

Federal Standards:
 This amendment does not exceed any minimum standards of the Federal government for the same or similar subject areas.
 Compliance Schedule:
 The proposed amendment will become effective upon publication of a Notice of Adoption in the State Register.

Regulatory Flexibility Analysis
 No Regulatory Flexibility Analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis
 A Rural Area Flexibility Analysis for these amendments is not being submitted because amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

Job Impact Statement
 A Job Impact Statement is not required. The proposed rule will not have an adverse impact on jobs and employment opportunities based upon its nature and purpose. The proposed regulations will allow Medicaid FFS patients to have prescriptions written for a maximum of twelve fills within one year from the date written by the prescriber. The proposed regulations have no implications for job opportunities.

Office of Mental Health

EMERGENCY RULE MAKING

Covid-19 Masking Program

I.D. No. OMH-40-21-00007-E
Filing No. 1267
Filing Date: 2021-12-15
Effective Date: 2021-12-15

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Part 556 to Title 14 NYCRR.
Statutory authority: Mental Hygiene Law, sections 7.07, 7.09 and 31.04
Finding of necessity for emergency rule: Preservation of public health and general welfare.

Specific reasons underlying the finding of necessity: The immediate adoption of this rule is necessary for the preservation of health, safety, and welfare.

The 2019 Coronavirus (COVID-19) is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal. According to Johns Hopkins' Coronavirus Resource Center, as of July 14, 2021, there have been over 188 million cases and over 4 million deaths worldwide, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions. Given the disproportionate adverse health impacts of COVID-19 for older adults and those with comorbidities, many of whom reside in New York's facilities, it is imperative that these facilities facilitate the appropriate masking of their staff. Based on the foregoing, the Office has made the determination that this emergency regulation is necessary to best protect the residents of New York's facilities.

For all of the reasons outlined above, this rule is being adopted on an Emergency basis until such time as it has been formally adopted through the SAPA rule promulgation process.

Subject: Covid-19 Masking Program.
Purpose: To implement Covid-19 Mask Program.

Text of emergency rule: A new Part 556 titled COVID-19 Mask Requirement, is added to read as follows:

556.1 Background and Intent.

(a) COVID-19 is an unpredictable disease that can cause serious illnesses and death. In response to this increased public health threat, New York must take active steps to prevent and control transmission of COVID-19. The seriousness of the continuing threat and the failure to achieve acceptable vaccination rates through voluntary programs necessitate further action.

556.2 Legal Base.

(a) Section 7.07 of the Mental Hygiene Law charges the Office of Mental Health with the responsibility for seeing that persons with mental illness are provided with care and treatment, and that such care, treatment and rehabilitation is of high quality and effectiveness.

(b) Section 7.09 of the Mental Hygiene Law gives the Commissioner of the Office of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under the Commissioner's jurisdiction.

(c) Section 31.04 of the Mental Hygiene Law grants the Commissioner of Mental Health the power and responsibility to adopt regulations to effectuate the provisions and purposes of Article 31 of the Mental Hygiene Law, including procedures for the issuance and amendment of operating certificates, and for setting standards of quality and adequacy of facilities.

556.3 Applicability.

(a) This Part applies to:

(1) any provider of services which operates or proposes to operate a facility, or a residential program licensed, certified, designated or funded by the Office of Mental Health,

(2) hospitals, facilities, corrections-based programs, and residential programs operated by the Office of Mental Health.

556.4 Definitions Pertaining to this Part.

(a) Facility shall mean:

(1) a Hospital as defined hereinafter,

(2) a provider of services which operates or proposes to operate a congregate residential program licensed, certified, or funded by the Office of Mental Health, or

(3) an out-patient program licensed, certified, designated or funded by the Office of Mental Health.

(b) Hospital shall mean a hospital named in Mental Hygiene Law section 7.17(b), or operated pursuant to Parts 580, 582, or 590 of this Title, and any provider of services co-located within such hospital campus.

