

limits, or direct states to close their shark fisheries. The FMP requires states to adjust their commercial trip limits accordingly. By clarifying in regulation that the Division Director may issue these adjustments by directive, upon 72 hours' notice to license and permit holders, this rule will ensure that the State achieves timely compliance with ASMFC requirements.

Failure to timely comply with ASMFC requirements may result in federal closure of the State's coastal shark fisheries. Pursuant to ECL section 13-0371, New York State is a party to the Atlantic States Marine Fisheries Compact. The Compact establishes ASMFC to facilitate cooperative management of marine species, including sharks, among the 15 member states. If ASMFC determines that a state is non-compliant with an FMP, it notifies the U.S. Secretary of Commerce who may implement a complete closure of the non-compliant state's relevant fisheries. Failure to adopt the proposed rule may result in closure of the State's coastal shark fisheries. Although the State's coastal shark fishery for non-Smoothhound shark species is small, a complete moratorium would negatively impact commercial fishers and related businesses.

Additional amendments to section 40.6 are proposed to clarify, strengthen, and consolidate existing regulations. Specifically, the proposed rule: (1) defines "take" as it is used in the section; (2) clarifies which species are recreationally prohibited by replacing the existing list of species anglers are allowed to take and possess with the full list of recreationally prohibited sharks; (3) reduces redundancy; and (4) updates citations to other department regulations.

The proposed prohibition on Oceanic Whitetip shark take and possession is expected to have essentially no economic impact on New York State fishers and related businesses. Tagging data suggests that Oceanic Whitetip sharks are not found in New York waters but prefer offshore pelagic habitats from North Carolina to Florida, and other southern waters. There is no record of commercial or recreational landings of Oceanic Whitetip sharks in New York State.

Likewise, the proposed provisions allowing the Director of the Division of Marine Resources to set commercial quotas, trip limits, and fishery thresholds for coastal sharks by directive is expected to have a negligible economic impact on New York fishers and related businesses. The State is required by ASMFC to implement quotas, trip limits, and other requirements of the FMP for coastal sharks. The State already manages shark harvest through implementation and enforcement of the regulations currently in effect at section 40.6.

New York State's commercial coastal shark fishery for non-Smoothhound shark species is small. In each of the last five years, just seven active commercial fishers participated in the fishery, landing an average of about 1,000 pounds of non-Smoothhound shark per year. Most of New York's shark landings consist of Smooth Dogfish, averaging about 217,000 pounds per year over the last five years. Smooth Dogfish are primarily captured in trawls and gill nets, likely as bycatch in fisheries targeting non-shark species. ASMFC's FMP for coastal sharks does not currently include retention limits for the Smoothhound Shark management group, including Smooth Dogfish. While a future change in allowable harvest under the FMP, and the department's subsequent directive, may negatively impact fishers who target coastal sharks, failure by the State to implement such changes in a timely manner may result in complete closure of the State's coastal shark fisheries, resulting in significantly greater negative economic impacts.

Given that the economic impact would be minimal, a Job Impact Statement is not submitted with this proposal because the proposal would have no substantial adverse impact on existing or future jobs and/or employment opportunities.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Voluntary Self-Exclusion Duties of Operators

I.D. No. SGC-20-25-00001-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of section 5402.4 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103, 104(19), 111 and 1344

Subject: Voluntary self-exclusion duties of operators.

Purpose: To enhance the State's voluntary self-exclusion program.

Text of proposed rule: Section 5402.4 of 9 NYCRR would be amended to add a new subdivision (h), to read as follows:

(h) *A gaming operator shall neither establish nor maintain a self-exclusion program available to persons with respect to gaming activities in New York other than the self-exclusion program described in this Part.*

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, 354 Broadway Center, PO Box 7500, Schenectady, NY 12305, (518) 388-3332, email: gamingrules@gaming.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 60 days after publication of this notice.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.

Regulatory Impact Statement

1. **STATUTORY AUTHORITY:** The New York State Gaming Commission ("Commission") is authorized to promulgate the proposed rule by Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") sections 103, 104(19), 111 and 1344.

Racing Law section 103 authorizes the Commission to carry out responsibilities relating to the regulation and enforcement of gaming and 104(19) grants authority to the Commission to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 111 requires the Commission to promulgate rules and regulations enabling people to exclude themselves voluntarily from gaming activities.

Racing Law section 1344 requires the Commission to provide by regulation the establishment of a list of persons self-excluded from gaming activities.

