

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.

Office of Children and Family Services

NOTICE OF CONTINUATION NO HEARING(S) SCHEDULED

Health and Safety Standards for Legally-Exempt Informal Child Care Providers in New York State

I.D. No. CFS-01-05-00006-C

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

The notice of proposed rule making, I.D. No. CFS-01-05-00006-P was published in the *State Register* on January 5, 2005.

Subject: Health and safety standards for legally-exempt informal child care providers in New York State.

Purpose: To further enhance the health, safety and welfare of the children that receive subsidized child care from legally-exempt informal child care providers in New York State.

Substance of rule: The regulations are needed to increase the basic safeguards for the health and safety of children who are arranging for services from legally-exempt informal child care providers.

Paragraph (6) of subdivision (f) of section 415.4 is amended to require that each social service district maintain an automated roster, rather than a list, of current legally-exempt caregivers enrolled with the district including the name and address of each such caregiver.

A new subparagraph (vi) is added to paragraph (7) of subdivision (f) of section 415.4 to require that a legally-exempt caregiver must, upon enrollment or annual re-enrollment, attest and certify in writing that all statements made on the enrollment or annual re-enrollment form and any attachment to the enrollment and re-enrollment forms are true and accurate. Any false information may result in termination of the caregiver's enrollment, cessation of the child care subsidy payments to the caregiver, and the taking of any appropriate legal action by the social services district.

A new paragraph (8) is added to subdivision (f) of section 415.4 to require districts to refer each caregiver of informal child care to the Child and Adult Care Food Program (CACFP). Districts may make participation in CACFP mandatory for each caregiver of informal child care who will be providing an average in excess of 30 hours of care per week to one or more subsidized children, provided the district sets forth this requirement in the district's Consolidated Services Plan or Integrated County Plan.

Within thirty days of applying for enrollment, and as part of the annual re-enrollment process, a social services district must check each caregiver of informal child care, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children in care, and, for caregivers of informal family child care, each household member age 18 or older against the county's criminal records for the county that the caregiver is located in, to determine whether any such person has ever been convicted of a misdemeanor or a felony in that county.

The caregiver must furnish the child's caretaker and the social services district with true and accurate information about any crime. The child's caretaker and the social services district must evaluate whether the criminal background poses an unreasonable risk to the safety or welfare of the child(ren). The district cannot enroll: a caregiver of informal child care who has been convicted of a felony or misdemeanor against children; a caregiver of informal child care that employs an individual or that uses a volunteer who has been convicted of a felony or misdemeanor against children; or, for caregivers of informal family child care, a caregiver whose household includes an individual age 18 or older convicted of such a crime.

A social services district may enroll a caregiver who has been convicted or whose employee, volunteer or household member has been convicted of other felony or misdemeanor offenses, consistent with guidelines issued by the Office for evaluating applicants with criminal conviction records.

Within thirty days of applying for enrollment, and as part of the annual re-enrollment process, a social services district must check each caregiver of informal child care against the district's child welfare data base to determine if the caregiver has ever had his or her parental rights terminated or had a child removed from his or her care by court order under Article 10 of the Family Court Act. The caregiver must provide the parent/caretaker and the social services district with true and accurate information regarding the reasons underlying the loss of parental or custodial rights. A social services district must determine whether to enroll a caregiver who has lost parental or custodial rights based on guidelines issued by the Office.

Within thirty days of applying for enrollment, and as part of the annual re-enrollment process, a social services district must check each caregiver of informal child care against the New York State Office of Children and Family Services' Child Care Facility System to determine whether the caregiver has ever been denied a day care license or registration or had a day care license or registration suspended or revoked. The caregiver must give the parent/caretaker and the social services district true and accurate information regarding any such denial, revocation or suspension, including a description of the reason for denial, revocation or suspension, the date of the denial, revocation or suspension, and any other relevant information. A

social services district must determine whether to enroll a caregiver who has had such a license or registration denied, suspended or revoked based on guidelines issued by the Office.

Within thirty days of applying for enrollment, and as part of the annual re-enrollment process, a social services district must check each caregiver of informal child care, any employee of the caregiver, any volunteer who has the potential for regular and substantial contact with children in care, and for caregivers of legally-exempt family child care, each household member age 18 or older against the New York State Sex Offender Registry maintained by the New York State Division of Criminal Justice Services. This check will be completed by using the Registry's toll free telephone number. When the New York State Sex Offender Registry reveals that a caregiver, employee, volunteer or household member is listed on the Sex Offender Registry, the social services district may not enroll the caregiver.

Subdivision (h) of section 415.4 is amended to require that social services districts annually conduct, either directly or through purchase of services, on-site inspections of at least twenty percent of the currently enrolled caregivers of informal child care in the district who do not participate in the CACFP to determine whether such caregivers are in compliance with the health and safety and fiscal standards set forth in the regulations.

A social services district that in any calendar year has a non-compliance rate in either health and safety or fiscal standards in excess of ten percent of those caregivers of informal child care who are inspected, will be required to increase the inspection rate for the next calendar year to at least thirty percent of the caregivers of informal child care who do not participate in the CACFP. The district will be required to continue to inspect at least thirty percent of the caregivers of informal child care in the district who do not participate in the CACFP until the non-compliance rate among such caregivers of informal child care inspected drops below ten percent for a calendar year. At that time, the district will again be required to conduct on-site inspections on an annual basis of at least twenty percent of the active caregivers of informal child care in the district who do not participate in the CACFP.

A new subdivision (i) is added to section 415.4 to require each social services district to establish comprehensive fraud and abuse control activities for its child care subsidy program that must include but are not limited to:

(a) identification of the criteria the social services district will use to determine which applications should be referred to the district's front-end detention system;

(b) a sampling methodology to determine in which cases the social services district will seek verification of an applicant's or recipient's continued need for child care including, as applicable, verification of participation in employment, education or other required activities; and

(c) a sampling methodology to determine which providers of subsidized child care services the social services district will review for the purpose of comparing the providers' attendance forms for children receiving subsidized child care services and any CACFP inspection forms to verify that child care was actually provided on the days listed on the attendance forms.

Subdivision (j) of section 415.9 is amended to establish two market rates for the legally-exempt family child care and in-home child care provider, a standard market rate and an enhanced market rate. The enhanced market rate will apply to those caregivers who complete ten or more hours of training annually in the areas set forth in section 390-a(3)(b) of the Social Services Law. The standard market rate will apply to all other caregivers of legally-exempt family child care and in-home child care.

Changes to rule: No substantive changes.

Expiration date: January 5, 2006.

Text of proposed rule and changes, if any, may be obtained from: Public Information Office, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-7793

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

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-26-05-00003-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify positions in the exempt class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Homeland Security," by adding thereto the positions of Deputy Counsel (2).

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) 457-6205, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-26-05-00004-P

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

Proposed action: Amendment of Appendix(es) 1 of Title 4 NYCRR.

Statutory authority: Civil Service Law, section 6(1)

Subject: Jurisdictional classification.

Purpose: To classify a position in the exempt class in the Executive Department.

Text of proposed rule: Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Homeland Security," by adding thereto the positions of Director Public Information.

