

RULE MAKING ACTIVITIES

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

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

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

Office of Alcoholism and Substance Abuse Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Substance Use Disorder Residential Services

I.D. No. ASA-52-24-00003-P

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

Proposed Action: Amendment of Part 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: Substance Use Disorder Residential Services.

Purpose: Sunset Part 819 on February, 28, 2026.

Text of proposed rule: New section 819.13 is added to Part 819 as follows:
819.13 Sunset.

(a) *Notwithstanding any other provision of this Title, Part 819 will no longer be in effect after February 28, 2026. Operating certificates issued pursuant to this Part will have no force and effect after February 28, 2026.*

(b) *Providers that intend to continue providing the services currently authorized under this Part will need to obtain operating certificates under other applicable Parts of this Title, such as 14 NYCRR Part 820, on or before February 28, 2026.*

Text of proposed rule and any required statements and analyses may be obtained from: Eugene 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: 60 days after publication of this notice.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

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: OASAS has determined that Part 819 is no longer needed. Programs authorized under Part 819 can be certified under other Parts of Title 14, including Part 820. Currently, Part 819 certifies substance use disorder residential treatment, in 3 levels: intensive residential, community residential, and supportive living. Similarly, Part 820 certifies residential services as well. Part 820 services are designed to help persons who lack a safe and supportive residential option in the community to achieve changes in their substance use disorder (“SUD”) behaviors within a safe and supportive setting. Such services shall be strength based, person centered and trauma informed and may focus treatment on one or more of the following treatment/recovery elements: stabilization, rehabilitation, or community reintegration in congregate or scatter-site settings and may be provided directly on program site or through cooperative relationships with other service providers. Clinical services in residential programs are delivered on an individual or group basis in a variety of settings. The main difference with converting to Part 820 is that under 820, these providers will be able to have the capacity to bill for services. The main reason for developing Part 820 was to create this billable model, and providers have been aware that the goal is to transition over the last 5 years. The main resistance to transitioning is a lack of initiative and OASAS believes the sunset will provide that initiative.

Originally this regulation was proposed to the Behavioral Health Services Advisory Council in December 2022 and was not approved. The members raised viability concerns and these have been addressed. Upon hearing this progress that OASAS has made with providers, the members unanimously approved in February 2024. Of the 31 residential providers that have not applied to transition from Part 819 to Part 820, 6 are currently supportive living programs that do not have incentive to apply as they do not meet the rehab or clinical services eligibility criteria to bill for services. The sunset of Part 819 will provide that incentive. Of the 31 residential providers that have not applied to transition from Part 819 to Part 820, 12 are community residential programs that will need technical assistance to develop the capacity to bill for services. This technical assistance will be provided by Regional Offices. The remaining providers are currently intensive residential providers (there are 13) and have concerns about the model, recruiting clinical and medical staff to meet the regulatory requirements, and fiscal viability with the increased cost for staff and

the revenue model. The IMD waiver that was approved by CMS in January of this year greatly reduces concerns about viability. Broadly, concerns from Upstate providers include not being able to meet staffing requirements associated with conversion – despite OASAS ensuring that Part 819 residential or supportive living have no additional staffing requirements with conversion to Part 820 Reintegration, this talking point continues and Regional Offices will continue to reinforce the reality of converting. Overall, eliminating Part 819 will reduce confusion with Part 820 (residential services) and streamline resources.

This regulation was presented at the February 2024 meeting of the Behavioral Health Services Advisory Council and approved by all members.

4. Costs: OASAS will not face additional costs. While OASAS will see additional applications for certifications under other Parts, as well as additional reviews and inspections, OASAS will no longer see applications for certification under Part 819. There are no additional costs to State or local governments.

Providers currently certified under Part 819 will need to convert to Part 820 programs, which will include certification under that Part. Part 819 providers are already being encouraged to convert to Part 820. Regional Offices (there are 6-Central, Hudson, Long Island, New York, Western/Rochester, Western Buffalo) have identified current Part 819 programs and offered technical assistance to those remaining to aid in the transition to another type of program. While the requirements of Part 820 are different from Part 819, OASAS is already offering funding for programs seeking to convert to Part 820 certified programs. Funding up to \$205,000 is available for each newly converted Part 820 program through a previous Medicaid investment.

