

Medical Conditions For Which An Exemption From Restrictions On Tinted Glass May Be Issued

Effective date: 12/20/17

Pursuant to the authority vested in the Commissioner of Health by Section 206(16) of the Public Health Law, Section 69-7.1 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Section 69-7.1 Medical conditions for which an exemption from restrictions on tinted glass may be issued.

The following medical conditions, when their existence is certified by a physician, physician assistant or nurse practitioner, justify granting an exemption from the limits on light transmittance found in Vehicle and Traffic Law, section 375(12-a)(b), provided that personal protective measures such as sun protective clothing, sunscreen, or eye protective devices do not offer adequate protection:

Albinism;

chronic actinic dermatitis/actinic reticuloid;

dermatomyositis;

lupus erythematosus;

porphyria;

xeroderma [pigmentosa] pigmentosum;

severe drug [photo-sensitivity] photosensitivity, provided that the course of treatment causing the photosensitivity is expected to be of prolonged duration;

photophobia associated with an ophthalmic or neurological disorder; and
any other condition or disorder causing severe photosensitivity in which the individual is
required for medical reasons to be shielded from the direct rays of the sun.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Subdivision 16 of section 206 of the Public Health Law (PHL) authorizes the Commissioner of Health (Commissioner) to specify the medical conditions based on health and safety which justify granting an exception to the requirements of subparagraphs one and two of paragraph (b) of subdivision twelve-a of section 375 of the Vehicle and Traffic Law, which prohibits vehicle windows composed of, covered by or treated with any material which has a light transmittance of less than 70%.

Legislative Objectives:

The legislative objective of PHL § 206, subdivision 16 is to require the Commissioner to promulgate regulations identifying those medical conditions that justify an exemption from the general prohibition of higher tinted vehicle glass. Individuals suffering from such medical conditions may be unable to drive for extended periods in a vehicle equipped with glass that meets generally applicable transparency requirements, thus limiting their mobility. Exemptions can be granted to registered drivers that suffer from one or more of these conditions as well as registered drivers with habitual passengers with one or more condition.

Needs and Benefits:

The current list of medical conditions, specified in 10 NYCRR 69-7.1, that justify an exemption from the general prohibition of higher tinted vehicle glass was promulgated in 1997 following the New York State Department of Health's (the Department's) consultation with experts,

including the New York State Society of Dermatology and the New York State Ophthalmological Society, who identified the three conditions included in the current regulation – porphyria, xeroderma pigmentosa, and severe drug photosensitivity.

Section 301(c)(1)(a) of the Vehicle and Traffic Law was amended, effective January 1, 2017, to require assessment of vehicle windows for compliance with window tinting limits during the vehicle's annual state inspection. In light of this broader enforcement, the Department conducted a review to determine whether other medical disorders and conditions warrant exemption from the limits on light transmittance, pursuant to Vehicle and Traffic Law § 375(12-a). Based on its review, the Department developed the proposed amendment that provides a revised and expanded list of medical conditions that qualify for an exemption.

The proposed amendment is intended to address the full range of medical disorders and conditions that cause severe photosensitivity in which the individual is required for medical reasons to be shielded from the direct rays of the sun, and for which personal protective measures, such as sun-protective clothing, sunscreen, and eye protective devices, do not provide adequate protection. The proposed amendment also expands the list of medical providers that may certify the existence of a qualifying condition, to include physician assistants and nurse practitioners in addition to physicians. This is consistent with other New York State regulations mandating medical certification of conditions, and should minimize the burden on those seeking medical certifications.

In developing this proposal, the Department reached out to medical associations including the New York State Ophthalmological Society, the New York State Society of Dermatology and Dermatologic Surgery, the Dermatologic Society of Greater New York, the Medical Society of the State of New York and the Brain Injury Association for feedback. The Department also reviewed other states' regulations concerning medical exemptions to the general prohibition of higher tinted vehicle glass.

Costs:

Costs to Regulated Parties:

The proposed amendments to the list of medical conditions that justify an exemption from the general prohibition of higher tinted vehicle glass will not impose any additional costs. The need to obtain a medical certification to support a request for such an exemption is already part of standard practice; the inclusion of additional qualifying medical conditions will not add to the cost burden of regulated parties.

Costs to Local and State Governments:

The NYS Department of Motor Vehicles (DMV) will incur some costs for review and issuance of additional waivers. Since the enactment of Section 301(c)(1)(a) of the Vehicle and Traffic Law, the volume of requests submitted to DMV for waivers has nearly quadrupled. The volume of additional waiver requests is anticipated to increase most significantly within the first year of adoption of the proposed amendment but should decline thereafter.

There are no notable costs that will be incurred by the Department. The Department will continue to engage medical professionals, members of the public, and other stakeholders, to ensure the list of disorders and conditions remains appropriate and accurate. Should the Department identify a medical condition that should be included on the list, the Department will expand the list to include such condition. The Department will also provide guidance as needed to physicians, physician assistants, and nurse practitioners to assist with implementation of this provision.

Local governments should not incur additional costs associated with this amendment.

