

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 for the Aging

NOTICE OF ADOPTION

Nutrition Program

I.D. No. AGE-02-23-00020-A
Filing No. 1076
Filing Date: 2023-12-12
Effective Date: 2023-12-27

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

Action taken: Amendment of section 6654.10 of Title 9 NYCRR.

Statutory authority: Elder Law, section 201(3); Federal Older Americans Act, Part III-C, sections 330 (42 USC 3030d-21) through 339A (42 USC 3030g-22); 45 CFR section 1321.17(f)(7)

Subject: Nutrition Program.

Purpose: The purpose of this rule is to amend and update the regulations governing the Nutrition Program.

Text or summary was published in the January 11, 2023 issue of the Register, I.D. No. AGE-02-23-00020-P.

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

Text of rule and any required statements and analyses may be obtained from: Stephen Syzdek, NYS Office for the Aging, 2 Empire State Plaza, Albany, NY 12223, (518) 474-5041, email: Stephen.Syzdek@aging.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2026, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

Office of Alcoholism and Substance Abuse Services

EMERGENCY RULE MAKING

Credentialing of Addiction Professionals

I.D. No. ASA-40-23-00035-E
Filing No. 1062
Filing Date: 2023-12-11
Effective Date: 2023-12-11

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

Action taken: Amendment of Part 853 of Title 14 NYCRR,

Statutory authority: Mental Hygiene Law, sections 19.07(a), (d), 19.20, 19.20-a, 32.01, 32.02; Executive Law, section 495, 554 (L. 2012, ch. 501); Protection of People with Special Needs Act (L. 2012, ch. 501); Corrections Law, art. 23-A; Military Law, sections 308-a and 308-b

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

Specific reasons underlying the finding of necessity: The opioid epidemic has become one of the most severe public health crises in New York State and there are significant shortages in all substance use disorder (SUD) workforce occupations; the greatest need is for frontline workers, including substance use counselors (CASAC's). In order to assist the addiction workforce crisis, the adoption of these emergency regulations will allow OASAS to assist in expanding access to gaining an addiction credential.

In order to alleviate an identified "workforce crisis" in the field of substance use disorder professionals, the Office is now establishing an additional credential called the CASAC-Provisional, or "CASAC-P", in addition to establishing the standards and minimum qualifications for this credential. In addition to establishing this credential, OASAS has eliminated outdated terminology and made edits to streamline the credentialing process without affecting the quality of the process. This expansion allows those with a Bachelor's or Master's degree in human services to be hired in OASAS certified programs with minimum qualifications while they are working towards their credential. In addition, the process for obtaining a renewal for a credential has been expedited to allow for a quicker turnaround time similar to what the NYS Education Department requires. OASAS has been working with our providers on addressing the workforce crisis and many of the changes in the regulation have come from their direct input on what they need.

As mentioned above, the establishment of this new credential is a direct response from OASAS to the Substance Use Disorder workforce crisis and a response to the end of the "social work exemption" in 2022. The end of the social work exemption created the workforce crisis and since that time the field has sought a solution to the lack of credentialed professionals. The CASAC-P allows individuals with a related bachelor's or master's degree to be hired at an OASAS provider while obtaining the additional education and work experience to obtain a full CASAC. The regulatory changes establish the minimum qualifications for those seeking the credential.

OASAS also revised the requirements that make up the membership composition of the credentials board. This change makes the number of individuals who hold the OASAS credentials part of the formula of how many individuals are on the board representing each credential. Previ-

ously, all OASAS credentials had the same number of representatives regardless of the total number of people who held each credential. The intent is that this will better represent the total number of credentialed individuals.

OASAS removed the reference to the International Certification & Reciprocity Consortium and the National Academy of Medicine and replaced these with “as determined by the office”—this change reflects the growing number of options related to National Substance Use Disorder certification entities as well as the criteria associated with those credentials. It allows OASAS to vet all options that meet the needs of OASAS and to change such criteria (in Guidance) when it becomes outdated or incongruent with the needs of the agency and/or better options become available.

