



## Proposed Repeal of 14 NYCRR Part 857

### Problem Gambling Treatment and Recovery Services

#### SUMMARY

Part 857 (Problem Gambling Treatment and Recovery Services) will be rendered obsolete and unnecessary with the proposed amendment of Part 830 to add a new section providing for a Problem Gambling Treatment and Recovery (PGTR) designation. This program designation identifies additional criteria certified programs, as well as programs that are OASAS funded or otherwise approved but not certified, must meet for the provision of PGTR affirming services for persons affected by a gambling disorder or problem gambling as a secondary diagnosis to substance use disorder or without a primary diagnosis of substance use disorder. Program standards will be addressed in guidance for the provision of PGTR affirming services, *Problem Gambling Treatment and Recovery Designation Standards for OASAS Programs*, posted on the agency website. Accordingly, it is proposed that Part 857 be repealed in its entirety concurrently with the proposed amendment to Part 830.

#### FULL TEXT

##### **Part 857 is repealed.**

~~Section 857.1. Background and Intent~~

~~Section 857.2. Legal Authority~~

~~Section 857.3. Applicability~~

~~Section 857.4. Definitions~~

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~~Section 857.6. Medicaid/Insurance Claims~~

~~Section 857.7. General Program Standards~~

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##### **Section 857.1. Background and intent**

(a) Regulation of compulsive gambling (also known as “gambling disorder” or “problem gambling” as such terms are defined herein) was transferred by statute in 2005 from the Office of Mental Health (OMH) to OASAS.

(b) OASAS is directed to define treatment, develop access to prevention, treatment and recovery services, develop minimum standards for treatment, establish core competencies for treatment professionals and service providers, and educate providers of other addictive disorder treatment and mental health services.

### **Section 857.2. Legal authority**

(a) Section 19.07(a) of the Mental Hygiene Law charges the Office of Alcoholism and Substance Abuse Services (OASAS or “Office” with assuring the development of comprehensive plans, programs and services for research, prevention, care, treatment, rehabilitation, education and training related to substance use disorder and compulsive gambling.

(b) Section 19.09 (b) of the Mental Hygiene Law allows the commissioner to adopt regulations necessary and proper to implement any matter under the commissioner's jurisdiction.

(c) Section 19.20 of the Mental Hygiene Law authorizes the Office to receive and review criminal history information from the Justice Center related to employees or volunteers of treatment facilities certified, licensed or operated by the Office.

(d) Section 19.20-a of the Mental Hygiene Law authorizes the Office to receive and review criminal history information from the Justice Center related to persons seeking to be credentialed by the Office or applicants for an operating certificate issued by the Office.

(e) Section 32.01 of the Mental Hygiene Law states the commissioner may 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 32.02 of the Mental Hygiene Law states the commissioner may adopt regulations necessary to ensure quality services to those suffering from compulsive gambling.

(g) Section 32.07 of the Mental Hygiene Law states the commissioner may adopt regulations to effectuate the provisions and purposes of article 32 of the Mental Hygiene Law.

### **Section 857.3. Applicability**

(a) The provisions of this Part apply to providers certified and/or, funded or otherwise authorized by the Office that:

(1) provide gambling treatment as a secondary diagnosis to a substance use disorder; or

(2) have received a waiver to provide gambling-only treatment services prior to the effective date of this regulation; or

(3) have received a “designation” pursuant to the provisions of this Part to provide gambling only treatment services.

### **Section 857.4. Definitions**

- (a) **Addiction disorder** means substance use disorder, as defined in Part 800 of this Title, gambling disorder as defined in the most recent edition of the Diagnostic and Statistical Manual (DSM), or problem gambling as defined in this Part.
- (b) **Addiction services** means services delivered by a certified or authorized provider or program for the prevention, treatment and recovery from an addiction disorder.
- (c) **Designated program** means an OASAS-certified program that has been designated pursuant to the requirements of this Part to provide “gambling only treatment.”
- (d) **Problem gambling** means gambling behavior meeting less than four of the DSM criteria for gambling disorder.
- (e) **Gambling treatment** means treatment for gambling disorder or problem gambling as a secondary diagnosis to substance use disorder, or if context indicates, “gambling only treatment” without a primary diagnosis of substance use disorder.
- (f) **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.

