RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing; or C for first Continuation.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Banking Department

EMERGENCY RULE MAKING

Maximum Fee Charged by Licensed Check Cashers for Cashing Checks, Drafts or Money Orders

I.D. No. BNK-51-05-00007-E
Filing No. 1440
Filing date: Dec. 5, 2005
Effective date: Dec. 5, 2005

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

Action taken: Amendment of section 400.12 of Title 3 NYCRR.

Statutory authority: Banking Law, sections 371 and 372

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: The licensed check cashing industry is subject to a maximum fee cap (hereafter cap) that can be charged for the cashing of checks, drafts and money orders (hereafter checks) for customers who are natural persons, as set by regulations of the Superintendent and as required pursuant to section 372 of the Banking Law. Section 400.12, 3 NYCRR, provides for annual adjustment of the cap based upon the increase in regional Consumer Price Index for all urban consumers (CPI-U). In February 2005, the Department first imposed a general assessment upon licensed check cashers to cover the Department's annual cost to supervise the industry for the state fiscal year 2005-06, and the Department will continue to impose such an assessment in future years. The Department has determined that the additional burden of this expense upon the industry is not adequately accounted for in the annual CPI-U adjustment of the cap. A significant portion (approximately 21 percent) of the licensed check cashing businesses are small businesses that operated with financial losses in 2004, both with and without the assessment expense included in their total expenses for 2004. Many of these businesses serve urban neighborhoods and demographic groupings that do not maintain banking relationships and would not necessarily use other licensed check cashers. A significant portion of the check cashing business is conducted in the first quarter of the calendar year. In order not to cause further assessment-based losses for the industry that may cause a number of such businesses to close their locations and leave groups and neighborhoods inadequately served, it is necessary that the rule be adopted quickly.

Subject: Maximum fee charged by licensed check cashers for cashing checks, drafts or money orders made payable to natural persons.

Purpose: To increase the base maximum percentum fee that may be charged by licensed check cashers against the face amount of a check, draft or money order, in order to account for the licensees' increased costs caused by the department's initial imposition of a general assessment fee in 2005 upon such licensees to cover the department s cost of the licensees' regulatory supervision.

Text of emergency rule: Amend section 400.12 of Part 400, 3 NYCRR, as follows:

§ 400.12 Fees. *(a)* The licensee shall be permitted to charge or collect a fee for cashing a check, draft or money order not to exceed [(a)] *(i)* 1.5 percentum of the amount of the check, draft or money order*; provided, however, effective January 1, 2006, such percentum of the amount of the check, draft or money order shall be increased by an additional 0.03 percentum in addition to any increase that shall have been heretofore or hereafter made pursuant to subdivision (b) of this section and such additional 0.03 percentum shall not itself be subject to any increase pursuant to subdivision (b) of this section,* or [(b)] *(ii)* $1, whichever is greater.

(b) Effective January 1, 2005, and annually thereafter, the maximum percentum fee specified in subdivision (a) of this section, shall be increased by a percentum amount, based upon an increase in the consumer price index for the New York—Northern N.J.—Long Island, NY—NJ—CT—PA area for all urban consumers (CPI-U), as reported by the Bureau of Labor Statistics of the U.S. Department of Labor for the calendar year preceding the year in which such increase is made compared to such annual CPI-U for the year prior to such preceding year. The maximum percentum fee that may be charged or collected for cashing a check, draft or money order pursuant to this section in effect at such time shall be multiplied by such computed percentum amount and the result added to such maximum percentum fee. The resulting sum shall be the revised maximum percentum fee, which shall be posted upon the internet site of the Banking Department (www.banking.state.ny.us) by the superintendent not later than 45 days following the public release of such annual index by the U.S. Department of Labor. Such revised maximum percentum fee shall be calculated and posted to the nearest one-hundredth of a percentum. Such revised maximum percentum fee shall be effective not later than 45 days after the superintendent shall have notified the Majority Leader of the Senate, the Speaker of the Assembly, and the chairperson of the Senate and Assembly Committees on Banks of his/her intention to change the maximum percentum fee pursuant to the provisions of section 372.3 of the Banking Law and shall continue in effect until revised and increased in the next succeeding year based upon an increase in such annual index. If such

CPI-U does not increase in any one year, the maximum percentum fee in effect during the year in which the index does not increase shall remain unchanged in the next succeeding year. Nothing herein shall be deemed to prohibit the superintendent from setting, by regulation, a different maximum percentum fee at any time where the superintendent shall find that such a fee is necessary and appropriate to protect the public interest and to promote the stability of the check cashing industry for the purpose of meeting the needs of the communities that are served by check cashers. No maximum fee shall apply to the charging of fees by licensees for the cashing of checks, drafts or money orders for payees of such checks, drafts or money orders that are other than natural persons.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 4, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

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

A Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement are not submitted, but will be published in the *Register* within 30 days of the rule's effective date.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Probationary Terms for Positions of University Police Officer 1 and University Police Officer 1 (Spanish Language)

I.D. No. CVS-51-05-00008-P

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

Proposed action: This is a consensus rule making to amend section 4.5(b)(1) of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 63(2)

Subject: Probationary terms for positions of University Police Officer 1 and University Police Officer 1 (Spanish Language).

Purpose: To provide for a probationary term for appointments from promotion eligible lists to positions of University Police Officer 1 and University Police Officer 1 (Spanish Language) of not less than 52 weeks nor more than 78 weeks.

Text of proposed rule: RESOLVED, That subject to approval of the Governor, a new paragraph (viii) will be added to subdivision (2) of subsection (b) of section 4.5 of Title 4 of the New York Code of Rules and Regulations (Rules for the Classified Service) to read as follows:

(viii) The probationary term for positions of "University Police Officer 1"and "University Police Officer 1 (Spanish Language)" shall be not less than 52 weeks nor more than 78 weeks.

Text of proposed rule and any required statements and analyses may be obtained from: Shirley LaPlante, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6203, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: Brian S. Reichenbach, Counsel, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-3177, e-mail: bsr@cs.state.ny.us

Public comment will be received until: 45 days after publication of this notice.

Consensus Rule Making Determination

Section 63(1) of the Civil Service Law provides that the State Civil Service Commission may provide by rule for the conditions and extent of probationary service for titles in the Classified Service of the State.

Section 4.5(b)(2) of the Rules for the Classified Services provides that except as otherwise prescribed therein, every promotion to a position in grade 14 and above shall be subject to a probationary term of not less than 12 nor more than 52 weeks.

University Police Officers 1 (UPO 1s) perform public safety and law enforcement duties at various campuses of the State University of New York (SUNY). UPO 1s are "police officers" within the meaning of subdivision (34) of section 1.20 of the Criminal Procedure Law. Each SUNY campus acts as its own appointing authority.

The Civil Service Commission recently amended Rule 4.5 to provide that positions of UPO 1 and UPO 1 (Spanish Language) shall serve a probationary period of not less than 52 nor more than 78 weeks. The subject technical amendment to section 4.5(b)(2) conforms such rule to SUNY practice by specifying that all appointments to UPO 1 and UPO 1 (Spanish Language) from a promotional list shall be subject to the same minimum and maximum probationary period as appointments to UPO 1 and UPO 1 (Spanish Language) from open competitive lists.

As no person is likely to object to the rule as written, the proposed rule is advanced as a consensus rule pursuant to State Administrative Procedure Act § 202(1)(b)(i).

Job Impact Statement

By modifying Title 4 of the NYCRR to revise the probationary term for positions of University Police Officer 1 and University Police Officer 1 (Spanish Language), the rule will have no impact on jobs or employment possibilities, as set forth in section 201-a(2)(a) of the State Administrative Procedure Act (SAPA). Therefore, a Job Impact Statement is not required by section 201-a of such Act.

Department of Environmental Conservation

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Volatile Organic Compound (VOC)

I.D. No. ENV-51-05-00016-P

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

Proposed action: This is a consensus rule making to amend section 200.1 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 19-0301 and 19-0303

Subject: Modification of the definition of 'volatile organic compound (VOC)' and addition of the term' exempt VOCs'. In addition, tertiary butyl acetate would be classified as an exempt VOC.

Purpose: To modify New York's air regulations to be consistent with changes in Federal regulations.

Public hearing(s) will be held at: 9:00 a.m., Jan. 31, 2006 at Department of Environmental Conservation Annex, Region 2, 11–15 47th Ave., Hearing Rm. 106, Long Island City, NY; 9:00 a.m., Feb. 1, 2006 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A, Albany, NY; and 1:00 p.m., Feb. 2, 2006 at Department of Environmental Conservation, Region 8, Conference Rm. 6274 E. Avon-Lime Rd., Avon, NY.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Interpreter Service: Interpreter services will be made available to deaf persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Text of proposed rule: Section 200.1

Subdivisions (a) through (cf) remain unchanged.

(cg)'Volatile organic compound (VOC)'. Any organic compound which participates in atmospheric photochemical reactions. This includes any organic compounds other than those compounds with negligible photochemical reactivity which are listed below *and in subdivision 200.1(ck).* For purposes of determining compliance with emission limits in this Subchapter, VOC will be measured by test methods in Appendix A of 40 CFR 60 (see table 1, section 200.9 of this Part) or by an alternative method acceptable to the Department on the basis of a demonstration that it is as accurate as the Appendix A method. Where such a method also inadver-

tently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds when determining compliance with a VOC emission standard. The following compounds are not volatile organic compounds:

Subdivisions (ch) through (cj) remain unchanged.

(ck) 'Exempt VOCs'. The organic compounds listed in the paragraphs of this subdivision do not constitute VOCs for purposes of determining permitting applicability, demonstrating compliance with a VOC emission limit or VOC content requirement, or calculating Operating Permit Program Fees. These compounds are considered to be VOCs for purposes of all VOC recordkeeping and emissions reporting requirements and are considered regulated air contaminants for the purposes of Subpart 202-2 Emission Reporting requirements.

(1) tertiary butyl acetate

Text of proposed rule and any required statements and analyses may be obtained from: John Barnes, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402–8396, e-mail: 200tbac@gw.dec.state.ny.us

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

Public comment will be received until: five days after the last scheduled public hearing required by statute.

Additional matter required by statute: Pursuant to art. 8 of the State Environmental Quality Review Act, a short environmental assessment form, a negative declaration and a coastal assessment form have been prepared and are on file. This rule must be approved by the Environmental Board.

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Consensus Rule Making Determination

The United States Environmental Protection Agency (EPA) exempted tertiary butyl acetate (TBAC) as a volatile organic compound (VOC) by modifying the definition of VOCs (40 CFR 51.100(s) - *Federal Register* Volume 69, Number 228, pages 69298-69304, November 29, 2004). The EPA rule took effect on December 29, 2004. EPA took this action upon determining that TBAC has a negligible contribution to the formation of tropospheric ozone.

The EPA action was limited to those situations where a VOC emission limit or product content requirement applies. However, for recordkeeping and emissions reporting purposes, TBAC is still considered to be a VOC by EPA.

The Department of Environmental Conservation (DEC) defines VOCs at 6 NYCRR 200.1(cg). This definition is updated periodically to conform with the corresponding definition in federal regulations. In this proposed rulemaking, DEC is proposing to add a new term, 'exempt VOCs', to 6 NYCRR Part 200. TBAC will be listed under the definition of exempt VOCs. This action would conform to the aforementioned rulemaking by EPA.

Job Impact Statement

The Department of Environmental Conservation (Department) proposes to modify Part 200, 'General Provisions,' by adding a new term to the list of definitions incorporated in Section 200.1. The new term, 'Exempt VOCs,' is being added to reflect a rule recently promulgated by the United States Environmental Protection Agency (USEPA).[1] The USEPA modified 40 CFR 51.100(s) on November 29, 2004 (*Federal Register* Volume 29, Number 228, pages 69298 through 69304) by adding tertiary butyl acetate (TBAC) to the list of exempt volatile organic compounds (VOCs). As part of the Department's proposed modification to Part 200, TBAC would be the first compound listed under 'Exempt VOCs.'

To date, the USEPA has exempted 34 compounds or sets of compounds as VOCs. Unlike the previous 33 exemption actions, the TBAC exemption only applies to VOC emission limits and VOC content requirements. TBAC is considered by EPA to be a VOC for purposes of emissions reporting, recordkeeping and emissions inventory requirements. EPA may use this approach in future actions where an organic compound is listed as an exempt VOC.

NATURE OF IMPACT

The primary impact of this rule would be that businesses using solvents containing regulated VOCs could opt to use solvents containing exempt VOCs such as TBAC. As a result, these businesses would be subject to fewer regulatory requirements, which in turn would lead to lower costs of production. For example, a facility subject to Part 234 that replaces a solvent consisting of non-exempt VOCs with TBAC may no longer need to operate air pollution control equipment in order to comply with that regulation.

No new reporting or monitoring requirements are included in the proposed rulemaking. The proposed rulemaking is expected to result in cost savings to a wide range of affected businesses. Therefore, the Department has concluded that the proposed rulemaking will not have an adverse impact on jobs in New York State.

CATEGORIES AND NUMBERS OF JOBS OR EMPLOYMENT OPPORTUNITIES AFFECTED

Businesses which may be impacted by this rule include those subject to Part 205 'Architectural and Industrial Maintenance (AIM) Coatings,' Part 228 'Surface Coating Processes,' Part 234 'Graphic Arts,' and Part 235 'Consumer Products' would be affected by the proposed rule. However, no adverse impacts on the job market are anticipated as a result of this rulemaking.

REGIONS OF ADVERSE IMPACT

No adverse impacts on the job market are anticipated in any region of the state as a result of this rulemaking.

MINIMIZING ADVERSE IMPACT

No adverse impacts on the job market are anticipated as a result of this rulemaking, therefore, no actions where required to minimize the impact on employment opportunities in the state.

SELF-EMPLOYMENT OPPORTUNITIES

Not applicable.

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[1] The Department is also proposing to insert a phrase into the definition of volatile organic compounds (subdivision 200.1(cg)) to refer to the definition of 'Exempt VOCs.'

Department of Health

NOTICE OF ADOPTION

Spousal Impoverishment Budgeting

I.D. No. HLT-03-05-00032-A
Filing No. 1434
Filing date: Dec. 1, 2005
Effective date: Dec. 21, 2005

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

Action taken: Amendment of section 360-4.10(a)(9) of Title 18 NYCRR.

Statutory authority: Social Services Law, section 366-c

Subject: Spousal impoverishment budgeting.

Purpose: To revise the spousal impoverishment budgeting regulations to clarify that a community spouse's pension fund or individual retirement account (IRA) is a countable resource for purposes of determining the institutionalized spouse's Medicaid eligibility.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-03-05-00032-P, Issue of January 19, 2005.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us

Assessment of Public Comment

During the public comment period, the Department of Health received written comments from one client advocate. The comments were not supported by State or federal statute. Therefore, the context of the proposed amendment will not be altered.

The following is a summary of the public comments:

Comment:

The proposed regulation is contrary to New York State legislative policy to exempt retirement accounts of all sorts, including individual retirement accounts, from creditors.

Comment:

If Medicaid was denied because of excess resources due to the amount of the community spouse's retirement accounts, the nursing facility, in

which the institutionalized spouse resides, would not be able to collect from these accounts for any unpaid bills.

Comment:

There is an inequity in treating funds in a community spouse's retirement accounts as countable resources if the community spouse is receiving periodic distributions from the funds.

Response:

Spousal impoverishment statutes (42 USC Section 1396r-5 and Social Services Law Section 366-c) require the Medicaid program to look at the resources of the institutionalized spouse and the community spouse to the extent that either or both has an ownership interest. The fact that other statutes might wholly or partially immunize certain resources from the claims of creditors does not limit the couple's ownership interest in the resources, and therefore has no bearing on the requirement that Medicaid consider these resources for spousal impoverishment budgeting purposes.

The nursing facility's ability to enforce private payment during periods of Medicaid ineligibility is not relevant to the correct application of the Medicaid spousal impoverishment budgeting rules.

The comment that the proposed regulation applies to individual retirement accounts (IRAs) and work-related pension plans regardless of whether they are in periodic payment status is incorrect. The proposed regulation deals with the correct treatment of the resources of institutionalized spouses and community spouses, and, under current policy, the Department does not categorize such retirement funds as resources if they are in periodic payment status. Therefore, IRAs and work-related pension plans in periodic payment status will not be considered available to be used toward the institutionalized spouse's cost of care.

NOTICE OF ADOPTION

Treatment, Monitoring and Reporting of Radionuclides

I.D. No. HLT-28-05-00004-A
Filing No. 1435
Filing date: Dec. 1, 2005
Effective date: Dec. 21, 2005

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

Action taken: Amendment of sections 5-1.52 and 5-1.91 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225(1)

Subject: Treatment, monitoring and reporting radionuclides.

Purpose: To revise the requirements community water systems must follow in order to comply with the federally mandated radionuclides rule and obtain primary responsibility for implementation.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-28-05-00004-P, Issue of July 13, 2005.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: William Johnson, Department of Health, Division of Legal Affairs, Office of Regulatory Reform, Corning Tower, Rm. 2415, Empire State Plaza, Albany, NY 12237, (518) 473-7488, fax: (518) 486-4834, e-mail: regsqna@health.state.ny.us

Assessment of Public Comment

A Notice of proposed amendment to Subpart 5-1 of NYCRR Part 5, Sections 5-1.52 and 5-1.9, titled "Radionuclides Rule" was published in the July 13, 2005 issue of the *State Register*. The New York State Department of Health (NYSDOH) informed all Local Health Departments (LHD) of the publication. In response to this publication, the NYSDOH received written comments from one LHD. Comments were minor, consequently, the content of the proposed amendment will not be altered.

The following is a summary of the public comments:

Comment:

There were several formatting and typing errors of the NY *State Register* on the website especially in tables.

Response:

Comment was noted. When the rule is adopted, it will be published in the Subpart 5-1 in a correct format.

Comment:

Some commentators suggested we include definitions for several terms used in the proposed rule.

Response:

No changes were made. The Department determined that the terms identified in the comments were either already defined or were otherwise explained by the proposed rule.

Comment:

A comment was made on a footnote that referred to Appendix 5-C, "the conversion table of gross beta activity to annual dose," however, the table was not included in the referred Appendix.

Response:

The footnote was removed from the rule since it was not appropriate to include the conversion table.

Comment:

A comment was received regarding the footnote 8 in table 12 seeking clarification on radium-228 monitoring requirements and whether substitution of gross alpha was allowed.

Response:

Prior to December 8, 2003 the New York State Department of Health had permitted the substitution of radium-228, as determined from gross alpha measurements, in lieu of the initial monitoring provided the gross alpha results had been consistently below the detection limit. However, that guidance document also mandated measurement of radium-228 for all future monitoring requirements. Therefore, there are no current discrepancies between the guidance document and the current requirements of the new State and Federal Radionuclides Rule.

Higher Education Services Corporation

NOTICE OF ADOPTION

Senator Patricia K. McGee Nursing Faculty Scholarship Program

I.D. No. ESC-41-05-00008-A
Filing No. 1442
Filing date: Dec. 6, 2005
Effective date: Dec. 21, 2005

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

Action taken: Addition of section 2201.5 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 679-c

Subject: Senator Patricia K. McGee Nursing Faculty Scholarship Program.

Purpose: To implement the program.

