

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

NOTICE OF ADOPTION

Patient Rights in OASAS Programs

I.D. No. ASA-11-22-00003-A

Filing No. 689

Filing Date: 2022-08-30

Effective Date: 2022-10-01

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

Action taken: Amendment of Part 815 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(c), (e), 19.09(b), 19.20, 19.20-a, 19.21(b), 22.03, 22.07, 32.01, 32.07(a), 32.05; Social Services Law, section 492; Protection of People with Special Needs Act; L. 2012, ch. 501; Executive Law, art. 15

Subject: Patient rights in OASAS programs.

Purpose: Establish patient rights and provider obligations regarding patient rights in OASAS programs.

Substance of proposed rule: In addition to technical amendments updating this regulation consistent with Title 14, the Proposed Rule amends Part 815 as follows:

§ 815.1 Legal base. Updates to utilize appropriate language. Addition of reference to NYS Human Rights Law.

§ 815.4 Provider requirements. Updates to utilize appropriate language, include references to person-centered and trauma informed care delivery. Clarification that providers may not base program admission on specific identification requirements. Clarification on the requirement for providers to have policies related to the provision of medication for addiction treat-

ment for substance use disorder. Update to use standardized terms for governing authority.

§ 815.5 Patient rights. Updates to utilize appropriate language, include references to person-centered and trauma informed care delivery. Addition of provisions relating to non-discrimination in program admission. Clarification on a patient's right to access medication for addiction treatment for substance use disorder.

§ 815.6 Patient responsibilities. Updates to utilize appropriate language, include references to person-centered and trauma informed care delivery.

§ 815.7 Procedure at discharge. Updates to utilize appropriate language, include references to person-centered and trauma informed care delivery.

§ 815.8 Toxicology testing. Updates to utilize appropriate language, include references to person-centered and trauma informed care delivery and consistent with OASAS guidance.

§ 815.9 Patient use of prescription medication. Updates to utilize appropriate language, include references to person-centered and trauma informed care delivery.

§ 815.10 Patient screening. Programs are explicitly prohibited from conducting body cavity searches Alternatives to body cavity searches are provided.

§ 815.12 Research subjects. Updates to appropriate language references. Changes to clarify timing of training.

§ 815.13 Staff and client relationships. Inclusion of reference to regular trainings regarding appropriate boundaries between staff and clients/patients.

Final rule as compared with last published rule: Nonsubstantial changes were made in sections 815.5(a)(21) and 815.12(d).

Text of rule and any required statements and analyses may be obtained from: Patrick Totaro, Office of Addiction Services and Supports, 1450 Western Ave., Albany, NY 12203, (518) 485-2312, email: patrick.totaro@oasas.ny.gov

Revised Regulatory Impact Statement

1. Statutory Authority:

(a) Section 19.07(c) of the Mental Hygiene Law ("MHL") charges the Commissioner ("Commissioner") of the New York State Office of Addiction Services and Supports ("the Office") with the responsibility of ensuring that the personal and civil rights of persons receiving care, treatment and rehabilitation 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 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 authorizes the Office to receive and review criminal history information from the Justice Center related to employees or volunteers of treatment facilities certified, licensed, funded or operated by the Office.

(e) Section 19.20-a of the MHL authorizes the Office to receive and review criminal history information from the Justice Center related to persons seeking to be credentialed by the Office or applicants for an operating certificate issued by the Office.

(f) Section 19.21(b) of the MHL authorizes the Commissioner to adopt regulations concerning the licensing, certification, inspection, and treatment standards of all facilities that provide addiction services.

(g) Section 22.03 of the MHL requires the director of any addiction services program to establish, communicate and post patient rights, to include information about how to communicate with the Office and the Commissioner.

(h) Section 22.07(c) of the MHL authorizes the Commissioner to adopt rules and regulations and take any other necessary action to ensure that the rights of individuals who have received or are receiving addiction services are protected.

(i) Section 32.01 of the MHL authorizes the Commissioner to adopt any

regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by article 32 of the MHL.

(j) 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.

(k) Section 32.05 of the MHL indicates that no provider of services shall engage in the provision of addiction services without an operating certificate issued by the Commissioner.

(l) Section 492 of the Social Services Law established the Vulnerable Persons' Central Register.

(m) The Protection of People with Special Needs Act (chapter 501 of the Laws of 2012) established the Justice Center for the Protection of People with Special Needs.

(n) Section 32.06 of the MHL prohibits the offering or acceptance of a payment, benefit or consideration in any form, in exchange for the referral of any person as a potential patient for substance use disorder services.

(o) Article 15 of the Executive Law enacts the Human Rights Law prohibiting discrimination against protected classes of New Yorkers including on the basis of sexual orientation and gender identity or expression.

2. Legislative Objectives: The legislature has authorized OASAS to establish standards and regulations governing the provision of addiction services, including the provision of medications for addiction treatment, as well as standards for providers seeking to offer such services. Additionally, OASAS is tasked with the responsibility of ensuring that the personal and civil rights of persons receiving care, treatment and rehabilitation are adequately protected.

3. Needs and Benefits: Amendments to Part 815 include updates to definitions and language used by all OASAS programs consistent with continued efforts and agency goals to reduce stigma and use person-first language for the delivery of addiction services. Additionally, provisions for medication for addiction treatment for substance use disorder are further clarified consistent with guidance issued by the Office and the medical standard of care for the treatment of substance use disorder. These amendments support OASAS overarching goals to ensure programs are responsive to community needs and provide person-centered care.

Furthermore, the ability for OASAS certified programs to conduct body cavity searches are prohibited in all circumstances. OASAS has guidance for providers for recommended alternatives when a body cavity search may have otherwise been considered. OASAS, pursuant to mental hygiene law, is tasked with the responsibility of ensuring that the personal and civil rights of persons receiving care, treatment and rehabilitation are adequately protected. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

4. Costs: No additional administrative costs to the State, local government or agency are anticipated. The requirements outlined in the regulation are already required in guidance (both for medication access and naloxone education and access) and in the standard of care for the treatment of substance use disorder. Programs which formerly utilized body cavity searches in their patient search procedures will need to update their policies in accordance with this regulation as body cavity searches are explicitly prohibited.

5. Paperwork: There is no additional paperwork beyond what is already required. OASAS programs are required to review and update policies and procedures to ensure compliance with OASAS regulations and guidance and evolving standards of care for the treatment of substance use disorder and problem gambling. Some programs will be expected to enter into agreements with Opioid Treatment Programs, which should not be difficult as many providers currently have agreements to facilitate linkage between different levels of care.

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

7. Duplication: This 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 providers unsure of their obligation to provide medication for addiction treatment for substance use disorders. Additionally, body cavity searches, which have no therapeutic value, are permissible until such time as the regulation is updated.

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.

Revised 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 significant requirements on prevention, treatment or recovery programs providing addiction services. Providers of

services are already required to develop policies and procedures to implement addiction services in their programs. These regulatory amendments are consistent with guidance issued by the Office and the medical standard of care for the delivery of substance use disorder services. Any needed changes to existing policies and procedures in accordance with these regulatory amendments should be minimal.

Furthermore, OASAS is tasked with the responsibility of ensuring that the personal and civil rights of persons receiving care, treatment and rehabilitation are adequately protected. This amended regulation explicitly prohibits the use of a body cavity search in any OASAS program. OASAS will issue guidance to the field as to the alternatives which may be used in situations where they may have otherwise sought to use a body cavity search. Programs may choose to develop new policies and procedures in accordance with guidance issued by the Office if they choose to utilize such process. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Revised 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 prevention, treatment or recovery programs providing addiction services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs. These regulatory amendments are consistent with guidance issued by the Office and the medical standard of care for the delivery of substance use disorder services. Any needed changes to existing policies and procedures in accordance with these regulatory amendments should be minimal.

Furthermore, OASAS is tasked with the responsibility of ensuring that the personal and civil rights of persons receiving care, treatment and rehabilitation are adequately protected. This amended regulation explicitly prohibits the use of a body cavity search in any OASAS program. OASAS will issue guidance to the field as to the alternatives which may be used in situations where they may have otherwise sought to use a body cavity search. Programs may choose to develop new policies and procedures in accordance with guidance issued by the Office if they choose to utilize such process. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Revised 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 prevention, treatment or recovery programs offering OASAS services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs. OASAS is tasked with the responsibility of ensuring that the personal and civil rights of persons receiving care, treatment and rehabilitation are adequately protected. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2027, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

Public comment: Policies pertaining to discrimination should be amended to include prohibition against discrimination based on age.

Agency response: Amendments have been made consistent with this recommendation.

Public comment: Supervised urine collection should allow for patient preference on which program staff may observe.

Agency response: Amendments have been made consistent with this recommendation.

Public comment: Including prospective patients in agency requirements to provide medication for addiction treatment is challenging.