### **Section 857.5. Designation to provide gambling only treatment services**

- (a) OASAS certified providers seeking to provide gambling only treatment services must receive authorization pursuant to the requirements of this section.
- (b) Designation.
- (1) Requests for designation to provide gambling only treatment services shall be in the form of an application submitted to the Bureau of Certification and to the appropriate Regional Office.
  - (2) Office approval will be based on a review of the written plan addressing the following criteria available on the Office website and including, but not limited to:
    - (i) Admission criteria and screening tools;
    - (ii) confidentiality;
    - (iii) staffing, supervision and staff training;
    - (iv) reporting and recordkeeping;
    - (v) programming specific to gambling only treatment services, such as financial counseling and planning; individual, group and family counseling;

(vi) policies and procedures addressing potential conflicts of interest involving staff with outside employment.

(c) Regulatory compliance. “Designated providers” are subject to all regulations applicable to their operating certificate. If terms of such regulation conflict with corresponding terms of the approved designation plan related to the provision of gambling only services, the terms of the designation plan and the provisions of this Part applicable to gambling only services shall govern.

(d) Previous waivers. Providers who have previously received a waiver to provide gambling only treatment services must apply for designation pursuant to this Part.

### **Section 857.6. Medicaid/insurance claims**

(a) Third Party Reimbursement.

(1) No Medicaid claim may be submitted by an OASAS program for gambling only services (addiction services) unless such program has been approved to provide such services and the service has been approved by CMS.

(2) Private insurance may be billed for gambling disorder services.

### **Section 857.7. General program standards**

(a) Policies and Procedures. In addition to the policies and procedures required by a program's certification, programs offering gambling treatment (as secondary to SUD or as gambling only) must develop policies and procedures specific to the level of gambling treatment provided including, but not limited to:

(1) Standards of conduct for staff related to providing clinical treatment, self help support or any other professional service in another independent program, community and/or private practice setting;

(2) provisions to admit without a full diagnosis for a gambling disorder;

(3) Services must include financial counseling and planning (on site or by referral);

(b) Staffing.

(1) Programs providing gambling treatment must have a clinical supervisor and designated counseling staff deemed qualified to provide gambling treatment services. If at any time a program does not meet the staffing requirements the program must immediately report this to their Field Office manager.

(2) Staffing requirements include:

(i) Clinical Supervisor. The Clinical Supervisor must be a Qualified Problem Gambling Professionals (QPGP) as defined in section 857.4 of this Part and be currently acting in a clinical supervisory role. If the Clinical Supervisor is not a QPGP at the time of the application, they must document they are pursuing the requirements and submit proof of completion within one year of application approval. During this time, the direct counseling staff providing gambling treatment must be receiving supervision as approved by OASAS.

(ii) Counselors. Counselors providing direct gambling treatment must be a QPGP.

(iii) Training. All clinical staff should be provided with, and document, training related to gambling disorder and problem gambling.

(iv) Continuing education. Qualified Health Professionals (QHP) as defined in Part 800 of this Chapter, and Pastoral Counselors, must submit documentation of ten (10) hours of advanced clinical problem gambling training every three years.

(c) Admission, initial services, transfers and readmissions:

(1) The program must document that the individual is determined to have met the criteria for problem gambling (meets 1-4 criteria of Gambling Disorder) or Gambling Disorder based on the criteria in the most recent version of the Diagnostic and Statistical Manual (DSM) or the International Classification of Diseases (ICD).

(2) The program must have used a gambling screening tool that has been approved by the Office.

(3) The decision to admit an individual must be made by the clinical supervisor defined in subdivision (b) of this section, and must be documented by such supervisor's dated signature (physical or electronic signature) and include the basis for admitting the patient.

(d) Case Records and Confidentiality:

(1) The following must be included in records for patients admitted for gambling treatment: A completed gambling screening tool approved by OASAS;

(2) If admitted for gambling as a secondary diagnosis, patient records can be kept together subject to all federal and state confidentiality laws and regulations. If admitted for gambling only treatment services, patient records must be kept separate from records for patients receiving substance use disorder treatment.

### **Section 857.8. Severability**

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 application, and to this end the provisions of this Part are declared to be severable.]