

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 Alcoholism and Substance Abuse Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Requirements for the Establishment, Incorporation and Certification of Providers of Addiction Services

I.D. No. ASA-33-22-00001-P

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

Proposed Action: Amendment of Part 810 of Title 14 NYCRR. This rule is proposed pursuant to SAPA section 207(3), 5-Year Review of Existing Rules.

Statutory authority: Mental Hygiene Law, sections 19.07(c), (e), 19.09(b), 19.20, 19.20-a, 19.21(b), (d), 19.40, 32.01, 32.05, 32.07(a), 32.09, 32.21, 32.29, 32.31; Business Corporation Law, section 406; Not-For-Profit Corporation Law, section 404(u); Protection of People with Special Needs Act (L. 2012, ch. 501); 42 CFR 431.110

Subject: Requirements for the establishment, incorporation and certification of providers of addiction services.

Purpose: To update outdated and stigmatizing language and to clarify processes of the certification process for providers and applicants.

Substance of proposed rule (Full text is posted at the following State website: <https://oasas.ny.gov/>): 810.1 Background and Intent: Updates to outdated terminology.

810.2 Legal base: Updates to outdated terminology.

810.3 Applicability: Updates to outdated terminology.

810.4 Definitions: Updates to outdated terminology and revised definitions.

810.5 Applications requiring full review: Updates to outdated terminology.

810.7 Standards for approval of an application requiring full or administrative review: Clarification of ownership and management requirements to align with agency practice.

810.8 Full review process: Updates to outdated terminology and clarification of timeframes.

810.9 Administrative Review Process: Updates to outdated terminology and clarification of timeframes.

810.10 Actions requiring prior approval: Updates to outdated terminology and clarification of ownership requirements.

810.12 Criteria and procedures for approval of management contracts: Updates to outdated terminology.

810.13 Certification: Clarification of requirements, updates to outdated terminology, and inclusion of a provisional operating certificate.

810.14 Inspection and reviews: Updates to outdated terminology and clarification of requirements.

810.15 Suspension, revocation or limitation of operating certificates: Updates to outdated terminology and inclusion of the provision for a temporary operator.

810.18 Indian health services programs: Updates to outdated terminology.

Text of proposed rule and any required statements and analyses may be obtained from: Kelly E. Grace, Office of Addiction Services and Supports, 1450 Western Ave., Albany NY 12203, (518) 366-7958, email: Kelly.Grace@oasas.ny.gov

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

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

Five-Year Review of Existing Rules: An assessment of public comments is not attached because no comments were received.

Regulatory Impact Statement

1. Statutory Authority:

(a) Section 19.07(c) of the Mental Hygiene Law (MHL) charges the Office with the responsibility for ensuring that persons in need of addiction services, care and treatment receive services of high quality and effectiveness and that the personal and civil rights of persons seeking and receiving such services are adequately protected.

(b) Section 19.07(e) of the MHL authorizes the Commissioner to adopt standards including necessary rules and regulations pertaining to addiction treatment services.

(c) Section 19.09(b) of the MHL authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under their jurisdiction.

(d) Section 19.20 of the MHL requires review of criminal history information review concerning certain prospective employees and volunteers of providers of services certified, operated or otherwise authorized by the office.

(e) Section 19.20-a of the MHL authorizes the Office to receive criminal history information from the Division of Criminal Justice Services related to persons seeking to be credentialed or applicants for an operating certificate issued by the office that will have regular and substantial unsupervised or unrestricted contact with patients/clients.

(f) Section 19.21(b) of the MHL requires the [c]Commissioner to establish and enforce regulations concerning the licensing, certification, inspection and treatment standards of addiction treatment services.

(g) Section 19.21(d) of the MHL requires the office to establish reasonable performance standards for providers of services certified by the Office.

(h) Section 19.40 of the MHL authorizes the Commissioner to issue operating certificates for the provision of addiction treatment services, including the authority to waiver regulatory requirements.

(i) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and ef-

fectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

(j) Section 32.05 of the MHL provides that no substance use disorder services may be established without an Operating Certificate issued by the commissioner.

(k) Section 32.07(a) of the MHL authorizes the Commissioner to adopt regulations to effectuate the provisions and purposes of article 32 of the MHL.

(l) Section 32.09 of the MHL contains criteria that the Commissioner must consider when issuing an operating certificate.

(m) Section 32.20 of the MHL authorizes the Commissioner to appoint a Temporary Operator.

(n) Section 32.21 of the MHL provides the Commissioner with the authority to suspend, revoke or limit operating certificates and imposition of fines.

(o) Section 32.29 of the MHL authorizes the Commissioner to approve the construction of a facility for which an operating certificate will be issued.

(p) Section 32.31 of the MHL provides the process for the establishment or incorporation of facilities for addiction services.

(q) Section 406 of the Business Corporation Law requires any corporation which intends to establish or operate a program of services for services to obtain the approval of the Commissioner as to the proposed filing of its certificate of incorporation.