Agency response: The intent of including prospective patients in agency policies regarding the provision of medication for addiction treatment and overdose prevention education and training is to ensure that programs provide access to such services as soon as a staff person engages with an individual, rather than upon completion of administrative requirements for program admission. Programs should consider how they provide low threshold services to individuals to maintain their engagement with said provider until such time as they are prepared to engage in additional services.

Public comment: Referring providers cannot guarantee an appointment will be provided when referring patients to another provider for continued medication access.

Agency response: Medication for addiction treatment saves lives.

Patients that begin medication for addiction treatment in a program, need to maintain access to said medication post-discharge. It is an expectation that programs create relationships with other community-based programs across their service region to facilitate access to services for their patients.

Public comment: Regulations specify that the patient has the ability to define recovery, what should a program do if the patient's definition of recovery is inconsistent with medical or clinical criteria for admission or continued stay for insurance coverage?

Agency response: Clinical criteria are determined by an individualized assessment done by a clinician. The patient's definition of recovery is not determinative for these purposes.

Public comment: Not allowing programs to have patients remove all clothing or perform a body cavity search will create dangerous situations in the programs and increase the likelihood that patients will bring contraband into a program.

Agency response: There is no therapeutic value in requesting a patient remove their clothing or performing a body cavity search. Programs are required to provide trauma informed, strength based, person centered services while balancing the unique needs in residential settings to prohibit access to items that may create an unsafe environment. OASAS has developed guidance for programs identifying therapeutic alternatives to asking patients to remove their clothing or conducting body cavity searches. Guidance will be posted on the OASAS website and shared with the provider community.

Public comment: Providers may not discharge a patient for refusal to participate in treatment. Does this mean OASAS authorizes keeping patients in treatment who are refusing treatment?

Agency response: No. Treatment in the OASAS system is voluntary. Programs may not discharge a patient solely for their refusal to participate in a particular service recommended by the program, such as counseling or medication for addiction treatment.

Public comment: Define how regularly staff should be trained on maintaining appropriate boundaries with clients, recommend at hire and annually thereafter.

Agency response: Amendments have been made consistent with this recommendation.

NOTICE OF ADOPTION

Residential Services

I.D. No. ASA-11-22-00004-A

Filing No. 683

Filing Date: 2022-08-30

Effective Date: 2022-10-01

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

Action taken: Amendment of Part 819 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 19.40, 32.01 and 32.07(a)

Subject: Residential services.

Purpose: Establish rules and expectations for providers of residential services.

Substance of final rule: In addition to technical amendments updating this regulation consistent with Title 14, the Proposed Rule amends Part 819 as follows:

§ 819.2 Definitions. A new section addressing definitions applicable to this Part is added.

§ 819.3 Standards applicable to all residential service providers. Adds and updates requirements applicable to residential service providers consistent with other OASAS residential programs including the development of policies and procedures, access to medications for addiction treatment for substance use disorders and service provision. Updates outdated medical term.

§ 819.4 Admission procedures. Updates consistent with appropriate use of terminology. Provisions relating to non-discrimination are removed and reference is added to compliance with Part 815.

§ 819.5 Post admission procedures. Updates consistent with appropriate use of terminology related to medical and clinical assessments post-admission. Treatment planning and discharge provisions are updated consistent with OASAS updates to all certified programs. Discharge for behavioral reasons updated to require an offer of a referral. Updates outdated medical term.

§ 819.6 Record keeping. Updates consistent with appropriate use of terminology and record keeping requirements around medications for addiction treatment.

§ 819.8 General staffing. Updates consistent with appropriate use of

terminology consistent with OASAS regulations. Reference is added to appropriate duties that may fall to residents consistent with OASAS guidance. Staff training requirements are amended to occur every year instead of every three years and the list of appropriate trainings are updated consistent with other certified program requirements. Updates outdated medical term.

Final rule as compared with last published rule: Nonsubstantial changes were made in section 819.5(b)(2)(v) and (o)(6).

Text of rule and any required statements and analyses may be obtained from: Patrick Totaro, Office of Addiction Services and Supports, 1450 Western Ave., Albany, NY 12203, (518) 485-2312, email: patrick.totaro@oasas.ny.gov

Revised Regulatory Impact Statement

1. Statutory Authority:

(a) Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner of the Office of Addiction Services and Supports to adopt standards including necessary rules and regulations pertaining to substance use disorder services.

(b) Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner of the Office of Addiction Services and Supports to adopt regulations necessary and proper to implement any matter under their jurisdiction.

(c) Section 19.40 of the Mental Hygiene Law authorizes the Commissioner of the Office of Addiction Services and Supports to issue operating certificates for the provision of substance use disorder services.

(d) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner of the Office of Addiction Services and Supports to adopt any regulation reasonably necessary to implement and exercise effectively the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

(e) Section 32.07(a) of the Mental Hygiene Law authorizes the Commissioner of the Office of Addiction Services and Supports to adopt regulations to effectuate the provisions and purposes of Article 32 of the Mental Hygiene Law.

2. Legislative Objectives: The legislature has authorized OASAS to establish standards and regulations governing the provision of addiction services, including the provision of medications for addiction treatment, as well as standards for providers seeking to offer such services.

3. Needs and Benefits: Amendments to Part 819 include updates to definitions and language used by all OASAS programs consistent with continued efforts and agency goals to reduce stigma and use person-first language for the delivery of addiction services. Additionally, provisions for medication for addiction treatment for substance use disorder are further clarified consistent with guidance issued by the Office and the medical standard of care for the treatment of substance use disorder. These amendments support OASAS overarching goals to ensure programs are responsive to community needs and provide person-centered care.

This amendment contains substantial revisions for these programs because the regulation has not been otherwise updated since 2002. Provisions are consistent with requirements in other OASAS residential programming. Medical and clinical requirements for providers of substance use disorder residential services are updated consistent with requirements in other residential services programs and guidance issued by the Office. Training requirements are updated consistent with other regulations. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

4. Costs: No additional administrative costs to the State, local government or the agency are anticipated. Providers already have access to training, so there are no costs associated with requiring annual training. The requirements outlined in the regulation regarding medication are already required in guidance (both for medication access and naloxone education and access) and in the standard of care for the treatment of substance use disorder.

5. Paperwork: There is no additional paperwork beyond what is already required. Providers will need to create updated policies and procedures consistent with this regulation to replace previous policies and procedures. OASAS programs are required to review and update policies and procedures to ensure compliance with OASAS regulations and guidance and evolving standards of care for the treatment of substance use disorder and problem gambling. Some programs will be expected to enter into agreements with Opioid Treatment Programs, which should not be difficult as many providers currently have agreements to facilitate linkage between different levels of care.

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

7. Duplication: This 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 providers

unsure of their obligation to provide medication for addiction treatment for substance use disorders. Additionally, similar residential services programs will have inconsistent regulatory provisions and requirements.

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.

Revised 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 treatment programs providing addiction services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs, including for the provision of medication assisted treatment. These regulatory amendments are consistent with guidance issued by the Office and the medical standard of care for the delivery of substance use disorder services. Any needed changes to existing policies and procedures in accordance with these regulatory amendments should be minimal as program policies and procedures should already cover most of the clinical and medical updates contained in the regulation, terminology needs to be updated. Annual training requirements are consistent with rules in other regulations and as the provider already makes training available to their staff, providing such trainings annually will not be difficult.

Revised 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 treatment programs providing addiction services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs, including for the provision of medication assisted treatment. These regulatory amendments are consistent with guidance issued by the Office and the medical standard of care for the delivery of substance use disorder services. Any needed changes to existing policies and procedures in accordance with these regulatory amendments should be minimal as program policies and procedures should already cover most of the clinical and medical updates contained in the regulation, terminology needs to be updated. Annual training requirements are consistent with rules in other regulations and as the provider already makes training available to their staff, providing such trainings annually will not be difficult. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Revised 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 treatment programs offering OASAS services. Providers of services are already required to provide services to individuals admitted to their programs and no new staff will be required for compliance with these amendments. Providers of these services have already developed standard trainings consistent with other OASAS requirements and therefore making such training available to staff annually is not difficult. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2027, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

Public comment: Do the provisions that require maintaining a naloxone kit on-site pertain to each individual unit for supportive living?

Agency response: Kit availability will vary based on location. If there are multiple apartment units on a floor, a kit(s) could be maintained in a central location, accessible to everyone. Otherwise, each individual unit shall be provided with at least one naloxone kit.

Public comment: Why is OASAS using the term psychosocial therapies instead of psychosocial counseling?

Agency response: Psychosocial counseling is a form of psychosocial therapy. "Psychosocial therapies" was a term that was used to describe individual and group treatment modalities in other regulations. The term was carried over to the revisions to Part 819 for consistency among the regulations.

Public comment: Residential programs are not equipped to make a refer-

ral to a more appropriate level of care if an individual is not appropriate for an 819 level of care.

Agency response: This is not a new mandate. All certified OASAS programs are expected to make referrals to an appropriate level of care for individuals seeking services if they do not meet admission criteria for services at a particular program.

