

Before the
GOVERNOR OF THE STATE OF NEW YORK
The Honorable Kathy Hochul

In the Matter of the Petition of
NEW YORKERS FOR A MODERN HEALTH CODE
for an Executive Order Directing the Department of Health to Review
Part 24 of the New York State Sanitary Code, 10 NYCRR Part 24,
in Accordance with State Administrative Procedure Act § 207

PETITION FOR EXECUTIVE ACTION

Submitted pursuant to N.Y. Const. art. I, § 9 and art. IV, §§ 1, 3,
and Executive Order No. 61 (July 8, 2026)

PETITIONER

New Yorkers for a Modern Health Code
Joe Hickerson, Board President & Executive Director

DATED

October 7, 2026

SUBMITTED TO

Office of the Governor · Counsel to the Governor
New York State Capitol · Albany, NY 12224

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CASES

Boreali v. Axelrod, 71 N.Y.2d 1, 523 N.Y.S.2d 464, 517 N.E.2d 1350 (1987)

City of New York v. New St. Mark's Baths, 130 Misc. 2d 911, 497 N.Y.S.2d 979 (Sup. Ct. N.Y. Cnty. 1986), *aff'd*, 168 A.D.2d 311, 562 N.Y.S.2d 642 (1st Dep't 1990)

Clark v. Cuomo, 66 N.Y.2d 185, 495 N.Y.S.2d 936, 486 N.E.2d 794 (1985)

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CONSTITUTIONAL PROVISIONS

N.Y. Const. art. I, § 9

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STATUTES

N.Y. Exec. Law § 6

N.Y. Pub. Health Law §§ 204, 206, 220, 225(4), (5)(a)

N.Y. A.P.A. §§ 202-d, 207

5 U.S.C. § 553(e)

EXECUTIVE ORDERS

N.Y. Exec. Order No. 20 (Nov. 30, 1995), N.Y. Comp. Codes R. & Regs. tit. 9, § 5.20

N.Y. Exec. Order No. 25 (Aug. 6, 2009), N.Y. Comp. Codes R. & Regs. tit. 9, § 7.25

N.Y. Exec. Order No. 12 (Mar. 2, 2011), N.Y. Comp. Codes R. & Regs. tit. 9, § 8.12

N.Y. Exec. Order No. 61, *Directing New York State Agencies to Reform Outdated Regulations and Policies That Waste Time and Money* (July 8, 2026)

REGULATIONS

10 NYCRR pt. 24 (Acquired Immune Deficiency Syndrome (AIDS))

10 NYCRR subpt. 24-2 (Prohibited Facilities), §§ 24-2.1, 24-2.2, 24-2.3 (eff. July 6, 1994)

L.A. Cnty., Cal., Code tit. 11, div. 1, ch. 11.04, pt. 3 (eff. Nov. 10, 2005)

LEGISLATIVE MATERIALS

S. 10673, 2025–2026 Leg., Reg. Sess. (N.Y. 2026) (Public Health Modernization Act)

GOVERNMENT AND PUBLIC HEALTH AUTHORITIES

- Ctrs. for Disease Control & Prevention, *HIV Risk and Prevention Estimates* (last reviewed Nov. 5, 2024)
- N.Y. State Dep’t of Health, *Ending the AIDS Epidemic in New York State*
- N.Y. State Dep’t of Health, *Three, Five, Ten, Fifteen and Twenty Year Regulation Review*
- N.Y. State Dep’t of Health AIDS Inst., *U=U Policy Statement* (Nov. 1, 2018)
- N.Y. State Dep’t of Health AIDS Inst. Clinical Guidelines Program, *U=U Guidance for Implementation in Clinical Settings* (updated Apr. 5, 2023)
- N.Y. State Dep’t of Tax’n & Fin., *Five-Year Rule Reviews*
- Press Release, Governor Kathy Hochul, *Cutting Red Tape: Governor Hochul Issues Executive Order Kicking Off “Regulatory Reset” to Save New Yorkers Time and Money* (July 8, 2026)
- Mary R. Tanner et al., *Antiretroviral Postexposure Prophylaxis After Sexual, Injection Drug Use, or Other Nonoccupational Exposure to HIV*, 74 MMWR Recomm. Rep. 1 (2025)

SCIENTIFIC LITERATURE

- Benjamin R. Bavinton et al., *Viral Suppression and HIV Transmission in Serodiscordant Male Couples*, 5 Lancet HIV e438 (2018)
- Myron S. Cohen et al., *Antiretroviral Therapy for the Prevention of HIV-1 Transmission*, 375 New Eng. J. Med. 830 (2016)
- Alison J. Rodger et al., *Sexual Activity Without Condoms and Risk of HIV Transmission in Serodifferent Couples*, 316 JAMA 171 (2016)
- Alison J. Rodger et al., *Risk of HIV Transmission Through Condomless Sex in Serodifferent Gay Couples (PARTNER)*, 393 Lancet 2428 (2019)

OTHER AUTHORITIES

- Petition for Rulemaking to the Department of Health for the Repeal of 10 NYCRR § 24-2.2 (submitted by New Yorkers for a Modern Health Code on October 7, 2026)

Preliminary Statement

New Yorkers for a Modern Health Code (“Petitioner”) respectfully petitions the Governor to issue an executive order directing the New York State Department of Health (the “Department”) to conduct a public review of Part 24 of the State Sanitary Code, 10 NYCRR Part 24, in accordance with the procedures and standards of State Administrative Procedure Act § 207.1 Part 24, titled “Acquired Immune Deficiency Syndrome (AIDS),” consists of a single operative subpart, Subpart 24-2, which prohibits any establishment from making facilities available for specified activities, declares such facilities a threat to public health, and authorizes their closure as public nuisances.²

On July 8, 2026, the Governor issued Executive Order No. 61 directing every State agency to review existing regulations, recognizing that “many existing regulations, while well-intentioned at their inception, contain requirements that have become obsolete, unnecessarily increase costs, restrict access to services, or delay progress.”³ Few regulations in the New York Codes, Rules and Regulations fit that description as well as Part 24. It was adopted by emergency resolution in October 1985, when no effective HIV treatment existed, no biomedical means of prevention had been developed, and the mechanisms of transmission were still a mystery.⁴ The science has since been transformed: pre-exposure prophylaxis reduces the risk of sexually acquired HIV by approximately 99%, and the Department itself has formally recognized that people who maintain an undetectable viral load do not sexually transmit HIV.⁵ The emergency regulation has nevertheless remained in its present form since 1994.