Local Government Mandates:

This amendment imposes no program, service, duty or other responsibility upon any city, town, village, school district, fire district, or other special district.

Paperwork:

This amendment imposes slightly different reporting requirements, forms, or other paperwork upon regulators and regulated parties. Existing paperwork and forms will need to be amended to include the additional medical conditions for which an exemption to higher tinted vehicle glass may be issued. These forms will require update and posting on the DMV website as well as printing, if applicable, for any public distribution centers. Revised language will be provided to regulated parties to ensure uniformity of paperwork and other forms.

The Department will work with the DMV to revise the paperwork and forms affected by the proposed amendments and will conduct outreach to medical professionals.

Duplication:

There is no duplication of this initiative in existing State or federal laws.

Alternatives:

One alternative is to take no action, and thus continue to offer the exemption to individuals with a medical diagnosis of porphyria, xeroderma pigmentosa, or severe drug photo-sensitivity. Upon review of requests from members of the public and state legislators, and following consultation with medical experts, the Department identified additional medical conditions that present severe photo-sensitivity that warrant exemption from the general prohibition of higher tinted vehicle glass.

A second alternative was for the Department to list all specific medical disorders that could result in severe photosensitivity or photophobia in the proposed amendment and exclude all of the broader conditions provided. However, there are numerous medical disorders that can result in severe photosensitivity or photophobia in a small percentage of overall cases. Providing exemptions to all individuals diagnosed with such disorder(s) regardless of whether the individual has severe photosensitivity or photophobia is inappropriate and inconsistent with the intent of the legislation and law. In addition, listing specific medical disorders without the broader conditions would likely result in a list that excludes disorders that in rare instances may result in severe photosensitivity or photophobia, requiring the Department to update the list

regularly on a case by case basis. As a result of these challenges, the Department's proposed amendment includes a combination of specific medical disorders as well as some broader conditions allowing medical professionals to use professional judgement and discretion to determine whether a patient's condition cannot be addressed by personal protective measures, such as sunscreen or protective eyewear, and as such warrants an exemption.

Federal Standards:

Federal regulations governing windshield light transmittance do not include provisions for medical exemptions.

Compliance Schedule:

The amendment will become effective upon publication of the Notice of Adoption in the State Register.

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REGULATORY FLEXIBILITY ANALYSIS

Pursuant to section 202-b (3) of the State Administrative Procedure Act, a regulatory flexibility analysis statement is not required for this regulation because it does not impose any adverse economic impact on small businesses and does not impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

Neither the regulation nor its enabling legislation impose requirements on small businesses and local governments. Under the Vehicle and Traffic Law, individuals seeking an exemption from restrictions on tinted glass found in that statute must obtain a Medical Certification. That exemption may be issued only if the Medical Certification, completed by a physician, physician assistant, or nurse practitioner, identifies a medical disorder or condition identified by the State Commissioner of Health as warranting the exemption.

The medical conditions set apart in this regulation were identified through review of requests from the public and legislators; review of medical literature; and based on feedback from medical associations contacted by the NYS Department of Health.

RURAL AREA FLEXIBILITY ANALYSIS

The proposed rule will apply statewide. It is not expected to have a significant impact on local health units, physicians, physician assistants, nurse practitioners, hospitals and laboratories located in rural areas. A Rural Area Flexibility Analysis for these amendments is not being submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

STATEMENT IN LIEU OF JOB IMPACT STATEMENT

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purpose of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

ASSESSMENT OF PUBLIC COMMENT

Public comments were submitted to the New York State Department of Health (Department) on the Proposed Regulation which amended Section 69-7.1 of Title 10 of the New York State Codes, Rules and Regulations (NYCRR). The Department received comments from two members of the public, a New York State (NYS) Assembly Member and a NYS Senator. These comments and the Department's responses are summarized below.

COMMENT: Each commenter suggested additional medical conditions for inclusion in the list of medical conditions that justify granting an exemption from the limits on light transmittance found in Vehicle and Traffic Law, section 375(12-a)(b), specifically: polymorphous light eruption; vitiligo; dermatoheliosis; skin cancer; leukemia and other cancers; and immunocompromised transplant recipients.

RESPONSE: The Department's proposed amendment added several specific medical disorders to the list of medical conditions that justify granting an exemption from the limits on light transmittance of vehicle windows, including albinism, chronic actinic dermatitis/actinic reticuloid, dermatomyositis, and lupus erythematosus. The Department also added two broader conditions that allow medical professionals to use their professional judgment to determine whether a patient's condition warrants an exemption; these broader conditions include 1) photophobia associated with an ophthalmic or neurological disorder, and 2) severe photosensitivity in which the individual is required for medical reasons to be shielded from the direct rays of the sun. A technical revision was made to the proposed amendment, to clarify that

these are not specific diseases or disorders, but rather conditions that may be associated with a number of disorders.

