

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

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Voluntary Certification of Recovery Residences in NYS

I.D. No. ASA-24-23-00021-RP

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

Proposed Action: Addition of Part 860 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09(b), 32.01, 32.05-1, 32.06 and 32.07

Subject: Voluntary certification of recovery residences in NYS.

Purpose: This part establishes the requirements for recovery residences certified by OASAS.

Substance of revised rule (Full text is posted at the following State website: <https://oasas.ny.gov/legal>): 14 NYCRR Part 860

Recovery Residences

860.1 Background and Intent. Throughout the regulation, OASAS removed any reference to problem gambling specifically because the statute does not include problem gambling. OASAS also removed any references to “facility” or “house” throughout the regulation and replaced with the term “residence.” The term “recovery residence” was also used consistently throughout the regulation. The terms “patient” and “occupant” were replaced throughout with the term “resident” in the regulation.

860.2 Legal base. No revisions made.

860.3 Applicability: Shall only apply to recovery residences that voluntarily certify with OASAS. Recovery residences that do not wish to certify will be able to continue operating. No additional revisions were made from original filing.

860.4 Definitions. OASAS added “recovery”, “lived experience”, “MAT”, “assertive linkages”, “recovery plan”, “residence manager”, and “residents”. A definition for “recovery residences” was also included, revised from the former “recovery housing” definition. OASAS removed “occupants”, “person centered care” (it was only mentioned in the context of a recovery plan, and as revised the definition of recovery plan no longer used the term). OASAS also removed the word “program.”

860.5 General provisions applicable to all certified recovery residences. Contains requirements for policies and procedures that certified recovery residences must develop for certification. In this section, OASAS clarified what is required in the policy and procedure documents for each recovery residence. References to Part 815 and 836 were removed, and replaced with specific language relating to patient (resident) rights and incident reporting in order to address the specific needs of recovery programs (as opposed to treatment programs). One of the reasons that references to Part 836 were removed was to make it clear that the Justice Center does not have oversight over incident reporting. This was replaced with a reporting process directly to OASAS and Patient Advocacy. OASAS also included requirements for linkages when there is an involuntary termination of a resident.

860.6 Staffing. Includes staffing requirements for recovery residences that choose to certify in addition to training requirements. In response to public comment, OASAS re-evaluated the requirements for staffing. For a residence manager, the experience was revised from three years of experience to providing two different options-(a) one year of experience, or (b) one year in recovery or lived experience combined with one year of former residency in recovery housing. OASAS added a requirement that all residence managers must either have their CRPA or acquire it within one year of appointment. These changes are meant to make the experience required more appropriate in terms of what is required in the recovery environment. In addition, in response to public comment, the references to the 15 specific trainings were removed and replaced with a general provision requiring annual training to be chosen from a list of recovery specific training that is provided by the office. OASAS also clarified that operators with multiple residences must maintain sufficient staff to meet the need(s) of the population.

860.7 Supporting occupants who return to substance use. Requires providers attempt to help residents who may engage in recurrent use. OASAS added specific requirements surrounding linkages and referrals for residents who experience return to use.

860.8 Safety and Housing Standards. Makes clear that state laws regarding housing/property apply. Part 814 requirements regarding facilities apply. OASAS made it clear that Part 814 does apply, but included a few exemptions that are not relevant to recovery residences and revised some of the Part 814 requirements (such as sanitary facilities) to make them more appropriate for a recovery residence.

860.9 Occupant Rights and Obligations. States what rights residents have, including reasonable self-governance and access to healthcare and treatment of their own choosing. OASAS added language surrounding the “recovery plan” and made it clear that the resident self-directs this plan. OASAS added specific criteria relevant to non-discrimination in admission. These criteria specifically reflect the non-discrimination criteria in Part 815.

860.10 Terminating Residency. Reminds providers that all evictions must be pursuant to state law. Prevents evictions for reasons contrary to recovery. Requires providers attempt to help residents find other accommodations if they are facing eviction. Several public comments were received in response to this section. OASAS clarified the requirements for addressing a resident’s return to use and how it relates to terminating residency. OASAS added a provision making it clear that length of stay is resident-driven and providers may not independently put a limit on length of stay.

860.11 Certification. Makes it clear that recovery residences must comply with Part 810 certification if they wish to become certified. OASAS made it clear that Part 810 does not apply, and instead replaced

the reference with the specific language and requirements from Part 810 that are directly relevant to certification of a recovery residence. OASAS is in development of a recovery residence-specific certification application, and additional guidance will be provided by the office.