Petitioner has concurrently petitioned the Department to initiate rulemaking to repeal 10 NYCRR § 24-2.2.6, but New York law, gives the public no means of requiring the Department to act: the State Administrative Procedure Act contains no provision governing petitions for rulemaking and sets no deadline for an agency’s response.⁷

1 N.Y. Comp. Codes R. & Regs. tit. 10, pt. 24 (2026) (“Acquired Immune Deficiency Syndrome (AIDS)”). Subpart 24-2, titled “Prohibited Facilities,” comprises §§ 24-2.1 through 24-2.3. Its stated statutory authority is N.Y. Pub. Health Law § 225(4), (5)(a). The full text of Subpart 24-2 is reproduced in Appendix C.

2 10 NYCRR § 24-2.2 (“No establishment shall make facilities available for the purpose of sexual activities where anal intercourse, vaginal intercourse or fellatio take place. Such facilities shall constitute a threat to the public health.”); *id.* § 24-2.3 (authorizing the State Health Commissioner, local health officers, and local boards of health to “close any such facilities or establishments as constituting a public nuisance”).

3 N.Y. Exec. Order No. 61, *Directing New York State Agencies to Reform Outdated Regulations and Policies That Waste Time and Money* (July 8, 2026), <https://www.governor.ny.gov/executive-order/no-61-directing-new-york-state-agencies-reform-outdated-regulations-and-policies> [hereinafter Exec. Order No. 61]. A copy of the Order is attached as Appendix D.

4 The State Public Health Council adopted the measure by emergency resolution on October 25, 1985, and made it permanent on December 20, 1985, effective December 23, 1985. *See City of New York v. New St. Mark’s Baths*, 130 Misc.2d 911, 497 N.Y.S.2d 979 (Sup. Ct. N.Y. Cnty. 1986), *aff’d*, 168 A.D.2d 311, 562 N.Y.S.2d 642 (1st Dep’t 1990).

5 Ctrs. for Disease Control & Prevention, *HIV Risk and Prevention Estimates* (last reviewed Nov. 5, 2024) (“When taking PrEP daily or consistently . . . the risk of acquiring HIV is reduced by about 99% among MSM.”); N.Y. State Dep’t of Health AIDS Inst., *U=U Policy Statement* (Nov. 1, 2018) (stating that “people living with HIV (PLWH) who have achieved and continue to maintain an undetectable viral load do not sexually transmit HIV”).

6 Petition for Rulemaking of New Yorkers for a Modern Health Code for the Repeal of Section 24-2.2 of the New York State Sanitary Code, 10 NYCRR § 24-2.2 (submitted October 7, 2026) [hereinafter Rulemaking Petition]. A copy is included with this submission.

7 The State Administrative Procedure Act contains no provision expressly governing petitions by members of the public for the adoption, amendment, or repeal of a rule, and prescribes no period within which an agency must respond to such a request. *Cf.* 5 U.S.C. § 553(e) (federal analogue). *See* Rulemaking Petition, *supra* note 6, at n.16.

Nor will the State's periodic-review statute reach Part 24 on its own terms. SAPA § 207 requires agencies to review their rules at five-year intervals, to invite public comment on whether each rule should be continued or modified, and to publish a reasoned justification for the result — but only for rules adopted on or after January 1, 1997.⁸ Subpart 24-2 predates that threshold, so it has never undergone the review the statute now requires of every comparable modern rule.

This Petition asks the Governor to close that gap and advances five reasons for doing so.

First, the Governor has ample authority to direct the requested review. The executive power of the State is vested in the Governor, who appoints the Commissioner of Health and every appointed member of the Public Health and Health Planning Council, and who has already exercised that power in Executive Order No. 61, ordering a review of regulations across State government.⁹

Second, Part 24 is precisely the kind of regulation Executive Order No. 61 targets: a rule that was well-intentioned at inception but may have become obsolete, and that imposes the most significant cost a regulation can impose on small businesses — categorical prohibition — without any contemporary justification or demonstration of public benefit.

Third, SAPA § 207 supplies the right framework. It is the Legislature's own design for testing an existing rule against present conditions; it is public, time-bound, and neutral as to outcome; and the only reason it has not already applied to Part 24 is an accident of timing.

Fourth, the scientific and public-health premises established in 1985 and upon which Part 24 rests have changed fundamentally, and no public record shows the Department has ever re-examined the regulation in light of those changes.

Fifth, executive direction is the only mechanism to ensure such a review takes place. Without it, inertia wins and a regulatory relic remains in place indefinitely.

Petitioner does not ask the Governor to repeal Part 24, to direct any particular outcome, or to displace the statutory role of the Public Health and Health Planning Council. Petitioner asks only that the Department be directed to do for Part 24 what New York law already requires for every regulation adopted since 1997: place the rule before the public, analyze its continuing need and legal basis on a current record, and either justify continuation or propose modification.

⁸ N.Y. A.P.A. § 207(1) (mandatory review applies to rules adopted on or after the effective date of the section); *accord* N.Y. State Dep't of Tax'n & Fin., *Five-Year Rule Reviews* (explaining that the agency "must review all regulations adopted on or after January 1, 1997, after five years, and, thereafter, at five year intervals" under § 207).

⁹ N.Y. Const. art. IV, §§ 1, 3; N.Y. Pub. Health Law §§ 204, 220; Exec. Order No. 61, *supra* note 3. *See infra* Point I.