Last, OASAS added reference to a “reinstatement” process and removed reference to “inactive status” as well as included an attestation for credentialed renewal requirements, as opposed to a certifying evaluation. These changes are intended to streamline the process for renewal to be commensurate with other professions. It allows for an attestation of continuing education requirements and ethical conduct which is similar to renewals for other related NYS professions. It streamlined the reinstatement process to encourage renewal and reinstatement and increase the number of credentialed individuals.

This is the first re-adoption of the Rule that was initially made effective on September 26th 2023. This will be followed by a permanent Adoption of the Rule.

Subject: Credentialing of Addiction Professionals.

Purpose: Add new credentialing pathway for a “CASAC-Provisional” and modify outdated terminology.

Substance of emergency rule (Full text is posted at the following State website: <https://oasas.ny.gov/legal>): In addition to technical amendments updating this regulation consistent with Title 14 and eliminating outdated terminology, the Proposed Rule amends Part 853 as follows:

- § 853.1 Legal base. No substantive edits.
- § 853.2 Applicability. No substantive edits.
- § 853.3 Definitions. Revisions include adding the definition of “CASAC-P” (CASAC-Provisional).
- § 853.4 Credentials Board. Revised the requirements that make up the membership composition of the credentials board.
- § 853.5 Minimum qualifications for all credentials. Included the minimum requirements for the CASAC-Provisional.
- § 853.6 Credentialing applications. No substantive changes.
- § 853.7 Additional qualifications to become a Credentialed Alcoholism and Substance Abuse Counselor (CASAC) or CASAC-Trainee or CASAC-Provisional. Included the minimum requirements for the CASAC-Provisional.
- § 853.8 Additional qualifications to become a Credentialed Prevention Professional (CPP) or Credentialed Prevention Specialist. No substantive edits.
- § 853.9 Additional qualifications to receive a Gambling designation. No substantive edits.
- § 853.10 Issuance and registration of credentials. No substantive edits.
- § 853.11 Credential reinstatement status. Added reference to “reinstatement” and removed reference to “inactive status” as well as included an attestation for credentialed renewal requirements, as opposed to a certifying evaluation. Included the requirements for reinstatement as well.
- § 853.12 Reciprocity. No substantive edits.
- § 853.13 Misconduct. Included language referencing the “reinstatement” in reference to violations, and clarified language in what constitutes “misconduct”.
- § 853.14 Complaints and investigations. No substantive edits.
- § 853.15 Penalties. No substantive edits.
- § 853.16 Summary action and other remedial actions. No substantive edits.
- § 853.17 Notifications; right to a hearing. No substantive edits.
- § 853.18 Application following revocation. No substantive edits.
- § 853.19 Canons of Ethical Principles, Ethical Standards, Code of Conduct. No substantive edits.
- § 853.20 Severability. No substantive edits.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. ASA-40-23-00035-EP, Issue of October 4, 2023. The emergency rule will expire February 8, 2024.

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

Regulatory Impact Statement

1. Statutory Authority:

(a) Section 19.07(a) of the Mental Hygiene Law (MHL) charges the Of-

fice of Addiction Services and Supports (OASAS or Office) with assuring the development of comprehensive plans, programs, and services for research, prevention, care, treatment, rehabilitation, education, and training related to substance use disorder and problem gambling.

(b) Section 19.07(d) of the MHL directs the Office to foster programs for the training and development of persons capable of providing substance use disorder and gambling addiction services; to establish minimum qualifications for credentialed professionals; to issue credentials to persons who meet such qualifications; to suspend or revoke such credentials for good cause; and to establish a credentialing board to provide advice concerning the credentialing process.

(c) 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 or otherwise operated by the Office.

(d) 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.

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

(f) Section 32.02 of the MHL authorizes the Commissioner of the Office to adopt regulations necessary to ensure quality services to those suffering from problem gambling disorder.

(g) Section 554 of the Executive Law (Chapter 501 of the Laws of 2012), requires custodians, as defined in Part 836 of this Title, in programs licensed, certified, or otherwise operated by the Office to adhere to the code of conduct for custodians developed by the Justice Center.

(h) The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) establishes the Justice Center and requires criminal history information reviews be conducted for applicants for any credential issued by the Office pursuant to this Part.

(i) Section 495 of the Executive Law (Chapter 501 of the Laws of 2012) established the “Register of Substantiated Category One Cases of Abuse and Neglect” maintained by the Justice Center.

