§ 9.51 Residential treatment facilities for children and youth; admissions.

(a) The director of a residential treatment facility for children and youth, as defined by section 1.03 of this chapter, may receive as a patient a person under the age of twenty-one in need of care and treatment in such a facility who has been determined appropriate for such care and treatment in accordance with standards and priorities for admission established by the office in regulations in accordance with federal regulations.

(b) Persons admitted as in-patients to hospitals operated by the office of mental health upon the application of the commissioner of the office of children and family services pursuant to section five hundred nine of the executive law or 353.4 of the family court act who are not subject to a restrictive placement pursuant to section 353.5 of the family court act, may, if appropriate, and subject to the provisions of subdivision (d) of this section, be transferred to a residential treatment facility for children and youth. The commissioner of the office of children and family services shall be notified of any such transfer. When appropriate, the director of the residential treatment facility may arrange the return of a patient so transferred to the hospital or the transfer of a patient to another hospital or, in accordance with subdivision four of section five hundred nine of the executive law to the commissioner of the office of children and family services.

(c) The commissioner shall consult with the executive director of the council on children and families regarding the establishment of an advisory board. The advisory board shall include, as deemed appropriate by the commissioner and the executive director of the council on children and families, representatives of the members of the council on children and families as specified in section four hundred eighty-three of the social services law, local agency representatives under the jurisdiction of a member agency of the council on children and families, family representatives with lived experience with residential treatment facility services, medical directors from residential treatment facilities, and representatives from hospitals with pediatric inpatient psychiatric beds, that is not operated by the state office of mental health. Members of the advisory board shall be representative of the

racial, ethnic, and geographic diversity of the state. Such board shall have the right to visit residential treatment facilities for children and youth and shall have the right to review clinical records and shall be bound by the confidentiality requirements of section 33.13 of this chapter. The advisory board shall issue an annual report on the disposition of applications for admission to residential treatment facilities. Such report shall include, but not be limited to: the number of children that applied to each residential treatment facility, the number of children admitted to each residential treatment facility, the number of children transferred from a hospital operated by the office of mental health and subsequently transferred to another hospital, the average length of stay for residents at each residential treatment facility, the number of children served at each residential treatment facility, and the number of involuntary placements and/or transfers from office of mental health operated inpatient facilities which occur each calendar year. Such annual report shall be posted on the office of mental health's website and submitted to the governor, the speaker of the assembly and the temporary president of the senate by March first for the previous calendar year.

(d) Applications for admission or transfer of an individual to a residential treatment facility for children and youth must document that there has been an evaluation of the needs of the individual and a determination of the individual's need for treatment in a residential treatment facility for children and youth and the appropriateness of such treatment. In the case of individuals who are applicants or recipients of medical assistance pursuant to title eleven of article five of the social services law, such determination shall also include certification of need for residential treatment facility services in accordance with this section. Where certification is required, an individual will be certified for admission if:

(1) Available ambulatory care resources and other residential placements do not meet the treatment needs of the individual;

(2) Proper treatment of the individual's psychiatric condition requires in-patient care and treatment under the direction of a physician; and

(3) Care and treatment in a residential treatment facility for children and youth can reasonably be expected to improve the

individual's condition or prevent further regression so that services will no longer be needed, provided that a poor prognosis shall not in itself constitute grounds for a denial of certification if treatment can be expected to effect a change in prognosis. Decisions to recommend admission or priority admission shall occur in consultation with the residential treatment facility and be based on a determination of appropriateness including consideration of facility staffing, patient mix and acuity and the impact on the safety of other residents. In the event the office evaluates a child who is the subject of a proceeding currently pending in the family court, the office shall report its decision to the family court. Prior to admission and no sooner than fourteen days after admission, the office or its designee may evaluate the medical necessity and quality of services for each Medicaid member. If the office or its designee determines that residential treatment services are no longer appropriate, the determination of the office or its designee shall be reported to the facility and the person, or the person's legally authorized representative. Such determination shall not be effective retroactively.

No residential treatment facility for children and youth shall admit a person who has not been determined appropriate and where appropriate, certified for such admission. Residential treatment facilities shall admit individuals who have been designated as priority admissions by the office or commissioner's designee.

(e) Notwithstanding any inconsistent provision of law, no government agency shall make payments pursuant to title nineteen of the federal social security act or articles five and six of the social services law to a residential treatment facility for children and youth for service to a person whose need for care and treatment in such a facility was not certified pursuant to this section.

(f) No person shall be admitted to a residential treatment facility for children and youth who has a mental illness which presents a likelihood of serious harm to others; "likelihood of serious harm" shall mean a substantial risk of physical harm to other persons as manifested by recent homicidal or other violent behavior by which others are placed in reasonable fear of serious physical harm.

(g) Notwithstanding any other provision of law, the office or

commissioner's designee shall be entitled to review clinical records maintained by any person or entity which pertain to an individual on whose behalf an application is made for admission to a residential treatment facility for children and youth. Any clinical records received by the office or commissioner's designee shall be kept confidential in accordance with the provisions of section 33.13 of this chapter.

Confidentiality of clinical records of treatment of a person in a residential treatment facility for children and youth shall be maintained as required in section 33.13 of this chapter. That portion of the clinical record maintained by a residential treatment facility for children and youth operated by an authorized agency specifically related to medical care and treatment shall not be considered part of the record required to be maintained by such authorized agency pursuant to section three hundred seventy-two of the social services law and shall not be discoverable in a proceeding under section three hundred fifty-eight-a of the social services law or article ten-A of the family court act except upon order of the family court; provided, however, that all other information required by a local social services district or the office of children and family services for purposes of sections three hundred fifty-eight-a, four hundred nine-e and four hundred nine-f of the social services law and article ten-A of the family court act shall be furnished on request, and the confidentiality of such information shall be safeguarded as provided in section four hundred sixty-e of the social services law.