Public comment: Why must individuals opt out of communicable disease testing and prenatal care?

Agency response: NYS public health law requires that individuals opt out of HIV testing when offered. This evidence-based approach has been shown to remove the stigma associated with HIV testing. This standard is being applied universally to all communicable disease testing and prenatal services in OASAS programs.

Public comment: Consider amending regulation to remove "measurable" for treatment goal development as all goals may not be quantifiable.

Agency response: Measuring progress towards treatment goals is not a new mandate and is included in 819.5(i)(4). Adding "measurable treatment" to the term "goals" in 819.5(i)(3) allows for consistency between the two provisions.

Public comment: Consider removing the term "any known" from the requirement to document details about a resident death in the resident record as the situation will be unclear immediately following the incident, the resident record is closed upon death and it is unclear who will be accessing the records after the residents death.

Agency response: Any known factual details or information that describe the events associated with the witnessed death of a resident or the discovery of a deceased resident, and the actions taken after a witness or discovered death should be documented in the patient record because this is an event that occurred during the resident's treatment. The chart should document facts, only, and not speculative details or information about the death and/or the actions taken after a witnessed or discovered death.

Public comment: Address in the regulation the ability of a program to discharge or remove someone for violent, dangerous or illegal behavior without referral or connection to another treatment program.

Agency response: Any resident who is discharged from a program for inability to adhere to written behavioral standards of the program is likely to still be in need of substance use disorder treatment and, therefore, should be "offered a referral and connection to another treatment program" per the regulations. The standard is that a referral and connection are offered.

Public comment: What is the justification for the time limit on not allowing a former resident to be employed by the program within one year of discharge? Where is there additional guidance and standards issued by OASAS on this issue?

Agency response: This provision addresses the creation of healthy staff and client boundaries. Questions may be directed to the Regional Office and the PICM mailbox at PICM@oasas.ny.gov.

Public comment: Clarify what "certain duties" a resident may be asked to perform under the supervision of a staff person. Where is there additional guidance and standards issued by OASAS on this issue?

Agency response: The provision regarding "certain duties" is new, "additional guidance and standards may be issued after the regulation revisions are finalized and published in the NYS Register. "Certain duties" are those duties that are therapeutic and consistent with advancing the resident towards their treatment goals. These duties should not include operating program motor vehicles, serving as overnight awake staff, or functioning as staff members during times of staffing shortages. Additional guidance on Limitations on Participant Work is available on the OASAS website.

Public comment: The trainings identified in this regulation (nineteen in total) is excessive. That is in addition to any other state and federal trainings required.

Agency response: Fourteen of the nineteen trainings were listed in the regulation before the revisions so providing training in those areas is not a new requirement. The added trainings are critical for ensuring providers are knowledgeable and can provide information about and treatment with mediations to treat substance use disorders, provide life-saving measures such as overdose prevention education, naloxone, and naloxone administration and engage in trauma-informed care.

NOTICE OF ADOPTION

Withdrawal and Stabilization Services

I.D. No. ASA-11-22-00005-A

Filing No. 680

Filing Date: 2022-08-30

Effective Date: 2022-10-01

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

Action taken: Amendment of Part 816 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09, 19.15, 19.40 and 22.09

Subject: Withdrawal and Stabilization Services.

Purpose: Establish rules and expectations for providers of withdrawal and stabilization services.

Substance of final rule: In addition to technical amendments updating this regulation consistent with Title 14, the Proposed Rule amends Part 816 as follows:

§ 816.1 Background and intent. OASAS is removing the certification for medically monitored withdrawal and stabilization services and clarifying expectations, which are already included in guidance, for linkages to supportive services and other levels of care and the delivery of person centered, trauma informed services.

§ 816.4 Definitions. Updates various definitions. Clarifies that detox services may be under the supervision of a nurse practitioner consistent with federal authority. Eliminates the definition for medically monitored withdrawal and stabilization services.

§ 816.5 Standards applicable to all withdrawal and stabilization services. Various updates consistent with appropriate use of person-first terminology and consistent with other regulations. Clarification on the expectations regarding provision of medication for addiction treatment for substance use disorder. Reference added to current guidance on withdrawal and stabilization protocol guidance issued by the Office. Reference to psychosocial treatment requirements and prenatal care for pregnant persons for providers of these services. Updates outdated medical terms.

§ 816.6 Update terms to match other OASAS regulations.

§ 816.7 Additional requirements for medically supervised inpatient withdrawal and stabilization services. Updates the qualifications on who may be a program director for this service.

§ 816.8 Additional requirements for medically supervised outpatient withdrawal and stabilization services. Updates the qualifications on who may be a program director for this service. Removes the counselor ratio and instead references adequacy based on program objectives and outcomes. Update terms to match other OASAS regulations.

§ 816.9 Additional requirements for medically monitored services. This section is deleted.

§ 816.10 Standards pertaining to Medicaid reimbursement. Provisions updated to include mandate that programs deliver services consistent with this Part and Part 841 of this Title.

§ 816.11 Savings and renewal clause. Provision eliminated.

Final rule as compared with last published rule: Nonsubstantial changes were made in sections 816.5(n), 816.6(c) and 816.8(c).

Text of rule and any required statements and analyses may be obtained from: Patrick Totaro, Office of Addiction Services and Supports, 1450 Western Ave., Albany, NY 12203, (518) 485-2312, email: patrick.totaro@oasas.ny.gov

Revised Regulatory Impact Statement

1. Statutory Authority:

(a) Section 19.09 of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under their jurisdiction.

(b) Section 19.15 of the Mental Hygiene Law bestows upon the Commissioner the responsibility of promoting, establishing, coordinating, and conducting programs for the prevention, diagnosis, treatment, aftercare, rehabilitation, and control in the field of substance use disorder.

(c) Section 19.40 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for the provision of substance use disorder services.

(d) Section 22.09 of the Mental Hygiene Law directs the Commissioner to designate hospitals and other appropriate facilities as providers of emergency detoxification and stabilization services for persons needing or seeking emergency treatment.

2. Legislative Objectives: The legislature has authorized OASAS to establish standards and regulations governing the provision of addiction services, including the provision of medications for addiction treatment, as well as standards for providers seeking to offer such services.

3. Needs and Benefits: OASAS is updating the language used in this regulation consistent with amendments made to other OASAS regulations to clarify provider requirements with respect to the provision of medication for addiction treatment for substance use disorder and to update definitions consistent with other OASAS regulations. This level of service is very medically focused and is applicable to both hospital and community-based detox programs. Provisions include reference to all appropriate medical, psychiatric and substance use protocols consistent with the medical standards of care and OASAS guidance and withdrawal protocols.

Amendments to Part 816 include updates to definitions and language used by all OASAS programs consistent with continued efforts and agency

goals to reduce stigma and use person-first language for the delivery of addiction services. These amendments support OASAS overarching goals to ensure programs are responsive to community needs and provide person-centered care.

Furthermore, provisions are added consistent with other regulations regarding program responsibilities for the development of policies and procedures and for treatment planning. The amendments do not place new requirements on providers, existing requirements are updated and reference appropriate terminology. Withdrawal and stabilization protocols, which these programs are already required to comply with, are also referenced for provider compliance. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

4. Costs: No additional administrative costs to the State, local governments or the agency are anticipated. The requirements outlined in the regulation are already required in guidance (both for medication access and naloxone education and access) and in the standard of care for the treatment of substance use disorder.

5. Paperwork: There is no additional paperwork beyond what is already required. OASAS programs are required to review and update policies and procedures to ensure compliance with OASAS regulations and guidance and evolving standards of care for the treatment of substance use disorder and problem gambling. Programs certified pursuant to this regulation were already required to have linkage agreements with various levels of care to facilitate patient transition to other services and to consult with other providers regarding patient care.

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

7. Duplication: This 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 providers unsure of their obligation to provide medication for addiction treatment for substance use disorders. Additionally, while withdrawal protocols are included in guidance issued by the agency, the obvious preference for program operation is to identify such protocols in the regulation.

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.

Revised 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 prevention, treatment or recovery programs providing addiction services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs, including for the provision of medication assisted treatment. These regulatory amendments are consistent with guidance issued by the Office and the medical standard of care for the delivery of substance use disorder services. Providers of withdrawal and stabilization services are already required to provide these services consistent with medical protocols issued by the Office. Any needed changes to existing policies and procedures in accordance with these regulatory amendments should be minimal. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Revised 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 prevention, treatment or recovery programs providing addiction services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs, including for the provision of medication assisted treatment. These regulatory amendments are consistent with guidance issued by the Office and the medical standard of care for the delivery of substance use disorder services. Any needed changes to existing policies and procedures in accordance with these regulatory amendments should be minimal. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Revised 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 prevention, treat-

ment or recovery programs offering OASAS services. Providers of withdrawal and stabilization services are already required to provide these services consistent with medical protocols issued by the Office. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2027, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

Public comment: Consider an alternative for “physiologically dependent” as this is a difficult standard to meet.