5. Paperwork: The proposed amendments do require additional paperwork as providers will have to certify under other Parts (for example Part 820). However, given the timeframe for implementation this requirement is not overly burdensome and Regional Office contacts are available to assist.

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: One alternative is to not amend Part 819 and allow programs certified under this Part to continue to operate. However, that is inefficient and patients at these programs would be better served by Part 820 certified providers. Another alternative is to repeal Part 819 instead of declaring the Part and associated certificates are no longer effective, however that would limit the ability of OASAS to respond to unexpected developments.

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

10. Compliance Schedule: This rulemaking will be effective upon publication of the Notice of Adoption in the State Register, however the effective date of the sunset provision for providers is February 28, 2026.

Regulatory Flexibility Analysis

OASAS has determined that the rule may cause minimal adverse economic impact on small businesses or local governments because programs currently certified under Part 819 will need to recertify under a different Part in order to continue providing services beyond February 28, 2026. OASAS is already working to ease the transition and minimize obstacles to recertifying. No additional services or requirements are being imposed by this amended rule. This regulation was presented at the February meeting of the Behavioral Health Services Advisory Council and approved by all members.

Effect of Rule:

All 118 programs currently certified under Part 819 will no longer be able to provide services beyond February 28, 2026, under the Part 819 regulations. In order to continue providing services, current Part 819 programs will need to be certified under different Parts. OASAS believes most will transition to Part 820 as the services governed by that Part are very similar to Part 819. OASAS has already begun a Residential Redesign initiative to assist Part 819 programs seeking to convert to Part 820.

As local governments must approve certifications within their jurisdiction, they are likely to see an increase in Part 820 applications from the current Part 819 programs. However, they will also see a corresponding decline in Part 819 applications for recertification.

Compliance Requirements:

No additional requirements are being imposed. Instead, current Part 819 programs will be applying for certification under existing Part 820 rules. Acknowledging that there are differences between the certification process for the two Parts, OASAS is facilitating transitions by making sure Part 820 certification materials are centrally located and providing some funding for conversion.

Professional Services:

Part 820 certification is similar to Part 819 certification. OASAS does

not anticipate additional professional services being needed by Part 819 programs seeking to certify under Part 820.

Compliance Costs:

Compliance costs will vary depending on what services are being provided, and are impossible to estimate. Part 819 programs are already required to comply with Part 814 facility requirements for residential programs, so no significant changes to facilities are expected. Regulatory compliance is not significantly different as all OASAS certified programs have similar reporting requirements. OASAS does expect there may be additional costs during the initial conversion to Part 820 and is therefore offering funding for conversion, up to \$205,000 per program.

Economic and Technological Feasibility:

Compliance with the immediate impact of the rule change is straightforward, as programs certified under Part 819 will simply cease providing regulated services authorized by this Part after February 28, 2026. Instead, OASAS intends for all Part 819 programs to continue providing services under other Parts as are relevant. OASAS does not believe there are any technological barriers to small businesses handling these conversions. However, there may be additional costs with converting to regulations under a different Part which is why OASAS is providing funding for conversions to Part 820, the rule most Part 819 programs are likely to become.

Minimizing Adverse Impact:

OASAS is minimizing the immediate impact by setting the date for the sunset of Part 819 at February 28, 2026, rather than an earlier date. This will give current Part 819 programs sufficient time to receive certification under a different Part. As discussed above, OASAS is also attempting to ease the conversion process by providing funding. OASAS will also be actively and regularly communicating with all Part 819 programs to make them aware of the coming sunset and provide assistance with the conversion process.

Small Business Participation:

In addition to the required publication in the State Register and on the Office's website, OASAS will be proactively and regularly communicating with Part 819 programs to ensure a smooth transition. OASAS advises all providers of proposed regulatory changes when published in the State Register. OASAS does not want any program to cease providing services and will assist all affected programs with the transition to other certifications.