Authority for Petition

This Petition is submitted in the exercise of the right to petition government for the redress of grievances, guaranteed by Article I, § 9 of the New York State Constitution and the First Amendment to the United States Constitution.¹⁰

“The executive power shall be vested in the governor,” who “shall take care that the laws are faithfully executed.”¹¹ The Department is an executive agency headed by a Commissioner appointed by the Governor with the advice and consent of the Senate.¹² The Public Health and Health Planning Council, which is empowered to amend and repeal the State Sanitary Code subject to the Commissioner’s approval, sits within the Department and consists of the Commissioner and twenty-six members appointed by the Governor.¹³ The Governor is further authorized by statute to examine and investigate the management and affairs of any department of the State.¹⁴

Executive Order No. 61 applies by its terms to every “Affected State Entity,” a term that includes “an agency or department over which the Governor has executive authority.”¹⁵ The Department is such an agency. The Governor may therefore direct the Department — as Executive Order No. 61 already does in general terms — to review its existing regulations, and may specify the scope, procedure, and timetable of that review.

Accordingly, the Governor possesses the authority to grant the relief requested herein.

¹⁰ N.Y. Const. art. I, § 9; U.S. Const. amend. I.

¹¹ N.Y. Const. art. IV, § 1 (“The executive power shall be vested in the governor . . .”); *id.* art. IV, § 3 (the governor “shall take care that the laws are faithfully executed”).

¹² N.Y. Pub. Health Law § 204 (“The commissioner shall be appointed by the governor, by and with the advice and consent of the senate . . .”).

¹³ N.Y. Pub. Health Law § 220 (“There shall continue to be in the department a public health and health planning council, to consist of the commissioner and twenty-six members to be appointed by the governor with the advice and consent of the senate . . .”); *id.* § 225(4) (authorizing the council “to establish, and from time to time, amend and repeal sanitary regulations, to be known as the sanitary code of the state of New York, subject to approval by the commissioner”).

¹⁴ N.Y. Exec. Law § 6 (authorizing the governor to examine and investigate the management and affairs of any department, board, bureau, or commission of the state).

¹⁵ Exec. Order No. 61, *supra* note 3, Definitions (defining “Affected State Entity” to include “(i) an agency or department over which the Governor has executive authority, or (ii) a public benefit corporation, public authority, board, or commission for which the Governor appoints the Chair, the Chief Executive, or the majority of Members”). The Public Health and Health Planning Council sits within the Department and consists, apart from the Commissioner, entirely of gubernatorial appointees. N.Y. Pub. Health Law § 220, *supra* note 13.

Relief Requested

Petitioner respectfully requests that the Governor issue an executive order, substantially in the form set out in Appendix A, to:

1. Direct that the Department of Health review 10 NYCRR Part 24 in accordance with the procedures and standards of SAPA § 207, notwithstanding that Part 24 was adopted before the statute's effective date;
2. Direct that, within sixty days, the Department publish notice of the review in the State Register and on its website, together with an analysis of the need for and legal basis of Part 24, and invite public comment for a period of forty-five days;
3. Direct that the review expressly take into consideration current scientific evidence concerning HIV and other sexually transmitted infections, the enforcement history of Part 24, the economic costs of prohibition, and the effectiveness of regulatory alternatives based on the experiences of other jurisdictions;
4. Direct that, within one hundred twenty days after the close of the comment period, the Department either (a) present to the Public Health and Health Planning Council a proposed rule modifying or repealing Part 24, or (b) publish a notice of continuation providing a reasoned justification for retaining Part 24 unchanged and an assessment of the public comments received; and
5. Direct that all findings be made public and reported to the Governor.

In the alternative, should the Governor decline to issue a new executive order, Petitioner requests that the Governor direct the Department in writing to include Part 24 as part of its regulatory review under Executive Order No. 61 in accordance with the procedures and timetable described above. A model directive is set out in Appendix B.

Questions Presented

1. Whether the Governor may direct an executive agency to conduct a public, SAPA § 207–style review of a regulation adopted before January 1, 1997.
2. Whether 10 NYCRR Part 24 falls within the class of regulations Executive Order No. 61 directs State agencies to review.
3. Whether SAPA § 207 supplies an appropriate procedural and substantive framework for that review.
4. Whether, absent executive direction, any existing mechanism ensures that Part 24 will be reviewed on a current evidentiary record.

Statement of Facts and Regulatory History

I. Part 24 and Subpart 24-2

Part 24 of the State Sanitary Code was adopted during the earliest years of the HIV/AIDS epidemic. On October 25, 1985, the State Public Health Council adopted by emergency resolution the measure that became Subpart 24-2, and on December 20, 1985, it adopted the measure on a permanent basis.¹⁶ The Council's contemporaneous findings recorded its judgment that establishments "used as places for engaging in high risk sexual activities contribute to the propagation and spread" of the virus.¹⁷ That judgment was a reasonable exercise of emergency public-health authority on the record then available, and nothing in this Petition should be read as a criticism of the Department's conduct in 1985.

Subpart 24-2 contains three sections. Section 24-2.1 defines "establishment" as "any place in which entry, membership, goods or services are purchased." Section 24-2.2 provides that "[n]o establishment shall make facilities available for the purpose of sexual activities where anal intercourse, vaginal intercourse or fellatio take place," and that "[s]uch facilities shall constitute a threat to the public health." Section 24-2.3 authorizes the State Health Commissioner, local health officers, and local boards of health to close such facilities "as constituting a public nuisance."¹⁸ The Department's official compilation lists July 6, 1994 as the effective date of each section.¹⁹

Subpart 24-2 is today the only operative subpart of Part 24. The Department's compilation designates Subpart 24-1 as reserved, and unofficial compilations identify Subparts 24-1 and 24-3 as repealed.²⁰ The Department's compilation also lists an effective date of June 1, 2000 for Part 24 as a whole.²¹ Petitioner has located no rulemaking in which the text of Subpart 24-2 was readopted or substantively reconsidered after 1994.

II. Advances in HIV Prevention and Treatment

In the four decades since Part 24 was adopted, the science of HIV prevention has been transformed. Modern antiretroviral therapy permits persons living with HIV to achieve sustained viral suppression, and large prospective studies have observed no linked sexual transmissions from virally suppressed partners across tens of thousands of acts of condomless sex.²² Pre-

¹⁶ *New St. Mark's Baths*, 130 Misc. 2d 911, *supra* note 4.

¹⁷ *Id.* (quoting the Public Health Council's finding that "[e]stablishments including certain bars, clubs and bathhouses which are used as places for engaging in high risk sexual activities contribute to the propagation and spread of such AIDS-associated retro-viruses").