(c) Staff shall mean all persons employed or affiliated with a Facility, whether paid or unpaid, including but not limited to employees, corrections-based staff, members of the medical, nursing, and other treatment staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with COVID-19 they could potentially expose patients to the disease.

556.5 Requirements for All Facilities.

(a) Effective immediately, all Programs shall have policies and procedures in place to ensure all staff, visitors and individuals receiving services regardless of vaccination status wear appropriate masks, consistent with any infection control guidance issued by this Office.

(b) As determined by the Commissioner based on COVID-19 incidence and prevalence, as well as any other public health and/or clinical risk factors related to COVID-19 disease spread, all Hospital and Facility staff, contractors, vendors, visitors, patients, residents, clients, and all other individuals who enter the indoor premises of such Hospital or Facility, must wear masks at all times regardless of vaccination status, except when alone in an office or room, or actively eating or drinking.

(c) For purposes of this section face-coverings shall include, but are not limited to, cloth masks, surgical masks, and N-95 respirators that are worn to completely cover a person's nose and mouth.

(d) Face coverings are not required to be worn by:

(1) children under two years of age,

(2) a person with a disability who cannot wear a mask, or cannot safely wear a mask, for reasons related to the disability, or

(3) a person for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by an Occupational Health and Safety Administration workplace risk assessment.

556.6 Enforcement.

(a) The Office will enforce the provisions of this Part pursuant to its oversight authority in Mental Hygiene Law Articles 7 and 31.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. OMH-40-21-00007-EP, Issue of October 6, 2021. The emergency rule will expire February 12, 2022.

Text of rule and any required statements and analyses may be obtained from: Sara Paupini, Esq., Office of Mental Health, 44 Holland Avenue, Albany, New York 12229, (518) 474-1331, email: regs@omh.ny.gov

Regulatory Impact Statement

(1) Statutory Authority:

(a) Section 7.07 of the Mental Hygiene Law (MHL) charges the Office

of Mental Health (OMH) with the responsibility for seeing that persons with mental illness are provided with care and treatment, and that such care, treatment and rehabilitation is of high quality and effectiveness.

(b) Section 7.09 of the Mental Hygiene Law gives the Commissioner of the Office of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under their jurisdiction.

(c) Section 31.04 of the Mental Hygiene Law grants the Commissioner of Mental Health the power and responsibility to adopt regulations to effectuate the provisions and purposes of article 31 of such law, including procedures for the issuance and amendment of operating certificates, and for setting standards of quality and adequacy of facilities.

(2) Legislative Objectives:

To implement a COVID-19 mask program through MHL §§ 7.07, 7.09 and 31.04 which provide the Commissioner of Mental Health with the authority to protect the health and life of the people of the State of New York including by controlling the spread of communicable diseases. COVID-19 is an unpredictable disease that can cause serious illnesses and death. In response to this increased public health threat, New York must take active steps to prevent and control transmission of COVID-19. The seriousness of the continuing threat and the failure to achieve acceptable vaccination rates through voluntary programs necessitate further action. Collectively, the legislative purpose of these statutes is to protect the residents of New York's mental health facilities by providing safe, efficient, and adequate care.

(3) Needs and Benefits:

These regulations are necessary to prevent the spread of COVID-19 in facilities licensed, certified, funded and operated by the Office of Mental Health and to help ensure the health and life of residents of these facilities. This requirement will help reduce the spread of COVID-19 and ensure residents are less likely to suffer a COVID-related death or severe illness.

COVID-19 is a disease that causes mild to severe respiratory symptoms, including fever, cough, and difficulty breathing. People infected with COVID-19 have had symptoms ranging from those that are mild (like a common cold) to severe pneumonia that requires medical care in a general hospital and can be fatal. Given the disproportionate adverse health impacts of COVID-19 for adults and those with comorbidities, many of whom receive treatment in New York's facilities, it is imperative that all steps are taken, including wearing masks, to prevent the spread of the disease.

Based on the foregoing, the Office has made the determination that this emergency regulation is necessary to best protect the residents of the Office of Mental Health's licensed and operated facilities.