Text or summary was published in the notice of proposed rule making, I.D. No. ESC-41-05-00008-P, Issue of October 12, 2005.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: David E. Reid, Deputy Counsel, Higher Education Services Corporation, 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 474-3219, e-mail: dreid@hesc.com

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

New York State Nursing Faculty Loan Forgiveness Incentive Program

I.D. No. ESC-41-05-00009-A
Filing No. 1441
Filing date: Dec. 6, 2005
Effective date: Dec. 21, 2005

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

Action taken: Addition of section 2201.6 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 679-d

Subject: New York State Nursing Faculty Loan Forgiveness Incentive Program.

Purpose: To implement the program.

Text or summary was published in the notice of proposed rule making, I.D. No. ESC-41-05-00009-P, Issue of October 12, 2005.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: David E. Reid, Deputy Counsel, Higher Education Services Corporation, 99 Washington Ave., Rm. 1350, Albany, NY 12255, (518) 474-3219, e-mail: dreid@hesc.com

Assessment of Public Comment

After the rule was published in the October 12, 2005 *State Register*, NYSHESC received a comment regarding inaccurate language in the regulatory statements that accompanied the rule, but none on the rule itself.

The regulatory statements published on October 12, 2005 incorrectly stated that recipients must teach in a Master's degree program in nursing to be eligible for loan forgiveness. The proposed regulation contained no such language and correctly stated that a recipient could teach in any nursing program in New York State. As a result, a revised regulatory impact statement, a revised rural area flexibility analysis, and a revised job impact statement, were published on HESC's website on October 19, 2005, and published in the *State Register* on November 2, 2005. The aforementioned revised documents corrected the inaccurate language and brought such language into conformity with the proposed regulation.

Insurance Department

EMERGENCY RULE MAKING

Healthy New York Program

I.D. No. INS-51-05-00001-E
Filing No. 1432
Filing date: Nov. 30, 2005
Effective date: Nov. 30, 2005

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

Action taken: Addition of section 362-2.7 and amendment of section 362-2.5, 362-3.2, 362-4.1, 362-4.2, 362-4.3, 362-5.1, 362-5.2, 362-5.3 and 362-5.5 (Regulation 171) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326 and 4327

Finding of necessity for emergency rule: Preservation of public health and general welfare.

Specific reasons underlying the finding of necessity: It is estimated that approximately 3 million New York citizens currently do not have health insurance coverage. Access to employer based insurance coverage is heavily impacted by changes in the economy. Many small businesses do not offer health insurance to their employees due to its cost. A significant percentage of the uninsured in this State and Nationwide are employed by small businesses which do not offer health insurance coverage. Chapter 1 of the Laws of 1999 authorized the development of the Healthy New York program for the purpose of bringing affordable health insurance coverage to currently uninsured working people. The program targets uninsured small businesses with a significant percentage of low-wage workers and uninsured individuals at lower income levels. Since the program's commencement in 2001, over 27,000 uninsured workers have already benefitted from Healthy New York. After several years of operation, we have determined that certain changes allowing for choice in health insurance benefit packages, improved and simplified eligibility and recertification requirements, and an increased reduction in premiums will encourage even more uninsured small businesses and uninsured low income individuals to purchase health insurance coverage.

Consequently, it is critical for this regulation to be adopted as promptly as possible. For the reasons stated above, this rule must be promulgated on an emergency basis for the furtherance of the public health and general welfare.

Subject: Healthy New York Program.

Purpose: To reduce Healthy New York premium rates by adjusting the stop loss reimbursement corridors to enable more uninsured businesses and individuals to afford health insurance; lessen complexity in eligibility determination; eliminate the well-child copayment; create a second benefit package; allow members to select a benefit package at annual recertification or when the premium rate changes; establish clear rules with respect to determining employment eligibility; clarify employer contribution requirements for part-time workers, qualify Healthy New York as coverage eligible for a Federal tax credit - generally improving the Healthy New York Program based upon feedback of affected parties; change the loss ratio standard for Healthy New York contracts from small group to individual; require reports from the insurers pertaining to stop loss reimbursement or loss ratio to be certified.

Substance of emergency rule: The Second Amendment to Regulation 171 makes various changes to the Healthy New York program with respect to providing for choice in benefits, enhanced and simplified eligibility requirements and reduced premium rates.

Subsection 362-2.5(a) is amended to allow health maintenance organization to provide insured individuals with forms necessary for recertification 90 days prior to their due date.

Subsection 362-2.5(b) is amended to eliminate the requirement for supporting documentation with annual recertification.

Subsection 362-2.5(d) is deleted to discontinue the requirement that health plans mail Healthy NY a written reminder of their obligation to recertify sixty days prior to the date coverage would terminate due to a failure to recertify.

Subsection 362-2.5(e) is amended to delete a cross reference to a subsection that has been deleted and relabeled as subsection (d).

Subsection 362-2.5(f) is relabeled as subsection (e).

Subsection 362-2.7(a) is added to delete the copayment applied to well-child visits effective June 1, 2003.

Subsection 362-2.7(b) is added to require health plans to offer an additional Healthy New York benefit package which does not include prescription drugs and to allow qualifying small employers and qualifying individuals to choose among the Healthy New York benefit packages. The subsection also provides that qualifying small employers must elect to provide the same benefit package to all of their employees. The subsection also provides that once enrolled in the program, any change in the selection of a benefit package may occur at the time of annual recertification or at anytime the premium rate changes. Notice of this option must be included with any notice of rate change.

Subsection 362-2.7(c) is added to provide that individuals eligible for a federal tax credit under the Trade Adjustment Act of 2002 shall be deemed to have satisfied the pre-existing condition waiting period within the Healthy NY program in full.

Subsection 362-3.2(h) is revised to clarify that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution they make on behalf of part-time workers.

Subsection 362-3.2(j) is revised to provide that small employer applicants shall be considered to have provided group health insurance if they have arranged for group health insurance coverage on behalf of their employees and contributed more than a de-minimus amount on behalf of their employees. The subsection also defines de-minimus contributions through January 31, 2005 as those that do not exceed an average of $50 per employee per month. Beginning February 1, 2005, de-minimus contributions are those that do not exceed an average of $75 per employee per month for employers in the counties of Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester or an average of $50 per employee per month for employers in all other counties. De-minimus contributions shall not prevent small employers from qualifying to purchase health insurance coverage through the Healthy NY program.

Subsection 362-3.2(m) is amended to delete the requirement for supporting documentation with annual recertification.

Subsection 362-4.1(a) is revised to change the definition of "employed person" to include any person employed and receiving monetary compensation currently or within the past 12 months.

Subsection 362-4.1(b) is revised to delete the definition of "episodic employment."

Subsection 362-4.1(c) is re-labeled as subsection 362-4.1(b).

Subsection 362-4.2(i) is revised to delete the requirement for supporting documentation at annual recertification.

Subsection 362-4.2(k) is added to provide that applicants for qualifying individual health insurance contracts may meet the Healthy New York eligibility requirement regarding employment by demonstrating that their spouse (residing in their household) is an employed person.

Subsection 362-4.3(b) is amended to delete the requirement that child support be counted as parental income for the purposes of determining income eligibility.

Subsection 362-4.3(d) is revised to recognize that supporting documentation is not required upon annual recertification.

Subsection 362-5.1(b) is revised to amend the claims corridors for the small employer stop loss fund and the qualifying individual stop loss fund to include claims paid on behalf of a covered member in excess of $5,000 and less than $75,000, beginning in calendar year 2003.

Subsection 362-5.1(d) is amended to delete an unnecessary description of the prior claims corridor amounts.

Subsection 362-5.2(c) is amended to change a reference to the prior claims corridor from a specific dollar amount to a general reference so that it is applicable regardless of the dollar amount.

Subsection 362-5.2(f) is amended to insert the word "the." This corrects a technical error.

Subsection 362-5.3(e) is amended to change the loss ratio standard for Healthy New York contracts from small group to individual.

Subsection 362-5.3(f) is added to provide that health maintenance organizations and participating insurers may reinsure their Healthy New York business in whole or in part if they determine it would favorably impact premium rates. The subsection also provides that the impact of any such reinsurance shall be factored into the premium rates for affected qualifying group health insurance premiums and individual health insurance premiums.

Subsection 362-5.3(g) is added to provide that no later than 30 days from the effective date of this regulation, health maintenance organizations and participating insurers shall submit the policy form amendments and premium rate adjustments necessitated by these amendments.

Subsection 362-5.5(a) is amended to require that reports pertaining to stop loss reimbursement or loss ratio be certified by an officer of the company that such report is accurate and complete.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 27, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Michael Barry, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: mbarry@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority: The authority for the amendment to 11 NYCRR 362 is derived from sections 201, 301, 1109, 3201, 3216, 3217, 3221, 4235, 4303, 4304, 4305, 4318, 4326 and 4327 of the Insurance Law. Sections 201 and 301 authorize the superintendent to prescribe regulations interpreting the provisions of the Insurance Law as well as effectuating any power granted to the superintendent under the Insurance Law, to prescribe forms or otherwise to make regulations. Section 1109 authorizes the superintendent to promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to the contracts between a health maintenance organization and its subscribers. Section 3201 authorizes the superintendent to approve accident and health insurance policy forms for delivery or issuance for delivery in this state. Section 3216 sets forth the standard provisions to be included in individual accident and health insurance policies written by commercial insurers. Section 3217 authorizes the superintendent to issue regulations to establish minimum standards, including standards of full and fair disclosure, for the form, content and sale of accident and health insurance policies. Section 3221 sets forth the standard provisions to be included in group or blanket accident and health insurance policies written by commercial insurers. Section 4235 defines group accident and health insurance and the types of groups to which such insurance may be issued. Section 4303 sets forth benefits that must be covered under accident and health insurance contracts. Section 4304 includes requirements for individual health insurance contracts written by non-profit corporations. Section 4305 includes requirements for group health insurance contracts written by not-for-profit corporations. Section 4318 sets forth requirements for accident and health insurance contracts that include a pre-existing condition provision. Section 4326 authorizes the creation of a program to provide standardized health insurance to qualifying small employers and qualifying working uninsured individuals. Section 4326(g) authorizes the superintendent to modify the copayment and deductible amounts for qualifying health insurance contracts. Section 4326(g) authorizes the superintendent to establish additional standardized health insurance benefit packages to meet the needs of the public after January 1, 2002. Section 4327 creates two stop-loss funds and requires the superintendent to promulgate regulations setting forth the procedures for the operation of the stop loss funds and distribution of monies therefrom. Section 4327(b) sets the stop loss corridors for calendar year 2001. Section 4327(d) provides that, except as specified in subsection (b) with respect to calendar year 2001, the level of stop loss coverage need not be the same. Section 2807-v(1)(h) & (i) of the Public Health Law directs the distribution of funds for purposes of services and expenses related to the Healthy New York program.

2. Legislative objectives: A significant number of New York residents are currently uninsured. A large portion of New York State's uninsured population is made up of individuals employed in small businesses. Due in part to the rising cost of health insurance coverage, many small employers are currently unable to provide health insurance coverage to their employees. Additionally, the problem of the uninsured has been exacerbated by national events impacting the labor market and access to employer based health insurance coverage. Chapter 1 of the Laws of 1999 enacted the Healthy New York Program; an initiative designed to encourage small employers to offer health insurance to their employees and to encourage uninsured individuals to purchase health insurance coverage.

3. Needs and benefits: This amendment to Part 362 of 11 NYCRR is necessary to introduce a second Healthy New York benefit package at a reduced premium rate. The second benefit package provides for a lower cost alternative and gives individuals and small businesses choice of a benefit package that meets their needs. Any change in benefit package selection may occur at the time of annual recertification or when the premium rate changes. Any notice of rate change must include notice of this option to change benefit packages. The amendment deletes the well child copayment applicable to Healthy New York in order to enhance access to preventive and primary care for children. The amendment permits Healthy New York to be considered qualifying health insurance under the federal Trade Act of 2002 to allow those qualifying for a federal tax credit to benefit from that credit. The amendment revises the eligibility requirements relating to employment in order to lessen complexity and enhance access. The amendment provides that child support payments shall not be treated as income of the parents for the purpose of determining household income eligibility equitably. The amendment deletes the applicability of certain documentation requirements in connection with the re-certification process and facilitates re-certification closer to annual renewal date. This will allow for simplification of the re-certification process to assist in ensuring continuity of coverage for low income individuals. The amendment clarifies that qualifying small employers choosing to offer coverage to part-time workers may choose the level of premium contribution on behalf these workers to encourage employers to extend coverage to part-time workers. The amendment provides that employers making a de-minimus contribution to employee premiums shall not be crowded out of the Healthy New York Program for this reason. Through January 31, 2005, de-minimus contributions are those that do not exceed an average of $50 per employee per month. Beginning February 1, 2005, de-minimus contributions are those that do not exceed an average of $75 per employee per month for employers in the counties of Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, and Westchester or an average of $50 per employee per month for employers in all other counties. This de-minimus amendment will avoid penalizing vulnerable employers for such premium contributions and will encourage these employers to purchase Healthy New York subject to a 50% premium contribution requirement. The amendment clarifies that health maintenance organizations and participating insurers may reinsure their Healthy New York business if it achieves a favorable premium impact. The amendment also adjusts the stop loss corridors for the program in order to effectuate a level of premium reduction sufficient to encourage more currently uninsured businesses and individuals to purchase comprehensive health insurance coverage. These revisions should provide low-income individuals and vulnerable small businesses with enhanced access to Healthy New York. This amendment changes the loss ratio standard for Healthy New York contracts from small group to individual and requires that insurer's reports pertaining to stop loss reimbursement or loss ratio be certified.

4. Costs: The Health Care Reform Act allocated a fixed amount to the Healthy New York program to encourage uninsured businesses and individuals to purchase health insurance. This amendment will not alter the amounts dedicated to the program. However, this amendment will increase the per head cost to the State to be distributed from the overall allocation for the program for workers enrolled in Healthy New York. The amount of this increase will depend on the actual claims experience of the Healthy New York insured population. Because the amendment enhances access to Healthy New York, we would also expect that the amendment will cause the program to operate at enrollment levels which are consistent with the program's full funding capacity. At the same time, by bringing affordable insurance protections to the currently uninsured population, this amendment will avert costs to the State resulting from uninsured individuals accessing necessary and emergency health care services. Enhanced access to market based coverage will result in an introduction of private dollars

into the New York's healthcare system along with a savings to heavily subsidized State programs. Further, enhanced access to preventive and primary care services should result in cost savings related to improved children's health.

5. Local government mandates: This amendment imposes no new mandates on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This amendment will not impose any new reporting requirements. This amendment simplifies the recertification process reducing the administrative burden and paperwork requirements for health plans and enrollees. This amendment requires that insurers certify all reports pertaining to stop loss reimbursement and loss ratio but does not require any additional reports.

7. Duplication: There are no known federal or other states' requirements that duplicate, overlap, or conflict with this regulation.

8. Alternatives: Throughout the initial implementation of Healthy New York, input has been obtained from interested parties including consumer groups; health plans; health plan associations; business groups; association groups; local chambers of commerce and academics. In addition, independent reports have been prepared examining the impact of the program on the uninsured population. In developing the reports, the contractor interviewed health plans, brokers, businesses and enrollees. Claims data submitted by the participating health plans has also been analyzed. The alternative to introducing a lower cost benefit package would be continuing the current structure of offering a single benefit package option. This alternative was rejected in order to provide businesses and individuals with choice of the benefit package which best meets their needs and to provide for a lower cost alternative. With respect to the amendment to delete the well child copayment, the alternative would be to retain a copayment on these services. This alternative was rejected because it discourages access to preventive and primary care for children. This change was requested by health plans, providers and consumers. The alternative to changing the pre-existing condition exclusion for those eligible to receive a federal tax credit would leave those covered by Healthy NY unable to benefit from the credit. The alternative to addressing employment standards would be to retain the existing fragmented definition of employment within the eligibility criteria. The amended employment standard will lessen complexity, facilitate the application process, and enhance access to the Healthy New York program. The alternative to providing that child support shall not be counted as the income of the parents in determining household income eligibility would be continuing to count such payments as parental income. Consistent with requests of consumers and health plans, this revision will enhance access to the program while ensuring more equitable consideration of parental income. The alternative to simplifying the re-certification process would be continuing with the current requirements on re-certification. The Department believes the revision will assist in ensuring continuity of coverage for low-income individuals. No alternative was considered on providing clarification of employer's ability to choose the appropriate level of premium contribution on behalf of part-time workers. The program was already administered to allow employers choosing to cover part-time workers to choose the premium contribution on their behalf. With respect to the provision providing a de minimus exception to the program's crowd out requirement for employers which are contributing minimally toward payment of employee premiums, the alternative would be continuing to bar employers contributing minimally to premiums from participation in Healthy New York. We have received feedback from employers, brokers, and health plans that providing for an exception would be most equitable. This amendment will permit such employers to purchase Healthy New York subject to a program requirement that they contribute a full 50% of the Healthy New York premium. Concerning the provision addressing reinsurance, the alternative would be an absence of clarification or guidance on the use of reinsurance mechanisms. The Department wishes to clearly advise of the availability of private reinsurance mechanisms to favorably impact Healthy NY premiums. The alternative to changing the stop loss reimbursement levels would be to continue with the current reimbursement levels. Based upon a review of the program's claims data by the Department, health plans and an independent contractor, we have determined that the adjusted stop loss corridors are the most appropriate for the program. We have received feedback from health plans, chambers of commerce, business groups, academics, consumer groups and consumers that the Healthy New York small business program would be improved by enhanced price separation between Healthy New York and other small group products. We have also received feedback that the individual program would be improved if the Healthy New York premium constituted a smaller percentage of the member's household income. Adjustment of the stop loss corridors will achieve enhanced price separation in the small group market while reducing the percentage of income Healthy New York subscribers will need to commit to payment of premium. Increase of the loss ratio standard for Healthy New York contracts will increase the percentage of premium dollar that is received in claims by members. After two complete year's experience, the Department believes that the amendments set forth above will best serve the needs of the program.

9. Federal standards: The Federal Trade Adjustment Act of 2002 extends a Federal tax credit to certain individuals to be applied towards the purchase of health insurance. This amendment adjusts the pre-existing condition exclusion period within the Healthy NY to bring it into compliance with the requirements of the Trade Adjustment Act in order to enable eligible individuals to obtain the benefit of this credit.

10. Compliance schedule: This rulemaking will be effective upon adoption. HMOs and providers achieved the June 1, 2003 compliance date without problems because this regulation was previously filed on an emergency basis in March, June, and September 2003.

Regulatory Flexibility Analysis

1. Effect of rule: The amendment will affect qualifying small employers, including individual proprietors, by providing them with even greater access to affordable options for comprehensive health insurance. Employers will be provided with choice in the health insurance benefit option that meets their needs, enhanced and simplified eligibility, and improved Healthy New York premium rates. These modifications should encourage the purchase of health insurance coverage through the Healthy New York program. In turn, this will diminish the number of uninsured in New York State. The amendment will not affect local governments. The amendment will affect health maintenance organizations and licensed insurers in New York State, none of which fall within the definition of small business as found in Section 102(8) of the State Administrative Procedure Act.

2. Compliance requirements: Qualifying small employers and individual proprietors must provide health maintenance organizations and insurers with a certification of eligibility on an annual basis for continued participation in the Healthy New York program. There are no compliance requirements for local governments. This amendment eases existing compliance requirements.

3. Professional services: The qualifying small employer and individual proprietor should not require professional services to comply with the amendment.