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) 457-6205, e-mail: sjl@cs.state.ny.us

Data, views or arguments may be submitted to: John F. Barr, Executive Deputy Commissioner, Department of Civil Service, State Campus, Albany, NY 12239, (518) 457-6212, e-mail: jxb25@cs.state.ny.us

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 19, 2005 under the notice of proposed rule making I.D. No. CVS-03-05-00009-P.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Superintendents' Conference Days

I.D. No. EDU-26-05-00005-P

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

Proposed action: Amendment of section 175.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided) and 3604(8)

Subject: Superintendents' conference days.

Purpose: To allow a school district to use up to two of its superintendents' conference days for teacher rating of State assessments.

Text of proposed rule: Subdivision (f) of section 175.5 of the Regulations of the Commissioner of Education is amended, effective September 29, 2005, as follows:

(f) Use of superintendents' conference days.

- (1) . . .
- (2) . . .
- (3) . . .

(4) *Notwithstanding the provisions of paragraph (1) of this subdivision, a school district may elect to use up to two of its superintendents' conference days for teacher rating of State assessments, including but not limited to assessments required under the federal No Child Left Behind Act of 2001 (Public Law section 107-110), which rating activities shall constitute staff development relating to implementation of the new high learning standards and assessments as authorized by section 3604(8) of the Education Law.*

Text of proposed rule and any required statements and analyses may be obtained from: Anne Marie Koschnick, Legal Assistant, Office of Counsel, Education Department, Albany, NY 12234, (518) 473-8296, e-mail: legal@mail.nysed.gov

Data, views or arguments may be submitted to: James A. Kadamus, Deputy Commissioner, Education Department, Rm. 875, Education Bldg. Annex, Albany, NY 12234, (518) 474-5915, e-mail: jkadamus@mail.nysed.gov

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

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head, and authorizes the Regents to appoint the Commissioner of Education as the chief administrative officer of the Department, which is charged with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 authorizes the Board of Regents and the Commissioner to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the Department by law.

Education Law section 3604(8) requires the Commissioner to specify in regulations the acceptable use of superintendents' conference days by school districts and boards of cooperative educational services to satisfy a deficiency in the length of public school sessions for the instruction of pupils.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority of the Commissioner to specify the acceptable use of superintendents' conference days.

NEEDS AND BENEFITS:

The proposed amendment specifies the appropriate use of staff development activities by school districts to advance the implementation of the new high learning standards and assessments and to satisfy deficiencies in the length of public school sessions for the instruction of pupils.

The proposed amendment would permit a school district to use up to two of the allowed four superintendents' conference days provided for in

Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001. The rating of students' performance on the State assessments is an effective way for teachers to learn the new learning standards and therefore constitutes permissible staff development activities relating to implementation of the new high learning standards and assessments, as authorized by Education Law section 3604(8). The proposed amendment will provide school districts with additional flexibility and discretion to use this staff development function to fulfill their State test scoring requirements while minimizing impact on student instructional time.

COSTS:

- (a) Costs to the State: None.
- (b) Costs to local government: None.
- (c) Costs to private regulated parties: None.
- (d) Costs to regulating agency for implementation and continued administration of this rule: None.

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility on school districts or other local governments.

PAPERWORK:

The proposed amendment imposes no new or additional paperwork requirements.

DUPLICATION:

The proposed amendment does not duplicate existing State or federal requirements.

ALTERNATIVES:

There were no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

It is anticipated that school districts may comply with the proposed regulation by its effective date. The proposed amendment provides flexibility to school districts regarding the use of superintendents' conference days for teacher rating of State assessments required under State and federal law. The proposed amendment would permit a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001. Since the proposed amendment does not impose any requirements on school districts, there are no compliance issues or schedules.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to school districts' use of superintendents' conference days and does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed rule that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

The proposed amendment applies to all public school districts and boards of cooperative educational services (BOCES) in the State.

COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional reporting, record keeping or other compliance requirements. The proposed amendment specifies the appropriate use of staff development activities by school districts to advance the implementation of the new high learning standards and assessments and to satisfy deficiencies in the length of public school sessions for the instruction of pupils. The proposed amendment would permit a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001.

PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements on regulated parties.

COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on local governments.

ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements or costs on local governments.

MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any new requirements or costs, and will not have an adverse impact on local governments. The proposed amendment provides flexibility to school districts regarding the use of superintendents' conference days for teacher rating of State assessments required under State and federal law. The proposed amendment would permit a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001.

LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed amendment were solicited from school districts through the offices of the district superintendents of each supervisory district in the State.

Rural Area Flexibility Analysis

TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all school districts and boards of cooperative educational services (BOCES) in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements. The proposed amendment specifies the appropriate use of staff development activities by school districts to advance the implementation of the new high learning standards and assessments and to satisfy deficiencies in the length of public school sessions for the instruction of pupils. The proposed amendment would permit a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001. The proposed amendment does not impose any additional professional services requirements on regulated parties.

COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on local governments.

MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any new requirements or costs, and will not have an adverse impact on local governments. The proposed amendment provides flexibility to school districts regarding the use of superintendents' conference days for teacher rating of State assessments required under State and federal law. The proposed amendment would permit a school district to use up to two of the allowed four superintendents' conference days provided for in Education Law section 3604(8) for teacher rating of State assessments, including assessments required under the federal No Child Left Behind Act of 2001.

RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment relates to the use of superintendents' conference days by school districts and boards of cooperative educational services and will not have an adverse impact on jobs or employment activities. Because it is evident from the nature of the proposed amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Health

EMERGENCY RULE MAKING

Part-Time Clinics

I.D. No. HLT-32-04-00007-E

Filing No. 656

Filing date: June 14, 2005

Effective date: June 14, 2005

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

Action taken: Amendment of sections 703.6 and 710.1 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803(2)

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

Specific reasons underlying the finding of necessity: The agency finds the immediate adoption of this rule is necessary to preserve the public health, safety and general welfare and compliance with State Administrative Procedure Act Section 202(1) would be contrary to the public interest. These regulations repeal existing section 703.6 of 10 NYCRR and add a new section 703.6, amend sections 710.1(c)(1)(i) and 710.1(c)(4)(ii) and add section 710.1(c)(6)(v) to establish additional standards for the approval and operation of part-time clinics under Article 28 of the Public Health Law. The proposed rules would help ensure the provision of quality health care through needed preventive health screening programs and other public health initiatives to underserved populations and others in safe environments that protect both the patient and the general public.

A review of the part-time clinics approval system and operations raised serious questions and concerns as to whether care was being provided in appropriate sites, under adequate supervision, whether unnecessary care was being provided, whether the site environments were adequate and safe, and whether the type of services provided exceeded the original intent of the part-time clinic regulation. Examples of the problem areas include:

- The provision of radiology services in stationary sites and mobile vans where shielding may be inadequate.
 - The provision of a full range of primary care services where minimum physical plant standards may not be met, as part-time clinics are exempt from most physical plant requirements. Inadequate space to provide the range of services safely compromised patient safety with narrow corridors which, if an emergency arises, would not provide for stretcher or wheelchair access or egress.
 - The provision of a variety of complex services where more extensive supervision would be expected.
 - The provision of services to all the residents in a given location, such as an Adult Home, raises questions about appropriate utilization.
 - The provision of specialty services, such as pediatric cardiology utilizing sophisticated equipment, is considered inappropriate for a part-time clinic setting, since a comprehensive, integrated plan of care is needed to treat these patients effectively.
 - The use of part-time clinics by some patients as their main source of health care compromises the continuity of their care, as the link to emergency and after-hours treatment becomes problematic.
 - The improper application of infection control principles for sterilizing equipment.
- The persistence of these problems warrants the issuance of these rules on an emergency basis.
- The principal changes in the proposed rules are:
- A more detailed description of the types of services permitted in part-time clinics.
 - Explicit exclusion of certain types of locations and premises as acceptable sites for part-time clinics.
 - Addition of a requirement that part-time clinics be in sufficient proximity to the sponsoring hospital or diagnostic or treatment center to ensure adequate supervision.
 - Enhanced operating standards, including requirements for quality assurance and improvement and for credentialing of staff.

