

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

- AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice.
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Office of Children and Family Services

EMERGENCY RULE MAKING

To Establish Minimum Standards to Control the Spread of COVID-19 at Residential Congregate Programs

I.D. No. CFS-52-21-00003-E

Filing No. 288

Filing Date: 2022-04-11

Effective Date: 2022-04-11

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

Action taken: Addition of Part 338 to Title 18 NYCRR.

Statutory authority: Executive Law, sections 500(2), 501(16); Social Services Law, sections 20(3)(d), 34(3)(c) and 462(1)(a)

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

Specific reasons underlying the finding of necessity: 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, with a disproportionate risk of severe illness for older adults and/or those who have serious underlying medical health conditions.

On January 30, 2020, the World Health Organization (WHO) designated the COVID-19 outbreak as a Public Health Emergency of International

Concern. On a national level, the Secretary of Health and Human Services determined on January 31, 2020 that as a result of confirmed cases of COVID-19 in the United States, a public health emergency existed and had existed since January 27, 2020, nationwide. The Centers for Disease Control and Prevention (CDC) has noted continued high community transmission of the Omicron COVID-19 variant, resulting in: 1) high caseloads of COVID-19 (7-day average of over 21,000 per day, as of January 26, higher than any point before this winter); 2) burdensome levels of hospitalizations (7-day average of over 1,100 admissions and 10,000 people currently hospitalized with COVID-19); and 3) a high number of COVID-19-related deaths (7-day average of over 150, rendering COVID-19 one of the leading causes of death in New York). These levels remain very high, despite some recent declines; thus the winter surge driven by the Omicron variant continues to be underway.

Properly wearing an appropriate mask is an effective measure to protect against the transmission of the COVID-19 virus, including its variants. Since the Omicron-related surge appears to have peaked in January, the statewide number of COVID cases has remained high and the number of hospitalizations continues to stress the healthcare system. While the percentage of New Yorkers who are fully vaccinated and boosted continues to increase, coverage levels alone are not adequate to curb the spread of the Omicron variant, and substantially reduce the burden on hospitals. The above findings demonstrate the necessity to extend the implementation of further prevention strategies that include face coverings/masks in all indoor public places including congregate care programs. The extension of this requirement should help slow transmission and reduce the consequent increase in hospitalizations. COVID-19 spreads through respiratory droplets, and several studies have shown that appropriate face coverings/masks reduce the spray of droplets when worn correctly, fully covering one's nose and mouth. Additionally, as noted by the CDC, multiple "real-world" studies have shown face coverings substantially decrease SARS-CoV-2 transmission. See for <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html> (last updated December 6, 2021) for more information.

The CDC recommends universal indoor masking by all students (ages 2 years and older), staff, teachers, and visitors to K-12 schools, regardless of vaccination status. See <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html> (last updated on January 13, 2022) for more information. The CDC has issued guidance warning of the higher risks posed to persons residing in congregate settings. See <https://www.cdc.gov/coronavirus/2019-ncov/community/shared-congregate-house/guidance-shared-congregate-housing.html> for more information. The CDC has also provided guidance for management of the coronavirus in detention facilities. They explain that because many individuals infected with SARS-CoV-2 do not display symptoms, the virus could be present in facilities before infections are identified. Therefore, masks are an important element of prevention. See <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (last updated on February 15, 2022) for more information.

Finally, the American Academy of Pediatrics:

[S]trongly recommends that anyone over the age of 2, regardless of vaccination status, wear a well-fitting face mask when in public." ... Face masks can be safely worn by all children 2 years of age and older, including the vast majority of children with underlying health conditions, with rare exception. Children 2 years of age and older have demonstrated their ability to wear a face mask. In addition to protecting the child, the use of face masks significantly reduces the spread of SARS-CoV-2 and other respiratory infections within schools and other community settings. Home use of face masks also may be particularly valuable in households that include members who are in quarantine or isolation, as well as medically fragile, immunocompromised, or at-risk adults and children. See <https://www.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/cloth-face-coverings/> (last updated on January 6, 2022) for more information.

Subject: To establish minimum standards to control the spread of COVID-19 at residential congregate programs.

