

14 NYCRR Part 800, as amended March 29, 2019, is amended to read as follows:

OASAS TREATMENT SERVICES: GENERAL PROVISIONS
TITLE 14 NYCRR PART 800

[Statutory Authority: Mental Hygiene Law Sections 19.07(e), 19.09(b), 32.01, 32.07(a)]

Sec.

- 800.1 Legal base
- 800.2 Incorporation by reference
- 800.3 Definitions
- 800.4 Access to Medication Assisted Treatment
- 800.5 Waiver
- 800.6 Severability

Section 800.1 Legal base

- (a) Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner of the Office of Alcoholism and Substance Abuse Services 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 of the Office of Alcoholism and Substance Abuse Services 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 Alcoholism and Substance Abuse Services 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 Alcoholism and Substance Abuse Services to adopt regulations to effectuate the provisions and purposes of Article 32 of the Mental Hygiene Law.

800.2 Incorporation by reference

The following publications and/or federal laws and regulations are incorporated by reference where applicable to all Parts of this Chapter. Publications are filed with the Office of the Secretary of State of the State of New York, One Commerce Plaza, 99 Washington Ave., Albany, NY 12231-0001, and may be viewed at the law libraries of the New York State Supreme Court, the Legislative Library in the NYS Capitol, or viewed by appointment with the New York

State Office of Alcoholism and Substance Abuse Services, Office of Counsel, 1450 Western Ave., Albany, NY. Copies are also available by writing to the NYS Office of Alcoholism and Substance Abuse Services, Office of Counsel, 1450 Western Avenue, Albany, NY 12203-3526; federal documents may be purchased from the Superintendent of Documents, Government Printing Office, Washington D.C. 20402. Copies of the Code of Federal Regulations (CFR) are also available at many public libraries and bar association libraries.

- (a) The most current revision and published edition of “The International Classification of Diseases.”
- (b) The most current revision of “The OASAS Level of Care for Alcohol and Drug Treatment Referral Protocol” or “LOCADTR” or “level of care determination protocol” and accompanying Guidelines for Level of Care Determination published by the Office and which is in the public domain.
- (c) 21 Code of Federal Regulations Part 1301.72, et seq. regarding regulatory requirements for controlled substances.
- (d) 42 Code of Federal Regulations Part 2, et. seq. regarding confidentiality of patient records.
- (e) The most current revision and publication of “The Medicare Provider Reimbursement Manual” or “HIM 15” published by the U.S. Department of Health and Human Services' Centers for Medicaid and Medicare Services and available from: Centers for Medicaid and Medicare Services, Division of Communication Services, Production and Distribution Branch, Room 577, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.
- (f) The most current revision and publication of the “Diagnostic and Statistical Manual of Mental Disorders” published by the American Psychiatric Association.
- (g) “Health Insurance Portability and Accountability Act of 1996”, et. seq. (HIPAA) regarding patient records.

800.3 Definitions

The following terms are defined for purposes of all Parts of Chapter XXI of this Title, unless a term is defined and indicated as applicable only for purposes of a specific Part.

- (a) “Clinical staff” is staff who provide services directly to patients as prescribed in a treatment/recovery plan; clinical staff includes licensed medical staff, credentialed or licensed staff, non-credentialed staff, and student interns.
- (b) “Commissioner” means the Commissioner of the Office of Alcoholism and Substance Abuse Services, unless otherwise indicated.
- (c) “Diagnosis” for purposes of admission, treatment and discharge planning means the identification criteria contained in the most current editions of both the International Classification of Diseases, and the Diagnostic and Statistical Manual.
- (d) “Medical Director”. (1) Each program must have a physician designated by the program sponsor to be the medical director. The medical director shall be a physician licensed and currently registered as such by the New York State Education Department and shall have at least one year of education, training, and/or experience in substance use disorder services. The medical director is a physician who has overall responsibility for the following (this overall responsibility may not be delegated):
- (i) medical services provided by the program;
 - (ii) oversight of the development and revision of [medical] policies, procedures and ongoing training for matters including, but not limited to, [such as routing] routine medical care, specialized services, specialized medications, and medical and psychiatric emergency care, screening for, and reporting of, communicable diseases and infection in accordance with law, public health education including prevention and harm reduction;
 - (iii) collaborative supervision with the program director of non-medical staff in the provision of substance use disorder services;
 - (iv) supervision of medical staff in the performance of medical services;
 - (v) assisting in the development of necessary referral and linkage relationships with other institutions and agencies including, but not limited to, general or specialty hospitals and nursing homes, health-related facilities, home health agencies, hospital outpatient departments, diagnostic and treatment facilities, laboratories and related resources;
 - (vi) ensuring program compliance with all federal, state and local laws and regulations.
- (2) All medical directors, whether full-time or part-time, other than medical directors in place as of the effective date of this regulation, must hold a board certification in addiction medicine from a certifying entity appropriate to their primary or specialty board certification.

