

TOBACCO USE IN ADULT SERVICES

14 NYCRR PART 856

[Statutory Authority: Mental Hygiene Law Sections 19.07(e), 19.09(b), 19.21(b), 19.21(d), 32.01, & 32.07(a) and Public Health Law Section 1399-O]

Sec.

Sec. 856.1 Background and Intent

Sec. 856.2 Legal Base

Sec. 856.3 Applicability

Sec. 856.4 Definitions

Sec. 856.5 Policy and Procedures

Sec. 856.6 Severability

Sec. 856.7 Effective Date

Section 856.1 Background and intent

(a) To reduce addiction, illness and death caused by tobacco products.

(b) To provide a healthy and supportive environment for staff, patients, volunteers and visitors to entities organized and operating pursuant to the provisions of this Title and certified and/or funded by the Office of Addiction Services and Supports (“the Office”) as a provider of prevention, treatment or recovery services for substance use disorders and problem gambling.

(c) To establish tobacco-limited services for patients in a tobacco-limited environment and tobacco-free services in a tobacco-free environment.

(d) To establish evidence-based practices for the identification and treatment of tobacco use disorder during program admission.

Section 856.2 Legal base

(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 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under their jurisdiction.

(c) 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.

(d) Section 19.21(d) of the Mental Hygiene Law requires the Commissioner to promulgate regulations which establish criteria to assess substance use disorder treatment effectiveness

and to establish a procedure for reviewing and evaluating the performance of providers of services in a consistent and objective manner.

(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 1399-O of the Public Health Law regulates smoking and vaping in certain public areas.

Section 856.3 Applicability

(a) The tobacco-limited services provisions of this Part 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 prevention, treatment, or recovery addiction services for adults. The tobacco-limited services provisions of this part shall not apply to prevention, treatment, or recovery services for children, youth, and/or young adults, which must remain tobacco-free.

(b) Nothing in this Part shall be construed to limit the authority of a program organized and operating pursuant to the provisions of this Title and certified, funded, or otherwise authorized by the Office as a provider of prevention, treatment, or recovery substance use disorder services for adults to remain or to choose to be a tobacco-free program or service.

Section 856.4 Definitions

(a) Tobacco-limited means prohibiting the use of all tobacco products and nicotine delivery systems in facilities and in vehicles owned or operated by the program subject to this Part, while allowing for limited use of certain tobacco products by patients in designated areas on facility grounds at designated times, in accordance with guidance issued by the Office.

(b) Tobacco free means prohibiting the use of all tobacco products in facilities and in vehicles owned or operated by the program, consistent with this Part, as well as on facility grounds.

(c) Facility means certain parts of the program that are utilized by patients, staff, volunteers, or visitors. This shall include the programs' buildings which are under the direct control of the facility and vehicles that are owned and operated by the program.

(d) Facility grounds means any part of the program that is outdoors, is utilized by patients, staff, volunteers, or visitors and is under direct control of the program.

(e) Tobacco products include but are not limited to cigarettes, cigars, pipe tobacco, roll-your-own tobacco, and smokeless tobacco.

(f) Nicotine delivery systems means any electronic or modified mechanical devices that deliver aerosolized nicotine, flavorings, and/or other chemicals by inhalation of a non-combustible liquid or gel, and any refills, cartridges, and/or any other component of such devices.

(g) Patient means any recipient of services in a facility certified, funded, or otherwise authorized by the Office.

Section 856.5 Policy and procedures

(a) The program that chooses to become a tobacco-limited program, remain a tobacco-free program, or return to being a tobacco-free program, shall determine and establish written policies, procedures and methods governing the provision of a tobacco-limited or tobacco free environment. These policies, procedures and methods should at a minimum include the following:

(1) Defines the parts of the facility and vehicles where tobacco use is not permitted;

(2) For tobacco-limited programs, defines designated areas on facility grounds where limited use of certain tobacco products by patients is permitted in accordance with guidance issued by the Office and Public Health Law Section 1399-O;

(a) Use of nicotine delivery systems by patients shall not be permitted;

(b) Use of tobacco products and/or nicotine delivery devices by family members and other visitors shall not be permitted;

(4) For tobacco-limited programs, limits tobacco products that family members and other visitors can bring to patients admitted to the program to closed and sealed packages of cigarettes;

(5) Requires all patients, staff, volunteers and visitors be informed of the tobacco-limited or tobacco free policy including posted notices and the provision of copies of the policy;

(6) Establishes a policy prohibiting staff and volunteers from using tobacco products or nicotine delivery systems when they are on the site of the program, from purchasing tobacco products or nicotine delivery systems for, or giving tobacco products or nicotine delivery systems to patients, and from using tobacco products or nicotine delivery systems with patients;

(6) Describes employee assistance programs and other programs that will be made available to staff who want to stop using tobacco products, nicotine delivery systems, or other nicotine-containing products;

(7) Establishes evidence-based harm reduction and cessation treatment modalities for patients who use tobacco products or nicotine delivery systems, in accordance with guidance from the Office;

(8) For tobacco-limited programs, establishes a policy prohibiting patients from using tobacco products during program hours except for the limited use of certain tobacco products in designated areas of the facility grounds at designated times, in accordance with guidance issued by the Office;

(9) Describes required annual training for staff, including clinical, non-clinical, administrative and volunteers about tobacco products, nicotine dependence, and tobacco use disorder that is sufficient for the program to operate a holistic approach to tobacco use disorder that is evidenced in progress notes, policies and procedures, perception of care, and outcomes;

(10) Describes tobacco and nicotine prevention and education programs made available by the service to patients, staff, volunteers and others;

(11) Establishes procedures, including a policy to address patients who continue to use or return to use of tobacco products or nicotine delivery systems. This policy shall be incorporated into the policy and procedures as required by all programs for adults certified, funded or otherwise authorized by this Title and every effort shall be made to provide appropriate treatment services to all persons in need of substance use disorder treatment services. Additionally, each facility shall address staff who continue to use or return to use of tobacco products consistent with the requirements of 856.5 (a) (5) of this Title and the employment procedure of that facility.

(12) For tobacco-free services, established tobacco free policies consistent with this Part and guidance issued by the Office.

Section 856.6 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 provision or applications, and to this end the provisions of this Part are declared to be severable.