- Addition of a requirement for prior limited review of all new part-time clinic sites and the continuation or proposed relocation of existing clinics.

- Recognition that part-time clinics which are operated by city and county health departments are governed by section 614 of the Public Health Law.

Compliance with the requirements of the State Administrative Procedure Act for filing of a regulation on a non-emergency basis, including the requirements for a period of time for public comment, would be contrary to the public interest because to do so would place patients at continued risk that they would be served in sub-standard environments without adequate supervision and where continuity of care cannot be insured. In addition, the proposed rules guard against the unnecessary expenditure of Medicaid funds for unneeded or duplicative services thereby making funds available for needed care. This emergency regulation will go into effect immediately after the expiration of the prior emergency regulation. Its duration will extend until permanent regulations are promulgated or a subsequent regulation is adopted on an emergency basis.

Subject: Part-time clinics.

Purpose: To clarify and enhance the requirements that apply to part time clinics and require prior limited review of all part-time clinic sites.

Text of emergency rule: The current section 703.6 is repealed and a new section 703.6 is hereby adopted as follows:

Section 703.6 Part-time clinics

(a) *Applicability.* In lieu of Parts 702, 711, 712 and 715 of this Title, this section shall apply to part-time clinic sites, except for those operated by the State Department of Health (other than those part-time clinics which are operated as an extension of Article 28 hospitals operated by the State Department of Health) or by the health department of a city or county as such terms are defined in section 614 of the Public Health Law. Such cities and counties shall submit to the State Department of Health information which lists the location(s), hours of operation and services offered at each part-time clinic operated by or under the authority of the city or county health department. This information shall be submitted annually, by January 30 of each year, as an update to the Municipal Public Health Services Plan (MPHSP) submitted by the city or county pursuant to section 602 of the Public Health Law, and shall provide such information for each part-time clinic operated by or under the authority of the city or county health department in the previous calendar year. Consistent with the definition of part-time clinic site in section 700.2(a)(22) of this Title, a part-time clinic shall:

(1) provide services which shall be limited to low-risk (as determined by prevailing standards of care and services) procedures and examinations which do not normally require backup and support from the primary delivery site of the operator or other medical facility. Such services may include health screening (such as blood pressure screening), preventive health care and other public health initiatives, procedures and examinations (such as well child care, the provision of immunizations and screening for chronic or communicable conditions which are treatable or preventable by early detection or which are of public health significance);

(2) be located at a site that has adequate and appropriate space and resources to provide the intended services safely and effectively and is located in proximity to the primary delivery site to ensure that supervision and quality assurance are not compromised; and

(3) not be located at a private residence or apartment, an intermediate care facility, congregate living arrangements (not including an individualized residential alternative, a shelter for adults or other group shelter operated by governmental or other organizations to provide temporary housing accommodations in a safe environment to at-risk populations), an area within an adult home, a residence for adults or enriched housing program as defined in section 2 of the Social Services Law unless the part-time clinic is an outpatient mental health program approved by the Office of Mental Health, or the private office of a health care practitioner or group of practitioners licensed by the State Education Department, except if the private office space is leased for a defined period of time and on a regular basis for the provision of services consistent with paragraph (1) of this subdivision.

(b) *Department approval and/or notification.*

(1) An operator of part-time clinics may initiate patient care services at a specific site only upon written approval from the department in accordance with the department's prior limited review process set forth at section 710.1(c)(6)(v) of this Title. To request such approval, the operator shall submit to the department, for each such site, information and documentation in a format acceptable to the department and in sufficient detail to enable the Commissioner to make a decision, including the following:

(i) the location, type and nature of the building, days and hours of operation, expected duration of operation (specified limited period of time, for example, seasonally), staffing patterns and objectives of the part-time clinic;

(ii) the leasing or other arrangement for gaining access to the site's real property, (including a copy of the agreement which grants the applicant the right to use and occupy the space for the part-time clinic site);

(iii) the plans and strategies for meeting the operational standards set forth in this section and an explanation of how the operator will provide adequate supervision and ensure quality of care;

(iv) a listing of all part-time clinic sites already operated by the applicant;

(v) a description of the services to be provided and the populations to be served; and

(vi) procedures or strategies for advising patients on making arrangements for follow-up care.

(2) After initiating patient care services, an operator of part-time clinics may relocate a part-time clinic or change a category of service only upon written approval from the department in accordance with the department's prior limited review process as set forth in section 710.1(c)(6)(v) of this Title. The operator shall give written notification to the department at least 45 days prior to the relocation or change in services of a part-time clinic site. To request approval, the operator shall submit to the department, for the site of relocation or change in services, information concerning:

(i) the location, type and nature of the building, days and hours of operation, and expected duration of operation (specified limited period of time, for example, seasonally);

(ii) the leasing or other arrangement for gaining access to the site's real property (including a copy of the agreement which grants the applicant the right to use and occupy the space for the part-time clinic site); and

(iii) a description of the services to be provided and the populations to be served.

(3) After initiating patient care services, the operator shall give written notification, including a closure plan acceptable to the department, to the appropriate regional office of the department at least 15 days prior to the discontinuance of a part-time clinic site other than a scheduled discontinuance as indicated in accordance with subparagraph (i) of paragraph (1) of this subdivision. No part-time clinic site shall discontinue operation without first obtaining written approval from the department.

(4)(i) The operator of any part-time clinic that was in operation on the effective date of this paragraph, and in conformance with all pertinent statutes and regulations in effect prior to that date, and has submitted request(s) to the department for approval to continue providing services for each such site by November 13, 2000 in accordance with such requirements shall be permitted to operate until and unless the department issues a written denial of approval to continue operation. If a request to continue operation of a part-time clinic site is denied, the operator shall cease providing services at such site.

(ii) The operator of any part-time clinic site for which an application to continue providing services at such site was not submitted to the department by November 13, 2000, shall give the department the written notification and a closure plan required by subdivision (b)(3) of this section by November 28, 2000. Notwithstanding any other provision of this section, any part-time clinic for which an application to continue providing services at such site was not submitted to the department by November 13, 2000, shall cease operations by December 31, 2000.

(c) *Policies and procedures.* (1) The operator shall ensure the development and implementation of written policies and procedures specific to each part-time clinic site which shall include, but need not be limited to:

(i) security, confidentiality, maintenance, access to and storage of medical records for each patient, including documentation of any diagnoses or treatments;

(ii) handling and storage of drugs in accordance with state law and regulation;

(iii) provision and storage of sterile supplies including plans for sterilization or disposal of contaminated supplies and equipment;

(iv) disposal of solid wastes and sharps;

(v) handling of patient emergencies, including written transfer agreements with hospitals within the service area;

(vi) a fire plan consistent with local laws;

(vii) credentialing of staff by the governing authority of the operator and assurance that only appropriately licensed and/or certified staff perform functions that require such licensure or certification;

(viii) quality assurance/improvement initiatives coordinated with such activities at the operator's primary delivery site(s);

(ix) utilization review;

(x) community outreach efforts designed to ensure that community members are aware of the availability of and the range of clinic services and hours of operation; and

(xi) assurance that patients can access necessary services without regard to source of payment.