Purpose: To establish minimum standards to control the spread of COVID-19 at residential congregate programs.

Text of emergency rule: Part 338 of Title 18 NYCRR is added to read as follows:

Part 338. Congregate Care COVID-19 Prevention and Protection Program

338.1. Applicability

This part applies to all residential congregate programs operated, approved, licensed, or certified by the Office of Children and Family Services, with the exception of:

- (a) family-type homes for adults as defined in 18 NYCRR 485.2(f); and*
- (b) nonsecure detention family boarding care facilities as defined in 9 NYCRR 180-1.3(d)(1).*

338.2. Face Covering Requirements

(a) "Face covering" means a mask or other face covering that fits snugly and completely covers both the nose and mouth.

(b) All staff, volunteers, contractors, vendors, visitors, and residents of programs subject to this part, who are two years of age or older and able to medically tolerate a face covering, must wear a face covering when indoors regardless of vaccination status, subject to applicable Centers for Disease Control and Prevention (CDC) standards and recommended exceptions.

(c) In no instance should a resident face a loss of services, disciplinary consequences, removal from or change in programming, or be denied admission for failure to consistently wear a face covering.

(d) All programs subject to this part shall provide their employees, contractors, volunteers, and residents with appropriate face coverings at no expense. Face coverings must be replaced or laundered as necessary.

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. CFS-52-21-00003-EP, Issue of December 29, 2021. The emergency rule will expire June 9, 2022.

Text of rule and any required statements and analyses may be obtained from: Frank J Nuara, Associate Attorney, Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 474-9778, email: regcomments@ocfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules and regulations to carry out its powers and duties pursuant to the provisions of the SSL.

Section 34(3)(c) of the SSL requires the Commissioner of OCFS to take cognizance of the interests of health and welfare of the inhabitants of the state.

Section 462(1)(a) of the SSL requires OCFS to promulgate regulations concerning standards of care, treatment, and safety applicable to all facilities exercising care or custody of children.

Section 500(2) of the Executive Law authorizes the Commissioner of OCFS to establish rules and regulations to carry out its powers and duties pursuant to the provisions of the Executive Law.

Section 501(16) of the Executive Law authorizes the Commissioner of OCFS to perform such acts as are necessary or convenient to carry out OCFS' functions, powers, and duties in furtherance of the best interests of youth.

2. Legislative Objectives:

Chapter 436 of the Laws of 1997 created OCFS to take on the functions, powers, duties and obligations in the SSL concerning services and programs identified in article 6 of the SSL regarding the care and protection of children and under the structure and authority of article 2 of the SSL. This proposed rule enhances that responsible by addressing the issue of risk of physical harm to youth in care and victims of domestic violence and their children residing in residential programs for victims of domestic violence caused by failing to require appropriate face coverings in congregate care settings to prevent the spread of COVID-19.

3. Needs and Benefits:

The proposed regulation will protect the health and safety of youth and victims of domestic violence and their children residing in residential programs for victims of domestic violence in congregate settings overseen by OCFS. The United States Centers for Disease Control and Prevention has issued guidance warning of the higher risks posed to persons residing in congregate settings, including juvenile detention centers (see, e.g., <https://www.cdc.gov/coronavirus/2019-ncov/community/shared-congregate-house/guidance-shared-congregate-housing.html>; <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>).

To address the need to protect youth residing in programs operated, ap-

proved, licensed or certified by OCFS, and victims of domestic violence and their children residing in residential programs for victims of domestic violence, it is incumbent on OCFS to establish expectations for operators of these programs to minimize the risk to youth in their care such as setting expectations regarding the wearing of face coverings.

4. Costs:

The proposed regulations mandate implementation of best practices recommended by numerous State and federal agencies. There are no costs anticipated.

5. Local Government Mandates:

There are no new local government mandates.

6. Paperwork:

There are no additional paperwork requirements.

7. Duplication:

The proposed regulations would not duplicate other state or federal requirements.

8. Alternatives:

No significant alternatives were considered.

9. Federal Standards:

The proposed regulations would not conflict with current federal standards.