2. **LEGISLATIVE OBJECTIVES:** To enhance New York State's voluntary self-exclusion program.

3. **NEEDS AND BENEFITS:** Some gaming operators have established their own voluntary self-exclusion programs, which may not always align with the Commission's comprehensive statewide self-exclusion program in New York State. In New York, a person who elects to self-exclude is then prohibited from participating in all types of legal gambling in New York, not just with the particular licensee or the particular form of gambling with which they were engaged at the time the person determined to self-exclude. For example, a person who joins the New York self-exclusion program at a video lottery facility is prohibited from wagering at casinos, with mobile sports wagering licensees, at horse racetracks, at charitable gaming venues (via online events) in New York State, and with the New York Lottery. Even if a licensee has a well-intentioned private self-exclusion program, maintaining such a program may have the undesirable effect (even if unintended) of diverting a person in need of problem-gambling assistance from the broader statewide program.

4. **COSTS:**

(a) Costs to regulated parties for the implementation and continuing compliance with the rule: None.

(b) Costs to the regulating agency, the State, and local governments for the implementation and continued administration of the rule: No additional operating costs are anticipated as a result of the proposed rule.

(c) The information, including the source or sources of such information, and methodology upon which the cost estimate is based: The cost estimates are based on the Commission's experience with the statewide voluntary self-exclusion program.

5. **LOCAL GOVERNMENT MANDATES:** This rule does not impose any mandatory program, service, duty, or responsibility upon local government because intake of self-excluded people is strictly a matter of State law.

6. **PAPERWORK:** The proposed rule imposes no changes in paperwork requirements, which would remain the same for intake of self-excluded people.

7. **DUPLICATION:** The proposed regulation does not duplicate any existing State or federal requirements of the same or similar subject matter.

8. **ALTERNATIVES:** The Commission could allow licensees to maintain their own, sometimes more limited self-exclusion programs, which might divert a person needing a gambling pause from the broader statewide voluntary self-exclusion program. The Commission will welcome specific rule language suggestions in the public comment period to best accommodate all concerns, with the collective goal of making New York's voluntary self-exclusion program as robust and comprehensive as reasonably possible, without discouraging other tools that may be effective supplements to the New York program.

9. **FEDERAL STANDARDS:** There are no federal standards applicable to voluntary self-exclusion from gaming activity.

10. COMPLIANCE SCHEDULE: The Commission anticipates that affected parties will be able to achieve compliance with these rules upon publication of the Notice of Adoption in the State Register.

Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

The proposed rule change does not require a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement. There will be no adverse impact on small businesses, local governments, rural areas or jobs.

The proposed rule would make New York State’s voluntary self-exclusion program the only permissible self-exclusion program concerning gaming activities in New York State.

The proposed rule will not impose any adverse economic impacts or reporting, recordkeeping or other compliance requirements on small businesses, local governments, rural areas or employment opportunities.

Department of Health

NOTICE OF ADOPTION

In-Person Medical Evaluation Requirements and Exceptions for Controlled Substance Prescribing

I.D. No. HLT-20-24-00008-A

Filing No. 482

Filing Date: 2025-05-06

Effective Date: 2025-05-21

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 80.62, 80.63 and 80.84 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3308(2)

Subject: In-Person Medical Evaluation Requirements and Exceptions for Controlled Substance Prescribing.

Purpose: To clarify patient evaluation requirements with regards to the issuance of a controlled substance prescription.

Text of final rule: Subdivision (b) of section 80.62 is amended to read as follows:

(b) Such practitioners shall maintain a written patient record of administration, dispensing and prescription of all controlled substances. The patient record shall contain sufficient information to justify the diagnosis and warrant the treatment. The record shall contain at least the following information: patient identification data; chief complaint; present illness; *past medical history; medical evaluation of the patient pursuant to section 80.63 of this Part* [physical examination as indicated]; diagnosis; other data which support the diagnosis or treatment; and the regimen including the amount, strength, and directions for use of the controlled substance. This subdivision shall not be construed to require a record distinct from the medical record of the patient.

* * *

Subdivision (d) of section 80.63 is repealed and new sections (d) and (e) are added, to read as follows:

[(d)(1) No controlled substance prescription shall be issued prior to the examination of the patient by the practitioner except as otherwise permitted by this subdivision.

