

on existing jobs or to promote the development of new employment opportunities are required.

Self-employment opportunities: The Department does not foresee a measurable impact upon opportunities for self-employment resulting from adoption of this regulation.

Initial review of the rule pursuant to SAPA § 207: Initial review of this regulation shall occur no later than the third calendar year in which it is adopted.

Office of Mental Health

NOTICE OF EMERGENCY ADOPTION AND REVISED RULE MAKING NO HEARING(S) SCHEDULED

COVID-19 Vaccination Program

I.D. No. OMH-43-21-00002-ERP

Filing No. 129

Filing Date: 2022-03-02

Effective Date: 2022-03-02

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

Action Taken: Addition of Part 557 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 amendment 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 in New York's Hospitals, it is imperative that these Hospitals facilitate the prompt vaccination 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 Vaccination Program.

Purpose: To implement a COVID-19 vaccination program in OMH Operated or Licensed Hospitals.

Text of emergency/revised rule: Part 557, titled COVID-19 Vaccination Program, is added to read as follows:

557.1 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.

557.2 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 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.

557.3 Applicability.

(a) This Part applies to Hospitals and STARC Programs as defined in Part 557.4.

557.4 Definitions pertaining to this Part.

(a) Commissioner shall mean the Commissioner of Mental Health.

(b) COVID-19 vaccine or vaccine shall mean a vaccine currently licensed for immunization and distribution in the United States by the Food and Drug Administration (FDA) for active immunization for the prevention of COVID-19, or authorized for such use by the FDA pursuant to an Emergency Use Authorization (EUA) or as an Emergency Investigational New Drug (EIND).

(c) Fully Vaccinated shall mean fully vaccinated for COVID-19 for a period of 2 weeks or more after receiving either (1) the second dose in a 2-dose series (e.g., Pfizer-BioNTech or Moderna), or (2) a single-dose vaccine (e.g., Johnson & Johnson /Janssen), authorized for emergency use or approved by the U.S. Food and Drug Administration, and holds an emergency use listing by the World Health Organization.

(d) Hospital shall mean a hospital named in Mental Hygiene Law section 7.17(b), excluding the Nathan S. Kline Institute for Psychiatric Research. Hospital shall also mean a program operated pursuant to Parts 580, 582, or 590 of this Title.

(e) Office shall mean the Office of Mental Health.

(f) Staff shall mean all persons employed or affiliated with a Hospital, or STARC Program, whether paid or unpaid, including but not limited to employees, members of the medical, nursing, and other treatment staff, contract staff, students, and volunteers.

(g) STARC Program shall mean a secure treatment facility operated pursuant to Section 7.18 of the Mental Hygiene Law.

557.5 Testing and Vaccination Requirements for Hospitals and STARC Programs.

(a) Hospitals and STARC Programs shall require Staff to be Fully Vaccinated.

(b) New Staff shall not commence their duties until they have been Fully Vaccinated.

(c) A reasonable accommodation may be made for Staff who have a documented health condition that prevents them from complying with the vaccine requirements herein. When a reasonable accommodation is approved for a Staff member, they must comply with the following testing provisions.

(d) Staff who have been granted such a reasonable accommodation are required to undergo diagnostic screening testing. Employers and supervisors may choose either antigen or molecular tests, based upon the appropriateness to their setting, to satisfy this requirement. Staff must be tested at least once weekly. Any test used must either have Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements of the U.S. Centers for Medicare and Medicaid Services.

(e) Any Staff who work in Hospitals or STARC Programs who do not comply with the provisions of this Part shall not be permitted to report to work.

(f) Staff for whom a positive test result is received must comply with Office and New York State Department of Health regulations and guidance applicable to those who receive a positive test result.

(g) Hospitals and STARC Programs shall maintain records of their compliance with the requirements of this Part. Upon request by the Office, Hospitals and STARC Programs shall verify the vaccination status of all Staff, and must provide such requested information to the Office. Each Hospital or STARC Program shall require Staff to produce documentation to show all vaccine administrations. Acceptable documentation of vaccination status shall consist of one of the following:

(1) a COVID 19 vaccination record card issued by the CDC or equivalent, including the name of the person vaccinated, date of birth, type of vaccine provided and date(s) of administration.

(2) documentation of COVID-19 vaccination from a health care provider; or

(3) a digital record such as the New York State Excelsior Pass that includes a QR code that when scanned displays the name of the person vaccinated, date of birth, type of vaccine provided, and date(s) of administration.

(h) All Staff who are not Fully Vaccinated, or for whom vaccine status is unknown or documentation is not provided, must be considered unvaccinated.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the State Register on October 27, 2021, I.D. No. OMH-43-21-00002-EP. The emergency rule will expire April 30, 2022.

Revised rule making(s) were previously published in the State Register on January 19, 2022.

Emergency rule compared with proposed rule: Substantial revisions were made in sections 557.3, 557.4 and 557.5.

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

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 45 days after publication of this notice.