4. Compliance costs: The implementing legislation requires that small businesses wishing to participate in the Healthy New York program complete an initial form certifying as to their eligibility to participate in the program. There should be no costs associated with completing this form since the information requested in support of an applicant's eligibility certification is readily available to the small employer. This regulatory amendment does not impose any additional costs. The amendment should reduce insurance costs for small businesses. The amendment imposes no costs to local governments.

5. Economic and technological feasibility: The Healthy New York program is designed to make health insurance premiums more affordable to small businesses. Compliance with the amendment should be economically and technologically feasible for small businesses since it requires no action on their part.

6. Minimizing adverse impact: The amendment minimizes the adverse impact on small employers by lowering premium rates and increases access to affordable health coverage.

7. Small business and local government participation: Adjustment of the stop-loss corridors resulting in premium reduction is based on the Department's discussions with Chambers of Commerce, small businesses and providers. Other changes to the program result from concerns expressed to the Department by providers, Chambers of Commerce, business councils, and small businesses. This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with an additional opportunity to participate in the rulemaking process.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Health maintenance organizations and insurers to which this regulation is applicable do business in every county of the state, including rural areas as defined under Section 102(13) of the State Administrative Procedure Act. Small businesses and working uninsured individuals meeting the eligibility criteria for participation in the Healthy New York program and individuals in need of health insurance coverage are located in every county of the state

including rural areas as defined under Section 102(13) of the State Administrative Procedure Act.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Healthy New York requires health maintenance organizations to report enrollment changes on a monthly basis and also requires an annual request for reimbursement of eligible claims. Twice a year, enrollment reports that discern enrollment on a county by county basis are submitted to the Insurance Department by the health maintenance organizations. This revision will not add any new reporting requirements. This amendment does require that a notice of rate change include a notice of the right to change benefit packages. Nothing in this revision distinguishes between rural and non-rural areas.

3. Costs: The Healthy New York program is funded from state monies as part of the Health Care Reform Act of 2000. There are no costs to local governments. Qualifying small businesses and individuals will benefit from the revisions to Part 362 due to the resulting reduced premium rates for Healthy New York insurance. This will benefit those businesses and individuals in both rural and non-rural areas of the State. Additionally, this amendment should facilitate the program's goals of encouraging individuals to purchase insurance on their own behalf and encouraging businesses to purchase insurance on behalf of their employees. This regulation has no impact unique to rural areas.

4. Minimizing adverse impact: Because the same requirements apply to both rural and non-rural entities, the amendment will impact all affected entities the same. Furthermore, the result of the amendment should ultimately be a favorable one since it decreases premium rates and reduces some program complexity.

5. Rural area participation: Adjustment of the stop-loss corridors resulting in premium reduction is based on the Department's discussions with health plans, Chambers of Commerce, small businesses and consumers. Other changes to the program result from concerns expressed to the Department by providers, HMOs, Chambers of Commerce, business councils, small businesses, and consumers. This notice is intended to provide small businesses, local governments, and public and private entities in rural and non-rural areas with further opportunity to participate in the rule making process

Job Impact Statement

This amendment will not adversely affect jobs or employment opportunities in New York State. This amendment is intended to improve access to comprehensive health insurance for individuals, the working uninsured and small employers. This amendment reduces the cost of Healthy New York health insurance, a program for the uninsured, by creating choice in benefit structure, easing confusion regarding eligibility terms, and generally improving access to Healthy New York insurance.

EMERGENCY RULE MAKING

Rules Governing Valuation of Life Insurance Reserves

I.D. No. INS-51-05-00002-E
Filing No. 1433
Filing date: Dec. 1, 2005
Effective date: Dec. 1, 2005

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

Action taken: Amendment of Part 98 (Regulation 147) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 201, 301, 1304, 1308, 4217, 4218, 4240 and 4517

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: During 2004, the Department became aware that some insurers have designed certain life insurance products with the clear intent of circumventing the existing reserve standards. The Department is concerned with the solvency of insurers who fail to set aside sufficient funds to pay claims as they pose a serious threat to consumers who rely on insurers to honor their commitment both now and in the future. In addition, insurers who have elected to circumvent the law place themselves at a competitive advantage over those insurers who follow the rules and establish the appropriate level of reserves. On a daily basis, those insurers who abide by the law suffer substantial losses in terms of market share, as they cannot effectively compete against insurers that do not set aside adequate reserves. This practice of under-reserving by insurers, which have decided market share is more important than the safety and soundness of policyholder funds, puts policyholders at continued risk.

New York authorized insurers must file quarterly financial statements based upon minimum reserve standards in effect on the date of filing. The filing date for the December 31, 2005 annual statement is March 1, 2006. The insurers must be given advance notice of the applicable standards in order to file their reports in an accurate and timely manner.

For all of the reasons stated above, the emergency adoption of this first amendment to Regulation No. 147 is necessary for the general welfare.

Subject: Rules governing valuation of life insurance reserves.

Purpose: To prescribe rules and guidelines for valuing individual life insurance policies and certain group life insurance certificates, with primary emphasis on valuation of non-level premium and/or non-level benefit life insurance policies, indeterminate premium life insurance policies, universal life insurance policies, variable life insurance policies, and credit life insurance policies in accordance with statutory reserve formulas.

Substance of emergency rule: The First Amendment to Regulation No. 147 provides new mortality and reserve standards for credit life insurance policies. It also provides new reserve standards for certain other specified life insurance policies. The following is a summary of the amendments to Regulation No. 147:

Section 98.1(a) was amended to include credit life insurance policies and to mention clarification of principles.

Section 98.2(b) was amended to ensure consistency in applicability wording within the regulation.

Section 98.2(i) was amended to state that unless notification was previously provided to the superintendent to adopt lower reserves based on the requirements of this Part, insures may not adopt such lower reserves without the prior approval of the superintendent.

A new subdivision (j) was added to section 98.2 regarding the use of the minimum mortality standards defined in Part 100 of this Title.

A new subdivision (k) was added to section 98.2 regarding the applicability of this regulation to certain specified life insurance policies.

A new subdivision (l) was added to section 98.2 regarding the applicability of this regulation to credit life insurance.

Subdivision (d)(2) of section 98.4 was amended to change an incorrect reference.

The last sentence of section 98.4(s) was amended to change a reference from 1% to one percent, in order to be consistent with similar references in other sections of the regulation.

Section 98.4(u) was amended to reference the examples and reserve methodologies described in section 98.9 of this Part.

A new Section 98.4(v) was added to describe the reserve methodology for life insurance policies that provide long-term care benefits through the acceleration of benefits.

The third sentence of paragraph (2) of section 98.6(a) was amended to change an incorrect reference to the Contract Segmentation Method to the mortality and interest rates used in calculating basic unitary reserves.

Section 98.7(b)(1)(ii) was amended to have the definition of secondary guarantee period extended to this whole Part rather than just paragraph (1) of section 98.7.

Section 98.7(b)(1)(iii) was amended to provide clarification of an example supplied in this section.

Section 98.7(c) was amended to change the reference from age 100 to the age at the end of the applicable valuation mortality table, since the 2001 CSO Mortality Tables go out to ages greater than 100.

Section 98.8(b) was amended to reference section 98.9 of this Part.

A new section 98.9 was added for certain specified life insurance policies. This section provides examples of policy designs which constitute guarantees and describes the reserve methodologies to be used in valuing such policies.

A new section 98.10 was added for credit life insurance. This section provides minimum mortality standards and minimum reserve standards for such policies.

Section 98.9 was renumbered to section 98.11. This is the severability provision.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 28, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Michael Barry, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-5265, e-mail: mbarry@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

The superintendent's authority for the First Amendment of Regulation No. 147 (11 NYCRR 98) is derived from sections 201, 301, 1304, 1308, 4217, 4218, 4240 and 4517 of the Insurance Law.

These sections establish the superintendent's authority to promulgate regulations governing reserve requirements for life insurers. Sections 201 and 301 of the Insurance Law authorize the superintendent to prescribe regulations accomplishing, among other concerns, interpretation of the provisions of the Insurance Law, as well as effectuating any power given to him under the provisions of the Insurance Law to prescribe forms or otherwise to make regulations.

Section 1304 of the Insurance Law enables the superintendent to require any additional reserves as necessary on account of life insurers' policies, certificates and contracts.

Section 1308 of the Insurance Law describes when reinsurance is permitted and the effect that reinsurance will have on reserves.

Section 4217(c)(6)(C) provides that reserves according to the commissioners reserve valuation method for life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums shall be calculated by a method consistent with the principles of this paragraph.

Section 4217(c)(6)(D) permits the superintendent to issue, by regulation, guidelines for the application of the reserve valuation provisions for section 4217 to such policies and contracts, as the superintendent deems appropriate.

Section 4217(c)(9) requires that reserves for any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurance company based on then estimates of future experience, or which is of such a nature that the minimum reserves cannot be determined by the methods prescribed in sections 4217 and 4218, must be computed by a method consistent with the principles of sections 4217 and 4218 as determined by the superintendent.

Section 4218 requires that when the actual premium charged for life insurance under any life insurance policy is less than the modified net premium calculated on the basis of the commissioners reserve valuation method, the minimum reserve required for such policy shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy, or the reserve calculated by the commissioners reserve valuation method replacing the modified net premium by the actual premium charged for the policy in each contract year for which such modified net premium exceeds the actual premium.

Section 4240(d)(6) states that the reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees provided in the contract.

Section 4240(d)(7) states that the superintendent shall have the power to promulgate regulations, as may be appropriate, to carry out the provisions of this section.

For fraternal benefit societies, section 4517(b)(2) provides that reserves according to the commissioners reserve valuation method for life insurance certificates providing for a varying amount of benefits or requiring the payment of varying premiums shall be calculated by a method consistent with the principles of this subsection (b).

2. Legislative objectives:

One major area of focus of the Insurance Law is solvency of insurers doing business in New York. One way the Insurance Law seeks to ensure solvency is through requiring all insurers authorized to do business in New York State to hold reserve funds necessary in relation to the obligations made to policyholders.

3. Needs and benefits:

The regulation is necessary to help ensure the solvency of life insurers doing business in New York. After the adoption of the current version of Regulation No. 147, which incorporates the National Association of Insurance Commissioners (NAIC) Valuation of Life Insurance Policies model regulation (adopted in 1999), some insurers developed life insurance products that resulted in reserves being held that were lower than the reserves defined in section 4217 of the Insurance Law and the current version of Regulation No. 147, even though these products had similar death benefit and premium guarantees. To clarify the intent of the NAIC model regulation, NAIC Actuarial Guideline 38 was developed in 2002. The Guideline stated that new policy designs which are created to simply disguise guarantees provided by the policy must be reserved in a manner similar to more typical designs with similar guarantees. Section 98.4(u) of the current version of Regulation No. 147 also contains wording to address consistent reserving principles. In the past year the Department and other states became aware that, in spite of such wording, some insurers were creating new products in order to avoid the reserve methodologies described in Regulation No. 147. As a result, the NAIC began revising the Guideline in 2004 and ultimately addressed the concerns of the Department and other regulators by eliminating any perceived ambiguity in the Guideline for policies issued July 1, 2005 and later. This revision was adopted at the NAIC level in October 2005. The new reserve methodologies for various policy features that constitute guarantees, as described in section 98.9 of this amendment, are consistent with the principles of section 4217 of the Insurance Law and with the standards adopted at the NAIC level for policies issued July 1, 2005 and later. Not adopting this amendment could result in inadequate reserves for some insurers, which would jeopardize the security of policyholder funds.

The regulation will also set standards for determining policy reserves for credit life insurance and for determining reserves for life insurance policies that provide long-term care benefits through the acceleration of benefits.

4. Costs:

Administrative costs to most insurers authorized to do business in New York State will be minimal. Since the majority of the reserve requirements and methodologies included in this regulation have been in effect since the original adoption of this regulation in March of 2003, most insurers would only need to update their current computer programs to implement the new reserve methodologies for policies with secondary guarantees and credit life insurance policies. An insurer that needs to modify its current system could produce the modifications internally or if the system was purchased from a consultant, have their consultant produce the modifications. The cost associated with the modifications is estimated to be $50,000 - $100,000. The cost would include the actual modifications as well as the testing and implementation of the new software. Once the modifications to the system have been developed, no additional costs should be incurred due to those requirements.

Regarding costs in terms of reserve impact, for insurers following the intent of the Law and Regulation No. 147, there will be no reserve impact. A survey conducted by the Department showed that the reserve impact ranged from zero for many insurers to nearly $200 million as of December 31, 2004. For no insurer was the reserve impact as a percentage of capital and surplus greater than 16% as of December 31, 2004. Notwithstanding these reserve increases, holding reserves at appropriate levels is mandated by statute and will help guarantee that insurers will be able to pay future claims.

Costs to the Insurance Department will be minimal as existing personnel are available to verify that the appropriate reserves are held by insurers for policies affected by the amendment to Regulation No. 147. There are no costs to other government agencies or local governments.

5. Local government mandates:

The regulation imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork:

The regulation imposes no new reporting requirements.

7. Duplication:

The regulation does not duplicate any existing law or regulation.

8. Alternatives:

One significant alternative considered was to keep the current version of Regulation No. 147, which would result in some insurers holding reserves lower than those intended by section 4217 of the Insurance Law. Over the course of several months, the Department discussed this matter as part of the NAIC Life and Health Actuarial Task Force (LHATF) forums and in several conference calls and meetings with impacted insurers. During mid to late 2004, revised wording to NAIC Actuarial Guideline 38 was exposed in order to extend the principles of the NAIC's Standard Valuation Law to products not contemplated at the time of the writing of the NAIC Law by removing any perceived ambiguity in the Actuarial Guideline. Since the same perceived ambiguity exists in the current version of Regulation No. 147 when the Regulation is applied to some new product designs, the amendment is necessary to clarify the rules that apply to these products. The Department reviewed insurers' concerns related to the exposed wording, but determined that such change was needed because the Department believes the reserves that would be held by these insurers would be lower than those intended by section 4217 of the Insurance Law. Before drafting the amendment to Regulation No. 147, the Department analyzed a spreadsheet that calculates the reserve impact of the revised language to Regulation No. 147. The Department also discussed the impact with several potentially affected insurers. As confirmed by the results of the survey conducted by the Department in early 2005, the Department

believes that the amendment to Regulation No. 147 has had the appropriate effect on reserves, *i.e.*, reserves consistent with those intended by the Insurance Law and consistent with the reserve level for similar products.

Another alternative was to keep the current minimum standard for credit life insurance, but this would result in a mortality standard that is inconsistent with the national NAIC standard.

Another alternative was to not include the wording in section 98.4(v) that describes the reserve methodology for life insurance policies that provide long-term care benefits through the acceleration of benefits, but this would result in a standard that is inconsistent with the national NAIC standard.

9. Federal standards:

There are no federal standards in this subject area.

10. Compliance schedule:

This regulation applies to financial statements filed on or after December 31, 2004. The Department's concern about very low reserves being held for certain product designs is well known in the insurance industry. Numerous discussions with impacted insurers have taken place during the course of developing a national standard through the National Association of Insurance Commissioners. Since this regulation has been adopted on an emergency basis since December 29, 2004, insurers have had ample time to achieve full compliance.

Regulatory Flexibility Analysis

1. Small businesses:

The Insurance Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at all insurers authorized to do business in New York State, none of which fall within the definition of "small business" as found in section 102(8) of the State Administrative Procedure Act. The Insurance Department has reviewed filed Reports on Examination and Annual Statements of authorized insurers and believes that none of them fall within the definition of "small business", because there are none which are both independently owned and have under one hundred employees.

2. Local governments:

The regulation does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Insurance companies covered by the regulation do business in every county in this state, including rural areas as defined under SAPA 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services:

The amendment to this regulation establishes reserve requirements for certain types of life insurance, including universal life insurance with secondary guarantees, and for credit life insurance.

3. Costs:

Administrative costs to most insurers authorized to do business in New York State will be minimal. Since the majority of the reserve requirements and methodologies included in this regulation have been in effect since the original adoption of this regulation in March of 2003, most insurers would only need to update their current computer programs to implement the new reserve methodologies for policies with secondary guarantees and credit life insurance policies. An insurer that needs to modify its current system could produce the modifications internally or if the system was purchased from a consultant, have their consultant produce the modifications. The cost associated with these modifications is estimated to be $50,000 - $100,000. The cost would include the actual modifications as well as the testing and implementation of the new software. Once the modifications to the system have been developed, no additional costs should be incurred due to those requirements.

Regarding costs in terms of reserve impact, for insurers following the intent of the Law and Regulation No. 147, there will be no reserve impact. A survey conducted by the Department showed that the reserve impact ranged from zero for many insurers to nearly $200 million as of December 31, 2004. For no insurer was the reserve impact as a percentage of capital and surplus greater than 16% as of December 31, 2004.

4. Minimizing adverse impact:

The regulation does not impose any adverse impact on rural areas.

5. Rural area participation:

The Department's concern about very low reserves being held for certain product designs is well known in the insurance industry. Numerous discussions with impacted insurers have taken place during the course of developing a national standard through the National Association of Insurance Commissioners. Insurers that may be impacted by this standard are aware of the issues and should have already formed an estimate of the impact. In addition, a discussion of the proposed rule making was included in the Insurance Department's regulatory agenda which was published in the June 29, 2005 issue of the *State Register*.

Job Impact Statement

Nature of Impact:

The Insurance Department finds that this rule will have little or no impact on jobs and employment opportunities. This regulation sets standards for setting life insurance reserves for insurers. The regulation is unlikely to impact jobs and employment opportunities.

Categories and number affected:

No categories of jobs or number of jobs will be affected.

Regions of adverse impact:

This rule applies to all insurers authorized to do business in New York State. There would be no region in New York which would experience an adverse impact on jobs and employment opportunities.

Minimizing adverse impact:

No measures would need to be taken by the Department to minimize adverse impacts.

Self-employment opportunities:

This rule would not have a measurable impact on self-employment opportunities.

Department of Labor

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Public Employee Occupational Safety and Health Standards

I.D. No. LAB-51-05-00015-P

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

Proposed action: This is a consensus rule making to amend section 800.3 of Title 12 NYCRR.

Statutory authority: Labor Law, section 27-a.4(a)

Subject: Public employee occupational safety and health standards.

Purpose: To incorporate by reference into New York State Occupational Safety and Health Standards, those safety and health standards adopted by the U.S. Department of Labor, Occupational Safety and Health Administration, as of Sept. 13, 2005.

Substance of proposed rule: The proposed rule amends Section 800.3 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York, which sets forth those standards of the Occupational Safety and Health Administration which are incorporated by reference into state regulations. It is amended so as to incorporate those standards revised as of September 13, 2005.

The material incorporated by reference in Part 800.3 contains the following parts of Title 29 of the Code of Federal Regulations, revised as of the dates following the title of each part:

Part 1910 - General Industry Standards; July 1, 1988 edition
Part 1915 - Shipyard Employment Standards; July 1, 1988 edition
Part 1917 - Marine Terminal Standards edition; July 1, 1988 edition
Part 1918 - Longshoring Standards; July 1, 1988 edition
Part 1926 - Construction Standards; July 1, 1988 edition
Part 1928 - Agricultural Standards; July 1, 1988 edition

Certain revisions to these standards, published in the Federal Register through December 14, 2004, have been adopted previously.