(2) Once the initial examination has been completed, the frequency and necessity for future examinations prior to prescribing, either for the same acute or chronic condition, will be made by the practitioner utilizing generally accepted medical standards, including taking into account the drug to be prescribed and the patient’s condition, history and disposition toward the use of controlled substances.

(3) In the temporary absence of the initial prescriber, an authorized practitioner may issue a controlled substance prescription for a patient as part of a continuing therapy if the practitioner: (i) had direct access to the patient’s medical records and such records warrant continued controlled substance prescribing, or (ii) had direct and adequate consultation with the initial prescriber, who assures the necessity of continued controlled substance prescribing and with which the practitioner concurs. If the patient record is not available, the practitioner shall document the activity for his or her own record and shall transmit to the initial prescriber the prescription information. The initial prescriber shall include the prescription information in the patient’s record.

(4) A practitioner may prescribe a controlled substance to his or her patient after review of the patient’s record if the record contains the result of an examination performed by a consulting physician or hospital and such record warrants the prescribing.

(5) If a patient develops a new condition that would warrant the issuance of a prescription for a controlled substance, a practitioner may issue such prescription prior to performing an examination if: (i) the prescribing practitioner has a previously established practitioner/patient relationship with the patient; and (ii) an emergency exists; and (iii) the prescription does not exceed a 5-day supply as determined by the directions for use. An emergency means that the immediate administration of the drug is necessary for the proper treatment of the patient and that no alternative treatment is available. If the practitioner prescribes such substance orally, the practitioner must comply with the requirements of section 80.68 and section 80.70 of this Part.]

(d) No controlled substance shall be prescribed prior to an in-person medical evaluation of the patient by the prescribing practitioner for the medical condition for which the controlled substance is being considered. The practitioner shall determine the parameters for the medical evaluation, and frequency of future medical evaluations as part of the patient’s continuing treatment, utilizing generally accepted medical standards and taking into account the drug to be prescribed and the patient’s medical condition, history and disposition toward the use of controlled substances.

(e) Notwithstanding subdivision (d) of this section, a controlled substance may be prescribed by a practitioner, in the absence of the practitioner performing an in-person medical evaluation, in the following circumstances:

(1) when utilizing a consulting or referring practitioner - for their patient after review of the patient’s record if the record contains the result of an in-person medical evaluation performed by a consulting or referring practitioner within the previous 12 months specific to the medical condition for which the prescription is being considered.

(2) for a covering practitioner - in the temporary absence of the initial prescriber for a patient as part of a continuing therapy, provided the prescribing practitioner either:

(i) is part of the same practice as the initial prescriber and has direct access to the patient’s medical records, and such records warrant continued controlled substance prescribing, or

(ii) has direct and adequate consultation with the initial prescriber, who assures the necessity of continued controlled substance prescribing and with which the practitioner concurs. If the patient record is not available, the practitioner shall document the activity for their own record and shall transmit to the initial prescriber the prescription information within 72 hours. The initial prescriber shall include the prescription information in the patient’s record.

(3) for a new condition in an emergency situation - if a patient develops a new medical condition that would warrant the issuance of a prescription for a controlled substance, provided that:

(i) the prescribing practitioner has a previously established practitioner/patient relationship with the patient;

(ii) an emergency exists such that the immediate administration of the drug is necessary for the proper treatment of the patient and no alternative treatment is available; and

(iii) the prescription does not exceed a 5-day supply as determined by the directions for use. If the practitioner prescribes such substance orally, the practitioner must comply with the requirements of section 80.68 and section 80.70 of this Part.

(4) through telemedicine or telehealth - as such terms are defined by article 29-G of the Public Health Law, consistent with all applicable state laws and regulations and the laws, rules and regulations of the Drug Enforcement Administration, United States Department of Justice, or any successor agency. This is inclusive of any controlled substance as approved by the Food and Drug Administration (FDA), or its successor agency, and the New York State Department of Health for the treatment of opioid use disorder as listed in section 80.84 of this Part.

* * *

Section 80.84 is amended to read as follows:

80.84 Practitioners and pharmacies; prescribing, administering and dispensing for the treatment of *opioid use disorder* [narcotic addiction].

[Pursuant to the provisions of the federal Drug Addiction Treatment Act of 2000 (DATA 2000) (106 P.L. 310, Div. B, Title XXXV, Section 3502(a)), an authorized] A practitioner may prescribe, administer or dispense an approved controlled substance, and a licensed registered pharmacist may dispense an approved controlled substance, to a patient, pursuant to a prescription, for the treatment of *opioid use disorder*.