(4) Costs:

(a) Costs to Regulated Parties:

The purpose of this regulation is to require licensed and operated OMH facilities to promptly coordinate the COVID-19 masking of their residents and personnel. Costs are expected to be minimal.

(b) Costs to Local and State Governments:

This regulation will not have a significant impact on local or State governments unless they operate an OMH licensed facility or hospital in which case costs will be the same as costs for private entities. There may be limited additional agency costs for administrative oversight.

5. Local Government Mandates: Hospitals and residences operated by local governments will be affected and will be subject to the same requirements as any other hospital licensed under Article 31.

6. Paperwork: This regulation imposes no additional paperwork.

7. Duplication: These regulatory amendments do not duplicate existing State or Federal requirements.

8. Alternatives: The Office believes that the promulgation of this regulation is the most effective means to ensure that OMH licensed, certified, funded and operated facilities and hospitals adequately ensure appropriate masking is occurring to prevent the spread of COVID-19. Accordingly, the alternative of not issuing these regulations was rejected, as the potential for serious illness and possible death of both staff and residents as a result of a COVID-19 outbreak outweighed the risk of rejecting such a mandate.

9. Federal Standards: The regulatory amendments do not exceed any minimum standards of the Federal Government for the same or similar subject areas.

10. Compliance Schedule: This rulemaking will be effective upon filing a Notice of Emergency Adoption and Notice of Proposed Rulemaking in the State Register.

Regulatory Flexibility Analysis

Effect of Rule:

There are approximately 35 county operated mental health clinics. Including all OMH funded ambulatory and residential providers, there are over 100 such providers. This regulation will not impact local governments or small businesses unless they operate a facility licensed by this Office.

Compliance Requirements:

This regulation primarily requires facilities and hospitals to promptly coordinate the masking of all individuals and personnel entering such facilities or hospitals.

Professional Services:

No professional services are required by this regulation.

Compliance Costs:

This regulation requires OMH licensed and operated facilities and hospitals to promptly coordinate the masking of their residents and personnel. Costs are expected to be minimal given the current prevalence of masking.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

This regulation is consistent with the existing responsibilities facilities and hospitals have to maintain the health and safety of residents, ensure sufficient staffing levels, and ensure staff are free from communicable diseases. Therefore, any adverse impacts are expected to be minimal and are outweighed by the regulation's health and safety benefits to residents and staff.

Small Business and Local Government Participation:

Given the seriousness of COVID-19 if contracted, particularly by older adults or persons with comorbidities, small business and local governments were not directly consulted. However, the Office will notify such entities of the existence of these regulations and the opportunity to submit comments or questions to the Department.

Rural Area Flexibility Analysis

Type and Estimated Numbers of Rural Areas:

Although this rule applies uniformly throughout the state, including rural areas, for the purposes of this Rural Area Flexibility Analysis (RAFA), "rural area" means areas of the state defined by Exec. Law § 481(7) (SAPA § 102(10)). Per Exec. Law § 481(7), rural areas are defined as "counties within the state having less than two hundred thousand population, and the municipalities, individuals, institutions, communities, and programs and such other entities or resources found therein.

Reporting, Recordkeeping, and other Compliance Requirements; and Professional Services:

This regulation imposes no additional paperwork. Although the regulation may require recordkeeping by facilities, including documentation in personnel files, these records must already be maintained by facilities. Additionally, no additional professional services are required by this regulation.

Compliance Costs:

Costs are expected to be minimal given the prevalence of masking in health facilities.

Economic and Technological Feasibility:

There are no economic or technological impediments to the rule changes.

Minimizing Adverse Impact:

This regulation is consistent with the existing responsibilities facilities have to maintain the health and safety of residents, ensure sufficient staffing levels, and ensure staff are free from communicable diseases. Therefore, any adverse impacts are expected to be minimal and are outweighed by the regulation's health and safety benefits to residents and staff.

Rural Area Participation:

Given the seriousness of the COVID-19 virus particularly in congregate care settings and the need for services to be provided in person where appropriate, facilities located in rural areas were not directly consulted. However, the Office will notify covered entities located in rural areas of the existence of these regulations and the opportunity to submit comments or questions to the Office.