Since the standards were last updated, the Department of Labor has obtained one additional standard:

1. Updating OSHA Standards Based on National Consensus Standards; General, Incorporation by Reference; Hazardous Materials, Flammable and Combustible Liquids; General Environmental Controls, Temporary Labor Camps; Hand and Portable Powered Tools and other Hand-Held Equipment, Guarding of Portable Powered Tools; Welding, Cutting and Brazing, Arc Welding and Cutting; Special Industries, Sawmills; Final Rule, 70 Federal Register, 53925-53929.

Text of proposed rule and any required statements and analyses may be obtained from: Diane Wallace Wehner, Legal Assistant II, Department of Labor, Counsel's Office, State Campus, Bldg. 12, Albany, NY 12240, (518) 457–4380, e-mail: diane.wehner@labor.state.ny.us

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

Public comment will be received until: 45 days after publication of this notice.

Consensus Rule Making Determination

This amendment is necessary because Section 27-a(4)(a) of the Labor Law directs the Commissioner to adopt by rule, for the protection of the safety and health of public employees, all safety and health standards promulgated under the U.S. Occupational Safety and Health Act of 1970, and to promulgate and repeal such rules and regulations as may be necessary to conform to the standards established pursuant to OSHA. This insures that public employees will be afforded the same safeguards in their workplaces as are granted to employees in the private sector.

Job Impact Statement

As the proposed action does not affect jobs and employment opportunities but simply affords workplace safety and health guidelines to improve job performance and safety, a job impact statement is not submitted.

Office of Mental Health

EMERGENCY RULE MAKING

Criminal History Record Review

I.D. No. OMH-51-05-00005-E
Filing No. 1438
Filing date: Dec. 2, 2005
Effective date: Dec. 2, 2005

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

Action taken: Addition of Part 550 and amendment of sections 87.3(e)(1) and 551.7(a)(1) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.35; and Executive Law, section 845–b(h)(12)

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: This regulation is needed to implement OMH's statutory duty to facilitate requests for criminal background record checks, which are required by law as of April 1, 2005. This law is intended to protect mental health clients from risk of abuse or being victims of criminal activity. The regulations are necessary to implement the law as of its effective date so that we can fulfill our statutory imposed duty of ensuring the health, safety, and welfare of clients are not unreasonably placed at risk.

Subject: Criminal history record review of certain prospective employees and volunteers of providers of mental health services, and natural operators of such providers, licensed or otherwise approved by Office of Mental Health.

Purpose: To require prospective employees and volunteers of providers of mental health services who will have regular and substantial unrestricted or unsupervised physical contact with clients, and natural person operators of providers of services, to undergo criminal history record checks.

Substance of emergency rule: Chapter 643 of the Laws of 2003, as amended by Chapter 575 of the Laws of 2004, imposed the requirement of criminal history record checks on each prospective operator, employee, or volunteer of certain mental health treatment providers who will have regular and substantial unsupervised or unrestricted physical contact with the clients of such providers. The purpose of this legislation was to enable providers of services for persons with mental illness to secure appropriate and properly trained individuals to staff their facilities and programs, by verifying criminal history information received from individuals seeking employment or volunteering their services.

The legislation requires the Office of Mental Health to promulgate regulations that establish standards and procedures for the criminal history record checks contemplated in the statute. Accordingly, these regulations would establish provisions governing the procedures by which fingerprints will be obtained, and outlining the requirements and responsibilities on both the part of the Office and providers of services with regard to this process.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire March 1, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Julie Anne Rodak, Director, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 474-1331, e-mail: colejar@omh.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 31.35 of the Mental Hygiene Law provides that each provider of mental health services subject to its requirements must request, through the Office of Mental Health, a criminal history background check for each prospective operator, employee, or volunteer of such provider of services.

Subdivision (12) of Section 845-b of the Executive Law requires the Office of Mental Health to promulgate rules and regulations necessary to implement criminal history information requests.

2. Legislative objectives:

Chapter 643 of the Laws of 2003 established a requirement for certain providers of mental health services to obtain criminal background checks of prospective employees and volunteers who would have regular and substantial unsupervised or unrestricted contact with clients of such provider. Chapter 575 of the Laws of 2004 amended this law and required the Office of Mental Health to promulgate any rules or regulations necessary to implement the provisions of Section 31.35 of the Mental Hygiene Law. These regulations are intended to fulfill this requirement.

3. Needs and benefits:

New York State has the responsibility to ensure the safety of its most vulnerable citizens who may be unable to protect and defend themselves from abuse or mistreatment at the hands of the very persons charged with providing care to them. While the majority of employees and volunteers in mental health programs are dedicated, compassionate workers who provide quality care, there are cases where criminal activity and patient abuse take place at the very programs that are intended to help persons with mental illness seek recovery. While this proposal will not eliminate all instances of abuse in mental health programs it will eliminate many of the opportunities for individuals with a criminal record to be alone with those most at risk. Pursuant to Chapter 575 of the laws of 2004, this proposal requires providers of mental health services, including those that are licensed, who contract with, or who are otherwise approved by the Office of Mental Health, to request the Office to obtain criminal history information from the Division of Criminal Justice Services concerning each prospective employee or volunteer who will have regular and substantial unsupervised or unrestricted contact with the providers' clients. Prospective licensed operators of mental health services will be required to have a criminal background check through this process as well.

Each provider subject to these requirements must designate one or more "authorized persons" who will be empowered to request, receive, and review this information. Before a prospective employee or volunteer who will have regular, unsupervised client contact can be permanently hired or retained, he or she must consent to having his/her fingerprints taken and a criminal history check performed. The fingerprints will be taken by an Office of Mental Health- designated fingerprinting entity and sent to the Office, who will then submit them to the Division of Criminal Justice Services. The Division will provide criminal history information for each person back to the Office. Prospective licensed operators of mental health services must follow the same process.

The Office of Mental Health will then review the information and will advise the provider whether or not the applicant has a criminal history, and, if so, whether the criminal history is of such a nature that the person cannot be hired or retained, (*e.g.*, the person has a felony conviction for a sex offense or a violent felony). In some cases, a person may have a criminal background that does not rise to the level where the Office will require employment of the person to be terminated. The proposed regulations allow the provider to obtain sufficient information to enable it to make its

own determination as to whether or not to employ or retain such person. There will also be instances in which the criminal history information reveals an arrest or felony charges without a final disposition. In those cases, the Office will, in accordance with Chapter 575, hold the application in abeyance until the charge is resolved.

Before the Office can advise a provider that it intends to require that the employee or volunteer be terminated or not hired/retained, the proposal carries forth the statutory requirement of affording the individual an opportunity to explain, in writing, why his or her application should not be denied. If the Office nonetheless maintains its determination to advise the provider to terminate the employee or volunteer, the provider must notify the person that this criminal history information is the basis for the denial of employment or service.

The proposed regulation establishes certain responsibilities of providers in implementing the criminal record review required by Chapter 575. For example, a provider must notify the Office when an individual for whom a criminal history has been sought is no longer subject to such check. Providers must also ensure that prospective employees or volunteers who will be subject to the criminal background check are notified of the provider's right to request his/her criminal history information, and that he or she has the right to obtain, review, and seek correction of such information in accordance with regulations of the Division of Criminal Justice Services.

4. Costs:

The proposed regulations implement a system that will require providers of services licensed, funded, or approved by the Office of Mental Health to obtain all information from a prospective employee or volunteer necessary for the purpose of initiating a criminal history record check. While the statute does not require all new employees to be fingerprinted, for purposes of systems design, the Office has estimated that the average annual "turnover" rate for full time employees at 30%. In all catchment areas, the total estimate of annual hires is 10, 514 full time equivalent employees, and 2,390 full time equivalent volunteers. The Office has created a Criminal History Information Tracking System (CHITS), which is a web-based system designed to enter applicant information and track the status of the fingerprinting process. Because only a minimum amount of data elements must be input into the system, it intended to reduce the administrative burden related to implementation of Chapter 575 of the Laws of 2004. There is also a statutory fee of $75 to obtain a criminal history record check from the Division of Criminal Justice Services; however, this amount will be fully borne by the Office of Mental Health. At an estimated number of 15,000 fingerprint requests per year, annual cost of this fee for the Office is approximately $1,125,00.00.

Estimated start-up costs to the Office of Mental Health, which include the purchase of LiveScan technology and supporting equipment, activities, and systems, and staffing costs, are approximately $900,000.

5. Local government mandates:

The required criminal history record check is a statutory requirement, which does not impose any new or additional duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork:

In order to assist providers in fulfilling their responsibilities in implementing Chapter 575 of the Laws of 2004, the Office has created a Criminal History Information Tracking System (CHITS), which is a web-based system designed to enter applicant information and track the status of the fingerprinting process. Because only a minimum amount of data elements must be input into the system, and the system is designed to generate the two forms mandated in the statute (an informed consent form and a request form), it intended to reduce the administrative burden related to implementation of Chapter 575 of the Laws of 2004. Aside from record retention requirements necessary for monitoring compliance, the regulatory amendment will not require providers of service to furnish additional information, reports, records, or data.

7. Duplication:

The regulatory amendment does not duplicate existing State or federal requirements. It should be noted that the Office of Mental Retardation and Developmental Disabilities (OMRDD) has a similar statutory requirement and is promulgating its own regulations on this subject, as required via Chapter 575. In terms of technology, OMR and OMRDD hope to integrate systems at a later date to arrive at a single technology solution. In anticipation of that effort, OMRDD and OMH have selected the same vendor, which was already under contract to provide a LiveScan solution for a joint project between other state agencies. To facilitate future integration, a common, consistent hardware and software platform was purchased by OMH and OMRDD. Preliminary discussions to identify a partnership strategy with OMRDD have begun.

8. Alternatives:

The only alternative to the regulatory amendments which was considered was inaction, which is not advisable as the Office of Mental Health is required by Chapter 575 of the Laws of 2004 to promulgate implementing regulations.

9. Federal standards:

The regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance schedule:

The Office of Mental Health filed a similar emergency regulation on April 1, 2005 to implement Chapter 575 of the Laws of 2004, which became effective on that date. The Office intends to finalize the proposed amendments within the time frames provided in the State Administrative Procedure Act.

Regulatory Flexibility Analysis

1. Effect of rule:

A total of roughly 720 agencies operate mental health programs that are licensed or funded by the Office of Mental Health (OMH) in New York State would be subject to this regulation, some of which would be considered "small businesses." In addition, local governments that operate mental health service providers subject to approval or authorization of OMH will be required to comply with the statute and these regulations. While Chapter 575 of the Laws of 2004 does not require all new employees to be fingerprinted (only those prospective employees or volunteers who will have "regular and substantial unsupervised or unrestricted contact with clients"), for purposes of systems design, the Office has estimated that the average annual "turnover" rate for full time employees at 30%. In all catchment areas, the total estimate of annual hires is 10,514 full time equivalent employees, and 2,390 full time equivalent volunteers, statewide.

2. Compliance requirements:

Providers of service that are subject to these requirements must, by statute, request criminal history information concerning prospective employees or volunteers who will have regular and substantial unsupervised or unrestricted contact with clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record information must be obtained through the Office of Mental Health, which will pay the $75 fee to the Division of Criminal Justice Services for each history requested. Providers of service must inform prospective employees and volunteers of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State. Although prospective employees/volunteers cannot be hired before a determination is received from the Office of Mental Health about whether or not the application must be denied, providers can give temporary approval to prospective employees and permit them to work so long as they do not have unsupervised contact with clients.

3. Professional services:

No additional professional services will be required by small businesses or local governments to comply with this rule.

4. Compliance costs:

The direct cost of $75 per criminal history record check request will be absorbed by the Office of Mental Health.

5. Economic and technological feasibility:

The Office has created a Criminal History Information Tracking System (CHITS), which is a web-based system designed to enter applicant information and track the status of the fingerprinting process. Because only a minimum amount of data elements must be input into the system, it intended to reduce the administrative burden related to implementation of Chapter 575 of the Laws of 2004. This technology will be accessible through existing computer networks. There may be a very small number of providers that do not have any computer from which they can access this technology; OMH will work with those providers either to identify a way to obtain such access or identify another alternative.

6. Minimizing adverse impact:

Because most of the requirements in this proposal are statutorily required, compliance with them is mandatory. However, OMH has developed its compliance plan with the goal of minimizing adverse impact of compliance to the greatest extent possible. The Criminal History Information tracking System is one example of a strategy intended to reduce the administrative burden related to implementation of Chapter 575 of the Laws of 2004. Furthermore, OMH has endeavored to maximize its capability to have fingerprints taken electronically, through a system called

LIVE SCAN. LIVE SCAN is a technology that captures fingerprints electronically and would transmit the fingerprints directly to the Division of Criminal Justice Services to obtain criminal history information. It has many advantages to the traditional "ink and roll" process.

Under the "ink and roll" method, a trained individual rolls a person's fingers in ink and then manually places the fingers on a card to leave an ink print. The card would then need to be mailed to the Division of Criminal Justice Services by OMH. However, before OMH could submit the card, demographic information would need to be filled in on the card (such as the person's name, address, etc.) into OMH databases. Additional time delays may be encountered if it is determined that the fingerprint has been smudged and must be taken again, or when the handwriting on the fingerprint card is difficult to read.

With LIVE SCAN, a scanner and laptop computer are used rather than an ink pad and a paper card. Rather than rolling his fingers in ink, a person would lay his hand on top of a scanner screen. A real-time fingerprint preview is provided, so the person taking the print would know the quality of the print is acceptable before it can be sent to the Division of Criminal Justice Services. The information would then be automatically transmitted to the Division, eliminating the need to mail cards anywhere. Thus, the turnaround time for processing criminal history information is significantly less than under the "ink and roll" method.

While OMH's implementation plans will accommodate the ability to accept some fingerprints through the "ink and roll" method, our strategy is designed to utilize the LIVE SCAN technology to the greatest extent possible as of April 1, 2005.

7. Small business and local government participation:

The Office of Mental Health (OMH) reached out to affected parties by posting information about Chapter 575 of the Laws of 2004 on its website in January and February, coupled with informational letters to the field. The draft regulations were widely shared (via posting on our website) and comments solicited from all affected parties. Informational briefings were provided regionally to trade groups. Per statute, the regulations will be reviewed by members of the Mental Health Services Council.

Rural Area Flexibility Analysis

1. Effect of rule:

A total of roughly 720 agencies operate mental health programs that are licensed or funded by the Office of Mental Health (OMH) in New York State would be subject to this regulation, some of which are located in rural areas. While Chapter 575 of the Laws of 2004 does not require all new employees to be fingerprinted (only those prospective employees or volunteers who will have "regular and substantial unsupervised or unrestricted contact with clients"), for purposes of systems design, the Office has estimated that the average annual "turnover" rate for full time employees at 30%. In all catchment areas, the total estimate of annual hires is 10, 514 full time equivalent employees, and 2,390 full time equivalent volunteers, statewide.

2. Reporting, recordkeeping, and other compliance requirements:

Providers of service that are subject to these requirements, including those in rural areas, must, by statute, request criminal history information concerning prospective employees or volunteers who will have regular and substantial unsupervised or unrestricted contact with clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record information must be obtained through the Office of Mental Health, which will pay the $75 fee to the Division of Criminal Justice Services for each history requested. Providers of service must inform prospective employees and volunteers of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State. Although prospective employees/volunteers cannot be hired before a determination is received from the Office of Mental Health about whether or not the application must be denied, providers can give temporary approval to prospective employees and permit them to work so long as they do not have unsupervised contact with clients.

3. Costs:

The direct cost of $75 per criminal history record check request will be absorbed by the Office of Mental Health.

4. Minimizing adverse impact:

Because most of the requirements in this proposal are statutorily required, compliance with them is mandatory. However, OMH has developed its compliance plan with the goal of minimizing adverse impact of compliance to the greatest extent possible. The Criminal History Information Tracking System (CHITS) is one example of a strategy intended to reduce the administrative burden related to implementation of Chapter 575 of the Laws of 2004. Furthermore, OMH has endeavored to maximize its capability to have fingerprints taken electronically, through a system called LIVE SCAN. LIVE SCAN is a technology that captures fingerprints electronically and would transmit the fingerprints directly to the Division of Criminal Justice Services to obtain criminal history information. It has many advantages to the traditional "ink and roll" process.

Under the "ink and roll" method, a trained individual rolls a person's fingers in ink and then manually places the fingers on a card to leave an ink print. The card would then need to be mailed to the Division of Criminal Justice Services by OMH. However, before OMH could submit the card, demographic information would need to be filled in on the card (such as the person's name, address, etc.) into OMH databases. Additional time delays may be encountered if it is determined that the fingerprint has been smudged and must be taken again, or when the handwriting on the fingerprint card is difficult to read.

With LIVE SCAN, a scanner and laptop computer are used rather than an ink pad and a paper card. Rather than rolling his fingers in ink, a person would lay his hand on top of a scanner screen. A real-time fingerprint preview is provided, so the person taking the print would know the quality of the print is acceptable before it can be sent to the Division of Criminal Justice Services. The information would then be automatically transmitted to the Division, eliminating the need to mail cards anywhere. Thus, the turnaround time for processing criminal history information is significantly less than under the "ink and roll" method.

While OMH's implementation plans will accommodate the ability to accept some fingerprints through the "ink and roll" method, particularly in rural areas where access to State-operated LIVE SCAN machines may be more difficult, our strategy is designed to utilize the LIVE SCAN technology to the greatest extent possible as of April 1, 2005.

5. Rural area participation:

The Office of Mental Health (OMH) reached out to affected parties by posting information about Chapter 575 of the Laws of 2004 on its website in January and February, coupled with informational letters that were mailed to affected parties in the field. The draft regulations were widely shared (via posting on our website) and comments solicited from all affected parties. Informational briefings were provided regionally to trade groups. Per statute, the regulations will be reviewed by members of the Mental Health Services Council.

Job Impact Statement

A Job Impact statement is not necessary for this filing. Proposed 14 NYCRR Part 550 should not have any adverse impact on the existing employees and volunteers of providers of mental health services as it applies only to future prospective employees and volunteers. It is anticipated that the number of all future prospective employees/volunteers of mental health providers of services who have regular and substantial unsupervised or unrestricted physical contact with clients will be reduced to the degree that the criminal history record check reveals a criminal record barring employment.

NOTICE OF ADOPTION

Personalized Recovery-Oriented Services

I.D. No. OMH-09-05-00003-A
Filing No. 1443
Filing date: Dec. 6, 2005
Effective date: Dec. 21, 2005

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

Action taken: Addition of Part 512 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 31.04(a), 41.05, 43.02(a), (b), (c); and Social Services Law, sections 364(3) and 364–a(1)

Subject: Program and fiscal requirements for personalized recovery-oriented services.

Purpose: To establish standards for personalized recovery-oriented services.

Substance of final rule: This rule will establish a new licensed program category for Personalized Recovery-Oriented Services (PROS) programs. The purpose of PROS programs is to assist individuals to recover from the disabling effects of mental illness through the coordinated delivery of a customized array of rehabilitation, treatment and support services. Such services are available both in traditional program settings and in off-site locations where such individuals live, learn, work or socialize. Providers are expected to create a therapeutic environment which fosters awareness,

hopefulness and motivation for recovery, and which supports a harm reduction philosophy.

Depending upon program configuration and licensure category, PROS programs will be required to include the following four components:

1) Community Rehabilitation and Support (CRS): designed to engage and assist individuals in managing their illness and in restoring those skills and supports necessary to live in the community.