(j) Article 23-A of the Corrections Law is applicable to any applicant for a credentialed person who has previously been convicted of one or more criminal offenses in New York or in any other jurisdiction.

(k) Sections 308-a and 308-b of the Military Law provide for the preservation and extension of professional licenses held by persons in active military service.

2. Legislative Objectives: The legislature has authorized OASAS to establish standards and regulations establishing the minimum qualifications for credentialed professionals and issue such credentials that meet the qualifications. In order to alleviate an identified “workforce crisis” in the field of substance use disorder professionals, the Office is now establishing an additional credential called the CASAC-Provisional or “CASAC-P”, in addition to establishing the standards and minimum qualifications for this credential. In addition to this credential, OASAS has developed a streamlined process for renewal and allows for reinstatement of a credential for those that are looking to return to the addictions’ profession.

3. Needs and Benefits: As mentioned above, the establishment of this new credential is a direct response from OASAS to the Substance Use Disorder workforce crisis and a response to the end of the “social work exemption” in 2022. The end of the social work exemption heightened the workforce crisis and since that time the field has sought a solution to the lack of credentialed professionals. The CASAC-P allows individuals with a related bachelor’s or master’s degree to be hired at an OASAS provider while obtaining the additional education and work experience to obtain a full CASAC. The regulatory changes establish the minimum qualifications for those seeking the credential.

OASAS also revised the requirements that make up the membership composition of the credentials board. This change makes the number of individuals who hold the OASAS credentials part of the formula of how many individuals are on the board representing each credential. Previously, all OASAS credentials had the same number of representatives regardless of the total number of people who held each credential. The intent is that this will better represent the total number of credentialed individuals.

OASAS removed the reference to the International Certification & Reciprocity Consortium and the National Academy of Medicine and replaced these with “as determined by the office”—this change reflects the growing number of options related to National Substance Use Disorder certification entities as well as the criteria associated with those credentials. It allows OASAS to vet all options that meet the needs of OASAS and to change such criteria when it becomes outdated or incongruent with the needs of the agency and/or better options become available. Specifically, OASAS wanted to make sure that as the field evolves, the 300 hours of

core competencies may change based on guidance from SAMHSA, OASAS' ever evolving continuum of care, and the IC & RC standards that the CASAC examination is based on. For example, harm reduction and co-occurring disorders have never been included in core competencies, and the agency is just now embracing a harm reduction approach, as is SAMHSA.

Last, OASAS added reference to a "reinstatement" process and removed reference to "inactive status" as well as included an attestation for credentialed renewal requirements, as opposed to a certifying evaluation. These changes are intended to streamline the process for renewal to be commensurate with other professions. It allows for an attestation of continuing education requirements and ethical conduct which is similar to renewals for other related NYS professions. It streamlined the reinstatement process to encourage renewal and reinstatement and increase the number of credentialed individuals retaining their credentials.

4. Costs: The agency has factored in costs to develop the new online credentialing management system (electronic) and has already contracted with a vendor for such work. This should also help with the increased cost to the agency resulting from reviewing additional applications. The cost has already been accounted for through OASAS federal funding (SOR 1 & 2 grant funding). A portion of that funding was allocated to cover the expense of this system.

There are no other costs to the State, local governments, or regulated entities.

5. Paperwork: There is no additional paperwork required by these regulatory changes and if anything, is intended to reduce paperwork for individuals seeking credentialing.

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

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

8. Alternatives: The alternative is to leave the regulation as it currently reads, without addressing the workforce crisis in the substance use disorder field. OASAS explored alternatives to the CASAC-P, and the CASAC-P in the resulting regulation was most well received by the field. OASAS received feedback from ASAP, the Behavioral Health Services Advisory Council, conversations the Commissioner had during outreach with providers, and the main concern was the ability to get additional qualified people into the field and to ease the renewal process. The idea of the CASAC-provisional was presented to ASAP and the BHSAC, and each were in agreement that this would greatly help the SUD workforce.

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

10. Compliance Schedule: This rulemaking will be effective as an Emergency Rule upon publication of a Notice Emergency Adoption in the State Register. This is the first re-adoption after the Rule was initially effective on September 26th, 2023. This will be followed by a permanent Adoption of the Rule.