(2) The following services shall not be provided at a part-time clinic site:

(i) services that require specialized equipment such as radiographic equipment, computerized axial tomography, magnetic resonance imaging or that required for renal dialysis;

(ii) services that involve invasion or invasive treatment procedures or disruption of the integrity of the body that normally require a surgical operative environment; and

(iii) services other than those available at the primary delivery site(s) listed on the primary facility's operating certificate.

(d) Services and personnel. The operator shall ensure that all health care services and personnel provided at the part-time clinic site shall conform with generally accepted standards of care and practice and with the following:

(1) Part-time clinics operated by hospitals shall comply with pertinent standards established in Part 405 of this Title including, but not limited to, sections 405.7 (Patients' rights) and 405.20 (Outpatient services), which cross-references the outpatient care provisions of sections 752.1 and 753.1 of this Title.

(2) Part-time clinics operated by diagnostic and treatment centers shall comply with the pertinent provisions of Parts 750, 751, 752 and 753 of this Title including, but not limited to, section 751.9 (Patients' rights).

(e) Environmental health. The operator shall ensure that:

(1) exits and access to exits are clearly marked;

(2) lighting is provided for exit signs and access ways when located in dark areas and/or during night hours or power interruptions;

(3) passageways, corridors, doorways and other means of exit are kept unobstructed;

(4) the part-time clinic site is kept clean and free of safety hazards;

(5) all water used at the part-time clinic site is provided from a water supply which meets all applicable standards set forth in Part 5 of this Title;

(6) equipment to control a limited fire is available; and

(7) smoking is prohibited within patient care areas.

(f) Waivers. The Commissioner, upon a request from the operator, may waive one or more provisions of this section upon a finding that such waiver would:

(1) enable at risk or medically underserved patients to obtain needed care and services which are otherwise unavailable or difficult to access;

(2) contribute to attaining a generally recognized public health goal;

(3) not jeopardize the health or safety of patients or clinic staff; and

(4) not conflict with existing federal or state law or regulation.

Section 710.1(c)(1)(i) is hereby amended to read as follows:

(i) the requirements relating to the addition, modification or decertification of a licensed service other than the addition of a service or decertification of a facility's services as provided for in paragraph (6) of this subdivision or the addition or deletion of approval to operate part-time clinics, regardless of cost [;]. The addition or deletion of approval to operate part-time clinics shall not be applicable to the State Department of Health (other than for the addition or deletion of approval to operate part-time clinics as an extension of an Article 28 hospital operated by the State Department of Health) or to the health department of a city or county as such terms are defined in section 614 of the Public Health Law;

Section 710.1(c)(4)(ii) is hereby amended to read as follows:

(4) Proposals not requiring an application.

(ii) Any proposal to [add,] discontinue [or relocate] a part-time clinic site of a medical facility already authorized to operate part-time clinics pursuant to this Part shall not require the submission of an application pursuant to this Part, but compliance is required with the applicable notice provisions of Parts 405 and 703 of this Title.

Paragraph (6) of subdivision (c) of section 710.1 is hereby amended by the addition of a new sub-paragraph (v) to read as follows:

710.1(c)(6) Proposals requiring a prior review.

* * *

(v) Any proposal to operate, change services offered or relocate a part-time clinic site shall be subject to a prior limited review under Article 28 of the Public Health Law.

(a) Requests for approval under the prior limited review process shall be consistent with the provisions of section 703.6(b) of this Title.

(b) Requests for approval to operate, change a category of service offered or relocate a part-time clinic site in accordance with section 703.6(b) of this Title shall be made directly to the Division of Health Facility Planning.

(c) If the proposal is acceptable to the department, the applicant shall be notified in writing within 45 days of acknowledgement of receipt of the request. If the proposal is not acceptable, the applicant shall be notified in writing within 45 days of such determination and the bases thereof, and the proposal shall be deemed an application subject to full review, including a recommendation by the State Hospital Review and Planning Council, pursuant to section 2802 of the Public Health Law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. HLT-32-04-00007-P, Issue of August 11, 2004. The emergency rule will expire August 12, 2005.

Text of emergency 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: regsqa@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in section 2803(2) of the Public Health Law which authorizes the State Hospital Review and Planning Council (SHRPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of Article 28 of the Public Health Law, and to establish minimum standards governing the operation of health care facilities. This section also grants authority to establish requirements for projects subject to Certificate of Need review and other Department approvals.

Legislative Objectives:

Article 28 of the PHL seeks to ensure that hospitals and related services are of the highest quality, efficiently provided and properly utilized at a reasonable cost. Consistent with this legislative intent, the proposed amendments would update standards under which part-time clinics are permitted to operate and establish new procedures for the process by which clinics are approved to provide services. These changes will promote improved quality and appropriateness of care at a reasonable cost to payors.

Needs and Benefits:

Part-time clinics provide low-risk procedures and examinations which do not normally require back-up and support from the hospitals and diagnostic and treatment centers that sponsor them. Typical of such services are well-child care, immunization and screening for chronic and communicable conditions treatable or preventable by early detection. Part-time clinics may not deliver services which require specialized equipment, such as magnetic resonance imaging or dialysis, nor may they provide invasive treatment procedures which normally require a surgical environment. Once approved, part-time clinics may operate on either a short-term or permanent basis but may not offer services for more than a total of 60 hours per month.

Part-time clinics were established as a separate category of service to encourage the provision of basic preventive health care in community-based settings easily accessible to the general public and to groups targeted for particular services (e.g., senior citizens). Consequently, the approval process for these clinics is simpler than that for extension clinics of hospitals and diagnostic and treatment centers, whose services are more elaborate and hours of operation less restricted. The initial authority for a hospital or diagnostic and treatment center to operate part-time clinics requires administrative approval under the Certificate of Need (CON) process. However, the subsequent opening of individual clinic sites previously required only a letter of notification to the appropriate area office of the Department of Health, submitted a minimum 15 business days in advance of the proposed commencement of service. Environmental requirements for part-time clinics are minimal, calling only for compliance with prevailing standards for life safety, sanitation and infection control. Some 300 hospitals and diagnostic and treatment centers are authorized to operate part-time clinics.

The leniency of regulation which has encouraged the provision of needed services has also led to the delivery of services in locations and on a scale not intended for part-time clinics. Some providers, for example, have set up part-time clinics in sites such as an adult home and patients' private residences and in other settings not sanctioned under the current regulations. Other operators of part-time clinics have offered services far more elaborate than the low-risk screening and basic care procedures to which part-time clinics are restricted. Still others have engaged in questionable billing practices, submitting claims to the Medicaid program at rates approved only for the broader array of services offered at diagnostic and treatment centers and hospital-based clinics.

With large part-time clinic networks (one network has over 600 sites), there are the issues of service quality and patient safety in settings that lack appropriate medical supervision and staff support and which do not meet operational and environmental requirements. The delivery of services under these circumstances can pose a threat to patient safety and demands the issuance of the new rules on an emergency basis.