¹⁸ 10 NYCRR §§ 24-2.1–24-2.3, reproduced in Appendix C.

¹⁹ N.Y. State Dep't of Health, New York Codes, Rules and Regulations tit. 10, §§ 24-2.1, 24-2.2, 24-2.3 (regs.health.ny.gov) (each section listing an effective date of 07/06/1994). The 1994 amendments revised the wording of the prohibition but left its categorical form, and its declaration that such facilities constitute a threat to the public health, unchanged. *See* Rulemaking Petition, *supra* note 6, at 6.

²⁰ N.Y. State Dep't of Health, *Part 24 – Acquired Immune Deficiency Syndrome (AIDS)* (regs.health.ny.gov) (listing Subpart 24-1 as "RESERVED" and Subpart 24-2, "Prohibited Facilities"); N.Y. Comp. Codes R. & Regs. tit. 10, pt. 24 (Cornell Legal Info. Inst. & Justia) (listing Subparts 24-1 and 24-3 as "Repealed").

²¹ N.Y. State Dep't of Health, *Part 24*, *supra* note 20 (listing an effective date of June 1, 2000 for Part 24 and citing N.Y. Pub. Health Law §§ 206(1)(j), 225(4), (5)(a) as statutory authority). The June 1, 2000 date appears to reflect an amendment to another portion of Part 24; the three sections of Subpart 24-2 continue to carry the July 6, 1994 effective date.

²² *See* Myron S. Cohen et al., *Antiretroviral Therapy for the Prevention of HIV-1 Transmission*, 375 New Eng. J. Med. 830 (2016) (HPTN 052); Alison J. Rodger et al., *Sexual Activity Without Condoms and Risk of HIV Transmission in Serodifferent Couples When*

exposure prophylaxis reduces the risk of sexually acquired HIV by approximately 99%,²³ and post-exposure prophylaxis can interrupt infection when initiated promptly after exposure.²⁴

The Department has incorporated these developments into State policy. Its AIDS Institute has formally stated that people living with HIV who maintain an undetectable viral load do not sexually transmit HIV,²⁵ and the State's Ending the Epidemic initiative organizes prevention around testing, treatment, and biomedical prophylaxis.²⁶ HIV prevention in New York now operates principally through interventions directed to individuals rather than through restrictions on the places where sexual activity occurs. A fuller account of this evidence is set out in the Rulemaking Petition.²⁷

III. SAPA § 207 and Its Effective-Date Limitation

SAPA § 207 establishes a mandatory, recurring review of existing rules. An agency must review each covered rule no later than the fifth calendar year after its adoption and at five-year intervals thereafter, and sooner for rules that required certain impact analyses.²⁸ The review is public: the agency must identify the rule in its January regulatory agenda, provide an analysis of the rule's continuing need and legal basis, and invite public comment on whether it should be continued or modified, allowing not less than forty-five days.²⁹ The agency must then act on the record. If modification is warranted, it must propose a rule supported by a reasoned justification and an assessment of the comments, discussing where appropriate changes in technology, economic conditions, or other relevant factors;³⁰ if the rule is to be continued unchanged, it must publish a reasoned justification for continuation and an assessment of the comments.³¹

Section 207 applies only to rules adopted on or after January 1, 1997.³² The Department maintains a public list of the rules it is reviewing under § 207. Part 24 does not appear on it.³³

the HIV-Positive Partner Is Using Suppressive Antiretroviral Therapy, 316 JAMA 171 (2016) (PARTNER); Alison J. Rodger et al., *Risk of HIV Transmission Through Condomless Sex in Serodifferent Gay Couples with the HIV-Positive Partner Taking Suppressive Antiretroviral Therapy* (PARTNER), 393 Lancet 2428 (2019) (PARTNER2); Benjamin R. Bavinton et al., *Viral Suppression and HIV Transmission in Serodiscordant Male Couples*, 5 Lancet HIV e438 (2018) (Opposites Attract).

²³ CDC, *HIV Risk and Prevention Estimates*, *supra* note 5.

²⁴ Mary R. Tanner et al., *Antiretroviral Postexposure Prophylaxis After Sexual, Injection Drug Use, or Other Nonoccupational Exposure to HIV — CDC Recommendations, United States, 2025*, 74 MMWR Recomm. Rep. 1 (2025).

²⁵ NYSDOH AIDS Inst., *U=U Policy Statement*, *supra* note 5; see also N.Y. State Dep't of Health AIDS Inst. Clinical Guidelines Program, *U=U Guidance for Implementation in Clinical Settings* (updated Apr. 5, 2023).

²⁶ N.Y. State Dep't of Health, *Ending the AIDS Epidemic in New York State*.

²⁷ Rulemaking Petition, *supra* note 6, at 4–6 & Point II.

²⁸ N.Y. A.P.A. § 207(1)(a) (initial review no later than the fifth calendar year after adoption, and at five-year intervals thereafter); *id.* § 207(1)(b) (earlier initial review for rules for which a regulatory flexibility analysis, rural area flexibility analysis, or job impact statement was prepared).

²⁹ *Id.* § 207(2) (agency must identify the rule in its January regulatory agenda under § 202-d, provide an analysis of the need for and legal basis of the rule, and invite public comment on its continuation or modification, allowing not less than forty-five days).

³⁰ *Id.* § 207(3) (if modification is warranted, agency must publish a proposed rule containing a reasoned justification for the modification and an assessment of the public comments received, and discuss, where appropriate, changes in technology, economic conditions, or other factors affecting the rule).

³¹ *Id.* § 207(4) (if the rule is to be continued without modification, agency must publish a notice identifying the rule and its statutory authority, providing a reasoned justification for continuation, and assessing the public comments received).

³² *Id.* § 207(1); Dep't of Tax'n & Fin., *Five-Year Rule Reviews*, *supra* note 8.

³³ N.Y. State Dep't of Health, *Three, Five, Ten, Fifteen and Twenty Year Regulation Review* (regs.health.ny.gov) (listing rules under review pursuant to N.Y. A.P.A. §§ 202-d and 207) (retrieved Sept. 29, 2026).

