



**Notice of Proposed Rulemaking  
Regulatory Impact Statement**

Amend 14 NYCRR Part 810

**Establishment, Incorporation and Certification of Providers of Addiction Services**

**1. Statutory Authority:**

(a) Section 19.07(c) of the Mental Hygiene Law (MHL) charges the Office with the responsibility for ensuring that persons in need of addiction services, care and treatment receive services of high quality and effectiveness and that the personal and civil rights of persons seeking and receiving such services are adequately protected.

(b) Section 19.07(e) of the MHL authorizes the Commissioner to adopt standards including necessary rules and regulations pertaining to addiction treatment services.

(c) Section 19.09(b) of the MHL authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under their jurisdiction.

(d) Section 19.20 of the MHL requires review of criminal history information review concerning certain prospective employees and volunteers of providers of services certified, operated or otherwise authorized by the office.

(e) Section 19.20 -a of the MHL authorizes the Office to receive criminal history information from the Division of Criminal Justice Services related to persons seeking to be credentialed or applicants for an operating certificate issued by the office that will have regular and substantial unsupervised or unrestricted contact with patients/clients.

(f) Section 19.21(b) of the MHL requires the [c]Commissioner to establish and enforce regulations concerning the licensing, certification, inspection and treatment standards of addiction treatment services.

(g) Section 19.21(d) of the MHL requires the office to establish reasonable performance standards for providers of services certified by the Office.

(h) Section 19.40 of the MHL authorizes the Commissioner to issue operating certificates for the provision of addiction treatment services, including the authority to waiver regulatory requirements.

(i) 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.

(j) Section 32.05 of the MHL provides that no substance use disorder services may be established without an Operating Certificate issued by the commissioner.

(k) Section 32.07(a) of the MHL authorizes the Commissioner to adopt regulations to effectuate the provisions and purposes of article 32 of the MHL.

(l) Section 32.09 of the MHL contains criteria that the Commissioner must consider when issuing an operating certificate.

(l) Section 32.20 of the MHL authorizes the Commissioner to appoint a Temporary Operator.

(m) Section 32.21 of the MHL provides the Commissioner with the authority to suspend, revoke or limit operating certificates and imposition of fines.

(n) Section 32.29 of the MHL authorizes the Commissioner to approve the construction of a facility for which an operating certificate will be issued.

- (o) Section 32.31 of the MHL provides the process for the establishment or incorporation of facilities for addiction services.
- (p) Section 406 of the Business Corporation Law requires any corporation which intends to establish or operate a program of services for services to obtain the approval of the Commissioner as to the proposed filing of its certificate of incorporation.
- (q) Section 404(u) of the Not-For-Profit Corporation Law gives the Commissioner the responsibility of approving the certificate of incorporation of any corporation which intends to establish or operate an addiction program Certified by the Office.
- (r) The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) establishes the Justice Center for the Protection of People with Special Needs (Justice Center) and requires criminal information history reviews of all applicants for authorization to operate a program of services for addiction; and of all employees, contractors, or volunteers of such certified program who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the patients or clients of in such programs.
- (s) 42 CFR 431.110 relates to federal requirements that New York State's Medicaid State Plan provide for the acceptance of Indian Health Services facilities as a Medicaid provider on the same basis as any other qualified provider.

2. Legislative Objectives: Part 810 (Establishment, Incorporation and Certification) was revised at this time because it contained outdated and unnecessary terminology, and needed to be revised to as to better reflect current practice in the Agency.

3. Needs and Benefits: OASAS is updating the language used in this regulation consistent with amendments made to other OASAS regulations. These updates include using less stigmatizing and more person centered terminology, gender neutral language, and updating the name of the Agency, and updating outdated definitions. Other amendments made were specifically to clarify certification requirements, and to include statutory language that has been added and/or updated since the time that the regulation was last updated. Standards for approving a certification application for full or administrative review was updated to clarify the policy requirement that 10% of the owners or principals or board members of an applicant program must have substantial experience directly providing or managing substance use disorder treatment services, as determined by the office. The reason for this clarification is that it is essential for an applicant to demonstrate that there is sufficient knowledge within the ownership and management of an applicant to successfully implement substance use disorder services. These criteria by which this will be reviewed is currently drafted as “guidance” for applicants. This section also includes language to clarify the requirements that must be met by an applicant, as well as provides for the inclusion of gender neutral facilities.

Previously there were several references to “a reasonable time” in the regulation in relation to certain steps of the applicant approval process. Definitions for these time frames were clarified in the regulation so as to align with current practice of the agency. A “provisional certification” was included in the types of operating certificates issued by the office to allow for a provision certificate to be issued to an applicant by the

Commissioner. The requirement that an additional location must be operated in the same or contiguous county as the original was eliminated to align with other OASAS regulation

The Inspection and Review section of the regulation was amended to clarify the requirements for providers. A provision for appointment of a Temporary Operator was also included in the amended regulation, as it was a statutory provision added to the mental hygiene law in the time since the regulation was last updated. The authority for this comes from Section 32.20 of the Mental Hygiene law, and the regulation simply includes the requirements in the law.

4. Costs: No additional administrative costs to the agency are anticipated.
5. Paperwork: There is no additional paperwork beyond what is already required.
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: The alternative is to leave the regulation as it currently reads, with language inconsistent across Title 14 regulations and out of date terminology.
9. Federal Standards: This regulation does not conflict with federal standards.
10. Compliance Schedule: This rulemaking will be effective upon publication of a Notice of Adoption in the *State Register*.