An emergency regulation addressing part-time clinics was adopted effective August 15, 2000. Additional emergency regulations were adopted effective on November 13, 2000, February 12, 2001, May 14, 2001, August 10, 2001, November 8, 2001, February 7, 2002, May 6, 2002, August 1, 2002, October 29, 2002, January 27, 2003, April 25, 2003, July 24, 2003, October 22, 2003, January 20, 2004, April 20, 2004, July 19, 2004, October 19, 2004, December 16, 2004, February 16, 2005 and April 14, 2005. The last emergency adoption is scheduled to expire on June 13, 2005. This new emergency regulation will repeal and/or amend the regulations which would have gone back into effect upon the expiration of the April 14, 2005 emergency regulation.

The proposed emergency regulations will repeal the existing 10 NYCRR section 703.6 and replace it with a new section 703.6 more explicit in the requirements and prohibitions that apply to part-time clinics. They further amend section 710.1 to require a formal approval process for individual clinic sites. The principal changes in the proposed rules are:

- A more detailed description of the types of services permitted in part-time clinics.
- Explicit exclusion of certain types of locations and premises as acceptable sites for part-time clinics.
- A requirement that part-time clinics be in sufficient proximity to the sponsoring hospital or diagnostic and treatment center to ensure adequate supervision.
- Enhanced operational standards, including requirements for quality assurance and improvement and for credentialing of staff.
- A requirement for prior limited review of new part-time clinic sites and proposed relocations of existing clinics. Requests for prior limited review must be submitted to the Department's central office at least 45 days in advance of the proposed commencement of service, instead of the 15 business days required for notification to the appropriate Department regional office.
- Recognition that part-time clinics which are operated by city and county health departments are governed by Section 614 of the Public Health Law.

The proposed rules apply to all existing part-time clinics as well as to all future sites. To ensure that the new regulations do not impede access to care by patients currently receiving services or penalize providers operating bona fide clinics, the proposed rules allow existing sites to continue in operation while their operators' applications for prior limited review of current services and sites are under review by the Department. The rules allowed operators 90 days from the effective date of the original emergency regulation, which was August 15, 2000, to submit such applications, which may include proposals to relocate noncompliant clinics to sites that are in compliance with the proposed regulations. For clinics that failed to submit such timely applications, the rules establish a deadline for submission of a closure plan.

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

Both part-time clinics in existence at the time of the original emergency regulations and any new part-time clinics will be subject to the prior limited review process as set forth in the proposed amendments to section 710.1. The collection and submission of information for the prior limited review process will represent a new cost to the facility, but the Department has minimized that cost through issuance of a standardized form which can be filed electronically. Some facilities may incur additional costs in bringing substandard part-time clinics up to the standards established in the proposed regulations.

The cost impact of the proposed regulations will depend on the number of operators that seek to establish new part-time clinics, relocate existing clinics or change services in existing sites. For the individual provider, costs will vary with the condition of the existing or proposed site. For sites needing little or no renovation, costs will be minimal. For other locations, costs will depend on the degree of renovation needed, on whether the provider engages the services of architectural or construction firms to carry out the renovations, and on which firms the provider chooses to employ. Because the Department lacks data on the number of proposed sites that will need to pay for renovation, it is difficult to estimate these costs with any precision. However, it is expected that any expenditures will be insignificant in relation to the benefits of improved patient care and reductions in the costs to taxpayers of Medicaid claims for part-time clinic services rendered in inappropriate settings.

Cost to State and Local Government:

There will be no additional cost to State or local governments. If inappropriate or duplicative Medicaid billings are reduced, or if sites providing unsafe or inappropriate services discontinue operations, State and local governments will realize a share of the Medicaid savings. However, certain city and county health departments may incur minimal costs associated with submitting to the Department annually basic information regarding any part-time clinics they operate.

Cost to the Department of Health:

Additional costs related to the processing of prior limited review applications and stricter programmatic oversight of part-time clinics will be absorbed within existing resources.

Local Government Mandates:

This regulation does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district. However, certain city and county health departments may incur minimal costs associated with submitting to the Department annually basic information regarding any part-time clinics they operate.

Paperwork:

The governing body will be responsible for filing requests for approval to operate specific sites under the limited prior review process. DOH will attempt to limit the paperwork burden by developing a standardized format for such submissions which may be filed electronically. DOH also considered requiring that each site maintain a patient log with numerous data elements. It was decided not to include this requirement in the operating standards because many of the data elements duplicated information in the medical record, and some could interpret the requirement as an unnecessary paperwork burden unrelated to patient care. However, certain city and county health departments may incur minimal costs associated with submitting to the Department annually basic information regarding any part-time clinics they operate.

Duplication:

The regulations will not duplicate, overlap or conflict with federal or state statutes or regulations.

Alternative Approaches:

The alternative of taking no regulatory action was rejected because of the ongoing potential for questionable quality of care provided at inappropriate sites and because of fiscal irregularities at part-time clinics under current regulations. DOH also considered subjecting all current and proposed part-time clinics to the administrative review process rather than to the prior limited review process. That option was rejected in order to promote a streamlined review process for clinics and DOH and to avoid imposing on facilities the \$1,250 filing fee required for administrative reviews.

Federal Requirements:

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

Compliance Schedule:

The emergency regulations will go into effect immediately upon filing with the Department of State. Part-time clinics in operation at that time must have submitted requests to continue operating within 90 days of the effective date of the adoption of the first emergency regulation (issued August 15, 2000) but may continue to operate until and unless DOH issues a written denial of approval to operate. If the governing body of a primary delivery site wishes to open a new part-time clinic site after the effective date of the regulation, it must submit an application. If the proposal is acceptable, DOH will so notify the applicant within 45 days of acknowledgement of receipt of the request.

Regulatory Flexibility Analysis

Effect of rule:

New York State has 9 hospitals, 167 diagnostic and treatment centers and approximately 455 adult homes and 53 congregate living centers that could be considered small businesses affected by this rule. Physician offices, of which the Department has no statistics on how many there are, also could be considered small businesses and impacted by this regulation. The Office of Mental Health approved approximately 980 outpatient mental health programs, the majority of which are small businesses. The Office of Mental Retardation and Developmental Disabilities approves Intermediate Care Facilities (ICFs) many of which would be considered small businesses and which also could be impacted by the regulation. With respect to local governments, to the extent the New York City Department of Health and 57 county health departments operate or propose to operate part-time clinics, they would be impacted by this regulation.

Compliance requirements:

In order to comply with these requirements, an operator/applicant will need to determine that the services to be provided at the part-time clinic(s) are limited to low-risk procedures and examinations which do not normally require backup and support from the primary delivery site of the operator or other medical facility as described in section 703.6(a)(1), be located at a site as described in 703.6(a)(2) and not be located at one of the sites as described in 703.6(a)(3). In addition, the operator/applicant must obtain written approval pursuant to the Department's prior limited review process set forth in section 710.1(c)(6)(v).

Professional services:

There should be no additional professional services required that a small business or local government is likely to need to comply with the proposed rule. Applicants for, and current operators of, part-time clinics must already be licensed pursuant to Public Health Law Article 28 to provide outpatient services. Therefore, adequate administrative mechanisms already should be in place to comply with any reporting and record-keeping requirements.

Compliance costs:

The collection and submission of information for the prior limited review process will represent a new cost to the facility, including facilities operated by a small business or local government. The Department has attempted to minimize that cost through the issuance of a standardized form, which may be obtained and submitted electronically. Some facilities may incur additional costs in bringing substandard part-time clinics up to the standards in the proposed regulations.