2) Intensive Rehabilitation (IR): designed to intensively assist individuals in attaining specific life roles such as those related to competitive employment, independent housing and school. The IR component may also be used to provide targeted interventions to reduce the risk of hospitalization or relapse, loss of housing or involvement with the criminal justice system, and to help individuals manage their symptoms.

3) Ongoing Rehabilitation and Support (ORS): designed to assist individuals in managing symptoms and overcoming functional impairments as they integrate into a competitive workplace. ORS interventions focus on supporting individuals in maintaining competitive integrated employment. Such services are provided off-site.

4) Clinical Treatment: designed to help stabilize, ameliorate and control an individual's symptoms of mental illness. Clinical Treatment interventions are expected to be highly integrated into the support and rehabilitation focus of the PROS program. The frequency and intensity of Clinical Treatment services must be commensurate with the needs of the target population.

There are 3 license categories for PROS programs: Comprehensive PROS with clinical treatment (provides all 4 components), Comprehensive PROS without clinical treatment (provides CRS, IR and ORS components), and limited license PROS (provides IR and ORS components only).

All PROS providers will be required to offer individualized recovery planning services and pre-admission screening services. Any additional services may be offered if they are clinically appropriate and approved by OMH. Persons eligible for admission to a PROS program must: be 18 years of age or older; have a designated mental illness diagnosis; have a functional disability due to the severity and duration of mental illness; and have been recommended for admission by a licensed practitioner of the healing arts. Such recommendation may be made by a member of the PROS staff, or through a referral from another provider.

A PROS provider will be required to continuously employ an adequate number and appropriate mix of clinical staff consistent with the objectives of the program and the number of individuals served. Providers must maintain an adequate and appropriate number of professional staff relative to the size of the clinical staff. At least one of the members of the provider's professional staff must be a licensed practitioner of the healing arts, and must be employed on a full-time basis. IR services must be provided by, or under the direct supervision of, professional staff. The regulation provides that if a PROS provider has recipient employees, such employees must adhere to the same requirements as other PROS staff, and must receive training regarding confidentiality requirements.

An Individualized Recovery Planning (IRP) process must be carried out by, or under the direct supervision of, a member of the professional staff, and must be in collaboration with the individual and any persons the individual has identified for participation. The regulation sets out the contents and the time frames for development of the IRP.

The regulation provides standards and requirements that must be met in order for providers to receive medicaid reimbursement. The reimbursement will be based on a case payment basis in accordance with the total number of hours of service provided to PROS participants and collaterals in specific components. The rate of payment will be a monthly fee determined by the Commissioner and approved by the Division of the Budget. Fee schedules, based on defined Upstate and Downstate geographic area, are included in the regulation.

The regulation also addresses requirements relating to the content of the case record, co-enrollment in PROS and other mental health programs, quality improvement, organization and administration, governing body, recipient rights, and physical space and premises.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 512.4(q)-(z), 512.5(d), (h), (l), (r), 512.6(e), (k), 512.7(e)(13), (f)(3), 512.8(q) and 512.10(d)(4)(ii).

Text of rule and any required statements and analyses may be obtained from: Dan Odell, Bureau of Policy, Legislation and Regulation, Office of Mental Health, 44 Holland Ave., Albany, NY 12229, (518) 473-6945, e-mail: dodell@omh.state.ny.us

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

Non-substantive changes were made that did not necessitate revision to the previously published statements regarding the Regulatory Impact Statement (RIS), Regulatory Flexibility Analysis (RFA), Rural Area Flexibility Analysis (RAFA) or the Job Impact Statement (JIS).

The following non-substantive changes were made to the text of the amendment to Part 512:

1. Non-substantive change applying to § 512.4.

In response to a comment and in order to clarify the term "monthly caseload", a definition was added to § 512.4 Definitions, as a new definition (q) and existing definitions (q) through (y) were redesignated (r) through (z). The new definition reads as follows:

(q) Monthly Caseload means the unduplicated number of individuals admitted to and receiving services from the PROS program in a typical month. The monthly caseload range will be specified in the PROS operating certificate transmittal letter.

2. Non-substantive change applying to § 512.4(u).

In response to comments and in order to clarify that certain individuals may be considered as professional staff, definitions of professional staff were updated to reflect recent changes to the State Education Law as it regards licensed professionals.

The proposed definitions for creative arts therapist and social worker were amended and new definitions for marriage and family therapist, mental health counselor and psychoanalyst were added, to read as follows:

(u) Professional Staff means members of the clinical staff who are qualified by credentials, training and experience to provide supervision and direct service related to the care or treatment of persons with a mental illness diagnosis, and shall include the following:

(1) creative arts therapist, which means an individual who is currently licensed as a creative arts therapist by the New York State Education Department, or who has a master's degree in a mental health field from a program approved by the New York State Education Department, and registration or certification by the American Art Therapy Association, American Dance Therapy Association, National Association of Music Therapy or American Association for Music Therapy;

(3) marriage and family therapist, which means an individual who is currently licensed as a marriage and family therapist by the New York State Education Department;

(4) mental health counselor, which means an individual who is currently licensed as a mental health counselor by the New York State Education Department;

(11) psychoanalyst, which means an individual who is currently licensed as a psychoanalyst by the New York State Education Department;

(15) social worker, which means an individual who is currently licensed as a master social worker or clinical social worker by the New York State Education Department. Social workers who do not meet this definition may not be considered licensed practitioners of the healing arts. However, social workers who have obtained at least a master's degree in social work from a program approved by the New York State Education Department may be considered professional staff for the purposes of calculating professional staff and full-time equivalent professional staff;

3. Non-substantive change applying to § 512.5(d).

In response to a comment and in order to clarify the definition of clinical counseling and therapy, as it relates to co-occurring mental health and substance abuse, the phrase "for engaging, motivating and stabilizing persons" is added, so that the new definition reads as follows:

(d) Clinical Counseling and Therapy is a service designed to provide goal oriented verbal counseling or therapy, including individual, group and family counseling or therapy, for the purpose of addressing the emotional, cognitive and behavioral symptoms of a mental health disorder or for engaging, motivating and stabilizing persons with a co-occurring mental health and substance abuse (including alcohol) disorder, and the related effects on role functioning. Such service may also include cognitive behavioral therapy.

4. Non-substantive change applying to § 512.5(h).

In order to clarify that family psychoeducation is intended as a service for both collaterals and individuals admitted to the PROS program, § 512.5(h), the service definition of family psychoeducation is being amended to read as follows:

(h) Family Psychoeducation is a service designed to provide information, clinical guidance and support to collaterals and individuals admitted to the PROS program when desired and appropriate, for the purpose of assisting and enhancing the capacity of a collateral to facilitate an individual's recovery. Such service includes, but is not limited to: education about mental illness and its treatment, information on community resources, guidance on how to manage or cope with difficult behaviors, emotional

support and counseling, crisis planning, and problem-solving skills training.

5. Non-substantive change applying to § 512.5(l).

In response to a comment and in order to clarify the definition of Integrated Treatment for Co-Occurring Mental Health and Substance Abuse Disorders regarding care coordination by practitioners, the definition was expanded. The new definition reads as follows:

(l) Integrated Treatment of Co-Occurring Mental Health and Substance Abuse Disorders is a service designed to simultaneously address the mental health and substance abuse needs of persons with co-occurring disorders. Such service includes, but is not limited to, motivational and harm reduction approaches, and promotion of cognitive-behavioral skills, wherein practitioners coordinate care with appropriate substance abuse providers when it is determined that the co-occurring disorder is acute or serious, and the recipient is ready to accept related treatment.

6. Non-substantive change applying to § 512.5(r).

In response to a comment highlighting the importance of providing daily living skills to PROS recipients, the definition of Structured Skill Development and Support is being amended to add "mentoring and skill development" in order to specify the techniques used to assist the individual in completion of essential tasks. With this non-substantive change the definition will read:

(r) Structured Skill Development and Support is a service designed to assist individuals in developing instrumental skills for performing normative life roles associated with group membership, work, education, parenting or living environments. This service is often provided in structured "club-like" settings, such as a work-ordered day or an activity center format, where staff employ supportive counseling, mentoring and skill development techniques to assist the individual in completion of essential tasks. Services may also be provided off-site.

7. Non-substantive change applying to § 512.6(e).

In response to comments requesting clarification of how a program's final capacity will be determined, the Office is clarifying the text of § 512.6(e) which describes the process for fixing capacity within the initial capacity range. Non-substantive revisions have been made to § 512.6(e) which will read as follows:

(e) The initial operating certificate issued pursuant to subdivision (a) of this section shall be for a term of up to one year. The provider's capacity and monthly caseload identified in the initial operating certificate shall be expressed by a numeric range. The capacity and monthly caseload identified in the renewal of the initial operating certificate (but not less than one year from the date of initial licensure) shall be in accordance with the provider's actual capacity and monthly caseload, as determined by the Office, at that time. Such capacity and monthly caseload shall not exceed the capacity and monthly caseload ranges identified in the provider's initial operating certificate unless the provider receives approval pursuant to Part 551 of this Title.

8. Non-substantive change to § 512.6(k).

In order to clarify the process for exercising the Commissioner's authority to reduce and reallocate capacity, when a program is not providing services at a reasonable level or not providing reasonable access to services, § 512.6(k) add the term "monthly caseload". The revised paragraph will read as follows:

(k) The Commissioner, in consultation with the local governmental unit, may reduce a program's capacity and monthly caseload when it is determined that such program is not providing services at a reasonable level, or is not providing reasonable access to services in accordance with paragraph 512.7(c)(8) of this Part. Such reduced capacity and monthly caseload may be reallocated, to another provider of service certified pursuant to this Part, in accordance with Parts 551 and 573 of this Title.

9. Non-substantive changes to § 512.7(e)(13).

In response to comments, and in order to clarify the minimal time period during which progress notes must be completed, § 512.7(e)(13) has been expanded to read as follows:

(13) Progress notes shall be completed, at a minimum, two times each month. The time frame between the completion of notes within any given month shall not exceed 16 days. At least one note shall reflect the activities of the first half of the month, and at least one other note shall reflect the activities of the second half of the month.

10. Non-substantive change to § 512.7(f)(3).

In order to clarify the contents of the case record, the terms "registration attestations" and "admission note" have been added to the list of documents that are included in the case record, as set forth in § 512.7(f)(3).

11. Non-substantive change to § 512.8(q).

In order to clarify, by additional examples, the types of other service systems that should be considered in addressing continuity of care, the phrase "alcoholism and substance abuse services" has been added, as an example, to § 512.8(q).

12. Non-substantive change applying to § 512.10(d)(4)(ii).

In order to clarify the time period for minimum contacts with a psychiatrist for an individual enrolled in PROS, the term "on a quarterly basis" has been replaced with "every three months" in § 512.10(d)(4)(ii).

13. Non-substantive change applying to § 512.17(a).

In order to make § 512.17(a) consistent with § 512.17(b) and to clarify the time periods for the maintenance of statistical and financial records, the words "submitted to" in § 512.17(a) are changed to "filed with" and the phrase "or the date on which such reports were due, whichever is later", is added to § 512.17(a).

Assessment of Public Comment

1. The Office received a comment requesting clarification of the definitions of "average attendance" and "capacity." The Office responded by including the requested clarification in the regulations. An expanded description of the concepts of average attendance, capacity and monthly caseload will be available in additional documents developed by the Office.

2. The Office received two comments requesting expansion of the definition of "collateral" to include staff of human services agencies and other mental health programs. The Office responded that the definition as currently written is inclusive of all collateral contacts that can be considered eligible for reimbursement. Contacts with other human services and mental health programs and staff are part of the normal cost of doing business and, as such, are reimbursed as part of the PROS rate.

3. The Office received a comment requesting clarification that an individual who is a staff member of a mental health service provider can be considered a collateral if he or she is a member of the family or household of an individual who is receiving PROS services. The Office agrees with this interpretation in situations where the staff member is participating in services in his or her role as a recipient's collateral, and not his or her staff member role. Clarification, as necessary, will be available in additional documents developed by the Office.

4. The Office received seven comments requesting that Rehabilitation Counselor and Licensed Mental Health Counselor be added to the list of designated "licensed practitioners of the healing arts." The Office responded that the existing list of eligible titles is the broadest interpretation possible at this time. Rehabilitation Counselor cannot be included because it is not a profession licensed by the New York State Education Department. The four new licensed professions in New York State, including Licensed Mental Health Counselor, will be considered for designation in the future.

5. One comment was received requesting clarification that the wording "where services may be required" in the definition of "off-site" should not be interpreted to mean that PROS programs are required to deliver services off-site on demand. The Office agrees that this language is not intended to establish a requirement for on-demand off-site services. Rather, the use of the term "required" in this context reflects that any billable service that an individual receives from a PROS program must be documented as needed/required in the person's Individualized Recovery Plan.

6. The Office received two comments regarding the definition of "professional staff," requesting that the new licensed professions in New York State, including Licensed Mental Health Counselor and Licensed Marriage and Family Therapist, be added to the list of qualifying professional staff titles. The Office responded that this change will be made.

7. The Office received three comments requesting the addition of two specific vocational services — job skills training and generic job development — to the list of reimbursable PROS services. The Office responded that the services recommended for addition are specifically not eligible for reimbursement under the Federal Medicaid rules. Other funding streams, such as VESID intensive supported employment contracts, are available to reimburse these activities.

8. A comment was received highlighting the importance of providing activities of daily living (ADL) skills training to PROS participants. The Office agreed with this comment, and noted that a number of required PROS services are focused on ADL skills training, for example, Community Living Exploration, Structured Skill Development and Support, and Benefits and Financial Management. The definition of Structured Skill Development and Support has been clarified.

9. The Office received a comment that the definition of clinical counseling and therapy should be clarified as it relates to providing these services to persons with co-occurring mental health and substance abuse

disorders, specifically to highlight that the counseling or therapy should be provided for the purpose of engaging, motivating and stabilizing persons with a co-occurring mental health and substance abuse disorder. The Office responded that this change will be made.

10. A comment was received requesting expansion of the definition of "engagement" to include collaterals. The Office responded that engagement of collaterals is already included in the definitions of other services, such as Wellness Self-Management and Family Psychoeducation.

11. The Office received a comment requesting that NAMI-NYS be listed as a Family Psychoeducation resource in Part 512. The Office responded that regulations are not the appropriate place to identify resources, but that NAMI will be listed as a resource in the PROS Handbook. The Office is also clarifying the definition of "Family Psychoeducation."

12. The Office received a comment that the definition of integrated treatment for co-occurring mental health and substance abuse disorders, as it regards care coordination by practitioners, should be expanded to clarify that services are coordinated by the practitioner with appropriate substance abuse providers when it is determined that the co-occurring disorder is acute and serious and the recipient is ready to accept treatment. The Office responded that this change will be made.

13. The Office received a comment requesting clarification that competitive, integrated employment may be permanent or transitional. The Office responded that it agrees with this interpretation of the definition, and additional clarification will be available in other documents developed by the Office.

14. The Office received a comment questioning the need for issuance of an operating certificate for each site at which a PROS program operates. The Office responded that a discrete yet integrated PROS program may operate entirely at a single site, or may operate at multiple sites. In the latter situation, all services provided at the multiple sites are part of a larger, integrated entity that is licensed as a PROS program. Each of the sites at which a single PROS program operates will be issued an operating certificate to indicate that each site is one component of the larger program. Issuance of a license for a site does not signify that the site operates separately and independently from the primary location of the program. The Licensing Section of the PROS Handbook provides further clarification of the distinctions between "program" and "site."

15. The Office received four comments recommending that providers be allowed to operate for more than one year before their capacity is fixed within the initial capacity range. The Office responded that a full year of operation should provide a sufficient amount of time and experience for the enrollment and attendance to stabilize within programs, particularly with the registration process that is being implemented for PROS. This issue will be included in the evaluation of the first programs that convert to the new PROS license, to ensure that the 12-month timeframe is adequate. Should unexpected issues arise with respect to licensed capacity, the Prior Approval Review (PAR) process under 14 NYCRR Part 551 provides an avenue by which to make further adjustments. The administrative review process in 551.6(d)(2)(ii) accommodates expansion or reduction of outpatient capacity of less than 25 percent. With the concurrence of the County and the OMH Field Office, an administrative review under PAR can proceed relatively quickly.

16. The Office received three comments regarding the timing and process for exercising the Commissioner's authority to reduce and reallocate capacity when a program is not providing services at a reasonable level or is not providing reasonable access to services. Two commenters recommended that this authority should not be exercised until a program's final capacity is locked in (at a suggested two years after licensure). One commenter recommended that a meeting between the provider, the local governmental unit and OMH precede exercise of this authority. The Office responded that the PROS regulations as a whole are intended to promote access to PROS services by recipients who need or choose such services. This section of the regulations is intended to be used when there is evidence of a persistent pattern of restricted access to services by a provider and efforts to correct the situation have been unsuccessful, or when full implementation of an approved PROS program has not progressed such that recipients are being denied access to PROS services. This section is not intended to address reasonable, expected, or unforeseen delays in full implementation of the program.

17. Three comments were received requesting elimination of the requirement that Ongoing Rehabilitation and Support (ORS) services be provided off-site. The Office responded that ORS services are reimbursed at an enhanced rate to cover the additional costs of providing such services off-site. Supports to help an individual maintain employment provided at the PROS program site are part of the Community Rehabilitation and Support (CRS) component and are reimbursed accordingly.

18. The Office received a comment welcoming the protection of consumers from coercion, considering that many programs will, for the first time, be dependent on reimbursement based on billable hours. The Office agrees with the comment.

19. The Office received five comments regarding the issue of access to PROS services regardless of inability to pay. Several of these comments recommended that OMH provide additional funds to pay for services to non-Medicaid participants, particularly in areas where there is a high rate of uninsured/underinsured people. The Office responded that the PROS program's target population is individuals with functionally disabling serious and persistent mental health issues. It is expected that most clients enrolling in PROS will be eligible for Medicaid or other disability benefits programs. In addition, the PROS rates were developed to ensure that an efficiently operated PROS program will maintain fiscal viability, even if it incurs bad debt as a result of serving some non-Medicaid eligible individuals. Programs will be expected to assist recipients who are above the Medicaid eligibility standards to use their PROS expenses to spend down to Medicaid eligibility, and to counsel individuals who are eligible for the Medicaid Buy-In program. In addition, PROS programs are expected to establish sliding scale fee schedules and collect modest payments from individuals without insurance.

20. The Office received seven comments expressing concern that there is an over-emphasis on professional staffing in the PROS model, which will detract from peer employment opportunities. Two of these comments recommended a reduction in the required level of professional staffing. Four of the comments recommended various other solutions, such as increasing the percentage of the professional staffing requirement that can be met by individuals credentialed by the United States Psychiatric Rehabilitation Association (USPRA), permanent waivers and algorithms for rounding partial FTEs. The Office responded that the approach to staffing within the PROS model is intended to reflect an appropriate balance of professional and paraprofessional qualifications, consistent with the anticipated needs of the individuals receiving services in PROS programs and the requirements for Medicaid reimbursement. A Comprehensive PROS provider's staff is generally required to include at least 40 percent professional staff, and a Limited License PROS program, 20 percent professional staff. Up to 20 percent of the professional staff requirement may be fulfilled by individuals credentialed by USPRA. These ratios leave considerable room for the use of qualified paraprofessionals, including recipient employees, by PROS programs.

