



A new Part 557 titled COVID-19 Vaccination Program, is added to read as follows:

**557.1 Background and intent.**

(a) 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.

**557.2 Legal Base.**

(a) Section 7.07 of the Mental Hygiene Law charges the Office of Mental Health 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 Mental Hygiene Law gives the Commissioner of the Office of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under the Commissioner's jurisdiction.

(c) Section 31.04 of the Mental Hygiene Law grants the Commissioner of Mental Health the power and responsibility to adopt regulations to effectuate the provisions and purposes of Article 31 of the Mental Hygiene Law, including procedures for the issuance and amendment of operating certificates, and for setting standards of quality and adequacy of facilities.

**557.3 Applicability.**

(a) This Part applies to Hospitals as defined in Part 556.4(d) of this Title.

**557.4 Definitions pertaining to this Part.**

(a) *Commissioner* shall mean the Commissioner of Mental Health.

(b) *COVID-19 vaccine or vaccine* shall mean a vaccine currently licensed for immunization and distribution in the United States by the Food and Drug Administration (FDA) for active immunization for the prevention of COVID-19 or authorized for such use by the FDA pursuant to an Emergency Use Authorization (EUA) or as an Emergency Investigational New Drug (EIND).

(c) *Fully Vaccinated* shall mean fully vaccinated for COVID-19  $\geq$  2 weeks after receiving either (1) the second dose in a 2-dose series (e.g., Pfizer-BioNTech or Moderna), or (2) a single-dose vaccine (e.g.,

Johnson & Johnson [J&J]/Janssen), authorized for emergency use or approved by the U.S. Food and Drug Administration, and holds an emergency use listing by the World Health Organization.

(d) *Hospital* shall mean a hospital named in Mental Hygiene Law section 7.17(b), excluding the Nathan S. Kline Institute for Psychiatric Research. Hospitals shall also mean a program operated pursuant to Parts 580, 582, or 590 of this Title.

(e) *Office* shall mean the Office of Mental Health.

(f) *Staff* shall mean all persons employed or affiliated with a Hospital, whether paid or unpaid, including but not limited to employees, members of the medical, nursing, and other treatment staff, contract staff, students, and volunteers.

### **557.5 Testing and Vaccination Requirements for Hospitals.**

(a) All Staff who work in Hospitals will be required to be vaccinated with at least one vaccine dose against COVID-19 by November 1, 2021 and shall be Fully Vaccinated by December 10, 2021.

(b) Commencing on October 12, 2021, all Staff who work in Hospitals who are not Fully Vaccinated shall be tested for COVID-19 pursuant to the provisions herein for those who are granted a reasonable accommodation.

(c) A reasonable accommodation may be made for Staff who have a documented pre-existing health condition that prevents them from complying with the vaccine requirements herein. When a reasonable accommodation is approved for a Staff member, they must comply with the following testing provisions.

(d) Staff who have been granted such a reasonable accommodation are required to undergo diagnostic screening testing. Staff may choose either antigen or molecular tests to satisfy this requirement but must be tested at least once weekly. Any test used must either have Emergency Use Authorization by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements of the U.S. Centers for Medicare and Medicaid Services.

(e) Any Staff who work in Hospitals who do not comply with the provisions of this Part shall not be permitted to report to work.

(f) Staff for whom a positive test result is received must comply with New York State Department of Health and Office regulations and guidance applicable to those who receive a positive test result.

(g) By November 1, 2021, Hospitals shall verify the vaccination status of all Staff. Each Hospital shall require Staff to produce documentation to show vaccine administration. Acceptable documentation of vaccination status shall consist of one of the following:

(1) a COVID 19 vaccination record card issued by the Centers for Disease Control and Prevention or equivalent, including the name of the person vaccinated, date of birth, type of vaccine provided and date(s) of administration.

(2) documentation of COVID-19 vaccination from a health care provider; or

(3) a digital record such as the New York State Excelsior Pass that includes a QR code that when scanned displays the name of the person vaccinated, date of birth, type of vaccine provided, and date(s) of administration.

(h) All Staff who are not fully vaccinated, or for whom vaccine status is unknown or documentation is not provided, must be considered unvaccinated.

(i) Hospitals shall maintain records of their compliance with the requirements of this Part.