Revised 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 vaccination 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 patients in hospitals operated or licensed by the Office of Mental Health by providing safe, efficient, and adequate care.

(3) Needs and Benefits:

These regulations are necessary to prevent the spread of COVID-19 in hospitals operated or licensed by the Office of Mental Health. This requirement will help ensure patients are less likely to suffer a COVID-related death or severe illness and that fewer staff test positive for COVID-19 and aligns these facilities with other hospitals in New York State.

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 Hospitals, it is imperative that these hospitals facilitate the prompt vaccination of its staff.

Based on the foregoing, the Office has made the determination that this emergency regulation is necessary to best protect patients and staff in Hospitals operated by the Office of Mental Health.

(4) Costs:

(a) Costs to Regulated Parties:

The purpose of this regulation is to require Hospitals licensed or operated by the Office of Mental Health to promptly coordinate the COVID-19 vaccination of their staff. Costs are expected to be minimal given that the COVID-19 vaccine is provided free of charge, and Medicare reimbursement is available to help Medicare-enrolled residents cover administrative costs.

(b) Costs to Local and State Governments:

This regulation will have no significant impact on local or State governments. There may be limited additional agency costs for reviewing documentation and other administrative oversight.

5. Local Government Mandates: This regulation will have no impact on local governments.

6. Paperwork: This regulation imposes no additional paperwork. Although the regulation requires recordkeeping by hospitals, including documentation in personnel files, these records must already be maintained by the hospital.

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 operated hospitals adequately ensure their staff are vaccinated against 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 patients as a result of a COVID-19 outbreak outweighed the risk of rejecting a vaccine 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 Revised Rulemaking in the State Register.

Revised Regulatory Flexibility Analysis

Effect of Rule:

This regulation will not impact local governments or small businesses.

Compliance Requirements:

This regulation primarily requires Hospitals operated or licensed by the Office of Mental Health to promptly coordinate the COVID-19 vaccination of their staff.

Professional Services:

No professional services are required by this regulation.

Compliance Costs:

Costs are expected to be minimal given that the COVID-19 vaccine is provided free of charge.

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 hospitals have to maintain the health and safety of residents, 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:

Due to the urgent need to ensure hospital staff are vaccinated as soon as possible 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 Office.

Cure Period:

This regulation does not include a cure period given the serious threat the COVID-19 virus causes to all New Yorkers, particularly those residing in hospitals, considering such residents' age and comorbidities. The Office finds the periods provided to comply with the regulatory requirements sufficient to ensure Hospitals can establish or revise their vaccination policies and procedures, while balancing the urgent need to protect patients and personnel from this dangerous disease.

Revised Rural Area Flexibility Analysis

Types 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 creates no additional paperwork. Although the regulation requires recordkeeping by hospitals, including documentation in personnel files these records must already be maintained. Additionally, no additional professional services are required by this regulation.

Compliance Costs:

This regulation requires staff of OMH operated and licensed hospitals to be vaccinated against COVID-19. Costs are expected to be minimal given that the COVID-19 vaccine is provided free of charge.

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 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 patients and staff.

Rural Area Participation:

Due to the urgent need to ensure Hospital staff are vaccinated as soon as possible given the seriousness of the COVID-19 virus and the need for services to be provided in person where appropriate, Hospitals 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.

Revised Job Impact Statement

Nature of impact: Hospitals as defined may take disciplinary action on staff who are not fully vaccinated and up to date, and do not have a valid medical exemption.

Categories and numbers affected: This rule may impact any individual who falls within the definition of “staff” who are not fully vaccinated including maintaining up to date status if eligible, against COVID-19 and do not have a valid medical exemption on file with the Hospital for which they are employed with or are affiliated.

Regions of adverse impact: The rule would apply uniformly throughout the State and the Office does not anticipate that there will be any regions of the state where the rule would have a disproportionate adverse impact on jobs or employment.

Minimizing adverse impact: As part of ongoing efforts to address the COVID-19 pandemic, regulated parties have been a partner in implementing measures to limit the spread and/or mitigate the impact of COVID-19 within the Office since March of 2020.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Office of Mental Health publishes a new notice of proposed rule making in the NYS Register.

Redesigning Residential Treatment Facilities (RTF)

I.D. No.	Proposed	Expiration Date
OMH-09-21-00001-EP	March 3, 2021	March 3, 2022

Metropolitan Transportation Agency

**EMERGENCY
RULE MAKING**

Requiring Mask Wearing When Using the Facilities and Conveyances of the MTA and its Operating Affiliates and Subsidiaries

I.D. No. MTA-16-21-00004-E

Filing No. 131

Filing Date: 2022-03-03

Effective Date: 2022-03-03

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

Action taken: Amendment of Part 1030 of Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 1266(4) and (5)

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: The emergency rule, which complies with the Centers for Disease Control and Prevention’s Order effective February 1, 2021, and the Transportation Security Administration’s Security Directive (SD) 1582/84-21-01: Security Measures – Face Mask Requirements, effective at the same time, is necessary to safeguard public health and safety and to ensure through proper mask wearing that the public, health care providers, first responders, and other essential workers who rely on the Metropolitan Transportation Authority’s subways, buses, and commuter trains to get to and from work and also the Metropolitan Transportation Authority’s employees are protected during the COVID-19 outbreak.