Penalties for Violations:

No change to violations involved in this amendment.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas: Within the six Regional Office areas across New York State, there are rural areas within each of the RO locations. While it is widespread, the OASAS approach is that ALL current Part 819 Programs, whether rural or non-rural, are receiving the same extensive technical support from their Regional Office counterparts at OASAS to transition.

Reporting, Recordkeeping, and Other Compliance Requirements; and Professional Services: While there are not any additional requirements being imposed, the current Part 819 programs will be applying for certification under already existing Part 820 regulations. As both 819 and 820 programs are both residential service models, the reporting, recordkeeping, and compliance requirements are similar enough that this is not a burden on those programs transitioning. OASAS is facilitating the transitions by making sure that Part 820 certification materials are centrally located and providing funding to programs for conversion (again, whether rural or non-rural). In addition, because Part 819 is so similar to 820, OASAS does not anticipate any professional services being needed by Part 819 programs seeking to certify under Part 820. Regulatory compliance is not significantly different as all OASAS certified programs have similar reporting requirements.

Costs: Compliance costs will vary depending on what services are being provided, and are impossible to estimate. Part 819 programs are already required to comply with Part 814 facility requirements for residential programs, so no significant changes to facilities are expected. During initial conversion, there is up to \$205,000 in funding available per program to assist with transition costs that may arise.

Minimizing Adverse Impact: OASAS is minimizing the immediate impact by setting the date for the sunset of the regulation to February 28, 2026 - this will give current Part 819 programs sufficient time to receive certification under a different Part. In addition, programs have been aware of the upcoming transition for over five years. As discussed above, OASAS is also attempting to ease the conversion process by providing funding. OASAS will be actively and regularly communicating with all Part 819 programs to make them aware of the sunset date and provide additional assistance with the process.

Rural Area Participation: OASAS has made ALL programs, regardless of whether or not they are rural or non-rural, aware of the upcoming transition from Part 819 to Part 820 over the last five years. The six Regional

Offices across the state have already been assisting all current 819 programs to transition, and the majority have already done so. This regulation was initially presented to BHSAC in December 2022, and upon raising concerns, OASAS tabled the sunset and instead focused on offering assistance to the current 819 programs to transition. Now that there is increased awareness, funding, and continued assistance, OASAS has offered the new sunset date of February 28, 2026, to provide a final initiative in the transition for those remaining 819 providers.

Job Impact Statement

OASAS does not anticipate a substantial adverse impact on jobs and employment opportunities because programs certified under Part 819 will likely convert to programs certified under other Parts in Title 14, most likely Part 820, which have similar or higher staffing requirements to Part 819. As such, a Job Impact Statement is not required and has not been prepared. This regulation was presented at the February 2024 meeting of the Behavioral Health Services Advisory Council and approved by all members.

Education Department

EMERGENCY RULE MAKING

Development and Implementation of Regionalization Plans

I.D. No. EDU-39-24-00006-E

Filing No. 1013

Filing Date: 2024-12-09

Effective Date: 2024-12-09

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

Action taken: Addition of Part 124 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207, 215, 305, 1950, 2216 and 2204

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

Specific reasons underlying the finding of necessity: The Department recognizes the need for a strategic approach to addressing educational disparities, fiscal constraints, and operational inefficiencies across school districts in New York State. Regionalization can help solve these challenges, creating equitable educational opportunities through partnerships among school districts, Boards of Cooperative Educational Services (BOCES), and other stakeholders.

The goal of regionalization plans is to increase opportunities for students, build upon the existing strengths and capacity in communities across New York, address enrollment challenges, and manage fiscal constraints by fostering equitable educational environments through collaboration. The proposed amendment requires that each component school district of a supervisory district work with the District Superintendent to develop and implement a regionalization plan at least every ten years. This would result in 37 plans, one for each supervisory district.

The regionalization planning process must, at minimum, include the District Superintendents facilitating: (1) a strengths and needs tool on a form prescribed by the commissioner; (2) convenings with school districts and stakeholders; (3) an interim progress report on a form prescribed by the commissioner; and (4) the regionalization plan on a form prescribed by the commissioner. Component school districts and supervisory districts would begin implementing the approved regionalization plans no later than the start of the 2026-2027 school year.