860.12 Severability.

Revised rule compared with proposed rule: Substantial revisions were made in sections 860.4, 860.6, 860.8, 860.10, 860.5, 860.7, 860.9 and 860.11.

Text of revised proposed rule and any required statements and analyses may be obtained from Eugene J. Martin, Office of Addiction Services and Supports, 1450 Western Ave., Albany, NY 12203, (518) 485-2373, email: Eugene.Martin@oasas.ny.gov

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

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

Revised Regulatory Impact Statement

1. Statutory Authority:

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

(b) Section 32.05-a of the MHL authorizes the Commissioner of the Office of Addiction Services and Supports to adopt regulations necessary to issue operating certificates for recovery residences.

(c) Section 32.01 of the MHL 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 MHL.

(d) Section 32.06 of the MHL authorizes the Commissioner of the Office of Addiction Services and Supports to adopt any regulation necessary to effectuate the provisions of section 32.06 of the MHL which prohibit certain financial practices by providers of substance use disorder services.

(e) Section 32.07(a) of the MHL 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 MHL.

2. Legislative Objectives: New Part 860 Recovery Residences regulation was drafted in response to the New York State budget for fiscal year 2022-2023 (Bill # S8007C) which tasked OASAS with developing a voluntary certification process for Recovery Residences in New York State. Since August 2022, OASAS has developed this response to both the 2022-2023 Budget (Sec. 32.05-A Mental Hygiene Law) as well as collaborative efforts that OASAS has been engaging in with current Recovery Residence providers.

The Legislature has authorized OASAS to establish standards and regulations governing the voluntary certification and provision of services by recovery residences (also known as recovery homes or sober homes). The goal with certification is to provide a pathway for providers to legitimize the essential service they are providing on the continuum of recovery supports.

3. Needs and Benefits: The regulation was drafted in response to the New York State budget for fiscal year 2022-2023 (Bill # S8007C) which tasked OASAS with developing a voluntary certification process for Recovery Residences in New York State. Since August 2022, OASAS has developed this response to both the 2022-2023 Budget (Sec. 32.05-A Mental Hygiene Law) as well as collaborative efforts that OASAS has been engaging in with current Recovery Residence providers.

This is the first time that NYS has certified Recovery Residences, and it is intended to give voice to the hard work and essential nature of this unique type of housing that supports individuals in their recovery from substance use disorders. The voluntary certification of Recovery Residences is intended to standardize safe and quality housing that supports individuals on the continuum of recovery. Certification also provides a pathway for providers to legitimize the essential services that they provide on the continuum of recovery supports. In addition, this will allow OASAS to also develop a framework for collecting data on certified Recovery Residences that will build external credibility by demonstrating resident outcomes and cost-effectiveness for the broader healthcare system.

In this revised rulemaking, OASAS has made a number of changes to the original regulatory text in response to several public comments. There were significant changes made throughout the regulation in definitions, general provisions, staffing, supporting residents who return to use, safety and housing standards, resident rights and obligations, terminating residency and certification. In the definitions, OASAS added the terms "recovery", "lived experience", "MAT", "assertive linkages", "recovery plan", "residence manager", and "residents". In staffing, in response to public comment, OASAS re-evaluated the requirements. For a residence manager, the experience was revised from three years of experience to providing two different options-(a) one year of experience, or (b) one year in recovery or lived experience combined with one year of former

residency in recovery housing. OASAS added the requirement that all residence managers must either have their CRPA or acquire it within one year of appointment. The training for staff was also revised to be more streamlined and less burdensome. OASAS added specific requirements surrounding linkages and referrals for residents who experience return to use in the revised regulation. The safety and housing section of the regulation now makes it clear that State laws regarding housing and property apply. In rights and obligations, OASAS added language clarifying the recovery plan and also adding specific criteria related to non-discrimination in admission to housing. OASAS added clarifications in the terminating residency section that address a resident's return to use and how it relates to terminating residency. The rule as revised was approved by the Behavioral Services Advisory Council (BHSAC) in February 2024.

4. Costs: There are no anticipated costs to regulated entities and/or local governments. Additional costs to the agency to implement certification and oversight are currently being assessed along with internal capacity for the work. Other options, such as contracting out to National Certification organizations/agencies for pieces such as technical assistance are being considered as well. Those that choose to certify may incur costs in terms of additional staffing and/or updates to meet the safety standards required by OASAS certification.