Physicians may be hired as probationary medical directors if not so certified but must obtain certification within four (4) years of being hired. In addition, the medical director must ~~[obtain]~~ have a federal DATA 2000 waiver (buprenorphine-certified), or if hired after the effective date of this regulation, must obtain such waiver within six (6) months of employment.

(3) The medical director may serve as medical director of more than one program certified by the Office.

(e) “Medical staff” means physicians, nurse practitioners, registered physician's assistants, and registered nurses licensed and certified by the State Education Department practicing within the scope of, and in accordance with, the terms and conditions of such licenses and certifications, and working with, or under the supervision of a physician, or other medical professional if required by law.

(f) “Multi-disciplinary team” means a team of health professional staff including, at a minimum, one medical staff member (where applicable) as defined in this section, one credentialed alcoholism and substance abuse counselor (CASAC) and one other staff member who is a qualified health professional as defined in this section in a discipline other than alcoholism and substance abuse counseling. If the treatment service has a gambling designation on their operating certificate, the multi-disciplinary team must include Qualified Problem Gambling Professional (QPGP), consistent with this Chapter.

(g) “Office” means the New York State Office of Alcoholism and Substance Abuse Services.

(h) “Peer advocate” is staff who hold a credential from a certifying authority recognized by the Commissioner.

(i) “Prescribing professional” is any medical professional appropriately licensed under New York State law and registered under federal law to prescribe approved medications.

(j) “Program” means a location wherein a provider is authorized to provide addiction services.

(k) “Provider” means an individual, association, partnership, corporation, public or private agency sponsor, as “sponsor” is defined in this Part, other than an agency or department of the state, which provides addiction services via one or more Office certified, funded or otherwise authorized program.

(l) “Qualified Health Professional” means any of the professionals listed below, who are in good standing with the appropriate licensing or certifying authority, as applicable, with a

minimum of one year of experience or satisfactory completion of a training program in the treatment of substance use disorders:

(1) a credentialed alcoholism and substance abuse counselor (CASAC) who has a current valid credential issued by the Office, or a comparable credential, certificate or license from another recognized certifying body as determined by the Office;

(2) a counselor certified by and currently registered as such with the National Board for Certified Counselors;

(3) a rehabilitation counselor certified by the Commission of Rehabilitation Counselor Certification;

(4) a therapeutic recreation therapist certified by the National Council on Therapeutic Recreation or the American Therapeutic Recreation Association; or a person who holds a baccalaureate degree in a field allied to therapeutic recreation and, either before or after receiving such degree, has five years of full-time, paid work experience in an activities program in a health care setting;

(5) a professional licensed and currently registered as such by the New York State Education Department to include:

(i) a physician who has received the doctor of medicine (M.D.) or doctor of osteopathy (D.O.) degree;

(ii) a physician's assistant (PA);

(iii) a certified nurse practitioner;

(iv). a registered professional nurse (RN);

(v) a psychologist;

(vi) an occupational therapist;

(vii) a social worker (LMSW; LCSW), including an individual with a Limited Permit Licensed Master Social Worker (LP-LMSW) only if such person has a permit which designates the OASAS-certified program as the employer and is under the general supervision of a LMSW or a LCSW; and

(viii) a mental health practitioner including: a licensed mental health counselor (LMHC), a marriage and family therapist (LMFT), a creative arts therapist (LCAT), and licensed psychoanalyst; and any mental health practitioner with a Limited Permit.

(m) “Quality improvement” means an ongoing process by which a chemical dependence service systematically assesses the adequacy and appropriateness of the chemical dependence services provided to patients and provides recommendations for improvement.

(n) “Significant other” is an individual who is admitted to treatment and manifests psychological, behavioral and/or emotional effects arising from another person’s substance use disorder, regardless of whether the other individual is in treatment. A significant other must be determined to be able to actively participate in and benefit from the treatment process.

(o) “Sponsor” (formerly “governing authority”) means the provider of service or an entity that substantially controls or has the ability to substantially control the provider of service. For the purpose of this Part, factors used to determine whether there is substantial control shall include, but are not limited to, the following:

- (1) the right to appoint and remove directors or officers;
- (2) the right to approve bylaws or articles of incorporation;
- (3) the right to approve strategic or financial plans for a provider of service; or
- (4) the right to approve operating or capital budgets for a provider of service.