21. The Office received two contradictory comments regarding 512.7(d)(7)(iv)(a), one recommending that the standard of 0.125 FTE psychiatrist and 0.125 FTE nurse for every 40 individuals receiving clinical treatment services be raised, and one recommending that it be lowered and that nurse time be allowed to substitute for psychiatrist time. The Office responded that the staffing requirements for the Clinical Treatment component are appropriate as is, and do not need to be changed. The standards for nursing and psychiatry staffing are consistent with those of other similar mental health programs, given the anticipated needs of the target population to be served by PROS, and with the particular focus of the PROS program on the integration of treatment and rehabilitation services in support of each individual's life goals.

22. A comment was received suggesting that the Office delineate standards of conduct for all staff regarding relationships with PROS participants. The Office responded that it would prefer to encourage providers to work through this issue with staff and recipients and to develop standards that make sense in the context of their own unique program needs. The Office will review each program's policies and procedures in this area as part of the PAR process and ongoing licensing activities.

23. A comment was received suggesting that the need for family involvement in IRP development be highlighted. The Office acknowledged the value of family involvement and noted that the regulations ask for an identification of "collaterals" involved in the IRP process and that family is included in the definition of "collaterals."

24. The Office received five comments suggesting that progress notes be required monthly rather than every two weeks. The Office responded that the current standard is consistent with requirements for other similar mental health programs. Progress notes completed at a frequency of only once per month are considered insufficient. While such notes do not need to be extensive, they should adequately address recipients' progress toward their goals. With a gap in documentation as great as one month, valuable details could be overlooked. To assist providers in integrating the timing of progress notes into their ongoing record-keeping systems, the

Office has clarified the requirement. The Office is also clarifying additional case record requirements.

25. The Office received one comment suggesting that OMH needs to ensure that recipients receive information about the PROS program's local grievance process and about how to contact OMH for complaints related to PROS. The Office responded that it is a standard expectation that the provider will convey the complaint and grievance procedures to recipients who are enrolled in the program. Under section 512.9 regarding "Rights of PROS Participants," providers are required to inform recipients of grievance policies and procedures (512.9(a)(10)), to provide a copy of these rights at admission, and to post such rights along with addresses and phone numbers of various regulatory and advocacy groups (512.9(b)). The availability and dissemination of such procedures are reviewed during recertification visits by OMH staff. Recipients may contact the OMH Field Office or the OMH Central Office "800" complaint line for further follow-up regarding complaints about the PROS program.

26. One comment was received regarding the need for PROS programs to be able to use safe and reasonable interventions in order to protect staff and recipients from violent incidents. The Office responded that in any outpatient program, if another individual is placed in jeopardy by an outpatient, whereby his or her life or limb is in immediate danger, staff can exercise reasonable force to interrupt the behavior and remove the threatened individual from harm's way. In addition, the PROS regulations address advance planning in anticipation of potentially violent situations. Section 512.7(e)(4)(vii) requires that the individual recovery plan (IRP) include "any advance directives or preferences expressed by the individual, including a description of his or her preferences regarding treatment in the event of a crisis." PROS services specifically include crisis intervention and relapse prevention to anticipate and address a crisis situation.

27. The Office received two comments strongly endorsing recipient participation as members of a program's governing body or advisory board. One comment recommended specific requirements for advisory board composition and responsibilities. The Office responded with agreement that a well-functioning advisory board provides a useful and appropriate mechanism by which recipients can have an organized voice with the governing body of the provider. Likewise, the advisory board allows the governing body to receive important input from individuals served by the provider. The requirements for the advisory board have been left flexible rather than specific so that providers and advisory boards can shape a mechanism that works best for all of the stakeholders. While an advisory board must include current or former recipients, there is nothing to preclude a more expansive advisory board that also includes family members. Complaints regarding operation of an advisory board may be directed to OMH for review and follow-up.

28. One comment was received requesting the addition of a requirement for linkage and coordination with OASAS-certified programs. The Office responded that such continuity of care was intended, and that the regulations will be clarified accordingly.

29. The Office received two comments requesting that the eligibility for reimbursement for pre-admission screening services be expanded from one month to three months preceding admission. The Office responded that the inappropriateness of paying for the same essential service twice, in combination with the PROS client registration process that is being implemented to eliminate the problem of duplicate billing, establish the constraint on the amount of preadmission service that can be reimbursed.

30. The Office received two comments recommending that a provider of IR or ORS services only should also be permitted to bill for up to six hours of CRS services. The Office responded that this cannot be permitted for the following reasons:

- If another comprehensive PROS program also billed for CRS, as is likely, it would violate the prohibition of reimbursement for the same component of service in a given month.
- It cannot be accommodated by the client registration and Medicaid payment systems.
- It would require two providers to develop comprehensive Individualized Recovery Plans, which would fragment rather than integrate the delivery of services.

31. The Office received a comment requesting clarification regarding the billing for PROS services. Specifically questioned was whether each hour included in the aggregation of hours used for billing each monthly payment needs to be representative of a distinct Medicaid-reimbursable service. The Office responded that a provider's documentation should include an indication of the total time spent in the PROS program on any given day, as well as an indication of the Medicaid-reimbursable service or services received. However, the program does not need to provide or document a Medicaid reimbursable service for each hour that the person was in the program. Further, providers are not required to identify the time spent in association with each individual service.

32. The Office received three comments recommending that the ORS component include reimbursement for support services provided to individuals engaged in supported education. The Office responded that the specific purpose of the premium payment for the ORS component is to provide an incentive for the achievement of the highest level of competitive, integrated employment. The support services referred to above can be provided and reimbursed under both the CRS and IR service components.

33. The Office received three comments recommending that the enhanced ORS rate be paid for individuals who are employed less than 15 hours per week. The Office responded that individuals who are working less than 15 hours per week can be provided support services through the CRS and/or IR components of PROS. The enhanced ORS rate is intended as an incentive for agencies to assist recipients in obtaining and retaining jobs in the community. Part of the incentive is an offset for lost revenue resulting from recipients' increased time at work and away from the PROS program site. The 15 hours per week requirement was established as a reasonable threshold for demonstrating that a job is truly integrated and competitive (since most businesses will not hire individuals to work a smaller number of hours on a sporadic basis) and for demarking the point at which time on the job begins to seriously impact program attendance. At an earlier stage of PROS development, the Office reduced the ORS threshold from 20 hours per week to 15 hours per week based on stakeholder input. Further reduction would compromise the goals of the ORS enhanced payment and effectively eliminate the incentive for encouraging recipients to strive for greater independence in the workplace.

34. A number of comments were received expressing confusion about the co-enrollment rules, and concern about the inequity and financial risk of retroactively recovering co-enrollment payments from the PROS provider. In order to address these concerns, the Office will be implementing a client registration system that will accomplish several objectives simultaneously:

- It will protect the fiscal integrity of the Medicaid program by not allowing payment to occur to more than one provider for similar services.
- It will ensure that recoveries do not have to be made against PROS providers for duplicate services at clinics or Continuing Day Treatment programs and will ensure that PROS programs are reimbursed for properly registered clients.
- It will provide advance warning to fee-for-service providers when their clients are enrolled in a PROS program, so that they do not provide services for which they cannot get paid.

A description of the PROS client registration process will be available on the OMH website.

35. The Office received two comments suggesting removal of the requirement that reimbursable services in an employment setting be provided on a one-to-one basis, because it prohibits activities such as peer interaction and group work activities. The Office responded that peer interaction and group activities are more appropriately provided on-site at the PROS program or in the community than at an individual's workplace, where they could be considered disruptions to the individual's work routine on the employer's time.

36. The Office received a comment requesting that OMH not take any future actions, such as enhancing the add-on for the PROS Clinical Treatment component, that would encourage the further proliferation of Clinical Treatment providers. The Office responded that it is not contemplating any such actions at this time.

37. Two comments were received, related to the Quality Improvement section, containing specific suggestions about ways to evaluate the quality of Family Psychoeducation services being provided in PROS programs. The Office responded that these suggestions will be shared with the OMH, county and PROS program staff who are responsible for developing PROS quality indicators.

38. Three comments were received recommending that an appeals process be specifically referenced in the Quality Improvement section, which authorizes Medicaid withholds for failure to comply with the provisions of PROS county-provider agreements. The Office responded that the appeals process for PROS Medicaid withholds is outlined in detail in the boilerplate language for the county-provider agreement that was developed by OMH and disseminated in the PROS Provider Handbook.

39. In regard to the Waiver section, one comment was received suggesting that Licensed Mental Health Counselor be added to the list of professions that can provide support to a physician pursuant to a waiver of

psychiatric coverage requirements. The Office responded that no regulatory change will be implemented at this time. However, the Office will reevaluate this position when there has been more experience with the licensing process and results.

40. The Office received three comments related to the Transition to Part 512 section, requesting clarification of the criteria by which the professional staffing ratio will be deemed to have been met. The Office clarified that the reference to "such staffing plan" in 512.15(d)(1) means question #5 in Section F of the PAR application (available on OMH's website), wherein the provider must identify by name and title the current employees that will be counted as professional staff, and must describe the program's transition plan to comply fully with the professional staffing requirements over time. The Office further clarified that the provisions of 512.15(d)(3), which require the replacement of departing staff with new hires who will bring the program closer to compliance, also relate to the staffing plan outlined in question #5 in Section F of the PAR application. In addition to the specific requirements of 512.15(d)(3), providers will be expected to use every available opportunity to move closer to compliance with the professional staffing ratios, including filling any vacancies among paraprofessional clinical positions and non-critical administrative positions with hires who meet the definition of professional staff, and using additional revenue to hire additional professional staff. Clarification will be available in additional documents developed by the Office.

41. The Office received three comments expressing concern that the time frame for achieving compliance with the professional staffing requirements is too open-ended, and recommending that there be a fixed deadline established in the regulations. The Office is in agreement that the time frame for achieving compliance with the professional staffing requirements should not continue indefinitely, but does not believe that the solution is to establish a single fixed deadline in regulations. The primary purpose of the staffing transition provision is to facilitate a smooth conversion to the new PROS program model, without unnecessary financial risk to agencies, staff layoffs, or disruption in continuity of care for recipients. The Office believes that this purpose can best be met through careful review of PAR applications prior to licensure and through ongoing monitoring by licensing staff to ensure that programs are taking every conceivable step to reach the professional staffing ratios as quickly as possible. The PAR process for PROS programs will be enhanced to require submission of data about the program's staff turnover rate, an estimate of when full staffing compliance will be achieved, and a timeline for the hiring of additional professional staff. PAR applications from programs that project a timeline of more than one year will receive close scrutiny. For all programs that receive a waiver of the professional staffing requirements at the time of licensure, the initial operating certificate will be for six months and will include a condition requiring that the program achieve compliance within the projected timeframe submitted in the PAR application. During the first recertification visit, at six months, the status of the plan to achieve the professional staffing level will be reviewed, and if necessary, a plan of corrective action (POCA) will be required. After the first recertification, OMH will continue to monitor the program's progress toward meeting the professional staffing requirements, through regular reporting by the program on the status of its staffing plan, and follow up site visits by OMH as necessary, until full compliance is achieved. It should also be noted that this provision will not apply to the clinical treatment component of PROS, where programs will be expected to do timely hiring as needed to meet the staffing requirements for nursing and psychiatry.

42. A comment was received that the PROS initiative is inappropriate in the face of potential Medicaid cuts. The Office responded that providers converting to PROS, as a Medicaid-reimbursable entity, are not considered to be at increased risk. The creation of a flexible, comprehensive and accountable program model that is funded by Medicaid is intended to increase the financial viability of individual providers.

43. The Office received two comments questioning how various services that are not Medicaid reimbursable can continue to be provided under the PROS Medicaid funding model. The Office responded that, depending on the service context and the individual's needs, any single service may or may not be Medicaid reimbursable, but it is anticipated that provider revenue will be adequate to cover the cost of non-Medicaid reimbursable activities. This would include such things as providing night and weekend recreational activities and participation of clubhouse "lifetime" members in peer support and socialization activities, consistent with available space and appropriate staffing levels.

44. The Office received three comments expressing concern about the future fiscal viability of programs converting to PROS, and the adequacy of the safety net and hold harmless provisions offered by the Office as protection for providers during the first year following conversion. The Office responded that it has developed a cash flow strategy for all programs converting to PROS (please refer to the OMH Internet website [http://www.omh.state.ny.us/omhweb/spguidelines/] to view the PROS Spending Plan Guidelines, which detail this strategy) to assist with potential revenue shortfalls during the first year of operation. This cash flow, plus Medicaid revenue, should enable fiscal viability during the first year. In the unlikely event that an agency is not achieving, or is unable to achieve, sufficient Medicaid revenue to remain fiscally viable during the first year, the OMH will review the causes of the shortfall and determine the appropriate solution.

45. A comment was received that, with the implementation of PROS, local assistance and reinvestment funding must continue to be identified as viable and continuous funding streams for other community-based programs. The Office responded that such funding streams have not been eliminated.

46. The Office received a comment about the need for financial assistance for providers to convert to Medicaid billing, particularly for those programs with no previous history of billing for services. The Office responded that a process has been developed for providers to request start-up funding to assist with billing-related needs. Providers with no prior Medicaid billing experience will be given priority to receive available start-up funding for this purpose.

47. The Office received a comment about the need for funding for providers to upgrade existing program space to meet PROS regulatory requirements. The Office responded that State funding is not presently available for this purpose. Providers may use PROS generated revenue to pay for physical plant renovations.

48. The Office received three comments requesting that an annually adjusted trend factor be included in the PROS fee structure. The Office responded that PROS providers should achieve an increase in their revenues as a result of the implementation of PROS Medicaid rates. Any future adjustments to PROS Medicaid rates will be dependent on the New York State budget process.

49. A comment was received questioning how transportation costs for PROS programs will be addressed. The Office responded that transportation costs can be covered in three ways:

- CSS funding for transportation services is not affected by the PROS initiative and agencies already receiving this funding will continue to receive it.
- Providers can list transportation as an appropriate expense and cover the cost with revenue generated by the PROS.
- A county may choose to include PROS recipients in its Medicaid transportation program.

50. A comment was received requesting that New York City psychosocial programs that are converting to PROS continue to receive incentive payments for maintaining accreditation by the International Center for Clubhouse Development (ICCD), as they have under their current NYC contracts. The Office responded that all licensed PROS programs will be required to meet the same regulatory standards, for which they will receive the rates set forth in the regulations. PROS programs may continue to maintain ICCD accreditation if they wish, but New York State will not make additional incentive payments for this purpose.

51. The Office received two comments regarding billing of third party insurance payers for PROS services. One comment requested clarification of a PROS program's responsibility for billing third party payers, and the other requested that OMH educate payers about the new PROS license and encourage insurance coverage for PROS services. The Office responded that it will provide clarification as requested and will do what it can to educate insurance carriers regarding PROS services.

52. Three comments expressed concern that the informal, non-medical clubhouse model will be negatively altered under PROS. The Office responded that the purpose of PROS programs is to assist individuals in recovering from the disabling effects of serious mental illness through the coordinated delivery of a customized array of rehabilitation, treatment and support services. This model adopts many of the existing features and services of clubhouses. The PROS program, like the clubhouse program, is intended to represent a rehabilitation model.

53. The Office received a comment expressing concern that the transition to PROS will disrupt service delivery in Continuing Day Treatment (CDT) programs. The Office responded that PROS will allow converting CDTs to provide a better coordinated, integrated and customized array of rehabilitation, treatment and support services, including the full complement of services currently being offered in these programs.

54. The Office received two comments expressing concern that the PROS recordkeeping requirements are excessive and could detract from the time that staff has to interact with recipients. The Office responded that documentation requirements have been minimized and streamlined to the extent possible. In addition, the Individualized Recovery Plan development process has been designed so that documentation can be accomplished in a manner that is not onerous to the provider and that enhances recipients' active participation in their own recovery process. OMH will provide sample documentation formats and technical assistance to PROS programs to assist them in this area.

55. A family advocacy organization submitted a series of suggestions about ways to reinforce the requirement to provide Family Psychoeducation services in PROS programs, including a recommendation to reimburse these services at a higher rate. The Office responded that the regulations make clear that PROS programs are expected to provide the full array of mandatory services, including Family Psychoeducation, to all recipients and collaterals who would benefit from them. These regulatory and programmatic requirements will be reviewed during ongoing licensing visits. In addition, family psychoeducation services are already eligible for the Intensive Rehabilitation component add-on payment of $350 (upstate) or $385 (downstate) per month, and OMH does not feel that an additional premium is warranted. OMH will also be working with PROS providers to assist them in implementing a full array of family support services to supplement the evidence-based Family Psychoeducation model, including family involvement in assessment and IRP development, family support groups, family educational forums/classes/workshops, and individual family consultation/problem-solving sessions.

56. The Office received a comment requesting clarification of how "job coaching" services can be provided and reimbursed in a PROS program. The Office responded that the PROS program service definitions do not specifically use the term "job coaching." However, many of the activities commonly associated with this service are included in the PROS design, to the extent that such activities are based on client-specific needs. The PROS program will pay for rehabilitation, social and basic living skill development and modification. It will also reimburse for symptom monitoring and wellness self-management, and for intensive work with an individual to prepare for work, helping the individual obtain employment, or supporting an individual in retaining employment. While Medicaid will not reimburse for employment-related services, such as job-specific skill teaching or job development, it is expected that the revenue generated in a PROS program will enable agencies to deliver a comprehensive array of services that support individuals in obtaining and maintaining employment.

57. A comment was received asking what types of assessment tools will be used as part of PROS IRP development. The Office responded that specific assessment tools are not mandated but the PROS Handbook identifies several websites that contain a variety of potentially useful instruments.

58. The Office received four comments regarding the importance of training and technical assistance to ensure the successful implementation of PROS. The Office agreed with these comments, and has committed to working closely with counties, providers and recipients of services to identify and address their PROS-related technical assistance and training needs.

59. The Office received a comment regarding the possibility that the PROS program initiative will force mergers and consolidations of existing programs and thereby reduce choice for recipients. The Office responded that recipients are permitted to participate in multiple PROS programs, as long there is not co-enrollment within a single program component (*i.e.*, CRS, IR, ORS). To the extent that a PROS program is created from multiple existing programs, it is likely that recipient options will be expanded within that single program, in addition to the ability to simultaneously participate in alternative PROS programs. Therefore, program mergers should not reduce recipient choice and could, in fact, increase service options.

60. A comment was received suggesting some specific mechanisms for communicating with stakeholders about the progress of PROS implementation, including regional forums and a statewide advisory group. The Office responded that throughout the process of PROS development, there has been an open process of communication with stakeholders, including meetings, numerous presentations at conferences and forums across the State, and hundreds of pages of information published on the agency website. This open communication process will continue during the next phases of PROS implementation.

61. The Office received two comments requesting that previous contract deliverables for deficit-funded programs be waived when the PROS operating certificate is issued. The Office responded that it will do as requested for contracts held by the State and will work with providers and local governments to address this issue for county-held contracts.

62. A comment was received regarding the importance of involving recipients of service in discussions about the transition of the programs they are currently attending to the new PROS license and about how the new PROS programs will address their needs and issues. The Office agreed with this comment and will be encouraging the managers of programs converting to PROS to open up communications with recipients and other stakeholders at the earliest possible time.

Committee on Open Government

NOTICE OF ADOPTION

Access to Records

I.D. No. COG-42-05-00003-A
Filing No. 1439
Filing date: Dec. 5, 2005
Effective date: Dec. 21, 2005

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

Action taken: Amendment of section 1401.5(c)(3) and (e)(4) of Title 21 NYCRR.