5. Paperwork: There will be additional paperwork for recovery residences that choose to voluntarily certify. This would include a Certification application that is currently in the process of being developed, but will be similar to other OASAS certification applications. In addition to the application, certified recovery residences are expected to develop and maintain policies and procedures that will need to be periodically reviewed to ensure compliance with Part 860 regulations and guidance. Certified recovery residences are also expected to establish agreements with substance use disorder treatment programs in their community to ensure additional support for residence that may have a recurrence of substance use.

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: A voluntary certification regulation which addresses essential requirements is required by statute. While the regulation as drafted reflects current OASAS standards and goals, as well as national best practices, there are alternative policy choices made. 1) OASAS has determined that recurrence support should be required as that will result in improved recovery outcomes and reduced homelessness and housing instability. The alternative was to remain silent and allow residences to set their own policy or follow national standards. 2) OASAS has determined that disallowing evictions in certain cases, such as recurrence or the use of opioid antagonist, will improve recovery outcomes and limit housing instability. As with recurrence support, the alternative is to match national guidelines and set eviction standards at the same level as market rate residential units. As discussed previously, changes to staffing were made in the regulation as revised. OASAS re-evaluated the public comment and concerns that the previous three years was too burdensome for residence managers and now the regulation provides two options-(a) one year of experience, or (b) one year in recovery or lived experience combined with one year of former residency in recovery housing. This, plus the training and the added requirement that residence managers must either have their CRPA or acquire it within one year of appointment are meant to reflect an appropriate amount of training and experience for residence managers that is more appropriate in terms of what is required in the recovery environment.

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 certification process established by the regulation is completely voluntary. This regulation as revised was approved by the Behavioral Health Services Advisory Council in February 2024 and will be published in the New York State Register.

Revised Rural Area Flexibility Analysis

OASAS has determined that while the rule will impose new requirements on private entities in rural areas any adverse impact has been minimized to the extent possible while complying with statutory requirements. This regulation as revised was approved by the Behavioral Health Services Advisory Council in February 2024.

Types and Estimated Numbers of Rural Areas

The rule shall apply to all recovery residences which choose to certify

in all parts of the state. Those that do not certify may continue to operate. As recovery residences have not been regulated in the past, and there is no national or state level organization that has been tracking recovery residences in New York state, OASAS does not have an accurate count of existing recovery residence. We believe there are approximately 200. How many would seek to certify is unknown. Therefore, it is not possible to know which rural areas will be impacted.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services

Certified recovery residences would be required to prepare policies regarding operations, resident rights, and safety issues. Facilities would need to be updated to meet safety requirements that exceed local building codes. Staff will need to receive specific training and undergo and receive criminal background checks. Providers would need to establish agreements with community-based organizations to provide support for residents in the case of recurrence. Certified recovery residences are not likely to need additional professional services.

Costs

Recovery residences that operate in compliance with these regulations will require minimal changes to their facilities, and potential changes to staff. These facilities are private residences and those already up to code will not face significant costs to meet applicable OASAS facility requirements. Additional costs will vary depending on the condition of facilities and are impossible to estimate. Little additional equipment or fixtures are required that recovery residences operating according to best practices provided by national organizations would not already have. Since the rule was originally proposed, OASAS has announced the potential of funding for recovery residences that wish to pursue certification and continues to seek additional funding streams.

Minimizing Adverse Impact

OASAS has considered ways to minimize the impact of this rule on recovery residences. Certification under this rule is voluntary and recovery residences may continue to operate without certification, thereby avoiding affiliated costs and any potential adverse impacts to existing recovery residences. For those that do choose to certify, the rule generally sets few specific requirements. OASAS instead has opted to require certified recovery residences to develop their own policies and procedures. The rule imposes specific requirements only where health and safety are impacted or where treatment and recovery could be undermined.

Rural Area Participation

Prior to proposing this rule, OASAS staff met with operators of recovery residences as well as members of the National Alliance of Recovery Residences (NARR), which is the primary national organization for this industry, and which is attempting to establish a chapter in New York state. In addition to the required publication in the State Register and on the Office's website, OASAS intends to do the following: 1) staff will notify NARR so that it may communicate to its current and proposed members that public comment will be available, and 2) staff will also directly notify as many recovery residences as possible of the public comment period.

Initial Review

As this is the first time OASAS has issued a rule regarding recovery residences, we have determined that reviewing the rule within three years or less of adoption would benefit the field.

