



Pursuant to the authority vested in the Commissioner of the Office of Mental Health by Mental Hygiene Law Sections 7.07, 7.09 and 31.04, the Official Compilation of Codes, Rules and Regulations of the State of New York, are amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

***Part 557 of Title 14 NYCRR is repealed.***

## REGULATORY IMPACT STATEMENT

### 14 NYCRR Part 557

#### (1) Statutory Authority:

(a) Section 7.07 of the Mental Hygiene Law (MHL) charges the Office of Mental Health (OMH) with the responsibility for seeing that persons with mental illness are provided with care and treatment, and that such care, treatment, and rehabilitation is of high quality and effectiveness.

(b) Section 7.09 of the MHL gives the Commissioner of OMH the power and responsibility to adopt regulations that are necessary and proper to implement matters under their jurisdiction.

(c) Section 31.04 of the MHL grants the Commissioner of OMH the power and responsibility to adopt and repeal regulations to effectuate the provisions and purposes of article 31 of such law, including procedures for the issuance and amendment of operating certificates, and for setting standards of quality and adequacy of facilities.

#### (2) Legislative Objectives:

To implement a COVID-19 vaccination program through MHL §§ 7.07, 7.09 and 31.04 which provide the Commissioner of Mental Health with the authority to protect the health and life of the people of the State of New York including by controlling the spread of communicable diseases. COVID-19 is an unpredictable disease that can cause serious illnesses and death. In response to this increased public health threat, New York must take active steps to prevent and control transmission of COVID-19. The seriousness of the continuing threat and the failure to achieve acceptable vaccination rates through voluntary programs necessitate further action. Collectively, the legislative purpose of these statutes is to protect patients in hospitals operated or licensed by the Office of Mental Health by providing safe, efficient, and adequate care.

#### (3) Needs and Benefits:

COVID-19 vaccines are safe and effective, and COVID-19 vaccination offers the benefit of helping to reduce the number of COVID-19 infections. OMH's regulation requiring facilities to ensure that personnel are fully vaccinated against COVID-19 has increased the percentage of health care workers who are vaccinated against COVID-19.

However, federal recommendations for COVID-19 vaccination have changed and are expected to evolve as the future course of COVID-19 becomes more apparent. Additionally, there are now effective treatments for COVID-19, case rates appear to have steadily declined, and hospitalizations due to COVID-19 have substantially decreased. In response to changes in federal recommendations for COVID-19 vaccination and the overall pandemic landscape, the proposed regulation would repeal the requirement that facilities ensure that personnel are fully vaccinated against COVID-19, as well as repeal the requirement that facilities document evidence thereof in appropriate records.

In lieu of compliance with 14 NYCRR Section 557, facilities may now individually consider how to implement their own internal policies regarding COVID-19 vaccination, provided they remain in compliance with other applicable state and federal laws and regulations.

(4) COSTS:

(a) Costs to Regulated Parties:

The proposed regulation does not impose any new costs to regulated parties.

(b) Costs to Local and State Governments:

The proposed regulation does not impose any new costs to local or State governments.

5. Local government mandates: This regulation will have no adverse impact on local governments.
6. Paperwork: This regulation imposes no additional paperwork.
7. Duplication: These regulatory amendments do not duplicate existing State or Federal requirements.
8. Alternatives: One alternative OMH considered was to amend the regulation to require personnel to be “up to date” on COVID-19 vaccinations, rather than “fully vaccinated.” However, this option was not considered viable because of the likelihood of continued changes to federal COVID-19 vaccine recommendations and the language surrounding those recommendations.
9. Federal standards: On November 5, 2021, the U.S. Department of Health and Human Services’ Centers for Medicare & Medicaid Services (CMS) issued an interim final rule (CMS-3415-IFC) requiring Medicare and Medicaid-certified providers and suppliers to ensure that their staff were fully vaccinated for COVID-19 (i.e., obtain the primary vaccination series). On April 10, 2023, the President signed legislation that ended the COVID-19 national emergency and subsequently on May 11, 2023, the COVID-19 public health emergency expired. In light of these developments and comments received on the interim final rule, CMS has stated that it will soon end the requirement that covered providers and suppliers establish policies and procedures for staff vaccination, which would bring the state and federal requirements into alignment.
10. Compliance schedule: This rulemaking will be effective upon filing a Notice of Adoption in the State Register. Effective immediately, OMH will cease citing for failing to comply with the requirements of 14 NYCRR Section 557 while the regulation is in the process of being repealed. OMH may, however, continue to seek sanctions against providers based on previously cited violations that allegedly occurred.