Agency response: The regulation does not require that a program prove physiological dependence on a substance(s) to meet admission criteria, only that an individual may be physiologically dependent on a substance(s) with a need for management of withdrawal symptoms.

Public comment: Consider removing the requirement for 50% of staff to meet the definition of a qualified health practitioner as this level of service has many milieu and support staff that may not be qualified health practitioners. This would also be consistent with changes made to other levels of care.

Agency response: OASAS has determined staffing levels based on the services delivered in this level of care.

Public comment: Including prospective patients in agency requirements to provide medication for addiction treatment is challenging.

Agency response: The intent of including prospective patients in agency policies regarding the provision of medication for addiction treatment and overdose prevention education and training is to ensure that programs provide access to such services as soon as a staff person engages with an individual, rather than upon completion of administrative requirements for program admission. Programs should consider how they provide low threshold services to individuals to maintain their engagement with said provider until such time as they are prepared to engage in additional services.

Public comment: Do the provisions of Part 816.5(c)(5) require only screening and referral or is additional treatment required and by what staff?

Agency response: The provisions of that section require policies and procedures be developed to identify and address mental health conditions, this includes the use of OASAS approved, validated screening instruments for co-occurring mental health conditions and behavioral health risks, including suicide risk, and referral to services for any mental health conditions or behavioral health risks identified. OASAS issued guidance in 2020 on required screening for co-occurring mental health conditions that is posted on the website.

Public comment: Clarify what corrective or disciplinary actions the agency may take.

Agency response: OASAS has the discretion to take correction and/or disciplinary action against any provider consistent with the provisions of the mental hygiene law and Title 14 of the New York Code of Rules and Regulations (NYCRR).

Public comment: Recommendation to eliminate provisions requiring testing and treatment for communicable diseases because of the short length of stay. Are such costs included in the daily rate for this level of care? Is a referral to another provider sufficient?

Agency response: These are not new requirements. Referrals to community based providers are expected however the program is required to begin the testing and/or treatment process during admission to the program and follow up with referral for additional services.

Public comment: Clarification requested that if a health and physical was not done, a physical examination should be completed, for any patient that desires to leave the service (816.5(h)(6)(b)). Consider using the term medical evaluation rather than physical evaluation.

Agency response: The regulation requires the offer of a physical exam.

Public comment: Due to the length of stay, consider changing the mandate for components of a physical examination to include the activities specified in the regulation (816.5(i)(a-d)) and instead use the term “as medically appropriate”. Are these tests covered separately by Medicaid or included in the daily rate?

Agency response: Since individuals served in this setting often have one or more co-occurring conditions, a medical history, a physical examination, and laboratory tests as described in the regulation are considered medically appropriate regardless of length of stay.

Public comment: What additional certifications or accreditations would be required of the Part 816 to conduct methadone inductions?

Agency response: Provision of methadone for purposes of treating opioid use disorder requires certification and federal approvals as an Opioid Treatment Program.

NOTICE OF ADOPTION

Residential Services

I.D. No. ASA-11-22-00006-A

Filing No. 685

Filing Date: 2022-08-30

Effective Date: 2022-10-01

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

Action taken: Amendment of Part 820 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 19.40, 32.01, 32.07(a); Public Health Law, art. 27F

Subject: Residential services.

Purpose: Establish rules and expectations for providers of residential services.

Substance of final rule: In addition to technical amendments and updating terminology used across all regulations for consistency in Title 14, the Proposed Rule amends Part 820 as follows:

§ 820.2 Applicability. Adds reference to person centered, trauma informed services.

§ 820.3 Definitions. Adds definition of patient/resident consistent with this Part.

§ 820.5 General program standards. Added references to the provision of person centered, trauma informed care. Updated provisions regarding medication for addiction treatment for substance use disorder and naloxone access consistent with the needs of the program. Updates terms to be consistent with other OASAS regulations. Updates outdated medical terms.

§ 820.6 Updates outdated medical terms.

§ 820.7 Admission, screening, assessment. Removed list of non-discrimination categories and added reference to Part 815. Updates outdated medical terms.

§ 820.9 Discharge. Added reference to requirement for post-discharge appointment(s) to continue medication access.

§ 820.12 Additional requirements for community reintegration services in a residential setting. Added requirement for programs obligation to ensure access to medication for addiction treatment.

§ 820.13 Standards pertaining to Medicaid reimbursement. Updated provisions consistent with Part 841.

Final rule as compared with last published rule: Nonsubstantial changes were made in section 820.5(a).

Text of rule and any required statements and analyses may be obtained from: Patrick Totaro, Office of Addiction Services and Supports, 1450 Western Ave., Albany, NY 12203, (518) 485-2312, email: patrick.totaro@oasas.ny.gov

Revised Regulatory Impact Statement

1. Statutory Authority:

(a) Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner to adopt standards including necessary rules and regulations pertaining to addiction services.

(b) Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

(c) Section 19.40 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for the provision of addiction services.

(d) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by article 32 of the Mental Hygiene Law.

(e) Section 32.07(a) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations to effectuate the provisions and purposes of article 32 of the Mental Hygiene Law.

(f) Article 27F of the Public Health Law defines the rules governing HIV testing and treatment in New York.

2. Legislative Objectives: The legislature has authorized OASAS to establish standards and regulations governing the provision of addiction services, including the provision of medications for addiction treatment, as well as standards for providers seeking to offer such services.

3. Needs and Benefits: OASAS is updating the language used in this regulation consistent with amendments made to other OASAS regulations and OASAS guidance to clarify provider requirements with respect to the provision of medication for addiction treatment for substance use disorder and to update definitions consistent with other OASAS regulations.

Amendments to Part 820 include updates to definitions and language used by all OASAS programs consistent with continued efforts and agency

goals to reduce stigma and use person-first language for the delivery of addiction services. Additionally, provisions for medication for addiction treatment for substance use disorder are further clarified consistent with guidance issued by the Office and the medical standard of care for the treatment of substance use disorder. These amendments support OASAS overarching goals to ensure programs are responsive to community needs and provide person-centered care. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

4. Costs: No additional administrative costs to the State, local governments, or the agency are anticipated. The requirements outlined in the regulation are already required in guidance (both for medication access and naloxone education and access) and in the standard of care for the treatment of substance use disorder.

5. Paperwork: There is no additional paperwork beyond what is already required. OASAS programs are required to review and update policies and procedures to ensure compliance with OASAS regulations and guidance and evolving standards of care for the treatment of substance use disorder and problem gambling. Some programs will be expected to enter into agreements with Opioid Treatment Programs, which should not be difficult as many providers currently have agreements to facilitate linkage between different levels of care.

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

7. Duplication: This 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 providers unsure of their obligation to provide medication for addiction treatment for substance use disorders.

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.

Revised 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 treatment programs providing addiction services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs, including for the provision of medication assisted treatment. These regulatory amendments are consistent with guidance issued by the Office and the medical standard of care for the delivery of substance use disorder services. Any needed changes to existing policies and procedures in accordance with these regulatory amendments should be minimal. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Revised 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 treatment programs providing addiction services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs, including for the provision of medication assisted treatment. These regulatory amendments are consistent with guidance issued by the Office and the medical standard of care for the delivery of substance use disorder services. Any needed changes to existing policies and procedures in accordance with these regulatory amendments should be minimal. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Revised 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 prevention, treatment or recovery programs offering OASAS services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs, including for the provision of medication for addiction treatment. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2027, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

Public comment: By requiring services to be delivered in a manner that is strength based, person centered, and trauma informed, OASAS is increasing the risk of insurance denial or OMIG disqualification rationale.

Agency response: The delivery of services that are strength based, person centered, and trauma informed promotes a service delivery system that best needs patient’s needs to support both initial and long term health. These principles are consistent with, and supportive of both OMIG and insurance providers objectives to promote high quality, clinically appropriate patient care, while preventing and detecting fraudulent, abusive or inappropriate service delivery. Additionally, the utilization of either the OASAS LOCADTR tool, or a utilization tool approved by OASAS further supports the collective goal of quality patient care. As such, the State does not expect an increased risk of insurance denials or disqualifications.

Public comment: Requiring naloxone kits on hand that are sufficient to meet program needs is too vague.

Agency response: Programs are required to maintain a stock of naloxone sufficient to meet the need in their program if someone experiences an overdose onsite, consistent with OASAS guidance.

Public comment: Including prospective patients in agency requirements to provide medication for addiction treatment is challenging.

Agency response: The intent of including prospective patients in agency policies regarding provision of medication for addiction treatment and overdose prevention education and training are to ensure that programs provide access to such services as soon as a staff person engages with an individual, rather than upon completion of administrative requirements for program admission. Programs should consider how they provide low threshold services to individuals to maintain their engagement with said provider until such time as they are prepared to engage in additional services.

Public comment: Referring providers cannot guarantee an appointment will be provided when referring patients to another provider for continued medication access.

