

[40.

(a) The Department shall fix a rate to be charged to all patients admitted to public facilities, under the provisions of this article, not to exceed the average cost of maintaining a patient in the public facilities under the general jurisdiction of the Commissioner. The average cost of maintaining a patient shall be determined annually prior to the beginning of the fiscal year, by the Commissioner of Mental Hygiene, the State Comptroller, and the Secretary of the State Department of Budget and Fiscal Planning.

(b) In the case of patients continuously hospitalized as inpatients in any one or more public facilities under the provisions of this article for a period in excess of 30 months, the rate charged responsible relatives of the patient, if payment has been made for the first 30 months' hospitalization, shall thereafter not exceed the greater of:

(1) The sum of any proceeds of applicable insurance, group health plan, or prepaid medical care paid by the insurer or plan by reason of liability for the payment of or repayment for the cost of medical treatment rendered the patient, or

(2) 15% of the rate established in accordance with the provisions of this section. Continuous hospitalization shall mean and include all hospitalization where successive periods of inpatient care are not separated by absences in excess of one year.

41.

(a) Payments shall be made by the patient or his responsible relative as that term is defined in this article. Liability for such payment shall be joint and several.

(b) The Department shall specify the time and amount of payments. It may, from time to time, modify its orders as to payments, as circumstances may warrant. In setting the amounts of payments, the Department shall consider the financial means or abilities of the patient and responsible relatives, and may agree to accept less than the per capita cost of care.

(c) The Department may, when appropriate, set the rate of payments retroactively, for a period of not more than six months. The retroactivity may be set for a greater period if the patient, his responsible relatives, personal representative or other person having financial