Job Impact Statement

A Job Impact Statement for this regulation is not being submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and/or employment opportunities.

Assessment of Public Comment

The agency received no public comment.

Public Employment Relations Board

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rules and Regulations to Effectuate the Purposes of the State Employment Relations Act (Labor Law Art. 20)

I.D. No. PRB-01-22-00006-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of Parts 250-258; addition of Parts 259-264 to Title 12 NYCRR.

Statutory authority: Labor Law, art 20

Subject: Rules and regulations to effectuate the purposes of the State Employment Relations Act (Labor Law Art. 20).

Purpose: To enact procedures for the Farm Laborers Fair Laborers Practice Act, which amended the State Employment Relations Act.

Substance of proposed rule (Full text is posted at the following State website: <https://perb.ny.gov/proposed-sera-rule-amendments/>): The Public Employment Relations Board (“PERB”) is proposing amendments to the Rules of Procedure governing proceedings brought under the State Employment Relations Act, Labor Law Article 20 (“SERA”). Some of these changes are intended to implement changes made to SERA by the Farm Laborers’ Fair Labor Practices Act, L.2019, c. 105 (“FLFLPA”). For example, Section 251.4 provides procedures for certification without an election pursuant to Section 705.1-a of the FLFLPA. A new Part 260 has been added to provide procedures for impasse resolution for agricultural employers and farm laborers pursuant to the rights granted by the FLFLPA.

Part 250: Definitions and General Provisions, has been renumbered to run consecutively. Section 250.1 on the scope of the rules has been added and provides that rules promulgated to enforce the provisions of the FLFLPA do not repeal or supersede extant rules as applied to matters outside the scope of the FLFLPA. New definitions have been added for chairperson (Section 250.3), deputy chairperson (Section 250.6), declaration (Section 250.7), computing time (Section 250.11), and showing of interest (Section 250.12). Section 250.9 “Parties” has been amended. Small technical amendments have been made to Section 250.2 and 250.3. Section 250.10 “Electronic filing and service” has been amended so that the director of representation, director of conciliation, counsel, deputy chairperson, administrative law judge, or special mediator may permit the electronic filing and service of any or all pleadings or related documents, subject to requirements of the director of representation, director of conciliation, counsel, deputy chairperson, administrative law judge, or special mediator. Section 250.10 has also been amended to allow the deputy chairperson, director of representation, director of conciliation, and/or counsel to waive the filing of a paper copy in their discretion, as long as such waiver is posted online at the Agency’s website.

Part 251: Procedure Under Section 705 of SERA for Investigation and Certification of Representatives has been renumbered to run consecutively and has been amended to allow for the possibility of e-filing, should the Board institute such a procedure. Section 251.1 has been amended so that in cases brought under the FLFLPA, a petition may be supported by the unsworn declaration of the person filing the petition, the content of which is declared as true under penalty of perjury and to provide that three, not four, copies of the petition must be filed with the director of representation. Sections 251.2 and 251.3 have been amended to remove the necessity of providing certain information for cases brought under the FLFLPA. Section 251.4 has been amended to provide procedures for the selection of employee organizations. Unnecessary language has been removed from Section 251.13. Small technical changes have been made to Sections 251.7, 251.9, and 251.11.

Part 252: Procedure Under Section 706 of SERA for Prevention of Unfair Labor Practices has been renumbered to run consecutively. Section 252.2 has been amended so that original charges must be supported by a statement made by the person filing the charge signed and verified before any person authorized to administer an oath. In cases under the FLFLPA, the charge shall be supported by an unsworn declaration of such person, the content of which is declared as true under penalty of perjury, and signed and dated. Section 252.2 has also been amended to reflect the possibility of e-filing, should the Board institute such a procedure. Section 252.3 has been amended to provide that charges filed under the FLFLPA need not include information required in other private sector SERA cases. Section 252.4 has been added to provide for initial review of the charge by

