**§ 43.06 Assessments.**

1. Providers of services, as defined in this section, are charged assessments on their gross receipts received from all patient care services and other operating income less personal needs allowances and refunds on a cash basis in the percentage amounts and for the periods specified in subdivision two of this section. Such assessments shall be submitted by or on behalf of providers of services to the commissioner of mental health or his or her designee.

2. (a) Providers of services, for the purposes of this section, shall be hospitals licensed pursuant to article thirty-one of this chapter (which shall not include wards, wings, units or other parts of a hospital, as defined in article twenty-eight of the public health law,) and residential treatment facilities for children and youth, as defined in section 1.03 of this chapter.

(b)(i) For such hospitals which are providers of services, the assessment shall be six-tenths of one percent of each provider's gross receipts received from all patient care services and other operating income on a cash basis beginning January first, nineteen hundred ninety-one for hospital or mental health-related services including but not limited to inpatient service, outpatient service and emergency service; provided, however, that for all such gross receipts received on or after December first, nineteen hundred ninety-eight, such assessment shall be two-tenths of one percent, and further provided that for all such gross receipts received on or after April first, nineteen hundred ninety-nine, such assessment shall be one-tenth of one percent, and further provided that such assessment shall expire and be of no further effect for all such gross receipts received on or after January first, two thousand.

(ii) If required pursuant to the provisions of subdivision thirteen of this section, for such hospitals which are providers of services, an additional assessment shall be one-tenth of one percent of each provider's gross receipts received from all patient care services and other operating income on a cash basis beginning April first, nineteen hundred ninety-two for hospital or mental health-related services including but not limited to inpatient service, outpatient service and

emergency service; provided, however, that such additional assessment shall expire and be of no further effect for all such gross receipts received on or after December first, nineteen hundred ninety-seven.

(c)(i) For residential treatment facilities for children and youth, the assessment shall be six-tenths of one percent of each provider's gross receipts received from all patient care services and other operating income on a cash basis beginning July first, nineteen hundred ninety-one for hospital or mental health-related service including but not limited to inpatient service, outpatient service and emergency service; provided, however, that for all such gross receipts received on or after December first, nineteen hundred ninety-eight, such assessment shall be two-tenths of one percent, and further provided that for all such gross receipts received on or after April first, nineteen hundred ninety-nine, such assessment shall be one-tenth of one percent, and further provided that such assessment shall expire and be of no further effect for all such gross receipts received on or after January first, two thousand.

(ii) If required pursuant to the provisions of subdivision thirteen of this section, for residential treatment facilities for children and youth, an additional assessment, shall be one-tenth of one percent of each provider's gross receipts received from all patient care services and other operating income on a cash basis beginning April first, nineteen hundred ninety-two for hospital or mental health-related service including but not limited to inpatient service, outpatient service and emergency service; provided, however, that such additional assessment shall expire and be of no further effect for all such gross receipts received on or after December first, nineteen hundred ninety-seven.

3. For all providers of services, gross receipts from patient care services and other operating income shall include, but not be limited to: (a) all moneys received for or on account of inpatient service, outpatient service, emergency service, or other hospital, mental health or mental health related service; and (b) all moneys received for or on account of such revenue sources as investment income, parking lots, cafeterias, gift shops, and rental income, provided, however, that subject to the provisions of subdivision twelve of this section income

received from grants, charitable contributions, donations and bequests and governmental deficit financing shall not be included.

4. The commissioner is authorized to contract with the article forty-three insurance law plans, or such other administrators as the commissioner shall designate, to receive and distribute provider of services assessment funds. In the event contracts with the article forty-three insurance law plans or other commissioner's designees are effectuated, the commissioner shall conduct annual audits of the receipt and distribution of the assessment funds. The reasonable cost and expenses of such administrators as approved by the commissioner, not to exceed for personnel services on an annual basis one hundred thousand dollars for all assessments established pursuant to this section, shall be paid from the assessment funds.

5. Estimated payments by or on behalf of providers of services to the commissioner or his or her designee of funds due from the assessments pursuant to subdivision two of this section shall be made on a monthly basis. Estimated payments shall be due on or before the fifteenth day following the end of a calendar month to which an assessment applies.

6. (a) If an estimated payment made for a month to which an assessment applies is less than seventy percent of an amount the commissioner determines is due, based on evidence of prior period moneys received by a provider of services or evidence of moneys received by such provider of services for that month, the commissioner may estimate the amount due from such provider of services and may collect the deficiency pursuant to paragraph (c) of this subdivision.

(b) If an estimated payment made for a month to which an assessment applies is less than ninety percent of an amount the commissioner determines is due, based on evidence of prior period moneys received by a provider of service or evidence of moneys received by such provider of services for that month, and at least two previous estimated payments within the preceding six months were less than ninety percent of the amount due, based on similar evidence, the commissioner may estimate the amount due from such provider of services and may collect the deficiency pursuant to paragraph (c) of this subdivision.