IV. Executive Order No. 61

On July 8, 2026, the Governor issued Executive Order No. 61, *Directing New York State Agencies to Reform Outdated Regulations and Policies That Waste Time and Money*. The Order recites that the EXPRESS NY initiative “was established to streamline government services, modernize outdated and burdensome regulations that stand in the way of delivering the projects and services New Yorkers need,” and that “many existing regulations, while well-intentioned at their inception, contain requirements that have become obsolete, unnecessarily increase costs, restrict access to services, or delay progress.”³⁴

The Order directs that “[e]ach Affected State Entity shall conduct a review of its existing regulations and administrative procedures to identify inefficiencies that hinder the state’s ability to deliver for New Yorkers.” That review “should include, but not be limited to,” four enumerated categories. Three concern procedural requirements; the fourth is “[a]ny regulatory requirement that adds significant compliance costs to small businesses or individuals without providing a clear public benefit.”³⁵ The Order separately directs review of fines, fees, and penalties, and of mandated reports and advisory bodies.³⁶ In announcing the Order, the Governor described the resulting “Regulatory Reset” as the most comprehensive review of the State’s laws and regulations in its history, noted that the State had received nearly 4,000 public submissions, and stated that a first round of actions is expected later this year.³⁷

Executive Order No. 61 does not refer to SAPA § 207, does not identify any particular regulation for review, and does not prescribe a public-comment procedure for the reviews it directs.

V. The Rulemaking Petition and Pending Legislation

Petitioner concurrently submitted a Rulemaking Petition to the Department of Health’s Bureau of Program Counsel, Regulatory Affairs Unit. The Rulemaking Petition asks the Department to initiate rulemaking to repeal § 24-2.2, publish notice in the State Register, receive public comment, and develop a contemporary evidentiary record.

There is also pending legislation to repeal Subpart 24-2 which directs the Department to adopt modern health and safety standards in its place.³⁸ The prospects for timely passage of the Public Health Modernization Act, introduced by Senator Erik Bottcher and Assemblymember Tony Simone, are uncertain.

³⁴ Exec. Order No. 61, *supra* note 3, pmb1.

³⁵ *Id.* § “Modernizing Outdated Regulations.” The first three enumerated categories concern submission requirements (mail, fax, printed copies, and wet signatures), in-person hearing requirements, and notarization. *Id.*

³⁶ *Id.* §§ “Review of Fines, Fees, and Penalties,” “Streamlining of Mandated Reports and Boards, Commissions, and Councils.”

³⁷ Press Release, Governor Kathy Hochul, *Cutting Red Tape: Governor Hochul Issues Executive Order Kicking Off “Regulatory Reset” to Save New Yorkers Time and Money* (July 8, 2026) (describing “nearly 4,000 submissions from all 62 counties of New York” and stating that “[t]he first wave of actions taken in the ‘Regulatory Reset’ are expected to be announced later this year”).

³⁸ S. 10673, 2025–2026 Leg., Reg. Sess. (N.Y. 2026) (the “Public Health Modernization Act”), introduced Aug. 3, 2026 by Senator Erik Bottcher, with an Assembly companion introduced by Assemblymember Tony Simone, which would repeal 10 NYCRR Subpart 24-2 and direct the Department to promulgate minimum health and safety standards.

Argument

POINT I. The Governor Has Ample Authority to Direct the Requested Review.

A. The Governor is Vested with the Authority to Direct the Work of Executive Agencies.

The State Constitution vests the executive power in the Governor and charges the Governor to “take care that the laws are faithfully executed.”³⁹ The Court of Appeals has recognized that, while the Legislature makes policy, “the Executive Branch’s responsibility is to implement those policies,” and that the separation of powers is offended “only when the Executive acts inconsistently with the Legislature or usurps its prerogatives.”⁴⁰ On that basis the Court upheld an executive order establishing a voter-registration program that implemented the Legislature’s stated policy.⁴¹ The Governor may not, by contrast, use an executive order to impose obligations the Legislature has not authorized.⁴²

The relief requested lies well within these bounds. It would direct an executive agency, headed by the Governor’s appointee, to conduct its own review of its own regulation. It imposes no obligation on any private party, creates no new substantive standard, and alters no statutory right. Rather than depart from legislative policy, it implements it: SAPA § 207 is the Legislature’s judgment that existing rules should be periodically tested against present conditions, and the requested order would apply that judgment to a rule the statute’s effective-date provision left behind. Section 207 sets a floor, not a ceiling; nothing prevents an agency from reviewing an older rule.⁴³

B. Executive Order No. 61 Already Exercises This Authority.

The Governor has already directed the Department, as an Affected State Entity, to “conduct a review of its existing regulations.”⁴⁴ The requested order would not assert a new power. It would specify, for a single regulation, the procedure and timetable of a review the Department is already obligated to perform. That is an ordinary exercise of executive supervision over an agency.

C. Prior Governors Have Used Executive Orders for This Purpose.

The requested order also has clear precedent. In 1995, Governor Pataki established the position of State Director of Regulatory Reform, with authority to propose that any agency consider amending or repealing “any existing rule which may be obsolete.”⁴⁵ In 2009, Governor Paterson established a Regulatory Review and Reform Program that required designated agencies to

³⁹ See *supra* note 11.

⁴⁰ *Clark v. Cuomo*, 66 N.Y.2d 185, 495 N.Y.S.2d 936, 486 N.E.2d 794 (1985).

⁴¹ *Id.* (upholding an executive order establishing a voter registration program as a permissible implementation of the Legislature’s stated policy of encouraging voter participation).

⁴² See *Rapp v. Carey*, 44 N.Y.2d 157, 404 N.Y.S.2d 565, 375 N.E.2d 745 (1978) (invalidating executive order provisions that imposed obligations on State employees beyond those authorized by the Legislature).

⁴³ See N.Y. A.P.A. § 207(1), *supra* note 8. Section 207 defines the rules an agency *must* review; nothing in the section forbids an agency from reviewing a rule adopted before its effective date.

⁴⁴ Exec. Order No. 61, *supra* note 3, § “Modernizing Outdated Regulations.”