(p) “Student Intern” means a person enrolled in a program which could lead to credentialing, certification or licensure as a Qualified Health Professional.

(q) "Substance use disorder" means the misuse of, dependence on, or addiction to alcohol and/or legal or illegal drugs leading to effects that are detrimental to the individual's physical and mental health, or the welfare of others and shall include alcoholism, alcohol abuse, substance abuse, substance dependence, chemical abuse, and/or chemical dependence.

(r) “Substance use disorder services” or “chemical dependence services” shall mean and include examination, evaluation, diagnosis, care, treatment, or rehabilitation of persons with substance use disorders and their families or significant others.

(s) “Utilization review” means a process by which a service systematically monitors the appropriateness of admissions, the need for continued stay, and the necessity for an alternative level of care.

(t) “Addiction services” means examination, evaluation, diagnosis, care, treatment, or rehabilitation of persons with substance use disorder or gambling disorder and their families or significant others.

(u) “Qualified Problem Gambling Professional (QPGP)” means any of the following professionals who can document either a minimum of one year of experience in the treatment and/or clinical research of problem gambling, or have completed a formal training program in the treatment of problem gambling as required by the Office and available on the Office website:

(1) Qualified Health Professional (QHP) as listed in Part 800 of this Chapter; for purposes of this subdivision only such QHP is not required to meet the minimum one year of experience in substance use disorders;

(2) Credential Alcoholism and Substance Abuse Counselor with a Gambling designation (CASAC-G);

(3) Credentialed problem gambling counselor (CPGC) who has a current valid credential issued by the Office;

(4) National Certified Gambling Counselor (Level I and II);

(5) Board Approved Clinical Consultant who is currently registered as such by the National Council on Problem Gambling;

(6) Pastoral Counselor certified by the American Association of Pastoral Counselors or is a Fellow of the American Association of Pastoral Counselors.

(v) “Opioid agonist” as used in this Part means methadone or buprenorphine and/or buprenorphine/naloxone, or any other agonist medication that may be approved by the federal or state government for the treatment of opioid dependence.

(w) “Opioid full agonist” means methadone.

(x) “Opioid partial agonist” means buprenorphine and/or buprenorphine/naloxone.

800.4 Access to Medication Assisted Treatment

(a) All programs certified pursuant to this Chapter shall expeditiously facilitate access to medication assisted treatment, based on the clinical need and preference of the patient, through direct provision of the medication, contracting with private prescribing professionals or linkage agreements with other Office certified programs. Such agreements must ensure access sufficient to meet patient needs without undue barriers such as long waiting periods for appointments or waiting lists.

(b) All doctors, physician assistants and nurse practitioners employed in a treatment program certified pursuant to this Chapter must have a federal DATA 2000 waiver regarding treatment with buprenorphine.

(c) Any doctors, physician assistants and nurse practitioners required to have a federal DATA 2000 waiver must do so by March 1, 2019 or within six (6) months of date of hire, whichever is latest.

(d) All programs must allow for provision of medication assisted treatment and may not deny admission based on use of medication. Programs must continue access to opioid full and partial agonist treatment and plan for the continuity of medication administration.

(e) All programs must maintain an emergency medical kit at each certified or funded location; such kit must include basic first aid and at least one naloxone emergency overdose prevention kit such that it is available for use during all program hours of operation.

(f) Each program that dispenses medications must develop and implement a diversion control plan (DCP) as part of its quality improvement plan, such DCP to include specific measures to reduce the possibility for diversion of controlled substances from legitimate treatment use and shall assign specific responsibility to the medical and administrative staff of the program for carrying out the diversion control measures and functions described in the DCP.

800.5 Waiver

(a) The Commissioner may grant a waiver of a Part 800-series chemical dependence regulatory requirement not specifically required by law, if the Commissioner determines that:

- (1) meeting the requirement would impose an unreasonable hardship;
- (2) the health and safety of patients/residents would not be diminished; and
- (3) the best interests of the patients/residents and the service would be served.

(b) In considering a request for a waiver, the Commissioner will consider such factors as the special needs of the population(s) to be served, geographic distances and transportation

problems, staff availability, long range plans of the chemical dependence service, alternatives and any other relevant information.

(c) A request for a waiver must be submitted in writing, must contain substantial documentation to support the need for the waiver, and must include such other information as the Commissioner may require.

(d) Special limits, conditions or restrictions may be established by the Commissioner in granting a waiver.

(e) A waiver shall be in effect for no longer than the time period between grant of waiver and the conclusion of the subsequent re-certification inspection and review.

800.6 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 which can be given effect without the invalid provisions or applications, and to this end the provisions of this Part are declared to be severable.