Since the Board of Regents meets at fixed intervals, the earliest the proposed amendment could be adopted by regular (nonemergency) action after expiration of the 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5) would be the January 2025 Regents meeting. Furthermore, pursuant to SAPA 203(1), the earliest effective date of the proposed rule, if adopted at the January meeting, would be January 29, 2025, the date the Notice of Adoption would be published in the State Register.

Therefore, emergency action is necessary at the November 2024 meeting, effective December 9, 2024, for the preservation of the general welfare to ensure component school districts in each supervisory district timely begin the regionalization planning process in an effort to provide students with equitable access to educational opportunities and address operational efficiencies.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the January 2025 Regents meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rulemaking. However, since the emergency action will expire before the January Regents meeting, it is anticipated that an additional emergency action will be presented for adoption at the November 2024 Regents meeting.

Subject: Development and implementation of regionalization plans.

Purpose: The development of regionalization plans by component districts in collaboration with BOCES superintendents in order to best utilize educational resources.

Text of emergency rule: Part 124 Board of Cooperative Educational Services

Subpart 124-2 Regionalization Plans

Section 124-2.1 Purpose and applicability

The purpose of this Part is to establish a framework for the development and implementation of regionalization plans by component school districts in collaboration with district superintendents. The goal of regionalization plans is to increase opportunities for students, build upon the existing strengths and capacity in communities across New York, address enrollment challenges, and manage fiscal constraints by fostering equitable educational environments through regional collaboration.

Section 124-2.2 Definitions

As used in this Part:

(a) *District superintendent means the executive officer of a board of cooperative educational services.*

(b) *Regionalization means the process of creating equitable educational opportunities for all students through collaborative partnerships among school districts, BOCES, and other stakeholders.*

(c) *Regionalization plan means a strategic plan for a supervisory district where each component school district works with the district superintendent in the development of the plan, and the plan is designed to improve student opportunities and operational efficiencies through shared resources.*

(d) *Supervisory district means a specific type of educational administrative division responsible for providing shared educational services to multiple school districts within its jurisdiction, including special education, career and technical education, and various support services. Supervisory districts shall facilitate cooperation and efficiency among school districts, ensuring that they have access to resources and programs that might be difficult to provide individually.*

(e) *Stakeholder means a group that has a vested interest in the education of students and is involved in, or the potential beneficiary of, regionalization. Stakeholders include, but are not limited to, parents/guardians, business groups, collective bargaining units, professional education organizations, Indigenous nations, institutions of higher education, community groups, cultural institutions, and elected officials, where applicable.*

Section 124-2.3 Regionalization plan development

(a) *Each component school district of a supervisory district shall work with the district superintendent, or an individual designated by the Commissioner in the event of a vacancy in the district superintendent position, to develop and implement a regionalization plan at least every ten years that shall include, but not be limited to, initiatives for enhancing educational opportunities, strategies for operational efficiencies, mechanisms for ongoing evaluation, and other information as prescribed by the Commissioner.*

(b) *There shall be one regionalization plan for each supervisory district.*

(c) *The regionalization planning process shall at a minimum include the district superintendents facilitating the completion of the following activities by the component school districts:*

(1) *a strengths and needs tool on a form prescribed by the Commissioner;*

(2) *convenings with school districts and stakeholders;*

(3) *an interim progress report on a form prescribed by the Commissioner; and*

(4) *the regionalization plan on a form prescribed by the Commissioner.*

(d) *Neighboring non-component school districts, including the big five city school districts, as well as charter schools and nonpublic schools, shall be invited by the district superintendent to voluntarily participate in the regionalization planning process, where applicable.*

Section 124-2.4 Deadlines and approval process

(a) *For the initial and subsequent regionalization plans:*

(1) *each component school district shall submit the strengths and needs tool to the Department on or before November 1, 2024, and on or before each November 1 every 10 years thereafter;*

(2) *the district superintendent shall launch the first convening with*