Agency response: Medication for addiction treatment saves lives. Patients that begin medication for addiction treatment in a program, need to maintain access to said medication post-discharge. It is an expectation that programs create relationships with other community-based programs across their service region to facilitate access to services for their patients.

Additional comments were received on regulatory provisions not subject to proposed amendments which will not be addressed.

NOTICE OF ADOPTION

General Provisions Applicable to All Programs Certified, Funded or Otherwise Authorized by OASAS

I.D. No. ASA-11-22-00007-A

Filing No. 682

Filing Date: 2022-08-30

Effective Date: 2022-10-01

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

Action taken: Amendment of Part 800 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 32.01, 32.07(a); Executive Law, art. 15A

Subject: General provisions applicable to all programs certified, funded or otherwise authorized by OASAS.

Purpose: General provisions applicable to all programs certified, funded or otherwise authorized by OASAS.

Substance of final rule: In addition to technical amendments updating this regulation consistent with Title 14, the Proposed Rule amends Part 800 as follows:

§ 800.3 Incorporation by Reference. Adds incorporation by reference of Standards related to the Adolescent Endorsement proposed in Part 830 of this Title.

§ 800.4 Definitions. Add and updates various definitions. Updates terms to be consistent with other OASAS regulations. Updates outdated medical term.

§ 800.5 Access to Treatment. Adds individuals recently released from criminal justice settings to the list of individuals for which providers shall have priority admission policies.

§ 800.6 Access to Medication for Addiction Treatment. Updates and clarifies provider expectations regarding the provision of medication for addiction treatment for substance use disorder and overdose prevention education and training.

Final rule as compared with last published rule: Nonsubstantial changes were made in section 800.4(h) and (t).

Text of rule and any required statements and analyses may be obtained from: Patrick Totaro, Office of Addiction Services and Supports, 1450 Western Avenue, Albany, NY 12203, (518) 485-2312, email: patrick.totaro@oasas.ny.gov

Revised Regulatory Impact Statement

1. Statutory Authority:

(a) Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner of the Office of Addiction Services and Supports to adopt standards including necessary rules and regulations pertaining to addiction services.

(b) Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner of the Office of Addiction Services and Supports to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

(c) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner of the Office of Addiction Services and Supports to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

(d) Section 32.07(a) of the Mental Hygiene Law authorizes the Commissioner of the Office of Addiction Services and Supports to adopt regulations to effectuate the provisions and purposes of Article 32 of the Mental Hygiene Law.

(e) Article 15 of the Executive Law enacts the Human Rights Law prohibiting discrimination against various protected classes.

2. Legislative Objectives: The legislature has authorized OASAS to establish standards and regulations governing the provision of addiction services, including the provision of medications for addiction treatment, as well as standards for providers seeking to offer such services.

3. Needs and Benefits: OASAS is updating the language used in this regulation consistent with amendments made to other OASAS regulations to clarify provider requirements with respect to the provision of medication for addiction treatment for substance use disorder and to update definitions consistent with other OASAS regulations.

Amendments to Part 800 include updates to definitions and language used by all OASAS programs consistent with continued efforts and agency goals to reduce stigma and use person-first language for the delivery of addiction services. Additionally, provisions for medication for addiction treatment for substance use disorder are further clarified consistent with guidance issued by the Office and the medical standard of care for the treatment of substance use disorder. Finally, the agency has added to the list of high-risk populations for which programs must develop priority admissions policies. These amendments support OASAS overarching goals to ensure programs are responsive to community needs and provide person-centered care. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

4. Costs: No additional administrative costs are anticipated for the State, local governments, or the agency. Costs for regulated providers should be minimal and are mostly related to updating policies and procedures. The requirements outlined in the regulation are already required in guidance (both for medication access and naloxone education and access) and in the standard of care for the treatment of substance use disorder.

5. Paperwork: There is no additional paperwork beyond what is already required. OASAS programs are required to review and update policies and procedures to ensure compliance with OASAS regulations and guidance and evolving standards of care for the treatment of substance use disorder and problem gambling. Programs will be expected to enter into agreements with Opioid Treatment Programs, which should not be difficult as many providers currently have agreements to facilitate linkage between different levels of care.

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

7. Duplication: This 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 providers unsure of their obligation to provide medication for addiction treatment for substance use disorders.

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.

Revised 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 prevention, treatment or recovery programs providing addiction services. Providers of services are already required to develop policies and procedures to imple-

ment addiction services in their programs. These regulatory amendments are consistent with guidance issued by the Office and the medical standard of care for the delivery of substance use disorder services. Any needed changes to existing policies and procedures in accordance with these regulatory amendments should be minimal.

Providers are likewise required to have priority admission policies for specific high-risk populations/individuals. The amendment adds individuals leaving correctional settings to the preexisting list and therefore this change is minimal. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Revised 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 prevention, treatment or recovery programs providing addiction services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs. These regulatory amendments are consistent with guidance issued by the Office and the medical standard of care for the delivery of substance use disorder services. Any needed changes to existing policies and procedures in accordance with these regulatory amendments should be minimal.

Providers are likewise required to have priority admission policies for specific high-risk populations/individuals. The proposed amendment adds individuals leaving correctional settings to the preexisting list and therefore this change is minimal. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Revised 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 prevention, treatment or recovery programs offering OASAS services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2027, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

Public comment: Including prospective patients in agency requirements to provide medication for addiction treatment is challenging.

Agency response: The intent of including prospective patients in agency policies regarding provision of medication for addiction treatment and overdose prevention education and training are to ensure that providers that providing access to such services as soon as a staff person engages with an individual, rather than upon completion of administrative requirements for program admission. Programs should consider how they provide low threshold services to individuals to maintain their engagement with said provider until such time as they are prepared to engage in additional services.

Public comment: Referring providers cannot guarantee an appointment will be provided when referring patients to another provider for continued medication access.

Agency response: Medication for addiction treatment saves lives. Patients that begin medication for addiction treatment in a program, need to maintain access to said medication post-discharge. It is an expectation that programs create relationships with other community-based programs across their service region to facilitate access to services for their patients.

Public comment: Recommendations were made to set the time for maintaining patient records to six (6) years, consistent with other state and federal rules pertaining to the storage of patient records.

Agency response: Case law has found that a provider was liable for maintaining patient records for ten (10) years, even though state and federal law only require storage for six (6) years. OASAS changed the record storage policy consistent with this case law to ensure providers are protected in the event of a lawsuit.

Public comment: Opioid treatment programs are subject to federal rules which require patient participation in certain services, such as counseling, which is inconsistent with OASAS policies that medication access not be contingent on patient participation in other services.

Agency response: 14 NYCRR Part 822, which pertains to the certification of opioid treatment programs, maintains that opioid treatment programs are subject to compliance with all federal rules and regulations.

Public comment: Programs without access to a local opioid treatment

program shall not be required to enter into an agreement to facilitate patient access to medication for addiction treatment.

Agency response: All programs are required to enter into agreements with opioid treatment programs to facilitate access to medication for addiction treatment. Rural programs are not accepted from this requirement.

Public comment: Naloxone policy should be amended to allow programs to make naloxone available using various methods rather than simply providing a kit or prescription.

Agency response: Regulatory language has been changed accordingly and guidance (local services bulletin) will be updated as well.

NOTICE OF ADOPTION

Residential Rehabilitation Services for Youth

I.D. No. ASA-11-22-00008-A

Filing No. 686

Filing Date: 2022-08-30

Effective Date: 2022-10-01

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

Action taken: Amendment of Part 817 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 19.15(e), 19.40, 32.01, 32.07(a), 32.09; Public Health Law, article 27F and section 33.09

Subject: Residential rehabilitation services for youth.

Purpose: Establish rules and expectations for providers of residential rehabilitation services for youth.

Substance of proposed rule: In addition to technical amendments and updating terminology used across all regulations for consistency in Title 14, the Proposed Rule amends Part 817 as follows:

§ 817.2 General program standards. Added references to the provision of person centered, trauma informed care. Updated provisions regarding medication for addiction treatment for substance use disorder and naloxone access consistent with the needs of the program. Updated term to be consistent with other OASAS regulations.

§ 817.3 Admission procedures. Removed list of non-discrimination categories and added reference to Part 815. Updated term to be consistent with other OASAS regulations.

§ 817.5 Treatment/recovery plan. Added reference to requirement for post-discharge appointment(s) to continue medication access.

Final rule as compared with last published rule: Nonsubstantial changes were made in sections 817.2(a) and 817.3(e).

Text of rule and any required statements and analyses may be obtained from: Patrick Totaro, Office of Addiction Services and Supports, 1450 Western Ave., Albany, NY 12203, (518) 485-2312, email: patrick.totaro@oasas.ny.gov

Revised Regulatory Impact Statement

1. Statutory Authority:

(a) Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner to adopt standards including necessary rules and regulations pertaining to addiction services.

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

(c) Section 19.15(e) of the Mental Hygiene Law authorizes the Commissioner to implement programs of children and youth.