Revised Job Impact Statement

OASAS does not anticipate an adverse impact on jobs and employment opportunities because Recovery Residence certification under this rule is voluntary. Only those Recovery Residences that wish to pursue OASAS certification would be subject to these regulations. In addition, while the rule does require certain training requirements for staff/employees of those who do certify, these are similar to safety and training requirements for all OASAS certified programs and impact will be minimal. This regulation as revised was approved by the Behavioral Health Services Advisory Council in February 2024.

Assessment of Public Comment

OASAS received over 100+ public comments on the proposed regulation. Comments received ranged from existing operators (currently uncertified) of recovery residences (also known as recovery homes, sober homes, etc.) in New York State, OASAS employees, individuals who currently reside in recovery residences, individuals who have formerly resided in recovery residences, recovery organizations, and advocacy groups. For the full text of the Assessment of Public Comment please see: <https://oasas.ny.gov/legal>.

The majority of the substantive comments can be grouped into four main categories-(1) landlord/tenant issues and questions, (2) concerns with staffing requirements, (3) issues relating to return to use by residents, and closely related terminating residency, and (4) questions related to residents' utilization of MAT (Medication Assisted Treatment).

OASAS received several comments related to landlord/tenant issues

that may come up for those residences wishing to become certified. The commenters asked whether NYS property laws apply, whether a lease would be required, and whether residents are considered tenants. In responding to landlord/tenant comments, OASAS made it clear in both responses to public comment and the revised regulation that NYS Property Law and Real Property Actions and Proceedings Law do apply to recovery residences. OASAS reached out to those currently running recovery residences in NYS as well to gain insight on how best to address these topics in the regulation. While these laws apply when it comes to eviction and terminating residency, the regulation consistently refers to those occupying the residences as "residents" and they sign a "residency agreement" rather than a lease. This is consistent with what current providers do as well.

Several commenters raised the issue that the staffing requirements in the original regulation were overly burdensome for potential residence managers to fulfill. Commenters also made OASAS aware that the staffing requirements did not reflect what is needed in recovery residences in terms of a residence manager and oversight of the residences. In response to this, OASAS did make several changes to the regulation regarding residence manager requirements in order to respond to the needs of the residents. Many comments were also received regarding existing recovery residence models that are peer-governed without a staffed residence manager. OASAS responded to these commenters that the NYS model will require a staffed residence manager for oversight. OASAS also discussed all of these issues with those currently providing recovery residence services in NYS.

The next major area of comments covers issues relating to residents that return to substance use, combined with the right to terminate residency for those who return to use. The comments covered both sides of the issues-concerns that residents should not be simply "kicked out" for a return to use, and concerns that not being able to terminate residency could disturb the recovery environment and the health of other residents. In addressing and responding to these concerns, OASAS clarified that NYS Real Property Actions and Proceedings Laws do apply-therefore eviction proceedings in relation to terminating residency must be followed. However, the regulation balances this with requiring recovery residences to take several immediate steps with a resident who returns to use in conjunction with terminating residency. These steps include alternative placement (such as referral to inpatient treatment), seeking outpatient treatment, linkages to recovery resources, and attempting to help the resident find safe alternative housing.

The final major area of comments covers issues relating to MAT. Several comments were received by existing recovery residence operators asking if certified residences would be required to accept residents on MAT (such as buprenorphine, methadone, suboxone, etc.) Some existing recovery residences have a policy of not accepting any such medication use in the property. OASAS responded to these commenters that certified residences must accept residents on MAT, and should not discriminate against these individuals in admission or residing in the recovery residence. All legally prescribed medications for medical, mental health, and substance use disorders will be permitted in certified residences

Other comments outside of these four major categories touch on areas such as definitions in the regulation, resident rights, justice center (or other) incident reporting, and policies and procedures. OASAS made revisions in the regulation relating to all of these topics as well.

Department of Civil Service

ERRATUM

A Notice of Proposed Rule Making, I.D. no. CVS-24-24-00004-P, published in the June 12, 2024 issue of the *State Register* was inadvertently published with the incorrect proposed text of the rule. The correct rule text is as follows:

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office of Parks, Recreation and Historic Preservation," by increasing the number of positions of Administrative Assistant 2 from 6 to 7.

NOTICE OF WITHDRAWAL

Jurisdictional Classification

I.D. No. CVS-24-24-00013-W

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