



EMERGENCY ADOPTION AND PROPOSED RULEMAKING: Addition of New Part 808

14 NYCRR Part 808

COVID-19 Mask Wearing Requirements in Certified, Funded or Otherwise Authorized Settings

(Statutory Authority: Mental Hygiene Law Sections 19.07(e), 19.09(b), 19.21(b), 32.01, and 32.07(a))

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Section 808.1 Background and Intent

(a) The purpose of this Part is to provide a healthy environment for staff, patients, volunteers and visitors in combatting the SARS-CoV-2 (COVID-19) pandemic in New York State in certified, funded or otherwise authorized entities by mandating consistent with Office and Centers for Disease Control and Prevention Guidance.

Section 808.2 Legal Basis

(a) Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner of the Office of Addiction Services and Supports (“the Commissioner”) to adopt standards including necessary rules and regulations pertaining to substance use disorder services.

(b) Section 19.07(c) of the Mental Hygiene Law charges the Office with the responsibility for seeing that persons in need of treatment for substance use disorder services and their families receive high quality care and treatment, and that the personal and civil rights of persons receiving care, treatment and rehabilitation are adequately protected.

- (c) 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.
- (d) Section 19.21(b) of the Mental Hygiene Law requires the Commissioner to establish and enforce certification, inspection, licensing, and treatment standards for substance use disorder treatment facilities.
- (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 32.21 of the Mental Hygiene Law authorizes the Commissioner to suspend, revoke, or limit an operating certificate and impose fines where a provider has failed to comply with the terms of its operating certificate or with the provisions of any applicable statute, rule, or regulation.

Section 808.3 Applicability

- (a) This Part shall apply to any program organized and operating pursuant to the provisions of this Title and certified, funded, or otherwise authorized by the Office as a provider of substance use disorder or gambling prevention, treatment or recovery services, including but not limited to the following:
 - (1) Title 14 NYCRR Part 343 Alcohol Awareness Education Program for Youth;
 - (2) Title 14 NYCRR Part 816 Substance Use Disorder Withdrawal and Stabilization Services, including Medically Supervised Outpatient Withdrawal and Stabilization Services;
 - (3) Title 14 NYCRR Part 817 Substance Use Disorder Residential Rehabilitation Services For Youth (RRSY);
 - (4) Title 14 NYCRR Part 818 Substance Use Disorder Inpatient Rehabilitation Services;
 - (5) Title 14 NYCRR Part 819 Chemical Dependence Residential Services, except for supportive living services provided in scatter sites;
 - (6) Title 14 NYCRR Part 820 Residential Services, except those services provided in non-congregate settings;
 - (7) Title 14 NYCRR Part 822 Outpatient Treatment Services;
 - (8) Title 14 NYCRR Part 823 Child and Family Treatment and Support Services;
 - (9) Title 14 NYCRR Part 825 Integrated Outpatient Services;
 - (10) Title 14 NYCRR Part 1030.3 Drug-free prevention services;
 - (11) Services which are not certified but are funded or otherwise authorized by the Office.

Section 808.4 Definitions

- (a) “Mask” means a face covering that fits snugly and covers both the nose and mouth.
- (b) “Staff” shall include the director, employee or volunteer of a facility or provider agency, contract staff, students, or those who engage in activities that if they were to be infected with COVID-19 they would potentially expose patients to the disease.

Section 808.5 Masking Requirements

- (a) Effective immediately, all Programs shall have policies and procedure in place to ensure all staff, visitors and individuals receiving services regardless of vaccination status wear appropriate masks, consistent with any directives issued by the Office and consistent with guidance from the Centers for Disease Control and Prevention (CDC).
- (b) Exemptions from mask wearing requirements for staff, individuals receiving services, and visitors.
 - (1) Masks are not required to be worn by:
 - (i) Children under two years of age
 - (ii) A person with a disability who cannot wear a mask, or cannot safely wear a mask, for reasons related to the disability, or
 - (iii) A person for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by an Occupational Health and Safety Administration workplace risk assessment.
 - (2) Where a mask cannot be worn due to disability or a risk to workplace health, safety or job duty:
 - i. a face shield should be used as an alternative whenever practical.
 - ii. Any exemption from mask wearing must be based upon proof of disability or risk which is retained in a distinct record keeping system to assist with monitoring compliance.

Section 808.6 Penalties

- (a) Failure to comply with the requirements of this regulation may result in limitation to a provider’s operating certification, including suspension or revocation, and the imposition of fines for each violation in accordance with Mental Hygiene Law Section 32.21.

Section 808.7 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 provision or applications of this Part which can be given effect without the invalid provision or applications, and to this end the provisions of this Part are declared to be severable.