(d) Section 19.40 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for the provision of addiction services.

(e) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

(f) Section 32.07(a) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations to effectuate the provisions and purposes of Article 32 of the Mental Hygiene Law.

(g) Section 32.09 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for services that treat individuals with a substance use disorder.

(h) Section 3309 of the Public Health Law authorizes the DOH to establish standards for approval of any opioid overdose prevention program.

(i) Article 27F of the Public Health Law defines the rules governing HIV testing and treatment in New York.

2. Legislative Objectives: The legislature has authorized OASAS to establish standards and regulations governing the provision of addiction services, including the provision of medications for addiction treatment, as well as standards for providers seeking to offer such services.

3. Needs and Benefits: OASAS is updating the language used in this regulation consistent with amendments made to other OASAS regulations and OASAS guidance to clarify provider requirements with respect to the provision of medication for addiction treatment for substance use disorder and to update definitions consistent with other OASAS regulations.

Amendments to Part 817 include updates to definitions and language used by all OASAS programs consistent with continued efforts and agency goals to reduce stigma and use person-first language for the delivery of addiction services. Additionally, provisions for medication for addiction treatment for substance use disorder are further clarified consistent with guidance issued by the Office and the medical standard of care for the treatment of substance use disorder. These amendments support OASAS overarching goals to ensure programs are responsive to community needs and provide person-centered care. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

4. Costs: No additional administrative costs to the State, local governments or the agency are anticipated. The requirements outlined in the regulation are already required in guidance (both for medication access and naloxone education and access) and in the standard of care for the treatment of substance use disorder.

5. Paperwork: There is no additional paperwork beyond what is already required. OASAS programs are required to review and update policies and procedures to ensure compliance with OASAS regulations and guidance and evolving standards of care for the treatment of substance use disorder and problem gambling. Some programs will be expected to enter into agreements with Opioid Treatment Programs, which should not be difficult as many providers currently have agreements to facilitate linkage between different levels of care.

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

7. Duplication: This 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 providers unsure of their obligation to provide medication for addiction treatment for substance use disorders.

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.

Revised 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 treatment programs providing addiction services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs, including for the provision of medication assisted treatment. These regulatory amendments are consistent with guidance issued by the Office and the medical standard of care for the delivery of substance use disorder services. Any needed changes to existing policies and procedures in accordance with these regulatory amendments should be minimal. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Revised 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 treatment programs providing addiction services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs, including for the provision of medication for addiction treatment. These regulatory amendments are consistent with guidance issued by the Office and the medical standard of care for the delivery of substance use disorder services. Any needed changes to existing policies and procedures in accordance with these regulatory amendments should be minimal. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Revised 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 prevention, treatment or recovery programs offering OASAS services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs, including for the provision of

medication for addiction treatment. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2027, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Inpatient Rehabilitation Services

I.D. No. ASA-11-22-00009-A

Filing No. 681

Filing Date: 2022-08-30

Effective Date: 2022-10-01

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

Action taken: Amendment of Part 818 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 19.40, 32.01, 32.07(a); Public Health Law, section 33.09 and art. 27F

Subject: Inpatient rehabilitation services.

Purpose: Establish rules and expectations for providers of inpatient rehabilitation services.

Substance of proposed rule: In addition to technical amendments and updating terminology used across all regulations for consistency in Title 14, the Proposed Rule amends Part 818 as follows:

§ 818.2 General program standards. Added references to the provision of person centered, trauma informed care. Updated provisions regarding medication for addiction treatment for substance use disorder and naloxone access consistent with the needs of the program. Updates term to be consistent with other OASAS regulations. Updates outdated medical terms.

§ 818.3 Admission procedures. Removed list of non-discrimination categories and added reference to Part 815.

§ 818.5 Treatment/recovery plan. Added reference to requirement for post-discharge appointment(s) to continue medication access.

§ 818.10 Savings and renewal clause. Removed.

Final rule as compared with last published rule: Nonsubstantial changes were made in section 812.2(a).

Text of rule and any required statements and analyses may be obtained from: Patrick Totaro, Office of Addiction Services and Supports, 1450 Western Ave., Albany, NY 12203, (518) 485-2312, email: patrick.totaro@oasas.ny.gov

Revised Regulatory Impact Statement

1. Statutory Authority:

(a) Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner to adopt standards including necessary rules and regulations pertaining to substance use disorder services.

(b) Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

(c) Section 19.40 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for the provision of substance use disorder services.

(d) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

(e) Section 32.07(a) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations to effectuate the provisions and purposes of Article 32 of the Mental Hygiene Law.

(f) Section 3309 of the Public Health Law authorizes the DOH to establish standards for approval of any opioid overdose prevention program.

(g) Article 27F of the Public Health Law defines the rules governing HIV testing and treatment in New York.

2. Legislative Objectives: The legislature has authorized OASAS to establish standards and regulations governing the provision of addiction services, including the provision of medications for addiction treatment, as well as standards for providers seeking to offer such services.

3. Needs and Benefits:

Amendments to Part 818 include updates to definitions and language used by all OASAS programs consistent with continued efforts and agency

goals to reduce stigma and use person-first language for the delivery of addiction services. Additionally, provisions for medication for addiction treatment for substance use disorder are further clarified consistent with guidance issued by the Office and the medical standard of care for the treatment of substance use disorder. These amendments support OASAS overarching goals to ensure programs are responsive to community needs and provide person-centered care. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

4. Costs: No additional administrative costs to the State, local governments or the agency are anticipated. The requirements outlined in the regulation are already required in guidance (both for medication access and naloxone education and access) and in the standard of care for the treatment of substance use disorder.

5. Paperwork: There is no additional paperwork beyond what is already required. OASAS programs are required to review and update policies and procedures to ensure compliance with OASAS regulations and guidance and evolving standards of care for the treatment of substance use disorder and problem gambling. Some programs will be expected to enter into agreements with Opioid Treatment Programs, which should not be difficult as many providers currently have agreements to facilitate linkage between different levels of care.

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

7. Duplication: This 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 providers unsure of their obligation to provide medication for addiction treatment for substance use disorders.

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.

Revised 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 treatment programs providing addiction services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs, including for the provision of medication assisted treatment. These regulatory amendments are consistent with guidance issued by the Office and the medical standard of care for the delivery of substance use disorder services. Any needed changes to existing policies and procedures in accordance with these regulatory amendments should be minimal. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Revised 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 treatment programs providing addiction services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs, including for the provision of medication for addiction treatment. These regulatory amendments are consistent with guidance issued by the Office and the medical standard of care for the delivery of substance use disorder services. Any needed changes to existing policies and procedures in accordance with these regulatory amendments should be minimal. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Revised 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 prevention, treatment or recovery programs offering OASAS services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs, including for the provision of medication for addiction treatment. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2027, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

Public comment: Recommendation to eliminate provisions requiring testing and treatment for communicable diseases because of the short length of stay. Are such costs included in the daily rate for this level of care? Is a referral to another provider sufficient?

Agency response: These are not new requirements. Referrals to community based providers are expected however the program is required to begin the testing and/or treatment process and follow up with referral for additional services.

Public comment: Part 816 requires a blood-based TB test but Part 818 allows for intradermal. Why the difference?

Agency response: OASAS will issue a waiver to allow for utilization of both forms of TB testing until all regulations are similarly updated.

Public comment: What authority do programs operate under when OASAS amends regulations.

Agency response: Adopted regulations have an effective date. Providers are expected to comply with the regulatory provisions once adopted, unless a different timeframe is otherwise specific by OASAS.

NOTICE OF ADOPTION**Outpatient Programs**

I.D. No. ASA-11-22-00010-A

Filing No. 684

Filing Date: 2022-08-30

Effective Date: 2022-10-01

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

Action taken: Amendment of Part 822 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(c), (e), 19.09(b), 19.16, 19.21(b), (d), 19.40, 32.01, 32.05(b), 32.07(a) 32.09(b), 22.07(c); Penal Law, section 220.78; Public Health Law, sections 3309 and 2781; 42 CFR part 8

Subject: Outpatient programs.

Purpose: Establish rules and expectations for providers of outpatients services.

Text or summary was published in the March 16, 2022 issue of the Register, I.D. No. ASA-11-22-00010-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Patrick Totaro, Office of Addiction Services and Supports, 1450 Western Ave., Albany, NY 12203, (518) 485-2312, email: patrick.totaro@oasas.ny.gov

Revised Regulatory Impact Statement

1. Statutory Authority:

(a) Section 19.07(c) of the Mental Hygiene Law (MHL) charges the Office with the responsibility to ensure that persons who have a substance use disorder and their families are provided with care and treatment that is effective and of high quality.

(b) Section 19.07(e) of the MHL authorizes the commissioner to adopt standards including necessary rules and regulations pertaining to substance use disorder 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 19.16 of the MHL requires the commissioner to establish and maintain, either directly or through contract, a central registry for purposes of preventing multiple enrollments in opioid treatment programs and provides medication dosage information during an emergency, when displaced patients may seek such treatment from an alternate program.