Now that the New York City area has begun reopening and the Metropolitan Transportation Authority’s operating agencies are restoring service and anticipating increased ridership, it is imperative that all persons on all of the Metropolitan Transportation Authority’s subways, buses, and commuter trains fully comply with the Centers for Disease Control and Prevention’s Order requiring them to properly wear a safe mask covering their nose and mouth and maintain social distance as much as possible. Research has found that wearing a mask can reduce the rate of COVID-19 transmission significantly.

Subject: Requiring mask wearing when using the facilities and conveyances of the MTA and its operating affiliates and subsidiaries.

Purpose: To safeguard the public health and safety by adding a new all agency rule requiring the use of masks in facilities and conveyances.

Text of emergency rule: Part 1030 Rules Governing the Conduct and Safety of the Public in the Use of the Terminals, Stations, Trains, Facilities, or Conveyance of the Metropolitan Transportation Authority

1030.1 Authorities covered by the rules of this Part

The rules set forth in this Part 1030 are established by the Metropolitan Transportation Authority (MTA) and applicable to it and to each of its affiliates and subsidiaries and each of their affiliates and subsidiaries including without limitation the New York City Transit Authority, the Manhattan and Bronx Surface Transit Operating Authority, the Staten Island Rapid Transit Operating Authority, the MTA Bus Company, the Long Island Rail Road Company, and Metro-North Commuter Railroad Company (each an “authority”).

1030.2 Requiring Persons to Wear Masks

(a) This Section subpart 1030.2 wholly supersedes the emergency mask rules adopted and readopted by the following authorities: Part 1050.6(d)(1) (adopted by the New York City Transit Authority and the Manhattan and Bronx Surface Transit Operating Authority); Part 1040.4(g) (adopted by the Staten Island Rapid Transit Operating Authority); Part 1044.4(f)(adopted by the MTA Bus Company); Part 1085.4(g)(adopted by the Metro-North Commuter Railroad Company); and, Part 1097.4(e)(adopted by the Long Island Rail Road Company).

(b) Every person on or in any terminal, station, train, facility, or conveyance (as those terms are defined in Parts 1040, 1044, 1050, 1085, and 1097 of this Subchapter) of any authority covered by this Part shall wear a mask that completely covers their mouth and nose. A mask should fit snugly but comfortably against the face and be secured to the head, with ties, ear loops, or elastic bands behind the head. A gaiter must have two layers of fabric or be folded to make two layers. Masks may be either manufactured or homemade and must be a solid piece of material without slits, exhalation valves, or punctures. Cloth masks should be made with two or more layers of breathable fabric that is tightly woven (i.e., fabrics that do not let light pass through when held up to a light source). Masks may be reusable or disposable. Medical masks and N-95 respirators fulfill this requirement.

The following do *not* meet this requirement:

- (1) masks worn in a way that does not cover the nose and mouth
- (2) face shields or goggles (though face shields or goggles may be worn to supplement a mask that meets the above required attributes)
- (3) scarves, ski masks, balaclavas, or bandannas
- (4) shirt or sweater collars (i.e., turtleneck collars) pulled up over the mouth and nose
- (5) masks made from loosely woven fabric or that are knitted (i.e., fabrics that let light pass through)
- (6) masks made from material that is hard to breathe through (such as vinyl, plastic or leather)
- (7) masks containing slits, exhalation valves or punctures.

(c) The requirement to wear a mask shall not apply under the following circumstances:

- (1) while eating or drinking for brief periods, but only in locations where eating and drinking otherwise are permitted, or while taking medication; prolonged periods of mask removal are not permitted for eating or drinking, the mask must be worn between bites and sips
- (2) while communicating with a person who is hearing impaired when the ability to see the mouth is essential for communication
- (3) while a person is unconscious (for reasons other than sleeping), incapacitated, unable to be awakened, or otherwise unable to remove the mask without assistance
- (4) when necessary to temporarily remove the mask to verify one’s identity or when asked to do so by any police officer, peace officer, or authority employee.

(d) The following categories of persons are not required to wear a mask:

- (1) a child under the age of two years;
- (2) a person with a disability who cannot wear a mask, or cannot safely wear a mask, because of the disability as defined by the Americans with Disabilities Act;
- (3) a person for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by applicable workplace safety guidelines or federal regulations.

(e) Any person who does not comply with the requirement to wear a mask that completely covers their mouth and nose may be barred from entering or remaining on or in any terminal, station, train, facility, or conveyance of any authority covered by this Part and also may be fined \$50 per occurrence. This rule shall be enforced by each of the authorities on or in its terminals, stations, trains, facilities, or conveyances by any person authorized by such authority to enforce its own rules and pursuant to the procedures established by such authority for enforcing violations of its rules.

This notice is intended to serve only as a notice of emergency adoption.