⁴⁵ N.Y. Exec. Order No. 20 (Nov. 30, 1995), N.Y. Comp. Codes R. & Regs. tit. 9, § 5.20 (establishing the position of State Director of Regulatory Reform, with authority to “propose to any agency that it consider for amendment or repeal any existing rule which may be obsolete”).

publish a public invitation to comment in the State Register, allowed a sixty-day comment period, and directed the Governor’s Office of Regulatory Reform to “ensure agency compliance with . . . § 207, Review of Existing Rules.”⁴⁶ That order was revoked in 2011 only after the agencies had “completed the solicitation of public comment and review of their regulations” under it.⁴⁷

These orders show that directing a public review of existing regulations — and tying that review to § 207 — is a familiar and accepted exercise of the Governor’s authority.

D. The Requested Order Respects the Statutory Role of the Public Health and Health Planning Council.

Public Health Law § 225(4) vests the power to amend and repeal the Sanitary Code in the Public Health and Health Planning Council, subject to the Commissioner’s approval, and the Court of Appeals has made clear that the Council’s authority rests on the application of health expertise.⁴⁸ The requested order respects that allocation. It directs the Department to conduct a review and, if modification appears warranted, to present a proposal to the Council. It does not direct the Council to adopt any rule, and the final decision remains with the Council and the Commissioner under § 225. The model order in Appendix A says so expressly.

POINT II. Part 24 Is Precisely the Kind of Regulation Executive Order No. 61 Targets.

A. Part 24 Was Well-Intentioned at Inception but May Have Become Obsolete.

Executive Order No. 61 rests on the finding that “many existing regulations, while well-intentioned at their inception, contain requirements that have become obsolete, unnecessarily increase costs, restrict access to services, or delay progress.”⁴⁹ Part 24 is a prime example. It was adopted in good faith under emergency conditions on the best evidence then available. But every premise on which it rested — the absence of effective treatment, the absence of biomedical prevention, and limited testing — has since changed fundamentally. Whether the prohibition remains necessary in light of those changes is exactly the question Executive Order No. 61 asks agencies to answer.

B. Prohibition Imposes the Most Significant Cost Any Regulation Can Impose.

The fourth category of Executive Order No. 61 reaches “[a]ny regulatory requirement that adds significant compliance costs to small businesses or individuals without providing a clear public

⁴⁶ N.Y. Exec. Order No. 25 (Aug. 6, 2009), N.Y. Comp. Codes R. & Regs. tit. 9, § 7.25 (establishing a Regulatory Review and Reform Program, requiring each designated agency to publish in the State Register “a public invitation to comment” with a “60-day period during which such comments may be submitted,” and directing that “the Governor’s Office of Regulatory Reform shall ensure agency compliance with the requirements of State Administrative Procedure Act § 202-d, Regulatory Agenda, and § 207, Review of Existing Rules”).

⁴⁷ N.Y. Exec. Order No. 12 (Mar. 2, 2011), N.Y. Comp. Codes R. & Regs. tit. 9, § 8.12 (revoking Executive Order No. 25 and reciting that “all State agencies have completed the solicitation of public comment and review of their regulations pursuant to the Regulatory Review and Reform Program created by Executive Order No. 25”).

⁴⁸ *Boreali v. Axelrod*, 71 N.Y.2d 1, 523 N.Y.S.2d 464, 517 N.E.2d 1350 (1987) (invalidating Public Health Council regulations where “[n]o special expertise or technical competence in the field of health was involved”); N.Y. Pub. Health Law § 225(4), *supra* note 13.

⁴⁹ Exec. Order No. 61, *supra* note 3, pmb1.

benefit.”⁵⁰ Most regulations impose costs of compliance: forms, fees, standards, and inspections. Section 24-2.2 permits no compliance at all. It forbids an entire category of establishment regardless of its sanitation, safety, or public-health practices, so that the cost to small business is not the expense of meeting standards but the loss of any lawful ability to operate.

Whether that cost is matched by “a clear public benefit” today is a question no one has examined. Other public-health authorities have concluded that public-health objectives can be served by less restrictive means. Los Angeles County regulates establishments through inspection and permits conditioned on compliance with Health Officer guidelines.⁵¹ San Francisco rescinded its restrictions in 2020, and in June 2026 Minneapolis repealed its 1988 prohibition in favor of licensing.⁵² These examples do not dictate that New York must follow suit. They do however demonstrate that the public-benefit question is real and deserves to be answered on the record.

C. Executive Order No. 61’s List Is Expressly Non-Exhaustive.

Petitioner acknowledges that most examples listed in Executive Order No. 61 are administrative, concerning such matters as submission requirements and notarization. But the Order’s stated purposes — to address regulations that “restrict access to services” or impose costs “without providing a clear public benefit” — are not confined to paperwork. A regulation that prohibits an entire business type and forecloses the use of such businesses as sites for public-health outreach certainly falls within those purposes. Petitioner does not contend that the Order as issued requires Departmental review of Part 24, which is why this Petition seeks that specific direction.

POINT III. SAPA § 207 Supplies the Appropriate Framework for the Review.

A. Section 207 Is the Legislature’s Design for Testing Old Rules Against New Conditions.

The Legislature has already decided how an existing rule should be re-examined. Under § 207, the agency must place the rule before the public, analyze its continuing need and legal basis, receive comment for at least forty-five days, and then either propose a modification or publish a reasoned justification for continuation, in each case with an assessment of the comments received.⁵³ The process is public, produces a written record, and is neutral as to outcome. It asks the right question — whether the rule remains justified by present conditions — without presupposing the answer.

Adopting § 207 as the framework for reviewing Part 24 therefore spares the Department from designing an ad hoc procedure, gives the public and interested parties a familiar process, and produces a record in the form the Legislature has prescribed for every comparable modern rule.

⁵⁰ *Id.* § “Modernizing Outdated Regulations.”

⁵¹ L.A. Cnty., Cal., Code tit. 11, div. 1, ch. 11.04, pt. 3 (eff. Nov. 10, 2005) (public health permit for commercial sex venues, conditioned on compliance with Health Officer guidelines and subject to inspection). *See* Rulemaking Petition, *supra* note 6, Point IV.

⁵² The San Francisco Board of Supervisors and Mayor rescinded the health-code restrictions that had effectively precluded such establishments in 2020, with the change taking effect in January 2021; on June 25, 2026, the Minneapolis City Council voted to repeal that city’s 1988 prohibition in favor of a licensing and zoning framework. *See* Rulemaking Petition, *supra* note 6, nn.12–13.