the director of representation and for a notice of conference to be sent to the parties. Other sections of Part 252 have been amended to reflect the possibility of e-filing, should the Board institute such a procedure. Section 252.7 provides that answers in FLFLPA cases may be supported by an unsworn declaration, the contents of which are declared as true under penalty of perjury. Answers in non-FLFLPA SERA cases must be sworn. Section 252.11 provides that where prejudice to the charge party is demonstrated by a respondent’s failure to file an answer, or no sufficient excuse or justification for the failure to file is proffered, the administrative law judge may deem such failure to constitute an admission of the material facts alleged in the charge and a waiver by the respondent of a hearing.

Part 253: General Provisions Relating to All Proceedings, contains numerous technical amendments and has been renumbered to run consecutively. Sections 253.10 and 253.11 have been amended to allow for conferences and hearings to be held by videoconference, at the administrative law judge’s discretion. Section 253.23 has been added to set forth procedures for filing motions for leave to file interlocutory exceptions in extraordinary circumstances to interim decisions, orders, or rulings. Section 253.24 has been added to explain when decisions, reports, orders, rulings, findings, or other determinations become final and to allow the Board to review the remedial action recommended under an unfair labor practice charge within 45 working days after receipt by the parties of the decision and recommended order. Section 253.27 has been added to provide procedures through which a party may request the Board to seek a judicial order as provided by section 707 of SERA.

Section 254.1 of Part 254: Designation, Powers and Duties of Board’s Agents, has been amended to reflect the powers and duties of fact-finders and other individuals designated by the Board to hold hearings.

Part 255: Service of Papers, has been amended to allow for the possibility of e-filing, should the Board institute such a procedure.

Some small technical amendments have been made to Part 256: Certification and Signature of Documents.

Section 257.3 in Part 257: Construction, Amendment and Application of Rules, has been deleted as unnecessary.

Some technical amendments have been made to Part 258: Conciliation, to make the language more easily understood. Section 258.3 has been amended to delegate to the chairperson or their designee the authority to take such steps under section 702-b of SERA deemed expedient and efficient to effectuate a voluntary, amicable, and expeditious adjustment and settlement of issues between an employer and a labor organization or employees. Section 258.18 has been added to provide that all matters involving arbitrator payments and compensation are to be resolved between the parties and the arbitrator directly.

A new Part 259: Settlement of Labor Disputes Pursuant to § 702-a, has been added. This part provides a mechanism whereby parties may submit requests for settlement of existing, imminent, or threatened labor disputes to the office of the chairperson.

A new Part 260 has been added to provide procedures for impasse resolution for agricultural employers and farm laborers pursuant to the rights granted by the FLFLPA.

A new Part 261: Declaratory Rulings, has been added. This part allows any person, labor organization, or employer to file a petition for a declaratory ruling with respect to the scope of negotiations under the SERA.

A new Part 262: Access to Records of the Board, has been added. This part sets forth procedures for accessing records of the Board available for inspection in accordance with section 87 of the Public Officers Law and designates a records access officer and appeals officer.

A new Part 263: Misconduct Before the Agency, has been added. This part sets forth sanctions for misconduct by any person at any stage of a case before the Board, an administrative law judge, or other person designated by the Board to conduct proceedings.

A new Part 264: Privacy Protection and Accuracy of Personal Data, has been added. This part sets forth methods and procedures governing the availability, location, and nature of PERB’s records subject to the Personal Privacy Protection Law.

Text of proposed rule and any required statements and analyses may be obtained from:

Data, views or arguments may be submitted to: Sarah Coleman, Deputy Chair, Public Employment Relations Board, PO Box 2074, ESP, Bldg. 2, Fl. 20, Albany, NY 12220-0074, (518) 457-2578, email: scoleman@perb.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement

1. Statutory Authority:

The State Employment Relations Act (Labor Law Art. 20), (SERA) was enacted in 1937. In 2010, administration of the SERA was delegated to the Public Employment Relations Board (“PERB”). PERB resolves disputes between certain private sector employers and legally recognized unions,