10. Compliance Schedule:

Compliance with the proposed regulations would begin immediately upon filing.

Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed regulation would affect all congregate residential programs operated, approved, licensed, or certified by the Office of Children and Family Services (OCFS) in New York State. These programs include approximately 72 voluntary authorized agencies, 73 runaway and homeless youth shelters, 62 residential shelters and domestic violence programs, 30 residential sponsoring agencies with a total of 100 safe dwellings, all 10 OCFS-operated residential facilities, 16 nonsecure detention facilities, and all eight secure and specialized secure detention facilities. The proposed regulation does not affect family-type homes for adults as defined in 18 NYCRR 485.2(f) or nonsecure detention family board care facilities as defined in 9 NYCRR 180-1.3(d)(1).

2. Compliance Requirements:

The proposed regulation would require congregate residential programs operated, approved, licensed, or certified by OCFS to develop policies and procedures that require face coverings to minimize the spread of COVID-19.

3. Professional Services:

The proposed regulation would not require additional professional services to be retained by local governments or small businesses.

4. Compliance Costs:

The proposed regulation would not impose new costs on residential programs operated, approved, licensed, or certified by OCFS.

5. Economic and Technological Feasibility:

It is not anticipated that the proposed regulations would have an adverse economic impact on local governments or small businesses. OCFS has issued guidance throughout the COVID-19 pandemic (based on up-to-date guidance or directives issued by the New York State Department of Health and the Centers for Disease Control and Prevention) related to safety protocols for staff and youth in congregate care settings.

6. Minimizing Adverse Impact:

It is not anticipated that the proposed regulations would result in an adverse impact on local governments or small businesses. Congregate residential programs are already required to have COVID-19 policies and protocols to protect the continued health and safety of youth and staff alike. The proposed regulations would reinforce such policies and procedures.

7. Small Business and Local Government Participation:

The issues addressed in the proposed regulation are not new. Throughout the COVID-19 pandemic, OCFS has been in constant contact with local governments and small businesses regarding best practices to ensure the health and safety of staff and youth in congregate care settings. Local governments and small businesses have been receptive to OCFS guidance and have had an opportunity to voice any concerns or questions throughout the COVID-19 pandemic. OCFS will continue these relationships as it completes necessary guidance related to the requirements set forth in this regulation.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas:

This rule will apply to all residential congregate programs operated, approved, licensed, or certified by the Office of Children and Family Services (OCFS), with the exception of family-type homes for adults and nonsecure detention family boarding care facilities, in all 44 rural areas of the state.

2. Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

OCFS does not anticipate there will be reporting, recordkeeping and other compliance or professional services related to this regulation.

3. Costs:

There are no new costs associated with this rule in rural areas.

4. Minimizing Adverse Impact:

OCFS does not anticipate any adverse impact to congregate residential programs operated, approved, licensed, or certified by OCFS in rural areas as a result of this rule.

5. Rural Area Participation:

Since the start of the pandemic, OCFS has continuously worked with all congregate residential programs operated, approved, licensed, or certified by OCFS regarding actions to help minimize the spread of COVID-19. OCFS anticipates continuing this relationship as it completes necessary guidance related to the requirements set forth in this regulation.

Job Impact Statement

1. Nature of Impact:

The New York State Office of Children and Family Services (OCFS) does not anticipate that this rule will have a negative impact on employment opportunities in any region of New York State.

2. Categories and Numbers Affected:

None.

3. Regions of Adverse Impact:

This rule applies to all residential congregate programs operated, approved, licensed, or certified by the Office of Children and Family Services. There are no regions where this rule will have a disproportionate adverse impact on employment opportunities.

4. Minimizing Adverse Impact:

OCFS does not anticipate an adverse impact.

Assessment of Public Comment

The agency received no public comment.

certificate, provided the Emergency COVID-19 certificate is held in the same certificate title of the reissuance sought. This proposal enables these candidates to take the required exam(s) during the full two-year validity period of the Emergency COVID-19 certificate.

The revised proposed amendment was presented to the Higher Education Committee for recommendation to the Full Board for adoption as an emergency rule at the January 2022 meeting of the Board of Regents, effective January 11, 2021. Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) action after expiration of the 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the April 2022 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the April meeting, would be April 27, 2022, the date the Notice of Adoption would be published in the State Register.