Statutory authority: Public Officers Law, section 89(3); and L. 2005, ch. 22

Subject: Access to records.

Purpose: To conform with amendments to law.

Text or summary was published in the notice of proposed rule making, I.D. No. COG-42-05-00003-P, Issue of October 19, 2005.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Janet Mercer, Department of State, Committee on Open Government, 41 State St., Albany, NY 12231, (518) 474-2518, e-mail: jmercer@dos.state.ny.us

Assessment of Public Comment
The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Lightened Regulation by Neptune Regional Transmission System, LLC

I.D. No. PSC-25-05-00010-A
Filing date: Nov. 30, 2005
Effective date: Nov. 30, 2005

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

Action taken: The commission, on Nov. 22, 2005, adopted an order approving the petition of Neptune Regional Transmission System, LLC providing for lightened regulation as an electric corporation.

Statutory authority: Public Service Law, sections 4(1), 66(1), 69, 70 and 110

Subject: Request for lightened regulation as an electric corporation.

Purpose: To grant Neptune Regional Transmission System, LLC's request for lightened regulation.

Substance of final rule: The Commission approved the petition filed by Neptune Regional Transmission System, LLC seeking a declaratory ruling

that the company will be subject to a lightened regulatory regime, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(05-E-0069SA1)

NOTICE OF ADOPTION

Inter-Carrier Telephone Service Quality Measures and Standards by the Carrier Working Group

I.D. No. PSC-30-05-00006-A
Filing date: Dec. 1, 2005
Effective date: Dec. 1, 2005

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

Action taken: The commission, on Nov. 22, 2005, adopted an order in Case 97-C-0139 regarding inter-carrier service quality guidelines (C2C guidelines).

Statutory authority: Public Service Law, section 94(2)

Subject: Inter-carrier telephone service quality standards and metrics.

Purpose: To consider modifications to the C2C guidelines.

Substance of final rule: The Commission adopted an order concerning proposed modifications to the Inter-Carrier Service Quality Guidelines, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(97-C-0139SA23)

NOTICE OF ADOPTION

Inter-Carrier Telephone Service Quality Measures and Standards by the Carrier Working Group

I.D. No. PSC-30-05-00007-A
Filing date: Dec. 1, 2005
Effective date: Dec. 1, 2005

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

Action taken: The commission, on Nov. 22, 2005, adopted an order in Case 97-C-0139 regarding inter-carrier service quality guidelines (C2C guidelines).

Statutory authority: Public Service Law, section 94(2)

Subject: Inter-carrier telephone service quality standards and metrics.

Purpose: To consider modifications to the C2C guidelines.

Substance of final rule: The Commission adopted an order concerning proposed modifications to the Inter-Carrier Service Quality Guidelines, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(97-C-0139SA24)

NOTICE OF ADOPTION

Submetering of Electricity by Accurate Energy Group

I.D. No. PSC-33-05-00008-A
Filing date: Dec. 1, 2005
Effective date: Dec. 1, 2005

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

Action taken: The commission, on Nov. 22, 2005, approved the petition filed by Accurate Energy Group to submeter electricity.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Submetering of electricity.

Purpose: To approve the petition of Accurate Energy Group on behalf of Trump Tower at City Center to submeter electricity at 10 City Place, White Plains, NY.

Substance of final rule: The Commission approved the petition of Accurate Energy Group to submeter electricity at 10 City Place, White Plains, New York, located in the territory of Consolidated Edison Company of New York, Inc.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(05-E-0921SA1)

NOTICE OF ADOPTION

Steam Business Development Plan by the Steam Business Development Task Force

I.D. No. PSC-37-05-00004-A
Filing date: Dec. 5, 2005
Effective date: Dec. 5, 2005

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

Action taken: The commission, on Nov. 22, 2005, adopted an order in Case 03-S-1672 regarding a steam business development plan for Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 2, 5, 79 and 80

Subject: Steam business development plan for Consolidated Edison Company of New York, Inc.

Purpose: To accept the plan.

Substance of final rule: The Commission adopted an order accepting the Steam Business Development Plan prepared by the Steam Business Development Task Force to examine issues associated with the future viability of Consolidated Edison Company of New York, Inc.'s (Con Edison) steam business and directed Con Edison to implement or propose plans for nine of the action items set forth in the plan, subject to the terms and conditions set forth in the order.

Final rule compared with proposed rule: No changes.

Text of rule may be obtained from: Central Operations, Public Service Commission, Bldg. 3, 14th Fl., Empire State Plaza, Albany, NY 12223-1350, by fax to (518) 474-9842, by calling (518) 474-2500. An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(03-S-1672SA3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Verizon New York Inc. and FlatPhone, Inc.

I.D. No. PSC-51-05-00009-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and FlatPhone, Inc. for approval of an interconnection agreement executed on Sept. 29, 2005.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Verizon New York Inc. and FlatPhone, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and FlatPhone, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until September 27, 2007, or as extended.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(05-C-1445SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Verizon New York Inc. and Mundol Telecom Corp.

I.D. No. PSC-51-05-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and Mundol Telecom Corp. for approval of an interconnection agreement executed on Oct. 6, 2005.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: Verizon New York Inc. and Mundol Telecom Corp. have reached a negotiated agreement whereby Verizon New York Inc. and Mundol Telecom Corp. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until October 5, 2007, or as extended.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(05-C-1446SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between ALLTEL New York, Inc. and Granite Telecommunications, LLC

I.D. No. PSC-51-05-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by ALLTEL New York, Inc. and Granite Telecommunications, LLC for approval of an interconnection agreement executed on Nov. 14, 2005.

Statutory authority: Public Service Law, section 94(2)

Subject: Interconnection of networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement.

Substance of proposed rule: ALLTEL New York, Inc. and Granite Telecommunications, LLC have reached a negotiated agreement whereby ALLTEL New York, Inc. and Granite Telecommunications, LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until November 14, 2006, or as extended.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(05-C-1498SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Mini Rate Increase by Plattsburgh Municipal Lighting Department

I.D. No. PSC-51-05-00012-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by the Plattsburgh Municipal Lighting Department to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 1 to become effective April 1, 2006.

Statutory authority: Public Service Law, section 66(12)

Subject: Mini rate increase.

Purpose: To increase annual electric revenues by $299,000 or 1.8 percent.

Substance of proposed rule: On November 29, 2005, the Plattsburgh Municipal Lighting Department (Plattsburgh) filed proposed tariff amendments to increase its annual electric revenues by approximately $299,000 or 1.8% to become effective April 1, 2006. The Commission may approve, reject or modify, in whole or in part, Plattsburgh's proposed tariff revisions.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(05-E-1496SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rule No. 11 — Service Lines by Niagara Mohawk Power Corporation

I.D. No. PSC-51-05-00013-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 219.

Statutory authority: Public Service Law, section 66(12)

Subject: Rule no. 11 — service lines.

Purpose: To eliminate the reference which provides that if a customer has not taken service within 90 days of the date the gas service was available, that the customer shall pay the entire cost of providing, placing and constructing the service.

Substance of proposed rule: The Commission is considering Niagara Mohawk Power Corporation's request to eliminate the specific 90 day reference in its Rule No. 11 which provides that if a customer has not taken service within 90 days of the date the gas service was available or the date on which the customer requested service to commence, whichever is later, that the customer shall pay the entire cost of providing, placing and constructing the service. The company proposes to eliminate the 90 day reference and instead reflect Section 230.5 of 16 NYCRR which does not contain a specific date.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(05-G-1525SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Agreement for the Provisions of Water Service by Saratoga Water Services, Inc.

I.D. No. PSC-51-05-00014-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a petition filed by Saratoga Water Services, Inc. requesting approval of an agreement for the provision of water service and requesting a waiver of certain tariff provisions and 16 NYCRR Parts 501 and 502.

Statutory authority: Public Service Law, section 89–b

Subject: Agreement for the provision of water service, waive certain tariff provisions and 16 NYCRR Parts 501 and 502.

Purpose: To approve an agreement for the provision of water service, waive certain tariff provisions and 16 NYCRR parts 501 and 502.

Substance of proposed rule: On October 11, 2005, Saratoga Water Services, Inc. (Saratoga) filed a petition requesting approval of an agreement between Saratoga and the New York State Energy Research and Development Authority (NYSERDA) for the provision of water service by Saratoga to a proposed commercial development being constructed by NYSERDA in the Town of Malta, Saratoga County. The petition also requested waiver of the requirements of inconsistent tariff provisions and 16 NYCRR parts 501 and 502, concerning water main extensions. The agreement takes into account that all costs and associated charges arising out of the company's expansion will be borne by NYSERDA. Saratoga currently provides water service to approximately 2,029 customers and is located in the Towns of Malta and Stillwater, Saratoga County. The Commission may approve or reject, in whole or in part, or modify the company's request.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530

Public comment will be received until: 45 days after publication of this notice.

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(04-W-0765SA1)

Racing and Wagering Board

EMERGENCY RULE MAKING

Administration of Race Day Medications by Veterinarians

I.D. No. RWB-51-05-00003-E
Filing No. 1436
Filing date: Dec. 1, 2005
Effective date: Dec. 1, 2005

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

Action taken: Amendment of section 4005.5 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, section 101

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: This rule is necessary to allow veterinarians employed by the New York State Racing and Wagering Board and licensed thoroughbred racing associations to administer race day medications to horses. Recently, thoroughbred racing associations adopted procedures and policies whereby race horses are segregated into limited access security barns. This practice was adopted to prevent the administration of prohibited medications to the horse. The only veterinarians that are allowed into these limited access security barns are veterinarians employed by the New York State Racing and Wagering Board or the thoroughbred racing association. This rule amendment would allow these veterinarians access to race horses in limited access security barns for the purpose of administering medications which are authorized for race day administration per 9 NYCRR 4043.2.

Subject: Administration of race day medications by veterinarians employed by the New York State Racing and Wagering Board and licensed thoroughbred racing associations.

Purpose: To allow the administration of board-authorized race day medications to horses that are quartered in limited access security barns by board or association veterinarians.

Text of emergency rule: Amendment is made to section 4005.5 of 9 NYCRR to add new language:

No veterinarian employed by the commission or by an association shall be permitted, during the period of his employment, to treat or prescribe for any horse for compensation or otherwise, except in case of emergency , or in the case of race day medication as authorized by Board Rule 4043.2.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire February 28, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Mark A. Stuart, Assistant Counsel, Racing and Wagering Board, One Watervliet Ave. Ext., Albany, NY 12206, (518) 453–8460, e-mail: mstuart@racing.state.ny.us

Regulatory Impact Statement

Statutory authority: Section 101(1) of the Racing, Pari-Mutuel Wagering and Breeding Law vests the Board with general jurisdiction over all horse racing and all pari-mutuel wagering activities in New York State.

Legislative objectives: This amendment advances the legislative objective of regulating the conduct of pari-mutuel wagering in a manner designed to maintain the integrity of racing while generating a reasonable revenue for the support of government.

Needs and benefits: This rule is necessary to allow veterinarians employed by the New York State Racing and Wagering Board and licensed thoroughbred racing associations to administer race day medications to horses. Recently, thoroughbred racing associations adopted procedures and policies whereby race horses are segregated into limited access security barns. This practice was adopted to prevent the administration of prohibited medications to the horse. The only veterinarians that are allowed into these limited access security barns are veterinarian employed by the New York State Racing and Wagering Board or the thoroughbred racing association. This rule amendment would allow these veterinarians access to race horses in limited access security barns for the purpose of administering medications which are authorized for race day administration per 9E NYCRR 4043.2.

The is rule is intended to allow the administration of Board-authorized race day medications to horses that are quartered in limited access security barns by Board or association vets. Currently, such vets are prohibited from administering medications except in emergencies. Such security barns are designed to prohibit the unauthorized administration of certain medications. Nevertheless, the Board has authorized the administration of certain medication on the day that a horse will race, including the medication known as Lasix. This amendment will allow the Board vet or association vet to administer such race day medications and preserve the integrity of the limited access security barn.

Costs: There are no projected costs to regulated persons or state and local governments associated with the amendment of 9E NYCRR 4005.5. This amendment will create an exception to an existing rule to permit a veterinarian employed by the Racing and Wagering Board or a racing association to administer medications to horses. There are no costs associated with making such an exception.

Paperwork: There is no additional paperwork required by or associated with this rule amendment.

Local government mandates: This rule would impose no local government mandates.

Duplication: There are no other state or federal requirements similar to the provisions contained in the rule amendment.

Alternative approaches: There are no other significant alternatives to this rule, which was narrowly drafted to accomplish the stated benefits in thoroughbred races of significant merit and interest.

Federal standards: The rule does not exceed any minimum standards of the federal government because there are no applicable federal rules.

Compliance schedule: This emergency rule amendment is effective upon filing. Compliance can be accomplished immediately without need for modification of existing procedures.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment merely allows veterinarians employed by the New York State Racing and Wagering Board and thoroughbred racing associations to administer race day medications to thoroughbreds. The impact of this rule is limited to those two types of veterinarians. Other rules prohibit veterinarians from entering a security barn area where thoroughbreds are quartered prior to races. It is necessary for Board and association veterinarians to enter security barns to administer race day medications, and this rule would allow that. These amendments do not impact upon State Administrative Procedure Act § 102(8). Nor do they affect employment. The proposal will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above, because the rule is a permissive rule that will allow state and association veterinarians to administer race day medications.

EMERGENCY RULE MAKING

Post-Race Blood Gas Testing Procedures for Thoroughbred and Harness Race Horses

I.D. No. RWB-51-05-00004-E
Filing No. 1437
Filing date: Dec. 1, 2005
Effective date: Dec. 1, 2005

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

Action taken: Addition of sections 4038.18(f), 4043.8, 4043.9, 4043.10, 4109.7(f), 4120.13, 4120.14 and 4120.15 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101, 207, 227, 301, 305, 401, 405 and 902; and Unconsolidated Laws, section 8162(1)

Finding of necessity for emergency rule: Preservation of general welfare.

Specific reasons underlying the finding of necessity: In January 2005, the U.S. Justice Department arrested a New York-licensed thoroughbred trainer and a prominent New York-licensed harness driver and charged the two with milkshaking a thoroughbred at Aqueduct Raceway in December 2003 to increase the odds that the horse, A One Rocket, would win. According to the Justice Department, this was not an isolated incident and such violations occurred regularly. This case has brought national attention to the issue of milkshaking and the need to adopt testing programs and penalties for such "milkshaking" practices. Clearly, the practice of milkshaking race horses is detrimental to the integrity of the sport of horse racing, erodes public confidence in pari-mutuel wagering events, and invites criminal abuse and exploitation.

Subject: Post-race blood gas testing procedures for thoroughbred and harness race horses.

Purpose: To detect and deter the prohibited practice known as "milkshaking."

Substance of emergency rule: 4043.8(a) Establishes method of testing thoroughbred racehorses to detect excess levels of total carbon dioxide (TCO2) using a Clinical Auto Analyzer, establishes the threshold for excess TCO2 at 37 millimoles per liter.

4043.8(b) Establishes penalties for excess TCO2 violations in a thoroughbred race horse ranging from a 60-day license suspension and $1,000 fine to a maximum 60-day license suspension with a $5,000 fine with a possible one-year Board-imposed license suspension. Includes provision for purse redistribution in case of a positive excess TCO2 test.

4043.8(c) Establishes procedures for stewards to grant relief in cases where excess TCO2 levels are found, to allow a thoroughbred horse owner

or trainer to place the horse in guarded quarantine to support a claim of naturally occurring excess TCO2 levels in a horse.

4043.8(d) Establishes that any person participating in the thoroughbred racehorse blood gas testing or thoroughbred racehorse guarded quarantine program shall act at the direction of the Racing and Wagering Board.

4043.8(e) Establishes minimum standards for guarded quarantine of a thoroughbred race horse at a race track operated by a track association.

4043.9(a) Establishes a post-race blood gas-testing program for thoroughbred race horses, and pre-race guarded quarantine procedures and requirements for thoroughbred horses that have been tested and found to have excess TCO2 levels.

4043.9(b) Establishes pre-race guarded quarantine for horses under the care of a trainer who has been found to have had a horse under his care and custody that was tested and found to have excess TCO2 levels in the previous 12 months.

4043.9(c) Establishes pre-race guarded quarantine requirements for a thoroughbred horse that has been tested and found to have excess TCO2 levels.

4043.10 Establishes punishment for failure to cooperate in the thoroughbred post race gas-testing program.

4038.18 Allows claimants in a claiming race to void a claim on a thoroughbred horse that is subsequently found to have excess TCO2 levels.

4120.13(a) Establishes method of testing harness racehorses to detect excess levels of total carbon dioxide (TCO2) using a Clinical Auto Analyzer, establishes the threshold for excess TCO2 at 37 millimoles per liter.

4120.13(b) Establishes penalties for excess TCO2 violations in a harness racehorse ranging from a 60-day license suspension and $1,000 fine to a maximum one-year license suspension with a $5,000 fine with a possible one-year Board-imposed suspension. Includes provision for purse redistribution in case of a positive excess TCO2 test.

4120.13(c) Establishes procedures for judges to grant relief in cases where excess TCO2 levels are found, to allow a harness racehorse owner or trainer to place the horse in guarded quarantine to support a claim of naturally occurring excess TCO2 levels in a horse.

4120.13(d) Establishes that any person participating in the harness racehorse blood gas testing or thoroughbred guarded quarantine program shall act at the direction of the Racing and Wagering Board.

4120.13(e) Establishes minimum standards for guarded quarantine of a harness racehorse at a race track operated by a track association.

4120.14(a) Establishes a post-race blood gas-testing program for harness racehorses, and pre-race guarded quarantine procedures and requirements for harness racehorses that have been tested and found to have excess TCO2 levels.

4120.14(b) Establishes pre-race guarded quarantine for harness racehorses horses under the care of a trainer who has been found to have had a harness racehorse under his care and custody that was tested and found to have excess TCO2 levels in the previous 12 months.

4120.14(c) Establishes pre-race guarded quarantine requirements for a harness racehorse that has been tested and found to have excess TCO2 levels.

4120.15 Establishes punishment for failure to cooperate in the harness post race gas testing program.

4109.7(f) Allows claimants in a claiming race to void a claim on a harness racehorse that is subsequently found to have excess TCO2 levels.

This notice is intended to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire February 21, 2006.

Text of emergency rule and any required statements and analyses may be obtained from: Gail Pronti, Secretary to the Board, Racing and Wagering Board, One Watervliet Ave. Ext., Suite 2, Albany, NY 12206, (518) 453–8460, e-mail: info@racing.state.ny.us

Regulatory Impact Statement

(a) Statutory authority. Racing, Pari-Mutuel Wagering and Breeding Law, §§ 101, 207, 227, 301, 305, 401, 405, 902; Unconsolidated Laws, § 8162(1).

(b) Legislative Objectives. This amendment advances the legislative objective of regulating the conduct of pari-mutuel wagering in a manner designed to maintain the integrity of racing while generating a reasonable revenue for the support of government.

(c) Needs and benefits. This rulemaking is necessary to assure the public's confidence and continue the high degree of integrity in racing at the pari-mutuel betting tracks. This rulemaking will detect and deter the administration of alkali agents to thoroughbred racehorses and harness racehorses for the purpose of affecting the performance of such horse during a pari-mutuel wagering race.