⁵³ N.Y. A.P.A. § 207(2)–(4), *supra* notes 29–31.

B. Part 24 Is Excluded From § 207 Solely Because of Its Age.

Subpart 24-2 carries an effective date of July 6, 1994. Had a materially identical prohibition been adopted or amended two and one-half years later in 1997, it would have been reviewed five times by now.⁵⁴ The exclusion of Part 24 reflects no legislative judgment that AIDS-era prohibitions should be exempt from review; it reflects only the advanced age of the rule. To the extent any question exists about the effect of a June 1, 2000 amendment to Part 24, the requested order would resolve it by directing review regardless of adoption date.⁵⁵

C. The Order Should Specify a Timetable.

Section 207 ties the start of each review to an agency's January regulatory agenda.⁵⁶ Applied without modification, that schedule could delay a review of Part 24 until 2027 or later. The requested order therefore set its own deadlines: notice within sixty days, a comment period of forty-five days, and a determination within one hundred twenty days after the comment period closes. These periods track § 207's structure while ensuring the review is completed within a reasonable timeframe. The burden on the Department is modest, as it already conducts regular § 207 reviews as a matter of course.

POINT IV. The Premises Have Fundamentally Changed, yet No Record of Review.

Section 24-2.2 is not an operating requirement. It is a judgment about disease causation: that establishments making facilities available for the enumerated activities propagate HIV and must therefore be prohibited rather than regulated. That judgment was formed before antiretroviral therapy, before PrEP and PEP, and before the evidence establishing that viral suppression prevents sexual transmission. The Department has since adopted a prevention framework built on those developments.

Petitioner has located no published § 207 continuation determination, regulatory-agenda review, or public-comment proceeding in which the Department examined whether Subpart 24-2 remains necessary under contemporary conditions.⁵⁷ Petitioner does not contend that the answer is self-evident. Venue-specific public-health measures may well be justified. But four decades of scientific advancement are more than sufficient to require the question be asked on the record and with public participation. Petitioner's full argument is set out in the Rulemaking Petition and incorporated here by reference.⁵⁸

⁵⁴ Under § 207(1)(a), a rule adopted in 1997 would have required an initial review no later than 2002 and further reviews in 2007, 2012, 2017, and 2022. *See* Rulemaking Petition, *supra* note 6, Point III.B.

⁵⁵ *See supra* note 21 and accompanying text. If any portion of Part 24 were considered to have been "adopted" after § 207's effective date, the Department's published list of rules under § 207 review does not include it. *See supra* note 33. The requested order would resolve any such question by directing the review regardless of Part 24's adoption date.

⁵⁶ N.Y. A.P.A. § 207(2), *supra* note 29 (tying review notices to the agency's January regulatory agenda).

⁵⁷ *See* Rulemaking Petition, *supra* note 6, Point III.C (reporting that Petitioner's review of the publicly available regulatory history located no published § 207 continuation determination, regulatory-agenda review, public-comment process, or comparable proceeding concerning Subpart 24-2).

⁵⁸ Rulemaking Petition, *supra* note 6, Points I–IV.

POINT V. Executive Direction Is the Only Mechanism to Ensure Review Occurs.

Each of the other mechanisms is uncertain.

- **Rulemaking Petition.** New York law provides no procedure by which a member of the public can require an agency to act on a petition for rulemaking, and no deadline for the agency's response.⁵⁹ The Department may grant the Rulemaking Petition, deny it, or leave it unanswered indefinitely.
- **SAPA § 207.** By its terms, § 207 will never reach Part 24. Absent direction, the statutory review cycle will continue to leave it unexamined.
- **Executive Order No. 61.** The Order directs a general review but does not name any regulation, prescribe any public-comment procedure, or set any deadline. Agencies conducting that review may reasonably concentrate on the administrative categories the Order enumerates.
- **Pending legislation.** The Legislature has not yet been in session to act on the introduced bill,⁶⁰ As the Court of Appeals has observed, "[l]egislative inaction, because of its inherent ambiguity affords the most dubious foundation" for drawing conclusions about legislative policy.⁶¹ A record developed now would help to inform future legislative deliberation.

An executive order is the one instrument that can ensure a public, time-bound, evidence-based review. It would cost little, predetermine nothing, and bring one of the oldest surviving AIDS-era regulations within the review process New York applies to every comparable modern rule.

⁵⁹ See *supra* note 7.

⁶⁰ S. 10673, *supra* note 38.

⁶¹ *Clark*, 66 N.Y.2d 185, *supra* note 40 ("Legislative inaction, because of its inherent ambiguity affords the most dubious foundation . . .").

Conclusion

Public health is best served when regulations are periodically evaluated to ensure they remain necessary, effective, and supported by contemporary evidence. For the foregoing reasons, Petitioner respectfully requests that the Governor:

1. Issue an executive order, substantially in the form set out in Appendix A, directing the Department of Health to review 10 NYCRR Part 24 in accordance with the procedures and standards of SAPA § 207;
2. Require that the review include public notice in the State Register, an analysis of the need for and legal basis of Part 24, and a public-comment period of forty-five days;
3. Require that the review consider current scientific evidence, the enforcement history of Part 24, its compliance costs and public benefits, less restrictive alternatives, and the experience of other jurisdictions;
4. Require that the Department, within a defined period, either present a proposed modification to the Public Health and Health Planning Council or publish a reasoned justification for continuing Part 24 unchanged;
5. Require that the Department report its findings to the Governor and the public; or
6. In the alternative, direct the Department in writing, substantially in the form set out in Appendix B, that its regulatory review under Executive Order No. 61 include Part 24 and be conducted in accordance with the foregoing procedures.

Granting this Petition would not predetermine the outcome of the review. It would ensure only that a regulation adopted under the extraordinary conditions of 1985 is tested, in public and on a current record, against the conditions of today.

Appendices

This Petition is supported by the appendices below.