However, the emergency rule will expire on April 10, 2022. Therefore, a second emergency action is necessary at the March 2022 meeting for the preservation of the general welfare to immediately allow candidates to take the exam(s) required for the reissuance of their Initial certificate during the validity period of their Emergency COVID-19 certificate, and to ensure that the emergency action taken at the January 2022 meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at its April 2022 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by SAPA for State agency rule making.

Subject: Requirements for the Reissuance of an Initial Certificate.

Purpose: To remove the requirement that candidates complete 50 hours of CTLE and/or professional learning to obtain a reissuance and to allow Initial Reissuance candidates to take the certification exam(s) in the area(s) required for the certification sought during the validity period of their Emergency COVID-19 certificate.

Text of emergency rule: Subdivision (a) of section 80-1.8 of the Regulations of the Commissioner of Education shall be amended to read as follows:

(a) The holder of an initial certificate whose certificate has expired and who has not successfully completed three school years of [teaching] experience, or its equivalent, as is required for a professional certificate, shall be reissued an initial certificate on one occasion only, for a period of five years from the date of reissuance.

(1) Candidates applying for a reissuance shall [meet the requirements in the following paragraphs:

(i) The candidate shall have successfully completed 50 clock hours of acceptable continuing teacher and leader education (CTLE), professional learning (PL), and/or a combination thereof. Such PL and/or CTLE shall be completed within one year prior to the department's receipt of a completed application or within one year after the department's receipt of such completed application for the reissuance of the initial certificate. The definition of acceptable PL and the measurement of PL study shall be that defined in section 100.2(dd) of this Title and the definition of acceptable CTLE and the measurement of CTLE shall be that prescribed in Subpart 80-6 of this Part.

(ii) The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination content specialty test(s) in the area required for the certificate sought [or, where applicable], the New York State assessment [for school building leadership] required for a certificate as a school building leader, or the New York State assessment required for a certificate as a school counselor, which shall be taken within one year prior to or one year after the department's receipt of a completed application [or within one year after the department's receipt of such completed application] for the reissuance of the initial certificate or during the validity period of the Emergency COVID-19 certificate, provided such certificate is held in the same certificate title of the reissuance sought.

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. EDU-52-21-00014-P, Issue of December 29, 2021. The emergency rule will expire June 9, 2022.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, Education Department, Office of Counsel, 89 Washington Avenue, Room 112EB, Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law § 14 authorizes the Commissioner to prescribe regulations pertaining to certification and licensing requirements of a classroom teacher.

Education Law § 101 (not subdivided) charges the Department with the

Education Department

EMERGENCY RULE MAKING

Requirements for the Reissuance of an Initial Certificate

I.D. No. EDU-52-21-00014-E

Filing No. 289

Filing Date: 2022-04-11

Effective Date: 2022-04-11

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

Action taken: Amendment of section 80-1.8(a) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101, 207, 208, 305, 308, 3001, 3004 and 3009

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: At its December 2021 meeting, the Board of Regents permanently adopted regulatory amendments extending the validity period of the Emergency COVID-19 certificate from one year to two years. This extension gives candidates two years to take and pass the exams required for the certificate sought. Therefore, classroom teachers and school building leaders who obtain the Emergency COVID-19 Initial Reissuance certificate have two years to take and pass the certification exam(s) in the area(s) required for the reissuance of their Initial certificate. However, section 80-1.8 of the Commissioner's regulations only provides candidates one year before or after the submission of their application for the reissuance of the Initial certificate to take such certification exam(s).

The Department has learned that some candidates who received the Emergency COVID-19 Initial Reissuance certificate took the certification exam(s) in the area(s) required for the certificate sought more than one year after they submitted their application for the Initial Reissuance, but during the two-year validity period of their Emergency COVID-19 certificate.

To hold these candidates harmless, the Department is proposing to amend section 80-1.8 of the Commissioner's regulations to allow candidates to take the certification exam(s) in the area(s) required for the certificate sought during the validity period of the Emergency COVID-19