(c) Upon receipt of notification from the commissioner of a provider of services' deficiency under this section, the comptroller or a fiscal intermediary designated by the director of the budget, or the commissioner of social services, or a corporation organized and operating in accordance with article forty-three of the insurance law, or an organization operating in accordance with article forty-four of the public health law shall withhold from the amount of any payment to be made by the state or by such article forty-three corporation or article forty-four organization to the provider of services the amount of the deficiency determined under paragraph (a) or (b) of this subdivision or paragraph (e) of subdivision seven of this section. Upon withholding such amount, the comptroller or a designated fiscal intermediary, or the commissioner of social services, or corporation organized and operating in accordance with article forty-three of the insurance law or organization operating in accordance with article forty-four of the public health law shall pay the commissioner, or his designee, such amount withheld on behalf of the provider of services.

(d) The commissioner shall provide a provider of services with notice of any estimate of an amount due for an assessment pursuant to paragraph (a) or (b) of this subdivision or paragraph (e) of subdivision seven of this section at least three days prior to collection of such amount by the commissioner. Such notice shall contain the financial basis for the commissioner's estimate.

(e) In the event a provider of services objects to an estimate by the commissioner pursuant to paragraph (a) or (b) of this subdivision or paragraph (e) of subdivision seven of this section of the amount due for an assessment, the provider of services, within sixty days of notice of an amount due, may request a public hearing. If a hearing is requested, the commissioner shall provide the provider of services an opportunity to be heard and to present evidence bearing on the amount due for an assessment within thirty days after collection of an amount due or receipt of a request for a hearing, whichever is later. An administrative hearing is not a prerequisite to seeking judicial relief.

(f) The commissioner may direct that a hearing be held without any request by a provider of services.

7. (a) Every provider of services shall submit reports on a cash basis

of actual gross receipts received from all patient care services and operating income for each month as follows:

(i) for hospitals which are providers of services, for the period January first, nineteen hundred ninety-one through January thirty-first, nineteen hundred ninety-one, the report shall be filed on or before March fifteenth, nineteen hundred ninety-one; and

(ii) for the quarter year ending March thirty-first, nineteen hundred ninety-one and for each quarter thereafter, the report shall be filed on or before the forty-fifth day after the end of such quarter; and

(iii) for residential treatment facilities for children and youth, for the period July first, nineteen hundred ninety-one through September thirtieth, nineteen hundred ninety-one and each quarter thereafter, the report shall be filed on or before the forty-fifth day after the end of the quarter.

(b) Every provider of services shall submit a certified annual report on a cash basis of gross receipts received in such calendar year from all patient care services and operating income.

(c) The reports shall be in such form as may be prescribed by the commissioner to accurately disclose information required to implement this section.

(d) Final payments shall be due for all providers of services for the assessments pursuant to subdivision two of this section upon the due date for submission of the applicable quarterly report.

(e) The commissioner may recoup deficiencies in final payments pursuant to paragraph (c) of subdivision six of this section.

8. (a) If an estimated payment made for a month to which an assessment applies is less than ninety percent of the actual amount due for such month, interest shall be due and payable to the commissioner on the difference between the amount paid and the amount due from the day of the month the estimated payment was due until the date of payment. The rate of interest shall be twelve percent per annum or at the rate of interest set by the commissioner of taxation and finance with respect to underpayments of tax pursuant to subsection (e) of section one thousand ninety-six of the tax law minus four percentage points. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar. Interest, if not paid by the due date of the following month's

estimated payment, may be collected by the commissioner pursuant to paragraph (c) of subdivision six of this section in the same manner as an assessment pursuant to subdivision two of this section.

(b) If an estimated payment made for a month to which an assessment applies is less than seventy percent of the actual amount due for such month, a penalty shall be due and payable to the commissioner of five percent of the difference between the amount paid and the amount due for such month when the failure to pay is for a duration of not more than one month after the due date of the payment with an additional five percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate. A penalty may be collected by the commissioner pursuant to paragraph (c) of subdivision six of this section in the same manner as an assessment pursuant to subdivision two of this section.

(c) Overpayment by a provider of services of an estimated payment shall be applied to any other payment due from the provider of services pursuant to this section, or, if no payment is due, at the election of the provider of services shall be applied to future estimated payments or refunded to the provider of services. Interest shall be paid on overpayments from the date of overpayment to the date of crediting or refund at the rate determined in accordance with paragraph (a) of this subdivision if the overpayment was made at the direction of the commissioner. Interest under this paragraph shall not be paid if the amount thereof is less than one dollar.

9. Funds accumulated, including income from invested funds, from the assessments specified in this section, including interest and penalties, shall be deposited by the commissioner and credited to the general fund.

10. Notwithstanding any inconsistent provision of law or regulation to the contrary, the assessments pursuant to this section shall not be an allowable cost in the determination of reimbursement rates pursuant to this article.

