

PART 802

VITAL ACCESS PROGRAM and PROVIDERS

(Statutory authority: Mental Hygiene Law §§19.07, 19.09, 19.40, 25.09, 32.01, 32.07, 43.02;
Chapter 58 of the Laws of 2009; Chapter 53 of the Laws of 2014)

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802.1 Background and Intent.

The Purpose of this Part is to provide a means to support the stability and geographic distribution of substance use disorder treatment services throughout all geographic and economic regions of the state. A designation of Vital Access Provider denotes the state's determination to ensure patient access to a provider's essential services otherwise jeopardized by the provider's payer mix or geographic isolation. Vital Access Providers in the OASAS system are limited to eligible OASAS certified inpatient rehabilitation facilities, or such other programs as may be designated by the commissioner.

802.2 Legal Base

- (a) 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 chemical dependence 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 chemical dependence services.

- (d) Section 25.09 of the Mental Hygiene Law authorizes the Office to establish limits on the amount of financial support which may be advanced or reimbursed to a program for the administration of such program.
- (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 43.02 of the Mental Hygiene Law authorizes the establishment of rates or methods of payment for services at facilities subject to licensure or certification by the Office.
- (h) Section 23 of part C of chapter 58 of the laws of 2009, authorizes the commissioner, with the approval of the Commissioner of Health and the Director of the Budget, to promulgate regulations pursuant to Article 32 of the Mental Hygiene Law utilizing the APG methodology described in subdivision (c) of section 841.14 of this Part for the purpose of establishing standards and methods of payments made by government agencies pursuant to title 11 of article 5 of the Social Services Law for chemical dependence outpatient clinic services.
- (i) Chapter 53 of the Laws of 2014 authorizes the commissioner to provide special funding to certain designated providers.

802.3 Definitions

- (a) “Vital Access Program” means a program of supplemental state funding and/or temporary rate adjustments available to designated vital access providers pursuant to Part 841 of this Title and the provisions of this Part.
- (b) “Vital Access Provider” (“VAP”) means an OASAS certified program that is designated by the commissioner as essential but not financially viable because of its service to financially vulnerable populations and/or provision of essential services in an otherwise underserved region.

802.4 Vital Access Program.

- (a) Program. The Vital Access Program is a program of ongoing supplement to the non-capital component of service reimbursement rates calculated pursuant to Part 841 of this Title, or

exemption from payment reductions, as long as the designation as a vital access provider, as determined pursuant to this section, applies.

(b) Eligibility. The commissioner may grant approval of temporary adjustments to OASAS certified inpatient rehabilitation (IPRs) programs, or such other programs as may be designated by the commissioner, which demonstrate through submission of a written application that the additional resources provided by a temporary rate adjustment will achieve one or more of the following:

- (1) protect or enhance access to care;
- (2) protect or enhance quality of care;
- (3) improve the cost effectiveness of the delivery of health care services; or
- (4) otherwise protect or enhance the health care delivery system, as determined by the commissioner.

(c) Application. (1) The written application pursuant to subdivision (a) shall be submitted to the commissioner at least sixty (60) days prior to the requested effective date of the temporary rate adjustment and shall include a proposed budget to achieve the goals of the proposal.

(2) The commissioner may require that applications submitted pursuant to this section be submitted in response to and in accordance with a Request For Applications or a Request For Proposals issued by the commissioner.

(3) In rural communities, federal designation as critical access, essential access, or sole community provider will serve to meet the threshold criteria as a vital access provider.

(d) Conditions on Approval. (1) Any temporary rate adjustment issued pursuant to this section shall be in effect for a specified period of time as determined by the commissioner, of up to three years. At the end of the specified timeframe, the facility shall be reimbursed in accordance with the otherwise applicable rate-setting methodology as set forth in applicable statutes and Part 841 of this Title.

(2) The commissioner may establish, as a condition of receiving such a temporary rate adjustment, benchmarks and goals to be achieved in conformity with the facility's written application as approved by the commissioner and may also require that the facility submit such periodic reports concerning the achievement of satisfactory progress, as determined by the commissioner, in accomplishing such benchmarks and goals shall be a basis for ending the facility's temporary rate adjustment prior to the end of the specified timeframe.

802.5 Severability

If any provision of this Part or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Part that can be given effect without the invalid provision or applications, and to this end the provisions of this Part are declared to be severable.