(r) Section 404(u) of the Not-For-Profit Corporation Law gives the Commissioner the responsibility of approving the certificate of incorporation of any corporation which intends to establish or operate an addiction program Certified by the Office.

(s) The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) establishes the Justice Center for the Protection of People with Special Needs (Justice Center) and requires criminal information history reviews of all applicants for authorization to operate a program of services for addiction; and of all employees, contractors, or volunteers of such certified program who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the patients or clients of in such programs.

(t) 42 CFR 431.110 relates to federal requirements that New York State's Medicaid State Plan provide for the acceptance of Indian Health Services facilities as a Medicaid provider on the same basis as any other qualified provider.

2. Legislative Objectives: Part 810 (Establishment, Incorporation and Certification) was revised at this time because it contained outdated and unnecessary terminology, and needed to be revised to as to better reflect current practice in the Agency. The objectives in making these edits were to make the certification process more clear to providers in order to provide safe, effective, and efficient addiction support programs that reflect the needs of the clients. By making the requirements more clear to providers and prospective providers, it should be easier for providers and prospective providers to comply with the standards set forth in the regulations in creating and maintaining quality programs.

3. Needs and Benefits: OASAS is updating the language used in this regulation consistent with amendments made to other OASAS regulations. These updates include using less stigmatizing and more person centered terminology, using gender neutral language, updating the name of the Agency, and updating outdated definitions. Other amendments made were specifically to clarify certification requirements, and to include statutory language that has been added and/or updated since the time that the regulation was last updated. Standards for approving a certification application for full or administrative review was updated to clarify the policy requirement that 10% of the owners or principals or board members of an applicant program must have substantial experience directly providing or managing substance use disorder treatment services, as determined by the office. The reason for this clarification is that it is essential for an applicant to demonstrate that there is sufficient knowledge within the ownership and management of an applicant to successfully implement substance use disorder services. These criteria by which this will be reviewed is currently drafted as "guidance" for applicants. This section also includes language to clarify the requirements that must be met by an applicant, as well as provides for the inclusion of gender neutral facilities.

Previously there were several references to "a reasonable time" in the regulation in relation to certain steps of the applicant approval process. Definitions for these time frames were clarified in the regulation so as to align with current practice of the agency. A "provisional certification" was included in the types of operating certificates issued by the office to allow for a provisional certificate to be issued to an applicant by the Commissioner. The requirement that an additional location must be operated in the same or contiguous county as the original was eliminated to align with other OASAS regulations.

The Inspection and Review section of the regulation was amended to clarify the requirements for providers. A provision for appointment of a

Temporary Operator was also included in the amended regulation, as it was a statutory provision added to the mental hygiene law in the time since the regulation was last updated. The authority for this comes from Section 32.20 of the Mental Hygiene law, and the regulation simply includes the requirements in the law.

4. Costs: No additional administrative costs to the State, agency, local governments or regulated parties are anticipated.

5. Paperwork: There is no additional paperwork beyond what is already required.

6. Local Government Mandates: There are no new local government mandates.

7. Duplication: This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule.

8. Alternatives: The alternative is to leave the regulation as it currently reads, with language inconsistent across Title 14 regulations and out of date terminology. To remove any inconsistencies and potential confusion among providers, this alternative was deemed unacceptable.

9. Federal Standards: This regulation does not conflict with federal standards.

10. Compliance Schedule: This rulemaking will be effective upon publication of a Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

OASAS has determined that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments because the amended regulation does not impose any new requirements on providers or applicants beyond what is already required by the Office. The amendments only update outdated and stigmatizing language, and clarify certification process requirements to align with practice.

Rural Area Flexibility Analysis

OASAS has determined that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas because the amended regulation does not impose any new requirements on providers or prospective applicants beyond what the office already requires. The amendments only update outdated and stigmatizing language, and clarify certification process requirements to align with practice.

Job Impact Statement

OASAS is not submitting a Job Impact Statement for this rulemaking. OASAS does not anticipate a substantial adverse impact on jobs and employment opportunities because the amended regulation does not impose any new employment or training requirements on applicants or providers of services. The amendments only update outdated and stigmatizing language, and clarify certification process requirements to align with practice.

Office of Children and Family Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Limits on Executive Compensation

I.D. No. CFS-33-22-00003-P

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

Proposed Action: This is a consensus rulemaking to repeal Subpart 166-5 of Title 9 NYCRR and Part 409 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f)

Subject: Limits on executive compensation.

Purpose: To remove the limits on executive compensation and administrative expenses.

Substance of proposed rule (Full text is posted at the following State website: <https://ocfs.ny.gov/main/legal/regulatory/pcon/>): Complete repeal of Subpart 166-5 of Subtitle E of Title 9.

Complete repeal of Part 409 of Title 18.

Text of proposed rule and any required statements and analyses may be obtained from: Lisa Vasnani, Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144, (518) 474-8310, email: regcomments@ocfs.ny.gov