11. (a) (ii) The assessment shall not be collected in excess of one million three hundred thousand dollars from providers of services pursuant to paragraph (b) of subdivision two of this section for the

period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight. The amount of the assessment collected pursuant to paragraph (b) of subdivision two of this section in excess of one million three hundred thousand dollars for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight shall be refunded to providers of services by the commissioner of mental health based on the ratio which a hospital's assessment for such period bears to the total of the assessments for such period paid by such hospitals.

(iii) The additional assessment shall not be collected in excess of three hundred thousand dollars from providers of services pursuant to paragraph (b) of subdivision two of this section for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight. The amount of the additional assessment collected pursuant to paragraph (b) of subdivision two of this section in excess of three hundred thousand dollars for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight shall be refunded to providers of services by the commissioner of mental health based on the ratio which a hospital's additional assessment for such period bears to the total of the additional assessments for such period paid by such hospitals.

(b) (ii) The assessment shall not be collected in excess of two hundred thousand dollars from residential treatment facilities for children and youth pursuant to paragraph (c) of subdivision two of this section for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight. The amount of the assessment collected pursuant to paragraph (c) of subdivision two of this section in excess of two hundred thousand dollars for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight shall be refunded to providers of services by the commissioner of mental health based on the ratio which a residential treatment facility for children and youth's assessment for such period bears to the total of the assessments for such period paid by such residential treatment facilities for children and youth.

(iii) The additional assessment shall not be collected in excess of fifty thousand dollars from residential treatment facilities for children and youth pursuant to paragraph (c) of subdivision two of this

section for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight. The amount of the additional assessment collected pursuant to paragraph (c) of subdivision two of this section in excess of fifty thousand dollars for the period of April first, nineteen hundred ninety-seven through March thirty-first, nineteen hundred ninety-eight shall be refunded to providers of services by the commissioner of mental health based on the ratio which a residential treatment facility for children and youth's additional assessment for such period bears to the total of the additional assessments for such period paid by such residential treatment facilities for children and youth.

12. Each exclusion of sources of gross receipts received from the assessments effective on or after April first, nineteen hundred ninety-two established pursuant to this section shall be contingent upon either: (a) qualification of the assessments for waiver pursuant to federal law and regulation; or (b) consistent with federal law and regulation, not requiring a waiver by the secretary of the department of health and human services related to such exclusion; in order for the assessments under this section to be qualified as a broad-based health care related tax for purposes of revenues received by the state pursuant to the assessments not reducing the amount expended by the state as medical assistance for purposes of federal financial participation. The commissioner of mental health shall collect the assessments relying on such exclusions, pending any contrary action by the secretary of the department of health and human services. In the event the secretary of the department of health and human services determines that the assessments do not so qualify based on any such exclusion, then the exclusion shall be deemed to have been null and void as of April first, nineteen hundred ninety-two, and the commissioner of mental health shall collect any retroactive amount due as a result, without interest or penalty provided the provider of services pays the retroactive amount due within ninety days of notice from the commissioner of mental health to the provider of services that an exclusion is null and void. Interest and penalties shall be measured from the due date of ninety days following notice from the commissioner of mental health to the provider of services.

13. Subparagraph (ii) of paragraph (b) of subdivision two and subparagraph (ii) of paragraph (c) of subdivision two of this section shall be of no force and effect upon either: (a) a waiver is granted pursuant to federal law and regulation; or (b) consistent with federal law and regulation, a waiver is not required by the secretary of the department of health and human services for a difference between the rate of assessment on hospitals and residential treatment facilities for children and youth assessed pursuant to this section and the rate of assessment including the additional assessment on general hospitals assessed pursuant to section twenty-eight hundred seven-d of the public health law; in order for the assessments pursuant to this section and the assessments including the additional assessment on general hospitals pursuant to section twenty-eight hundred seven-d of the public health law to be qualified as broad-based health care related taxes for purposes of the revenues received by the state pursuant to this section and section twenty-eight hundred seven-d of the public health law not reducing the amount expended by the state as medical assistance for purposes of federal financial participation. The commissioner of mental health shall not collect the additional assessments under this section, pending any contrary action by the secretary of the department of health and human services. In the event the secretary of the department of health and human services determines that the assessments pursuant to this section or the assessments including the additional assessment on general hospitals pursuant to section twenty-eight hundred seven-d of the public health law do not so qualify based on the difference between the rate of assessment on hospitals or residential treatment facilities for children and youth assessed pursuant to this section and the rate of assessment including the additional assessment on general hospitals pursuant to section twenty-eight hundred seven-d of the public health law then the provisions of subparagraph (ii) of paragraph (b) of subdivision two and subparagraph (ii) of paragraph (c) of subdivision two of this section shall be deemed to have been in full force and effect as of April first, nineteen hundred ninety-two, and the commissioner of mental health shall collect any retroactive amount due as a result, without interest or penalty provided the provider of services pays the retroactive amount due within ninety days of notice

from the commissioner of mental health to the provider of services that the exclusion is null and void. Interest and penalties shall be measured from the due date of ninety days following notice from the commissioner of mental health to the provider of services.