(e) Section 19.21(b) of the MHL requires the commissioner to establish and enforce regulations concerning the licensing, certification, and inspection of substance use disorder treatment services.

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

(g) Section 19.40 of the MHL authorizes the commissioner to issue operating certificates for the provision of substance use disorder treatment services.

(h) Section 22.07(c) of the Mental Hygiene Law authorizes the commissioner to promulgate rules and regulations to ensure that the rights of individuals who have received, and are receiving, substance use disorder services are protected.

(i) Section 32.01 of the MHL authorizes the commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the MHL.

(j) Section 32.05(b) of the MHL provides that a controlled substance designated by the commissioner of the New York State Department of Health (DOH) as appropriate for such use may be used by a prescribing professional to treat an individual with a substance use disorder pursuant to section 32.09(b) of the MHL.

(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(b) of the MHL provides that the commissioner may, once a controlled substance is approved by the commissioner of DOH as appropriate for such use, authorize the use of such controlled substance in treating an individual with a substance use disorder.

(m) Section 220.78 of the Penal Law affords limited protections from prosecution for persons seeking medical attention for accidental overdose.

(n) Section 3309 of the Public Health Law authorizes the DOH to establish standards for approval of any opioid overdose prevention program.

(o) Section 2781 of the Public Health Law defines the rules governing HIV testing in New York.

(p) 42 CFR Part 8 relates to the federal oversight and regulation of medication for addiction treatment for opioid use disorders.

2. Legislative Objectives: The legislature has authorized OASAS to establish standards and regulations governing the provision of addiction services, including the provision of medications for addiction treatment, as well as standards for providers seeking to offer such services.

3. Needs and Benefits: OASAS is updating the language used in this regulation consistent with amendments made to other OASAS regulations and OASAS guidance to clarify provider requirements with respect to the provision of medication for addiction treatment for substance use disorder and to update definitions consistent with other OASAS regulations.

Amendments to Part 822 include updates to definitions and language used by all OASAS programs consistent with continued efforts and agency goals to reduce stigma and use person-first language for the delivery of addiction services. Additionally, provisions for medication for addiction treatment for substance use disorder are further clarified consistent with guidance issued by the Office and the medical standard of care for the treatment of substance use disorder. These amendments support OASAS overarching goals to ensure programs are responsive to community needs and provide person-centered care. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

4. Costs: No additional administrative costs to the State, local governments, or the agency are anticipated. The requirements outlined in the regulation are already required in guidance (both for medication access and naloxone education and access) and in the standard of care for the treatment of substance use disorder.

5. Paperwork: There is no additional paperwork beyond what is already required. OASAS programs are required to review and update policies and procedures to ensure compliance with OASAS regulations and guidance and evolving standards of care for the treatment of substance use disorder and problem gambling. Some programs will be expected to enter into agreements with Opioid Treatment Programs, which should not be difficult as many providers currently have agreements to facilitate linkage between different levels of care. OTPs are certified pursuant to Part 822, so some of these programs are already OTPs.

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

7. Duplication: This 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 providers unsure of their obligation to provide medication for addiction treatment for substance use disorders.

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.

Revised 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 treatment programs providing addiction services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs, including for the provision of medication assisted treatment. These regulatory amendments are consistent with guidance issued by the Office and the medical standard of care for the delivery of substance use disorder services. Any needed changes to existing policies and procedures in accordance with these regulatory amendments should be minimal. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Revised 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 treatment programs providing addiction services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs, including for the provision of medication assisted treatment. These regulatory amendments are consistent with guidance issued by the Office and the medical standard of care for the delivery of substance use disorder services. Any needed changes to existing policies and procedures in accordance with these regulatory amendments should be minimal. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Revised 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 prevention, treatment or recovery programs offering OASAS services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs, including for the provision of medication for addiction treatment. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2027, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

Public comment: The regulation requires that treatment plans be reevaluated and revised when goals are not met but the requirement of a stand alone treatment plan was removed from the regulation, how are providers to meet this requirement?

Agency response: Treatment plans are to be revised and re-evaluated in every individual session.

Public comment: Opioid treatment programs are subject to federal rules which require patient participation in certain services, such as counseling, which is inconsistent with OASAS policies that medication access not be contingent on patient participation in other services.

Agency response: This Part also maintains that opioid treatment programs are subject to compliance with all federal rules and regulations.

Public comment: Programs without access to a local opioid treatment program shall not be required to enter into an agreement to facilitate patient access to medication for addiction treatment.

Agency response: All programs are required to enter into agreements with opioid treatment programs to facilitate access to medication for addiction treatment. Rural programs are not accepted from this requirement.

NOTICE OF ADOPTION**Incident Reporting Requirements at All Certified, Licensed, Funded, or Operated Services**

I.D. No. ASA-11-22-00011-A

Filing No. 688

Filing Date: 2022-08-30

Effective Date: 2022-10-01

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

Action taken: Amendment of Part 836 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(c), (e), 19.09(b), 19.20, 19.20-a, 19.21(b), 19.40, 22.07(c), 32.01, 32.02, 32.07(a), 33.16, 33.23, 33.25; Executive Law, sections 296, 491 and 495; Civil Service Law, section 50; Corrections Law, art. 23-A; Protection of People with Special Needs Act (L. 2012, ch. 501)

Subject: Incident reporting requirements at all certified, licensed, funded, or operated services.

Purpose: Establish rules and expectations for incident reporting at all OASAS programs and services.

Text or summary was published in the March 16, 2022 issue of the Register, I.D. No. ASA-11-22-00011-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Patrick Totaro, Office of Addiction Services and Supports, 1450 Western Ave., Albany, NY 12203, (518) 485-2312, email: patrick.totaro@oasas.ny.gov

Revised Regulatory Impact Statement

1. Statutory Authority:

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

(b) Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner ("Commissioner") of the Office to adopt standards including necessary rules and regulations pertaining to addiction services.

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

(d) Section 19.20 of the Mental Hygiene Law (Protection of People with Special Needs Act, added by Chapter 501 of the Laws of 2012) authorizes the Office to receive and review criminal history information related to certain prospective employees and volunteers.

(e) Section 19.20-a of the Mental Hygiene Law (Protection of People with Special Needs Act, added by Chapter 501 of the Laws of 2012) authorizes the Office to receive and review criminal history information related to persons seeking to be credentialed or applicants for an operating certificate issued by the Office.

(f) Section 19.21(b) of the Mental Hygiene Law requires the Commissioner to establish and enforce certification, inspection, licensing and treatment standards for addiction services facilities and staff.

(g) Section 19.40 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for the provision of addiction services.

(h) Section 22.07(c) of the Mental Hygiene Law authorizes the Commissioner to promulgate rules and regulations to ensure that the rights of individuals who have received, and are receiving, addiction services are protected.

(i) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

(j) Section 32.02 of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary to ensure quality services to those suffering from compulsive gambling.

(k) Section 32.07(a) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations to effectuate the provisions and purposes of Article 32 of the Mental Hygiene Law.

(l) Sections 33.16(a)(6) and 33.16(b)(4) of the Mental Hygiene Law define a "qualified person" as an individual receiving services, their legal guardian, or a parent, spouse or adult child who has authority to provide consent for care and treatment.

(m) Section 33.23 of the Mental Hygiene Law requires directors of facilities certified by OASAS to provide telephone notification to a "qualified person" of an incident involving a client within twenty-four (24) hours of the initial report.

(n) Section 33.25 of the Mental Hygiene Law requires facilities to release records to "qualified persons", upon request, relating to allegations and investigations of client abuse or mistreatment.

(o) Section 491 of the Executive Law requires mandated reporters to immediately report allegations of reportable incidents to the Vulnerable Persons' Register upon discovery.

(p) Section 492 of the Social Services Law establishes the Vulnerable Persons' Register to which reports of allegations of reportable incidents must be submitted in a manner and on forms approved by the executive director of the Justice Center.

(q) Article 6, Title 6 of the Social Services Law requires the reporting of suspected abuse or maltreatment of persons under 18 years of age to the New York Statewide Central Register of Child Abuse and Maltreatment (hereinafter, "Statewide Central Register").

(r) Section 413 of the Social Services Law identifies persons required to report cases of suspected child abuse or maltreatment to the Statewide Central Register.

2. Legislative Objectives: The legislature has authorized OASAS to establish standards and regulations governing incident management and oversight of addiction services in certified, funded or otherwise authorized programs, consistent with various NYS laws, regulations and rules for the protection of individuals seeking and receiving services in the OASAS system.

3. Needs and Benefits: OASAS is explicitly prohibiting any certified, funded or otherwise authorized program from conducting a body cavity search of a patient for any reason. There is no therapeutic value in conducting a body cavity search and could potentially cause harm to individuals that have a history of trauma. Many individuals that seek addiction treatment services in OASAS programs have a history of trauma and a body cavity search could potentially cause additional harm. OASAS will issue guidance on appropriate alternatives where a program may have otherwise

conducted a body cavity search. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

4. Costs: No additional administrative costs to the State, local governments, or the agency 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 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 permitting body cavity searches, however there is no therapeutic value in conducting a body cavity search.