Appendix A — Proposed Executive Order

EXECUTIVE ORDER NO. [__]

Directing the Department of Health to Review Part 24 of the State Sanitary Code in Accordance with the Procedures of Section 207 of the State Administrative Procedure Act

WHEREAS, Executive Order No. 61, issued July 8, 2026, directs each Affected State Entity to conduct a review of its existing regulations, recognizing that many existing regulations, while well-intentioned at their inception, contain requirements that have become obsolete, unnecessarily increase costs, restrict access to services, or delay progress;

WHEREAS, section 207 of the State Administrative Procedure Act requires State agencies to review rules adopted on or after January 1, 1997 at regular intervals, to invite public comment on their continuation or modification, and to justify their continuation or modification on the record, but does not by its terms apply to rules adopted before that date;

WHEREAS, Part 24 of Title 10 of the New York Codes, Rules and Regulations, “Acquired Immune Deficiency Syndrome (AIDS),” was first adopted in 1985 during the earliest years of the HIV/AIDS epidemic, before the development of effective antiretroviral therapy and biomedical prevention, and its operative provisions, 10 NYCRR §§ 24-2.1 through 24-2.3, have remained in their current form since 1994;

WHEREAS, advances in HIV treatment and prevention — including antiretroviral therapy, pre-exposure and post-exposure prophylaxis, and the scientific consensus, recognized by the Department of Health, that people who maintain an undetectable viral load do not sexually transmit HIV — have fundamentally changed public health practice; and

WHEREAS, the public interest is served when regulations restricting lawful activity are periodically reviewed on a current evidentiary record with public participation;

NOW, THEREFORE, I, Kathy Hochul, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the laws of the State of New York, do hereby order as follows:

I. Review of Part 24. The Department of Health (the “Department”) shall conduct a review of Part 24 of Title 10 of the New York Codes, Rules and Regulations in accordance with the procedures and standards set forth in section 207 of the State Administrative Procedure Act, as though Part 24 were a rule subject to that section.

II. Notice and Public Comment. Within sixty days of the date of this Order, the Department shall publish in the State Register and on its website a notice that (a) identifies Part 24 as a rule under review; (b) provides an analysis of the need for and legal basis of Part 24; and (c) invites public comment on its continuation or modification for a period of forty-five days. The Department shall provide notice of the review to small businesses, local governments, public-health organizations, and affected communities, and may hold one or more public hearings, which may be conducted in a hybrid format.

III. Scope of Review. In conducting the review, the Department shall consider, at a minimum: (a) the findings and scientific rationale supporting the original adoption of Part 24, and whether they remain supported by current evidence; (b) developments since 1994 in the prevention, testing, treatment, and transmission of HIV and other sexually transmitted infections; (c) the enforcement history of Part 24 by State and local health officials; (d) the compliance costs Part 24 imposes on small businesses and individuals and the public benefit it provides, as contemplated by Executive Order No. 61; (e) the availability of less restrictive regulatory alternatives, including licensing, sanitation, inspection, and public-health outreach requirements; (f) the experience of other jurisdictions; and (g) the public comments received.

IV. Determination. Within one hundred twenty days after the close of the public-comment period, the Department shall either (a) if it determines that modification or repeal of Part 24 is warranted, prepare a proposed rule accompanied by a reasoned justification and an assessment of the public comments received, and present it to the Public Health and Health Planning Council for consideration in accordance with section 225 of the Public Health Law; or (b) if it determines that Part 24 should be continued without modification, publish in the State Register a notice identifying Part 24 and its statutory authority, providing a reasoned justification for its continuation, and assessing the public comments received.

V. Report. Within thirty days after taking action under Section IV, the Commissioner of Health shall submit to the Governor a report summarizing the review, the evidence considered, and the Department's determination, and shall publish the report on the Department's website.

VI. Relationship to Executive Order No. 61. The review directed by this Order shall constitute part of the Department's review of its existing regulations pursuant to Executive Order No. 61.

VII. Construction. Nothing in this Order shall be construed to require any particular outcome of the review, to limit the authority of the Public Health and Health Planning Council or the Commissioner of Health under section 225 of the Public Health Law, or to create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the State, its agencies, officers, or employees.

G I V E N under my hand and the Privy Seal of the State in the City of Albany this [____] day of [_____] in the year two thousand twenty-six.

BY THE GOVERNOR
Secretary to the Governor

Appendix B — Alternative: Proposed Directive Under Executive Order No. 61

Should the Governor elect not to issue a separate executive order, Petitioner proposes the following written directive to the Commissioner of Health.

To: Commissioner of Health

From: [Secretary to the Governor / Director of State Operations]

Re: Review of 10 NYCRR Part 24 Under Executive Order No. 61

Pursuant to Executive Order No. 61 (July 8, 2026), the Department of Health is conducting a review of its existing regulations. At the direction of the Governor, the Department's review shall include Part 24 of Title 10 of the New York Codes, Rules and Regulations, "Acquired Immune Deficiency Syndrome (AIDS)," and shall be conducted in accordance with the procedures and standards of section 207 of the State Administrative Procedure Act, as though Part 24 were a rule subject to that section.

Within sixty days of this directive, the Department shall publish notice of the review in the State Register and on its website, with an analysis of the need for and legal basis of Part 24 and shall invite public comment for forty-five days. The review shall consider the matters identified in Section III of the Proposed Executive Order in Appendix A. Within one hundred twenty days after the close of the comment period, the Department shall either present a proposed modification or repeal to the Public Health and Health Planning Council, with a reasoned justification, or publish a notice of continuation with a reasoned justification and an assessment of the comments received and shall report its determination to this Office.

Nothing in this directive requires any particular outcome of the review or limits the authority of the Public Health and Health Planning Council or the Commissioner under section 225 of the Public Health Law.

Appendix C — Official Text of 10 NYCRR Subpart 24-2

The following is the official text of Subpart 24-2, the only operative subpart of Part 24 of the State Sanitary Code.

§ 24-2.1. Definition.

Establishment shall mean any place in which entry, membership, goods or services are purchased.

§ 24-2.2. Prohibited facilities.

No establishment shall make facilities available for the purpose of sexual activities where anal intercourse, vaginal intercourse or fellatio take place. Such facilities shall constitute a threat to the public health.

§ 24-2.3. Closure.

In addition to any other power they may have under any applicable law, ordinance or regulations, the State Health Commissioner, local health officers and local boards of health may close any such facilities or establishments as constituting a public nuisance.