In developing the proposed amendments, the Department reviewed the medical literature, the State's experience with the current window tinting regulation, other states' window tinting legislation and regulations, and other New York State regulations mandating medical certification of conditions. Through that process, the Department determined that it was not feasible or appropriate to list every specific medical disorder that might warrant an exemption. For example, there are numerous medical disorders that can result in severe photosensitivity or photophobia in only a subset of overall cases. Providing exemptions to all individuals diagnosed with such disorder(s), regardless of whether the individual has severe photosensitivity or photophobia, is inappropriate and inconsistent with the intent of the regulation and law. In addition, for some individuals, personal protective measures such as sun protective clothing, sunscreen, or eye protective devices would offer adequate protection.

By adding the two broader conditions, the Department acknowledges the importance of health care providers' professional judgment and knowledge of their patients' medical conditions and whether personal protective measures such as sun protective clothing, sunscreen, or eye protective devices would offer adequate protection. This professional judgment allows individuals whose medical conditions warrant an exemption to be granted one, and ensures that medical exemptions are not inappropriately granted, undermining the intent and purpose of the window tinting law.

The specific medical disorders on the list and the two broader conditions are intended to include medical disorders characterized by an acute, abnormal response to ultraviolet (UV) radiation or visible light. Photophobia is an abnormal intolerance to light and is associated with several ophthalmic and neurologic conditions. Photosensitive disorders of the skin, or photodermatoses, are aberrant skin reactions that occur within minutes to hours following UV radiation or visible light exposure. In some instances, the response may be delayed and not observed for up to several days after exposure. This list is not intended to include normal skin reactions to extended sun exposure such as sunburns, or usual eye sensitivity to sunlight. The list is also not intended to include disorders caused by long-term, cumulative exposure to UV radiation, such as skin cancer or precancerous skin lesions. Although some individuals are at higher risk of skin cancer, all individuals are at risk and need to take precautions to protect themselves from UV radiation. UV-protective window films are available that meet the current limits on light transmittance of vehicle windows and can effectively block 99.9 percent of UV radiation. Individuals, especially those at greater risk for developing skin cancer, can consider this additional measure to effectively protect themselves from UV radiation while in their cars, and would not require an exemption.

The following paragraphs are in response to comments to add specific medical conditions to the regulation.

Polymorphous light eruption is a very common disorder causing abnormal photosensitivity of the skin, affecting an estimated 10%-20% of the general population. The skin rash caused by polymorphous light eruption can take many forms, and ranges from mild to severe. In some

individuals, personal protective measures may be sufficient for the management of polymorphous light eruption. Some individuals also become tolerant to sunlight over time. Thus, due to polymorphous light eruption's high prevalence and the range of clinical features, it was not added as a specific condition on the list. A medical professional can make an assessment and determination of whether an exemption is warranted under the broader category of "severe photosensitivity in which the individual is required for medical reasons to be shielded from the direct rays of the sun."

Vitiligo is the loss of pigment in the skin when melanocyte cells in the skin die. Vitiligo may be widespread on an individual's body, or present on just one part of the body, such as a leg or arm. Some individuals with vitiligo may develop a rash after sun exposure. Vitiligo was not added as a specific condition on the list. Depending on a medical professional's assessment of the location and severity of the vitiligo, the presence of severe photosensitivity, and whether personal protective measures would offer adequate protection, the medical professional can make the determination if an exemption is warranted under the broader category of "severe photosensitivity in which the individual is required for medical reasons to be shielded from the direct rays of the sun."

Dermatoheliosis, or photoaging, is a term used to describe the changes to the skin that occur following prolonged exposure to UV radiation over a person's lifetime. Skin changes include fine or deep wrinkles, irregular pigmentation, rough skin texture, broken or dilated capillaries, and areas of actinic keratosis. All individuals are susceptible to dermatoheliosis, or photoaging, but it is most common among fair-skinned individuals with a history of extensive sun exposure,

especially during youth. Allowing tinting exemptions for individuals with a history of dermatoheliosis would undermine the intent of the regulation and law. All individuals should take precautions to reduce skin damage, including using sunscreen, wearing protective clothing, and considering the use of UV-protective window films that meet the current limits on light transmittance of vehicle windows.

Skin cancer is the most common cancer in the United States; current estimates are that one in five Americans will develop skin cancer in their lifetimes. Between 40 and 50 percent of Americans who live to age 65 will have either basal cell carcinoma or squamous cell carcinoma, which are two types of skin cancer, at least once. In addition, although some individuals are at higher risk of skin cancer than others, anyone can develop skin cancer. Allowing tinting exemptions for individuals with a history of skin cancer or precancerous skin lesions would undermine the intent of the regulation and law. All individuals should take precautions to reduce their risk of skin cancer, including using sunscreen, wearing protective clothing and considering the use of UV-protective window films that meet the current limits on light transmittance of vehicle windows.

Individuals with a history of certain cancers, including leukemia, and individuals who are transplant recipients are known to be at significantly higher risk of developing skin cancer than the general population. These individuals should take extra precautions to reduce their exposure to UV radiation; they also have the option of using UV-protective window films that meet the current limits on light transmittance of vehicle windows. If an individual with a history of cancer or transplantation is being treated with a medication that a medical provider determines is

causing severe drug photosensitivity and that the course of treatment is expected to be of prolonged duration, the medical provider may determine that an exemption is warranted, as outlined in the proposed amendment.