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.

Revised 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 treatment programs providing addiction services. This rule prohibits a programs ability to conduct a body cavity search. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Revised 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 treatment programs providing addiction services. This rule prohibits a programs ability to conduct a body cavity search. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Revised 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 prevention, treatment or recovery programs offering OASAS services. Providers of services are already required to develop policies and procedures to implement addiction services in their programs. These amendments only require removal of the ability to conduct a body cavity search. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2027, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

Public comment: Not allowing programs to have patients remove all clothing or perform a body cavity search will create dangerous situations in the programs and increase the likelihood that patients will bring contraband into a program.

Agency response: There is no therapeutic value in requesting a patient remove their clothing or performing a body cavity search. Programs are required to provide trauma informed, strength based, person centered services while balancing the unique needs in residential settings to prohibit access to items that may create an unsafe environment. OASAS has developed guidance for programs identifying therapeutic alternatives to asking patients to remove their clothing or conducting body cavity searches. Guidance will be posted on the OASAS website and shared with the provider community.

NOTICE OF ADOPTION

Designated Services and License Endorsements

I.D. No. ASA-12-22-00005-A

Filing No. 687

Filing Date: 2022-08-30

Effective Date: 2022-10-01

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

Action taken: Amendment of Part 830 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 1.03(6), 19.07(c), (e), 19.09(b), 19.21(d), 32.01, 32.02, 32.05(b), 32.07(a), 32.09(b); Education Law, art. 160; Public Health Law, section 3351(5) and art. 29G; Executive Law, art. 15; 21 USC 829

Subject: Designated services and license endorsements.

Purpose: Establish designated services and license endorsements and associated rules and expectations for providers.

Text or summary was published in the March 23, 2022 issue of the Register, I.D. No. ASA-12-22-00005-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Patrick Totaro, Office of Addiction Services and Supports, 1450 Western Ave., Albany, NY 12203, (518) 485-2312, email: patrick.totaro@oasas.ny.gov

Revised Regulatory Impact Statement

1. Statutory Authority:

(a) Section 1.03(6) of the Mental Hygiene Law defines “facility” as any place in which services for the mentally disabled are provided.

(b) Section 19.07(c) of the Mental Hygiene Law authorizes the commissioner to adopt standards ensuring the personal and civil rights of persons seeking and receiving addiction services, care, treatment and rehabilitation are adequately protected.

(c) Section 19.07(e) of the Mental Hygiene Law authorizes the commissioner to adopt standards including necessary rules and regulations pertaining to chemical dependence services.

(d) Section 19.09(b) of the Mental Hygiene Law authorizes the commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

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

(f) Section 32.01 of the Mental Hygiene Law authorizes the commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

(g) Section 32.05(b) of the MHL provides that a controlled substance designated by the commissioner of the New York State Department of Health (DOH) as appropriate for such use may be used by a physician to treat a chemically dependent individual pursuant to section 32.09(b) of the MHL.

(h) 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.

(i) Section 32.09(b) of the MHL provides that the commissioner may, once a controlled substance is approved by the commissioner of DOH as appropriate for such use, authorize the use of such controlled substance in treating a chemically dependent individual.

(j) Article 160 of the Education Law provides for the licensure or certification of acupuncturists and limited practice of unlicensed persons in treatment of substance use disorder.

(k) Article 29-G of the Public Health Law relates to reimbursement for health care services delivered via “telehealth.”

(l) Section 3351 of the Public Health Law authorizes the prescribing or dispensing of controlled substances for the purposes of substance use disorder treatment.

(m) Section 829 of Title 21 of the United States Code governs the law concerning internet prescribing of controlled substances.

(n) Article 15 of the Executive Law enacts the Human Rights Law prohibiting discrimination against protected classes of New Yorkers including on the basis of sexual orientation and gender identity or expression.

2. Legislative Objectives: The legislature has authorized OASAS to establish standards and regulations governing the provision of addiction services, including the provision of medications for addiction treatment, as well as standards for providers seeking to offer such services. The amendments to Part 830 add three new designations for providers to obtain if they meet the standards and wish to do so. They include the Adolescent Endorsement, the Ancillary Withdrawal Designation and the Open Access Services Designation.

3. Needs and Benefits: The designations and program endorsement allow programs the option of meeting the standards for an additional optional designation and/or program endorsement. The regulatory amendments serve as a formal means of identifying adolescent programs in the OASAS system, and/or those that offer ancillary withdrawal services and/or open access services in outpatient settings for providers certified pursuant to Part 822 and meet the standards in the regulation. The addition of these optional designations and endorsement make it easier for those seeking OASAS services to identify programs providing specific services.

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

5. Paperwork: There is no additional paperwork beyond what is already required. The adolescent endorsement, ancillary withdrawal designation and open access services designation are optional for providers and therefore any additional paper work required will not create additional burdens.

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

7. Duplication: This 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, without options for either the adolescent endorsement or ancillary withdrawal or open access services designations. Not creating a distinction for OASAS certified programs that meet these additional requirements for the designations and endorsement may have the effect of limiting access to appropriate care.

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.

Revised 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 all designations, including the new Adolescent Endorsement, Ancillary Withdrawal Designation and Open Access Services Designation, in the regulation are optional for providers that are already certified by the Office. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Revised 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 all designations, including the new Adolescent Endorsement, Ancillary Withdrawal Designation and Open Access Services Designation in the regulation are optional for providers that are already certified by the Office. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Revised 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 all designations, including the new Adolescent Endorsement, Ancillary Withdrawal Designation and Open Access Services Designation, in the regulation are optional for providers that are already certified by the Office. This regulation was approved at the February 16, 2022 meeting of the Behavioral Health Services Advisory Council.

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2027, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

Public comment: Regarding the Open Access Services designation, define immediate access to medication for addiction treatment.

Agency response: OASAS will address in Standards issued in accordance with the regulation.

Public comment: Regarding the Ancillary Withdrawal designation, define persistent withdrawal.

Agency response: OASAS will address in Standards issued in accordance with the regulation.

Office of Children and Family Services

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Updates Provisions to Reflect the Enacted Budget Regarding Child Care Assistance Rates and Work Requirements

I.D. No. CFS-37-22-00003-EP

Filing No. 678

Filing Date: 2022-08-29

Effective Date: 2022-08-29

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

Proposed Action: Amendment of Part 415 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 410-u, 410-w(1)(d) and 410-x(4); L. 2022, ch. 53

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

Specific reasons underlying the finding of necessity: The adoption of these regulations on an emergency basis is necessary to protect the health, safety and welfare of families and children receiving subsidized child care in New York State. Federal statute, section 658E(c)(4)(A) of the Child Care and Development Block Grant Act, and federal regulation, 45 CFR 98.45(a), require that the State establish payment rates for federally-funded child care subsidies that are sufficient to ensure equal access for eligible children.

The market rates that are being replaced are based on a survey conducted in 2018 and as a result, continuing to maintain the existing rates could result in subsidized families losing equal access for eligible children to child care arrangements, or being unable to find appropriate child care. This rulemaking also codifies the recent revision to Social Services Law that expands access to child care assistance by removing the work requirement for those receiving such assistance to attend a post-secondary education program.

Subject: Updates provisions to reflect the enacted budget regarding child care assistance rates and work requirements.

Purpose: To update provisions on child care assistance funded under the NYS Child Care Block Grant and Social Services Block Grant.

Text of emergency/proposed rule: Subparagraph (iv) of paragraph (3) of subdivision (a) of section 415.2 of Title 18 NYCRR is amended to read as follows:

(iv) a family is receiving public assistance or has income up to 200 percent of the State income standard and child care services are needed for the child's caretaker to attend a two-year program other than one with a specific vocational sequence leading to an associate's degree or a certificate of completion, or a four year college or university program leading to a bachelor's degree provided:

(a) the program is reasonably expected to improve the earning capacity of the caretaker; *and*

[(b) the caretaker is and continues to participate in non-subsidized employment whereby the caretaker works at least 17 1/2 hours per week and earns wages at a level equal to or greater than the minimum amount required under Federal and State Labor Law while pursuing the course of study; and]

[(c)](b) the caretaker can demonstrate his or her ability to successfully complete the course of study;

Subdivisions (a) through (i) of section 415.9 of Title 18 NYCRR are amended to read as follows:

A social services district has the option to apply the weekly or daily rate, except as provided below, when care is provided for 30 or more hours per week on five or less days. When care is provided for less than 30 hours per week, the daily[,] or part-day [or hourly] rates must be applied, as applicable.

(a)...

(b)...

(c) Part-day rates must be applied when the child care services are provided for [at least three but]less than six hours per day. [Part-day rates also must be applied for children who are attending pre-kindergarten,