The cost impact of the proposed regulations will depend on the number of operators that seek to establish new part-time clinics, relocate existing clinics or change services in existing sites. For the individual provider, costs will vary with the condition of the existing or proposed site. For sites needing little or no renovation, costs will be minimal. For other locations, costs will depend on the degree of renovation needed, on whether the provider engages the services of architectural or construction firms to carry out the renovations, and on which firms the provider chooses to employ. Because the Department lacks data on the number of proposed sites that will need to pay for renovation, it is difficult to estimate these costs with any precision. However, it is expected that any expenditures will be insignificant in relation to the benefits of improved patient care and reductions in the costs to taxpayers of Medicaid claims for part-time clinic services rendered in inappropriate settings.

Economic and technological feasibility:

It should be economically and technologically feasible for small businesses and local governments to comply with the regulations. Providers should not need to hire additional professional or administrative staff to comply with the requirements of the regulations. Due to the nature of the services provided at part time clinics, such sites should not involve significant capital expenditures. Also, applicants under the prior limited review process for reviewing part time clinic proposals are not required to pay the \$1,250 fee applicable to full review and administrative review applications. Therefore, overall costs of compliance should be minimal. The Department of Health also has developed a standardized electronic application form that applicants may use by accessing the Department's "web" page. This is technologically feasible using readily available, standard personal computers and internet access programs.

Minimizing adverse impact:

In developing the regulation, the Department considered the approaches set forth in section 202-b(1) of the State Administrative Procedure Act. The Department considered requiring all current and proposed part-time clinics to undergo the full administrative review process rather than the prior limited review process. That option was rejected in order to permit a streamlined review process for part-time clinics and to permit facilities to avoid the \$1,250 filing fee required for full or administrative

reviews. The Department also has developed a standardized electronic form to minimize the paperwork burden for requests for approval to operate specific sites under the prior limited review process. The Department also rejected a plan to require that each site maintain a patient log with numerous data elements. The maintenance of such a form was determined to be an unnecessary paperwork burden which duplicated information already in the medical record. This proposal also allows for a waiver from one or more provisions of the new regulations if the Department finds, upon a request from an applicant/operator, that a waiver would enable at-risk or medically underserved patients to obtain needed care and services which would be otherwise unavailable or difficult to access.

Language in this regulation in section 703.6(a)(2) specifies that part-time clinics shall be located at a site that "is located in proximity to the primary delivery site to ensure that supervision and quality assurance are not compromised." In order to allow providers flexibility in bringing needed services to patients, the Department has refrained from specifying a mileage limit for this requirement. In evaluating the distance of a part-time clinic from the sponsor's main site, the Department's principal consideration will be whether the sponsor can provide appropriate supervision and oversight of staff and services at the proposed site.

Part-time clinics may continue to operate while going through the prior approval process. Those in operation on the effective date of the first emergency adoption (August 15, 2000) had 90 days from such date to submit applications for the prior limited review process. If an operator wishes to open a new part-time clinic after the effective date of the regulation, it must submit an application. If the proposal is acceptable, the Department will so notify the applicant within 45 days of acknowledgment of receipt of the request.

Small business and local government participation:

Interested parties were given notice of this proposal by its inclusion in the agenda of the Codes and Regulations Committee of the State Hospital Review and Planning Council for its September 21, 2000 meeting and for its March 21, 2002 and November 21, 2002 meetings and for subsequent meetings. Comments were solicited and provided at the September 21, 2000 meeting. While comments were solicited at the March 21, 2002 and November 21, 2002 meetings and at subsequent meetings, none were provided.

Rural Area Flexibility Analysis

Effect on Rural Areas:

This rule applies uniformly throughout the State including all rural areas. Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene	Saratoga	

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

This regulation should not adversely affect current rural part-time clinics that are providing quality services in appropriate settings. The new regulations will provide facilities with clarified operating standards that will enable them to operate in conformance with the law and meet generally accepted standards for quality care and safety of patients. Operators of part-time clinics in the State (including rural areas) must obtain written approval from the Department to continue operation, relocate, or open new part-time clinics in accordance with the Department's prior limited review process as outlined in section 710.1(c)(6)(v) of 10 NYCRR.

Professional Services:

Hospitals should not need to hire additional professional or other staff to comply with the requirements of the new regulation. Applicants for, and current operators of, part-time clinics must already be licensed pursuant to Public Health Law Article 28 to provide outpatient services. Therefore, additional staff should not need to be hired, as administrative mechanisms should already be in place to comply with any reporting and record keeping requirements.

Compliance Costs:

Some facilities may incur additional costs in bringing substandard part-time clinics up to the standards established in the proposed regulations. It is impossible to quantify such costs because the Department lacks the data on the number of part-time clinics currently out of compliance with the proposed standards and on the cost of bringing such facilities into conformity with the proposed rules. In general, however, establishment of part-time clinics will not require significant capital expenditures because such clinics are intended to be limited to low risk procedures and examinations that normally do not require backup and support from the primary delivery site of the operator or other medical facilities.

Minimizing Adverse Impact:

In developing the regulation, the Department considered the approaches set forth in section 202-bb(2) of the State Administrative Procedure Act.

To minimize the paperwork and reporting requirements, the Department has developed a standardized application form which may be obtained and submitted electronically. Because the approval process is a limited review, the \$1,250 filing fee required for full or administrative reviews will not be imposed. The Department recognizes that part-time clinics can provide valuable sources of primary care in rural areas. These regulations will help to assure rural residents that such care meets appropriate quality and safety standards. This proposal also allows for a waiver from one or more provisions of the new regulations if the Department finds, upon a request from an applicant/operator, that a waiver would enable at risk or medically underserved patients to obtain needed care and services which are otherwise unavailable or difficult to access. While language in this regulation in section 703.6(a)(2) specifies that part-time clinics shall be located at a site that "is located in proximity to the primary delivery site to ensure that supervision and quality assurance are not compromised," The Department recognized that rural part-time clinics could serve a wide geographical area and did not specify a mileage limit for this requirement. In evaluating the distance of a part-time clinic from the sponsor's main site, the Department's principal consideration will be whether the sponsor can provide appropriate supervision and oversight of staff and services at the proposed site.

Part-time clinics may continue to operate while going through the prior approval process. Those in operation on the effective date of the first emergency adoption (August 15, 2000) had 90 days from such date to submit applications for the prior limited review process. If an operator wishes to open a new part-time clinic after the effective date of the regulation, it must submit an application. If the proposal is acceptable, the Department will so notify the applicant within 45 days of acknowledgement of receipt of the request. The Department also rejected a plan to require that each site maintain a patient log with numerous data elements. The maintenance of such a form was determined to be an unnecessary paperwork burden which duplicated information already in the medical record.

Opportunity for Rural Area Participation:

Rural areas were given notice of this proposal by its inclusion in the agenda of the Codes and Regulations Committee of the State Hospital Review and Planning Council for its September 21, 2000 meeting and for its March 21, 2002 and November 21, 2002 meetings and for subsequent meetings. Comments were solicited and provided at the September 21, 2000 meeting. While comments were solicited at the March 21, 2002 and November 21, 2002 meetings and at subsequent meetings, none were provided.