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 of the amendments are intended to reduce burden on those seeking credentialing as well as the providers that hire credentialed professionals.

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 the credentialed professions. In effect, it eliminates inefficiencies that have been identified in the credentialing process and is intended to reduce the burden on those seeking to become credentialed as well as the providers hiring credentialed professionals.

Job Impact Statement

OASAS is not submitting a Job Impact Statement for this rulemaking. OASAS does not anticipate any adverse impact on jobs and employment opportunities because the amended regulation is intended to solve the workforce crisis created by the ending of the "social work exemption" by creating a new CASAC-Provisional and overall streamlining the credentialing process and removing inefficiencies.

Education Department

EMERGENCY RULE MAKING

Requirements for Restricted Licenses for Clinical Laboratory Technologists in Molecular Testing

I.D. No. EDU-39-23-00013-E

Filing No. 1067

Filing Date: 2023-12-11

Effective Date: 2023-12-11

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

Action taken: Amendment of section 79-13.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 210, 6504, 6507, 8610; L. 2023, ch. 186

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

Specific reasons underlying the finding of necessity: In 2004, the Clinical Laboratory Technology Practice Act ("the Act") was enacted (chapter 755 of the Laws of 2004), effective September 1, 2006. Pursuant to the Act, a person could not work in a clinical laboratory without the appropriate generalist's license in the appropriate clinical laboratory area.¹

Chapter 204 of the Laws of 2008 added Education Law § 8610 to the Clinical laboratory technology article (Article 165), creating a restricted license in five specific test areas.² This restricted license provision enabled laboratories to provide such tests and procedures notwithstanding that they were often not yet included in the registered programs for clinical laboratory technology. Two categories of the restricted licenses that were created were for molecular diagnosis. The molecular diagnosis restricted licenses were created with very limited language, which reflected the technology and need that existed at that time. One type of molecular diagnosis restricted license was limited to diagnosis that is included in genetic testing-molecular and molecular oncology (Education Law § 8610(1)(a), 8 NYCRR 79-13.5(e)). The other type of molecular diagnosis restricted license was not limited to genetic testing-molecular and molecular oncology; however, this restricted license is only available to employees of the National Cancer Institute, a designated cancer center, or a teaching hospital that is eligible for distributions pursuant to Public Health Law § 2807-m(3)(c) (Education Law § 8610(1)(b), 8 NYCRR 79-13.5(f)).

On June 30, 2023, the Governor signed Chapter 186 of the Laws of 2023 (Chapter 186), which became effective immediately. Chapter 186 amended Education Law § 8610 by renaming the two categories of restricted licenses in clinical laboratory technology from "molecular diagnosis" to "molecular testing" and expanded the scope of services provided by persons holding these restricted licenses. Chapter 186 was enacted in response to a shortage of clinical laboratory workers who perform critically important molecular tests to detect COVID-19, influenza, and other infectious diseases and codifies temporary flexibilities that existed under Executive Orders.

Specifically, on September 27, 2021, the Governor executed Executive Order No. 4 of 2021 declaring a statewide disaster emergency due to health care staffing shortages in New York State. This Executive Order, as modified by Executive Order No. 4.1 of 2021, temporarily waived specified Education Law provisions and any associated regulations to the extent necessary to allow individuals to perform any clinical laboratory test, including for the detection of COVID-19 and influenza, provided such individual was under appropriate supervision and met certain federal requirements. Therefore, under these Executive Orders, persons holding a restricted license in molecular diagnosis (typically restricted to genetics and oncology pursuant to Education Law § 8610(a)) were now permitted to perform the full range of molecular testing. However, these Executive Orders expired on June 22, 2023. Chapter 186 allows persons with restricted licenses in molecular testing to continue to perform the full range of molecular testing services they were able to provide under these Executive Orders, including, but not limited to, COVID-19 and Influenza testing. Expanding the molecular testing services that can be performed with a restricted license will assist in addressing the ongoing high demand for these services, while also ensuring appropriate education and supervision.

The proposed amendment to section 79-13.5 of the Commissioner's regulations implements Chapter 186 by: