Law to improve access to behavioral health services in this State. Public Health Law 4403(5)(b), as added by Subpart F of Part II, requires the commissioner, in consultation with the Superintendent of Financial Services, the commissioner of the Office of Mental Health, and the commissioner of the Office of Addiction Services and Supports, to propose regulations setting forth standards for network adequacy for mental health and substance use disorder treatment services, including sub-acute care in a residential facility, assertive community treatment services, critical time intervention services, and mobile crisis intervention services. Subpart A of Part II establishes the effective date for coverage of sub-acute care in a residential facility, assertive community treatment services, critical time intervention services, and mobile crisis intervention services. This Subpart implements the requirements of Public Health Law 4403(5)(b), as amended by Subpart F of part II of chapter 57 of the Laws of 2023, and the requirements of Subpart A Part II by establishing network adequacy and access standards and other protections to improve access to behavioral health services.

## Section 98-5.2 Applicability.

- (a) This Subpart shall apply to all MCOs offering coverage that are subject to the mental health and substance use disorder requirements under Insurance Law § 4303 and Public Health Law § 4406.

Section 98-5.3 Definitions.

As used in this Part:

(a) *Appointment wait time* means the time from the initial request for health care services to the earliest date offered for the appointment for services.

(b) *Behavioral health services* mean mental health services and substance use disorder treatment services.

(c) *Health care professional* means an appropriately licensed, registered, or certified health care professional pursuant to title 8 of the Education Law or a health care professional comparably licensed, registered, or certified by another state.

(d) *Health care provider or provider* means a health care professional, or a facility licensed, certified, or designated pursuant to Public Health Law articles 28, or Mental Hygiene Law articles 19, 31, 32, or 36, or a facility comparably licensed or certified by another state.

(e) *Network* means the health care providers with which a MCO has contracted to provide health care services to enrollees.

(f) *Non-participating* means not having a contract with a MCO to provide health care services to an enrollee.

(g) *Participating* means having a contract with a MCO to provide health care services to an enrollee.

(h) *Telehealth* has the meaning set forth in section 2999-cc of the Public Health Law and includes audio-only visits.

Section 98-5.4 Network provider type standards.

(a) Pursuant to Public Health Law section 4403(5)(b), a MCO shall ensure that its provider network is adequate to meet the behavioral health needs of enrollees and provide an appropriate choice of providers sufficient to render the behavioral health services covered under its health insurance contracts.

(b) An adequate network of health care providers of behavioral health services shall include residential facilities that provide sub-acute care; assertive community treatment providers; critical time intervention services providers; and mobile crisis intervention services providers, after the commissioner, in consultation with the Superintendent of Financial Services, the commissioner of the Office of Mental Health, and the commissioner of the Office of Addiction Services and Supports, has determined, for each provider type listed in this subdivision, that there is a sufficient number of certified, licensed, or designated health care providers available in this State to meet the network adequacy standards established by Public Health Law 4403(5)(b). Once the commissioner makes this determination, the network adequacy standards shall apply to the provider types listed in this subdivision for contracts issued, renewed, modified, or amended 90 days after the commissioner makes this determination.

Section 98-5.5 Appointment wait time standards.

(a) A MCO shall ensure that its network has adequate capacity and availability of health care providers of behavioral health services to offer enrollees appointments with providers that can treat enrollees' behavioral health conditions within:

- (1) 10 business days for an initial appointment with an outpatient facility or clinic;

(2) 10 business days for an initial appointment with a health care professional who is not employed by or contracted with an outpatient facility or clinic; and

(3) seven calendar days for an appointment following a discharge from a hospital or an emergency room visit.

(b) A MCO may meet the appointment wait times set forth in subdivision (a) of this section through the use of telehealth unless the enrollee specifically requests an in-person appointment to treat the enrollee's behavioral health condition.

#### Section 98-5.6 Access to providers for enrollees.

(a) If an enrollee is unable to schedule an appointment with a participating provider of behavioral health services within the appointment wait times set forth in section 98-5.5 of this Part because there is not a participating provider of behavioral health services available within the appointment wait times who can treat the enrollee's behavioral health condition, the enrollee, or the enrollee's designee, may submit an access complaint by telephone, and in writing to the MCO to resolve the access issue.

(b) The MCO shall have three business days from receipt of the access complaint to locate a participating provider of behavioral health services that can treat the enrollee's behavioral health condition and is able to meet the appointment wait times set forth in section 98-5.5 of this Part and to give the enrollee or the enrollee's designee the name of and contact information for the provider or providers by telephone, if the request was made by telephone, and in writing. If the enrollee specifically requests an in-person appointment, the provider shall be located within a reasonable distance from the enrollee;

however, the distance may be greater for enrollees who reside in rural areas than for enrollees who do not reside in rural areas.

(c) If the MCO is unable to locate a participating provider of behavioral health services that can treat the enrollee's behavioral health condition, is able to meet appointment wait times set forth in section 98-5.5 of this Part, and is located within a reasonable distance from the enrollee if the enrollee specifically requests an in-person appointment, the MCO shall;

(1) notify the enrollee by telephone, if the request was made by telephone, and in writing, at the expiration of the time period in subdivision (b) of this section that the enrollee may obtain a referral to a non-participating provider at the in-network cost-sharing and include contact information for the New York State Behavioral Health Ombudsman Program; and

(2) approve a referral to a non-participating provider, regardless of whether the enrollee's coverage includes out-of-network benefits, if the non-participating provider:

(i) can treat the enrollee's behavioral health condition;

(ii) is able to meet the appointment wait times set forth in section 98-5.5 of this Part, as measured from the enrollee's receipt of the notification in paragraph (1) of this subdivision;

(iii) is located within a reasonable distance from the enrollee if the enrollee specifically requests an in-person appointment; and

(iv) charges rates that are not excessive or unreasonable.

(d) The approved referral shall remain in effect until the earlier of the following:

(1) the behavioral health services are no longer medically necessary; or

(2) the MCO locates a participating provider of behavioral health services that can treat the enrollee's behavioral health condition, is able to meet the appointment wait times set forth in section 98-5.5 of this Part and is located within a reasonable distance from the enrollee if the enrollee specifically requests an in-person appointment, and the enrollee's treatment can be transitioned to the participating provider, unless the MCO determines, in consultation with the enrollee's treating provider, as appropriate, that such a transition would be harmful to the enrollee. If the enrollee or the enrollee's designee disagrees with the MCO's transition of care determination, the enrollee or the enrollee's designee may request an expedited determination or appeal pursuant to Public Health Law section 4408-a or 4904, as applicable.

(e) The MCO shall not impose cost-sharing on the enrollee, including a copayment, coinsurance, or deductible, for the service rendered by a non-participating provider pursuant to an approved referral, that is greater than the cost-sharing that the enrollee would owe if the enrollee had received services from a participating provider. The MCO shall apply the out-of-pocket maximum that would have applied had the services been received from a participating provider.

Section 98-5.7 Provider directory requirements.

(a) In addition to the provider directory requirements set forth in Public Health Law 4403 and 4408, when listing a behavioral health provider, the provider directory shall include:

(1) any affiliation with participating facilities certified or authorized by the Office of Mental Health and the Office of Addiction Services and Supports;

(2) information on restrictions on the availability of services from a behavioral health provider. Restrictions on the availability of services means an age limit on the types of patients the behavioral health provider treats or any limits on the types of specific behavioral health conditions that the behavioral health provider treats;

(3) if the behavioral health provider is a facility, the level of care offered by the facility, including inpatient, outpatient, partial hospitalization, and intensive outpatient programs;

(4) the city/town and zip code where the behavioral health provider is located;

(5) whether the behavioral health provider offers services via telehealth; and

(6) if the behavioral health provider is a health care professional, the languages spoken by the health care professional.

(b) With respect to behavioral health providers, the provider directory that is posted on a publicly accessible area of the MCO's website shall be searchable and filterable by behavioral health services provided and conditions treated, level of care offered by a facility, languages spoken, affiliations with participating facilities certified or authorized by the Office of Mental Health or the Office of Addiction Services and Supports, and the city/town or zip code where the provider is located.

(c) In addition to the disclosure requirements set forth in Public Health Law 4408(1)(r), a MCO shall provide the enrollee or the enrollee's designee with a list of behavioral health providers available to treat a specific behavioral health condition within three business days of the request of the enrollee or the enrollee's designee.



(d) A MCO shall verify the accuracy of the information in the provider directory with behavioral health providers at least annually.

(e) A MCO shall review the claims activity of the first six months of the year by September 1 of that year and, for the second six months of the year by March 1 of the following year. If the MCO did not receive any claims from a participating provider of behavioral health services within those periods, the MCO shall confirm whether the provider is accepting new patients and the provider's participation status with the MCO.

(f) A MCO shall have a method available on a publicly accessible area of its website for enrollees, health care providers, and other persons to report errors in the provider directory information. Within 15 calendar days of receipt of reported errors, the MCO shall review the errors reported and ensure that the online provider directory information is accurate.

#### Section 98-5.8 Additional MCO responsibilities regarding network adequacy and access.

(a) A MCO shall have designated staff with sufficient knowledge to help enrollee find participating behavioral health providers that treat the enrollee's specific behavioral health condition. The MCO shall post the contact information for the department or unit, including a telephone number, on a publicly accessible area of its website, that allows the enrollee to access this designated staff directly.

(b) A MCO shall post information on a publicly accessible area of its website describing the appointment wait time standards for behavioral health services and the process to submit an access complaint.

(c)(1) A MCO shall have an access plan that establishes a protocol for monitoring and ensuring access to behavioral health services, outlines how provider capacity is determined, and establishes procedures for quarterly monitoring of capacity and access and for improving access and managing access in times of reduced participating provider capacity. The access plan and associated monitoring protocol shall address the following:

- (i) expected utilization of behavioral health services based on anticipated enrollment and health care needs of the enrollee population;
- (ii) the number and types of health care providers of behavioral health services required to furnish covered behavioral health services, the number and types of providers actively providing behavioral health services within the MCO's network, and the number and types of providers accepting new patients;
- (iii) the collection and monitoring of data on provider-to-enrollee ratios, travel time and distance to participating providers, and appointment wait times;
- (iv) the role of telehealth in providing access to behavioral health services; and
- (v) the ability of the MCO's network of behavioral health providers to meet the cultural and linguistic needs of the MCO's enrollee population.

(2) A MCO shall make the access plan available to the commissioner upon the commissioner's request.

Section 98-5.9 MCO reporting on network adequacy and access.

(a) By December 31, 2026 and annually thereafter, each MCO shall submit to the commissioner a written certification in a form prescribed by the commissioner and signed by an officer of the MCO that confirms the following:

(1) the MCO has an access plan as required by section 98-5.8 of this Part and that such access plan is available upon the commissioner's request;

(2) the MCO has sufficient participating providers in each network used by the MCO to meet the appointment wait time standards as required by section 98-5.5 of this Part, or in instances where there are not sufficient participating providers to meet the appointment wait time standards as required by section 98- 5.5 of this part, that the MCO allows enrollees to obtain behavioral health services from non-participating providers pursuant to section 98-5.6 of this Part;

(3) the number of access complaints received and a description of how the access complaints were resolved, including the behavioral health services requested, the geographic area of the State where the services were requested, the number of approved referrals to non-participating providers made during the prior 12 months pursuant to section 98-5.6 of this Part; and the number of referrals that the MCO did not approve and the reasons why the MCO did not approve the referrals; and

(4) the MCO has performed the provider directory verification required by section 98-5.7 of this Part.

Section 98-6.0 Effective date.

This Part shall take effect July 1, 2025 and shall apply to all policies issued, renewed, modified, or amended on or after such date.