Job Impact Statement

A Job Impact Statement is not included in accordance with Section 201-a(2) of the State Administrative Procedure Act, because it is apparent from the nature and purpose of these proposed amendments that they will not have a substantial adverse impact on jobs and employment opportunities for those part-time clinics which provide appropriate services in appropriate locations. Those clinics which provide services in locations the Department deems unacceptable will be given an opportunity to relocate to an appropriate setting. The proposed amendments will help to ensure that qualified people provide clinical care and services. Appropriately operat-

ing part-time clinics will be allowed to continue providing care and services and newly-proposed sites will be permitted to open provided they can meet the standards established in the regulation. Thus, the jobs of people qualified to provide services, and currently doing so, will not be negatively impacted.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

EMERGENCY RULE MAKING

Payment for Psychiatric Social Work Services

I.D. No. HLT-32-04-00008-E

Filing No. 655

Filing date: June 14, 2005

Effective date: June 14, 2005

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

Action taken: Amendment of section 86-4.9 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 201.1(v)

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

Specific reasons underlying the finding of necessity: The amendment to 10 NYCRR 86-4.9 will permit Medicaid billing for individual psychotherapy services provided by certified social workers in Article 28 Federally Qualified Health Centers (FQHCs). In conjunction with this change, DOH is also amending regulations to prohibit Article 28 clinics from billing for group visits and to prohibit such services from being provided by part-time clinics.

Based upon the Department's interpretation of 10 NYCRR 86-4.9(c), social work services have not been considered billable threshold visits in Article 28 clinic settings despite the fact that certified social workers have been an integral part of the mental health delivery system in community health centers. New federal statute and regulation require States to provide and pay for each FQHC's baseline costs, which include costs which are reasonable and related to the cost of furnishing such services. Reimbursement for individual psychotherapy services provided by certified social workers in the FQHC setting is specifically mandated by federal law. Failure to comply with these mandates could lead to federal sanctions and the loss of federal dollars. Additionally, allowing Medicaid reimbursement for clinical social worker services is expected to increase access to needed mental health services.

Subject: Payment for psychiatric social work services in art. 28 federally qualified health centers.

Purpose: To permit psychotherapy by certified social workers a billable service under certain circumstances.

Text of emergency rule: Pursuant to the authority vested in the State Hospital Review and Planning Council, and subject to the approval of the Commissioner of Health by Section 2803(2)(a) of the Public Health Law, section 86-4.9 of Subpart 86-4 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended as follows to be effective upon filing with the Secretary of State:

86-4.9 Units of service. (a) The unit of service used to establish rates of payment shall be the threshold visit, except for dialysis, abortion, sterilization services and free-standing ambulatory surgery, for which rates of payment shall be established for each procedure. For methadone maintenance treatment services, the rate of payment shall be established on a fixed weekly basis per recipient.

(b) A threshold visit, including all part-time clinic visits, shall occur each time a patient crosses the threshold of a facility to receive medical care without regard to the number of services provided during that visit. Only one threshold visit per patient per day shall be allowable for reimbursement purposes, except for transfusion services to hemophiliacs, in which case each transfusion visit shall constitute an allowable threshold visit.

(c) Offsite services, visits related to the provision of offsite services, visits for ordered ambulatory services, and patient visits solely for the purpose of the following services shall not constitute threshold visits: pharmacy, nutrition, medical social services *with the exception of clinical social services as defined in paragraph (g) of this section*, respiratory therapy, recreation therapy. Offsite services are medical services provided

by a facility's clinic staff at locations other than those operated by and under the licensure of the facility.

(d) A procedure shall include the total service, including the initial visit, preparatory visits, the actual procedure and follow-up visits related to the procedure. All visits related to a procedure, regardless of number, shall be part of one procedure and shall not be reported as a threshold visit.

(e) Rates for separate components of a procedure may be established when patients are unable to utilize all of the services covered by a procedure rate. No separate component rates shall be established unless the facility includes in its annual financial and statistical reports the statistical and cost apportionments necessary to determine the component rates.

(f) Ordered ambulatory services may be covered and reimbursed on a fee-for-service basis in accordance with the State medical fee schedule. Ordered ambulatory services are specific services provided to nonregistered clinic patients at the facility, upon the order and referral of a physician, physician's assistant, dentist or podiatrist who is not employed by or under contract with the clinic, to test, diagnose or treat the patient. Ordered ambulatory services include laboratory services, diagnostic radiology services, pharmacy services, ultrasound services, rehabilitation therapy, diagnostic services and psychological evaluation services.

(g)(1) For purposes of this section, clinical social services are defined as,

(i) before September 1, 2004, individual psychotherapy services provided in a Federally Qualified Health Center by a certified social worker with psychotherapy privileges certification by the New York State Education Department, or by a certified social worker who is working in a clinic under qualifying supervision in pursuit of a psychotherapy privileges certification by the New York State Education Department.

(ii) on or after September 1, 2004, individual psychotherapy services provided in a Federally Qualified Health Center by a licensed clinical social worker, or by a licensed master social worker who is working in a clinic under qualifying supervision in pursuit of licensed clinical social worker status by the New York State Education Department.

(2) Clinical social services provided in a part time clinic shall be ineligible for reimbursement under this paragraph. Clinical social services shall not include group psychotherapy services or case management services.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. HLT-32-04-00008-P, Issue of August 11, 2004. The emergency rule will expire August 12, 2005.

Text of emergency 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

Regulatory Impact Statement

Statutory Authority:

The authority for the promulgation of these regulations is contained in section 2803(2)(a) of the Public Health Law which authorizes the State Hospital Review and Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner. Section 702 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000 made changes to the Social Security Act affecting how prices are set for Federally Qualified Health Centers and rural health centers. Section 1902(a)(10) of the federal Social Security Act [42 U.S.C. 1396a(a)(10)] and 1905(a)(2) of the Social Security Act [42 U.S.C. 1396d(a)(2)] require the State to cover the services of Federally Qualified Health Centers. Additionally, section 1861(aa) of the Social Security Act [42 U.S.C. 1395x(aa)] defines the services that a Federally Qualified Health Center provides, including the services of a clinical social worker.

Legislative Objective:

The legislative objective of this authority is to allow, in limited instances, social work visits to be a billable threshold service in Article 28 clinics. This amendment will allow psychotherapy by certified social workers (CSWs) as a billable visit under the following circumstances:

- Services are provided by a certified social worker with psychotherapy privileges (on their SED certification), or a CSW who is working in a clinic under qualifying supervision in pursuit of such certification.
- Payment will only be made for services that occur in Article 28 clinic base and extension clinics only. Billings by part-time clinics will not be allowed.

- Psychotherapy services only will be permitted, not case management and related services.
- Billings for group psychotherapy will not be permitted in Article 28 clinics.
- Payment will only be made for services that occur in Federally Qualified Health Centers (FQHCs).

Needs and Benefits:

For some time, the Department of Health (DOH) has interpreted existing regulation 10 NYCRR Part 86-4.9(c) as restricting threshold reimbursement for medical social work services in Article 28 outpatient and diagnostic and treatment center (D&TC) clinics. Advocacy groups (e.g., United Cerebral Palsy (UCP), Community Health Care Association of New York (CHCANYS)) have challenged this policy interpretation arguing that the prohibition only relates to the provision of social work services coincident to medical care, not to medical/behavioral health services provided by certified social workers.