The administration of alkali agents into a racehorse is commonly known as "milkshaking," where a person administers a mixture of sodium bicarbonate, sugar and water to a horse prior to a race mitigate the effects of lactic acid on the horse's muscles during the race, thereby gaining an advantage. Lactic acid is a naturally occurring byproduct of intense muscular exercise in mammals, and the accumulation of lactic acid in such muscles causes fatigue. Some people associated with racehorses believe that the administration of an alkaline substance, such as bicarbonate of soda, can neutralize the effect of lactic acid in a horse's muscles. This has resulted in the use of alkalizing agents, or "milkshakes" which are administered to a racehorse in an attempt to alter the performance of the horse. Based on this belief, people have administered milkshakes to racehorses on the day of a race with the intent to gain a racing advantage.

This rulemaking is necessary to establish empirical standards and testing procedures for the enforcement of Board Rule 4043.3(d) and Board Rule 4120.3(d), which apply to thoroughbred and harness racehorses respectively and state "No person shall, attempt to, or cause, solicit, request, or conspire with another or others to. . . administer a mixture of bicarbonate of soda and sugar in any of their forms in any manner to a horse within 24 hours of a racing program at which such horse is programmed to race. It shall be the trainer's responsibility to prevent such administration."

Horses that have received an alkalizing agent will exhibit elevated levels of TCO2 over and above normal levels. This rulemaking will establish the ion selective electrode method with a clinical auto analyzer as a standard means of detecting elevated TCO2 in horses, and 37 millimoles per liter as the threshold level for TCO2.

In January 2005, the U.S. Justice Department arrested a New York licensed thoroughbred trainer and a prominent New York harness driver and charged the two with milkshaking a thoroughbred at Aqueduct Raceway in December 2003 to increase the odds that the horse, A One Rocket, would win. According to the Justice Department, this was not an isolated incident and such violations occurred regularly. This case has brought national attention to the issue of milkshaking and the need to adopt testing programs and penalties for such "milkshaking" practices. Clearly, the practice of milkshaking race horses is detrimental to the integrity of the sport of horse racing, erodes public confidence in pari-mutuel wagering events, and invites criminal abuse and exploitation.

This rulemaking will benefit thoroughbred and harness racing by ensuring the betting public that horses that compete in pari-mutuel races have not been tampered with through the administration of alkali agents, thereby ensuring that no extraordinary advantage has been given to the horse through prohibited substances.

(d) Costs.

(i) Thoroughbred horse owners may be subject to the cost of a pre-race guarded quarantine imposed upon any single horse found to have excess TCO2 levels that has not been determined to be physiologically normal for such horse. The track association sponsoring the race is responsible for making available a pre-race quarantine stall, and for maintaining an access log system in either paper or electronic form. The length of time for such quarantine shall be determined by the stewards, and will have an impact on the cost of guarded quarantine. The cost of a paper log is approximately $10 retail for a ring binder and 500 pages of paper. The cost of an electronic record, such as a personal computer or laptop computer, starts at $400 in ordinary retail stores.

(ii) There are no costs imposed upon the Racing & Wagering Board, the state or local government because the TCO2 testing program will be implemented utilizing the Board's existing medication testing program, personnel and facilities.

(iii) The Board cannot fully provide a statement of costs the trainers for pre-race guarded quarantine because the actual cost of establishing a pre-race guarded quarantine varies greatly from location to location in New York State, and the physical characteristics of the buildings within which a horse of quarantined. All horses that race at a New York State thoroughbred or harness racetrack are currently afforded stable space for free, so the only added cost that can be expected will be the cost of a guard. A pre-race guarded quarantine may require one guard per horse, or one guard for many horses, depending upon the access points that need to be controlled for an effective guarded quarantine. The Board's rulemaking requires that the subject horse is kept in an area where access to the subject horse is restricted to authorized licensed trainers, owners and veterinarians as submitted by the owner, that guards maintain a record of all licensed persons who have had access to the horse while in guarded quarantine, along with the time and purpose of the visit. In addition to the distinctive limitations that the guarded quarantine barn will have upon the cost, the wages of a guard varies depending upon the racetrack itself. According to track repre-

sentatives, the hourly cost of guard may range from $7 per hour up to $20 per hour, depending on the individual racetrack, experience required for the specific duties (*e.g.* a stable guard who is responsible for surveillance only compared to a quarantine supervisor who is responsible for also identifying illegal paraphernalia, treatments or procedures) and local pay scale. The minimum time that a horse is to be quarantined is six hours, and the maximum time for quarantine is 72 hours.

(e) Paperwork. Owners of any horse that has been found to have an excess levels of TCO2 will be required to submit a letter to the steward or judge of the track where the subject horse is to race, stating that the subject horse has a normally elevated level of TCO2. Such a letter is necessary for a horse to continue racing while under a guarded quarantine. Track associations will be required to maintain access logs, either paper or electronic, for a period of 90 days after the guarded quarantine period.

(f) Local government mandates. This rulemaking will not impose any program, service, duty, or responsibility upon any county, city, town, village, school district fire district or other special district.

(g) Duplication. Since the New York State Racing & Wagering Board is the exclusively responsible for the regulation of pari-mutuel wagering activities in New York State, there are no other relevant rules or other legal requirements of the state or federal government regarding total carbon dioxide testing of thoroughbred racehorses and harness racehorses in New York State.

(h) Alternative approaches. The Board did not consider any other significant alternatives because no other significant alternates are available. The rulemaking is based upon an established TCO2 testing program already adopted and in use by the New Jersey Racing Commission. To date, New Jersey is the only state that conducts TCO2 testing and there are no other TCO2 testing methods adopted in any other state. The testing procedure included in this rulemaking is the only TCO2 test that has been reviewed and declared reliable by a state court, in this case, the New Jersey Supreme Court recognized the reliability of the Beckman test generally and as applied by the *New Jersey Racing Commission (Campbell* v. *New Jersey Racing Commission, New Jersey Supreme Court,* 169 N.J. 579, 781 A.2d 1035, October 11, 2001.)

(i) Federal standards. There are no federal standards applicable to the subject area of state-regulated pari-mutuel wagering activity.

(j) Compliance schedule. The practice known as "milkshaking" of horses in already prohibited by rule under 9E NYCRR 4043.3 for thoroughbred racehorses and 9E NYCRR 4120.3 for harness racehorses. All of the provisions of this rulemaking shall be effective immediately upon filing with the Department of State.

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

This proposal does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement as the amendment would expand the existing medication testing rules to include a test for alkalizing agents in thoroughbred and harness race horses. This testing will utilize the current framework for post-race testing. These amendments do not impact upon State Administrative Procedure Act § 102(8), nor do they affect employment. The proposal will not impose an adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any significant technological changes on the industry for the reasons set forth above, because the Board rules has existing rules for post-race testing for the presence of performance altering drugs and other substances.

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Treatment of Lump Sum Income

I.D. No. TDA-51-05-00006-P

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

Proposed action: Amendment of sections 352.23(b) and 352.29(h)(1) and (2), and addition of section 352.23(b)(4) to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 131(1), 131-a(12)(c), 131-n and 355(3)

Subject: Treatment of lump sum income.

Purpose: To implement L. 2003, ch. 373 concerning the treatment of lump sum income.

Text of proposed rule: Subdivision (b) of 352.23 is amended to read as follows:

(b) The amount of real and personal property, including liquid assets, that can be reserved for each public assistance household must not be in excess of $2,000 equity value, except that for households in which any member is [over the] age [of] 60 *or over* such resources must not exceed $3,000, excluding only:

Paragraphs (4) through (10) of subdivision (b) of section 352.23 are renumbered paragraphs (5) through (11) and a new paragraph (4) is added to such subdivision to read as follows:

(4) an amount up to $1,400 in a separate bank account established by an individual while currently in receipt of public assistance for the sole purpose of paying tuition at a two year accredited post-secondary educational institution, so long as the funds are not used for any other purpose. Funds withdrawn for reasons other than paying tuition at a two year accredited post secondary educational institution will result in the full amount of funds in the account prior to the withdrawal being countable toward the public assistance household's resource limit beginning on the first day of the month of the withdrawal;

Paragraphs (1) and (2) of subdivision (h) of section 352.29 are amended to read as follows:

(1) For public assistance households, when the assistance unit's monthly income after application of applicable disregards exceeds the household's needs because of receipt of non-recurring lump sum earned or unearned income (including retirement, survivors', and disability insurance benefits as provided for under Title II of the Social Security Act; other retroactive monthly benefits; and payments in the nature of a windfall, e.g., inheritances or lottery winnings, personal injury and workers' compensation awards), except to the extent that such lump sum income is earmarked and used for the purpose for which it is paid (e.g., monies for previously incurred medical bills resulting from an accident or injury; funeral and burial costs; and replacement or repair of resources), the family will be ineligible for aid for a calculated period. This period is calculated by dividing the sum of the lump sum income and any other income received during the month, after applicable disregards for the month, by the household needs for a family which consists of the [ADC] *family assistance* or [HR] *safety net assistance* unit plus any other individual whose needs are taken into account in determining eligibility and the amount of the grant. Any income remaining from this calculation is income in the first month following the period of ineligibility.

(2) The local district shall shorten the period of ineligibility in any one or more of the following cases and in the following manner:

(i) by excluding from any lump sum income for which this subdivision applies any amount which would be exempt and disregarded as cash and liquid or non-liquid resources because it does not exceed the resource eligibility limit as established under subdivision (b) of section 352.23 of this Part; or

[(i)] *(ii)* by recalculating the period of ineligibility based upon the new standard of need and the amount of the lump sum which would remain if a proportionate amount thereof had been granted in each month of ineligibility, when an event occurs which, had the family been receiving assistance for the month of occurrence, would result in a change in the amount of assistance payable for such month; *or*

[(ii)] *(iii)* by recalculating the period of ineligibility based upon the actual amount of the lump sum remaining when the income received or a portion thereof has become unavailable to the members of the family for reasons that were beyond the control of such members. Unavailable shall mean the family no longer has the lump sum income. Reasons which are considered to be beyond the control of the family shall include but are not limited to any event or circumstances which the family did not foresee or could not prevent, such as loss or theft of income or a life threatening circumstance; or

[(iii)] *(iv)* by recalculating the period of ineligibility based upon the actual amount of the lump sum remaining when the family incurs, becomes responsible for, and pays medical expenses as defined under the Medical Assistance Program in the month of ineligibility[.], *or*

(v) *by recalculating the period of ineligibility based upon the actual amount of the lump sum remaining if the family, within ninety days*

of receipt of the lump sum, has used any or all of the lump sum for the following exempt resources:

(a) to purchase an automobile that is needed to seek or retain employment or for travel to and from work activities and which is exempt from the temporary assistance resource limit under subdivision (b) of section 352.23 of this Part, or

(b) to open a separate bank account or bank accounts that are exempt from the temporary assistance resource limit under subdivision (b) of section 352.23 of this Part for the purpose of purchasing an automobile to seek or retain employment or for the purpose of paying tuition at a two year post–secondary educational institution; or

(c) to purchase a burial plot that is exempt from the temporary assistance resource limit under subdivision (b) of section 352.23 of this Part, or

(d) to purchase a bona-fide funeral agreement that is exempt from the temporary assistance resource limit under subdivision (b) of section 352.23 of this Part.

Text of proposed rule and any required statements and analyses may be obtained from: Anne Grace, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-9498

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

Public comment will be received until: 45 days after publication of this notice.

Regulatory Impact Statement

1. Statutory Authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Department of Social Services to promulgate regulations to carry out its powers and duties. Section 122 of Part B of Chapter 436 of the Laws of 1997 reorganized the Department of Social Services into the Department of Family Assistance with two distinct offices, the Office of Children and Family Services and the Office of Temporary and Disability Assistance (OTDA). The functions of the former Department of Social Services concerning the public assistance programs and the food stamp program were transferred by Chapter 436 to OTDA.

Section 34(3)(f) of the SSL requires the Commissioner of the Department of Social Services to establish regulations for the administration of public assistance and care within the State. Section 122 of Part B of Chapter 436 of the Laws of 1997 provides that the Commissioner of the Department of Social Services will serve as the Commissioner of OTDA.

Section 131(1) of the SSL requires social services districts, insofar as funds are available, to provide adequately for those unable to maintain themselves, in accordance with the provisions of the SSL.

Section 131-a(12)(c) provides that a social services official shall exclude from any lump sum income any amounts that are exempt and disregarded as cash and liquid or non-liquid resources pursuant to section 131-n of the Social Services Law and shall recalculate the period of ineligibility caused by receipt of a nonrecurring lump sum of income to the extent that the income is applied to certain expenses within 90 days of receipt of the income.

Section 131-n of the SSL contains the resources that are to be exempt and disregarded in calculating the amount of benefits of any household under any public assistance program.

Section 355(3) of the SSL requires this Office to promulgate regulations to carry out the provisions of the SSL concerning the provision of Family Assistance.

2. Legislative Objectives:

It was the intent of the Legislature in enacting the above statutes that OTDA establish rules, regulations and policies so that public assistance and food stamp benefits are provided to eligible households.

3. Needs and Benefits:

The proposed amendments implement changes made to the SSL by Chapter 373 of the Laws of 2003. That Chapter added paragraph (c) to section 131-a(12) of the SSL to provide that any lump sum of income received by a public assistance applicant or recipient shall be disregarded when determining eligibility for such assistance if, within 90 days of receipt of the lump sum of income, the applicant or recipient applies the income to an automobile needed for the applicant or recipient to seek or retain employment or for travel to and from work activities, a bank account or accounts, or a burial plot or plots or a funeral agreement or agreements, the values of which are exempt and disregarded as a resource pursuant to section 131-n of the SSL. The following items identified in section 131-n of the SSL are subject to the lump sum disregard provisions added by Chapter 373 of the Laws of 2003:

(a) an amount up to $4,650 in a separate bank account established by an individual while currently in receipt of assistance for the sole purpose of enabling that individual to purchase a first or replacement vehicle for the recipient to seek, obtain or maintain employment, so long as the funds are not used for any other purpose;

(b) one automobile up to $4,650 fair market value, provided that if the automobile is needed for the applicant or recipient to seek or retain employment or travel to and from work activities, the automobile exemption shall be increased to $9,300 or such other higher dollar value as the local social services district may elect to adopt;

(c) an amount up to $1,400 in a separate bank account established by an individual while currently in receipt of assistance for the purpose of paying tuition at a two-year accredited postsecondary educational institution, so long as the funds are not used for any other purpose;

(d) one burial plot per household member; and

(e) bona fide funeral agreements up to a total of $1,500 in equity value per household member.

The proposed amendments also reflect the provision added to section 131-n of the SSL by Chapter 373 of the Laws of 2003 that exempts as a resource an amount up to $1,400 in a separate bank account established by an individual while currently in receipt of assistance for the purpose of paying tuition at a two-year accredited postsecondary educational institution, so long as the funds are not used for any other purpose. The proposed amendments also make a technical change to section 352.23(b) to clarify that for households in which any member is age 60 or over, rather than over the age of 60, the amount of real and personal property, including liquid assets, that are exempt in determining eligibility for public assistance is $3,000. This change is consistent with the provisions of section 131-n(1) of the SSL.

4. Costs:

The proposed amendments implement the provisions of Chapter 373 of the Laws of 2003. The social services districts were informed of the proposed amendments in 03 ADM-10 and the districts have implemented the provisions. Therefore, any new costs associated with the proposed amendments have been accounted for in the current State and local budgets.

The proposed amendments will result in additional public assistance cases remaining open in the event of the receipt of nonrecurring lump sum income if the income is spent on certain items. The estimated number of recipients affected by the proposed amendments is 400 and the additional annual State and local costs related to the continuation of public assistance to these cases is $947,000 each. To the extent that recipients use the lump sum income for an allowable purpose, it may help them attain self-sufficiency which could reduce long term public assistance costs.

5. Local Government Mandates:

Social services districts will be required to exclude form lump sum income any amounts that are exempt and disregarded as cash and liquid or non-liquid resources pursuant to section 131-n of the SSL and the proposed regulations and to recalculate the periods of ineligibility caused by receipt of a nonrecurring lump sum of income.

6. Paperwork:

No new forms or reporting requirements are anticipated as a result of the proposed amendments.

7. Duplication:

The proposed amendments do not duplicate State or Federal requirements.

8. Alternatives:

No alternatives were considered since the proposed amendments are necessary to implement Chapter 373 of the Laws of 2003.

9. Federal Standards:

The proposed amendments do not exceed Federal minimum standards for the same subject.

10. Compliance Schedule:

Chapter 373 of the Laws of 2003 became effective on December 17, 2003, and the social services districts were informed of that Chapter's requirements by 03 ADM-10. Therefore, the social services districts are currently implementing the proposed amendments.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed amendments will not affect small business but will have an impact on the 58 social services districts in the State.

2. Compliance requirements:

Social services districts will be required to exclude from lump sum income any amounts that are exempt and disregarded as cash and liquid or non liquid resources pursuant to section 131-n of the Social Services Law and the proposed regulations and to recalculate the periods of ineligibility caused by receipt of a nonrecurring lump sum of income. These require-

ments are contained in section 131-a(12)(c) of the Social Services Law, as enacted by Chapter 373 of the Laws of 2003. All social services districts in the State were advised of these requirements in 03 ADM-10, which was issued in November 2003.

3. Professional services:

No new professional services will be required in order for social services districts to comply with the proposed amendments.

4. Compliance costs:

The proposed amendments will not require the social services districts to incur any initial capital costs. The estimated maximum cost of the proposed regulations on all social services districts in the State on a full annual basis is $947,000.

5. Economic and technological feasibility:

The social services districts have the economic and technological feasibility to comply with the proposed amendments.

6. Minimizing adverse impact:

The proposed amendments will not have an adverse economic impact on social services districts.

7. Small business and local government participation:

All social services districts have been informed of the provisions of the proposed regulations. After the enactment of Chapter 373 of the Laws of 2003, the law upon which the proposed regulations are based, this Office issued 03 ADM-10 which instructed all social services districts on how to implement Chapter 373.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The proposed amendments will affect the 44 rural social services districts in the State.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

The proposed regulations would not impose any new reporting or recordkeeping requirements on social services districts in rural areas. Social services districts in rural areas will be required to exclude from lump sum income any amounts that are exempt and disregarded as cash and liquid or non-liquid resources pursuant to section 131-n of the Social Services Law and the proposed regulations and to recalculate the periods of ineligibility caused by receipt of a nonrecurring lump sum of income. These requirements are contained in section 131-a(12)(c) of the Social Services Law, as enacted by Chapter 373 of the Laws of 2003. All social services districts in the State were advised of these requirements in 03 ADM-10, which was issued in November 2003.

3. Costs:

It is expected that the proposed amendments will not impose any initial capital costs on social services districts in rural areas. The estimated maximum cost of the proposed regulations on all the social services districts in the State on a full annual basis is $947,000.

4. Minimizing adverse impact:

The proposed amendments will not have an adverse economic impact on social services districts in rural areas.

5. Rural area participation:

All social services districts have been informed of the provisions of the proposed regulations. After the enactment of Chapter 373 of the Laws of 2003, the law upon which the proposed regulations are based, this Office issued 03 ADM-10 which instructed the social services districts on how to implement Chapter 373.

Job Impact Statement

A job impact statement has not been prepared for the proposed regulatory amendments. It is evident from the subject matter of the amendments that the job of the worker making the decisions required by the proposed amendments will not be affected in any real way. Thus, the changes will not have any impact on jobs and employment opportunities in the State.