In addition, DOH's policy interpretation has also been inconsistent with the billing practices of the Office of Alcoholism and Substance Abuse Services (OASAS), the Office of Mental Health (OMH), and the Office of Mental Retardation and Developmental Disabilities (OMRDD). It is clear that permitting certified social workers to be reimbursed for behavioral health services is the generally accepted practice model. Thus, this amendment will, to some extent, provide consistency with billing practices of other state agencies in Article 31, 16 and 32 clinics. Furthermore, recent Federal changes related to Medicaid reimbursement for FQHCs mandate that psychotherapy services provided by a social worker be considered a billable service.

This approach will ensure access to social work services in the most underserved areas and increase consistency with the policies of other state agencies.

Costs:

Costs for the Implementation of, and Continuing Compliance with this Regulation to Regulated Entity:

Annually the estimated gross Medicaid cost for all CSW psychotherapy visits in FQHCs totals \$600,000, with a state share of \$150,000. This increase is anticipated to be partially offset by the savings associated with the elimination of clinic payments for group psychotherapy and the prohibition of CSW psychotherapy in part-time clinics.

Cost to the Department of Health:

There will be no additional costs to DOH.

Local Government Mandates:

This amendment will not impose any program service, duty or responsibility upon any county, city, town, village school district, fire district or other special district.

Paperwork:

This amendment will increase the paperwork for providers only to the extent that providers will bill for social work services.

Duplication:

This regulation does not duplicate, overlap or conflict with any other state or federal law or regulations.

Alternatives:

Recent changes to federal law make it clear that states must reimburse FQHCs under Medicaid for the services of certified social workers. In light of this federal requirement, no alternatives were considered.

Federal Standards:

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

Compliance Schedule:

The proposed amendment will become effective on the 1st day of the month following publication of a Notice of Adoption in the *State Register*.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

No impact on small businesses or local governments is expected.

Compliance Requirements:

This amendment does not impose new reporting, record keeping or other compliance requirements on small businesses or local governments.

Professional Services:

No new professional services are required as a result of this proposed action. The proposed regulation will allow threshold visits to be billed in Article 28 clinics by CSW's with a "P" or "R" designation on their State Education Department's (SED) Certification or by CSWs who are working in a supervised situation towards that certification, in a primary or extension (not part-time) clinic. Although some providers might experience problems hiring the higher level of supervision, the new prospective reimbursement system for FQHCs should ease the hiring of this staff.

Compliance Costs:

This amendment does not impose new reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Economic and Technological Feasibility:

DOH staff has had conversations with the National Association of Social Workers (NASW), UCP, and CHCANYS concerning the interpretation of the current regulation as well as proposed changes to the existing regulation. Although some systems changes will be necessary to ensure that payment is made only to FQHCs, the proposed regulation will not change the way providers bill for services, and thus there should be no concern about technical difficulties associated with compliance.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Small Business Participation:

Participation is open to any FQHC that is certified under Article 28 of the Public Health Law, regardless of size.

Rural Area Flexibility Analysis**Types and Estimated Number of Rural Areas:**

With the exception of part-time clinics, this rule will apply to all Article 28 primary and extension clinics (not part-time clinics) in New York that have been designated by the Centers for Medicare and Medicaid Services (CMS) as Federally Qualified Health Centers. These businesses are located in rural, as well as suburban and metropolitan areas of the State.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

No new reporting, recordkeeping or other compliance requirements and professional are needed in a rural area to comply with the proposed rule.

Compliance Costs:

There are no direct costs associated with compliance. However, part-time clinic providers that perform fraudulent billing may be investigated and subsequently realize reduced Medicaid reimbursement.

Minimizing Adverse Impact:

There is no adverse impact.

Opportunity for Rural Area Participation:

The Department has had conversations with the National Association of Social Workers Association (NASW), UCP, and CHCANYS to discuss Medicaid reimbursement for social work services and the impact of this new rule on their constituents. These groups and Association represent social workers from across the State, including rural areas.

Job Impact Statement**Nature of Impact:**

It is not anticipated that there will be any impact of this rule on jobs or employment opportunities.

Categories and Numbers Affected:

There are approximately 58 FQHCs, FQHC look-alikes, and rural health clinics.

Regions of Adverse Impact:

This rule will affect all regions within the State and businesses out of New York State that are enrolled in the Medicaid Program as an Article 28 clinic and that has been designated by the Centers for Medicare and Medicaid Services (CMS) as a Federally Qualified Health Center.

Minimizing Adverse Impact:

The Department is required by federal rules to reimburse FQHCs for the provision of primary care services, including clinical social work services, based upon the Center's reasonable costs for delivering covered services.

Self-Employment Opportunities:

The rule is expected to have no impact on self-employment opportunities since the change affects only services provided in a clinic setting.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

NOTICE OF ADOPTION**Managed Care Organizations**

I.D. No. HLT-13-04-00017-A

Filing No. 654

Filing date: June 14, 2005

Effective date: June 29, 2005

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

Action taken: Amendment of Subpart 98-1 of Title 10 NYCRR.

Statutory authority: Public Health Law, art. 44

Subject: Managed care organizations.

Purpose: To clarify the applicability of Subpart 98-1 to newly legislated and newly evolved forms of managed care, amend obsolete provisions, and provide clearer guidance to the health care industry concerning the certification and operational requirements for managed care organizations.

Substance of final rule: Revisions to Subpart 98-1, Managed Care Organizations (formerly Part 98, Health Maintenance Organizations) reflect changes made to Article 44 since the last time this section of 10 NYCRR was promulgated.

Revisions are made throughout the rule clarifying the applicability of provisions to specific types of managed care entities.

Title

The title was changed to incorporate new managed care entities that have been authorized by statutory changes.

98-1.1 Applicability

New types of managed care entities are added.

98-1.2 Definitions

Definitions are added for: "capitation"; "care management"; "comprehensive HIV special needs plan" (HIV SNP); "HIV SNP case management"; "HIV specialist primary care provider"; "independent practice association" (IPA); "managed care organization" (MCO); "managed long term care plan" (MLTCP); "material change to a contract"; "prepaid health services plan" (PHSP); "primary care partial capitation program" (PCPCP); "referral"; "Title XIX"; "Title XXI"; and, "transitional period".

Existing definitions were changed to reflect these new managed care entities, to achieve consistency with state and federal law and regulation and to update to reflect current practice.

98-1.3 Letter of Intent

Section 98-1.3, Letter of Intent, is obsolete and has been eliminated.

98-1.4 Certificate of Incorporation or Articles of Organization

This section is changed to recognize articles of organization.

98-1.5 Application for a Certificate of Authority

Changes to this section include: already approved MLTCPs may enroll members prior to obtaining a certificate of authority; applicants for certification provide notice to the Department of the resignation, termination or replacement of any officer or the medical director; pre-operational reserves and deposits must be calculated using projected net premium income and expenditures for the first calendar year; provider contracts are required to include requirements for enrollee consent for release of medical records, enrollee hold harmless provisions, authorization for the Commissioner of Health access to enrollee medical records and prior approval of material changes to MCO/provider contracts; State guidelines for provider contracts are authorized; recognition of limited liability corporations and IPAs organized under articles of organization; IPAs must use the term, "IPA" in the IPA name; an IPA certificate of incorporation or articles of organization must disclaim the operation of a hospital and other facilities; "Adult Care Facility" is added to this disclaimer; delineate the permitted activities of an IPA; proposed contracts for reinsurance must be submitted to the Commissioner and Superintendent prior to issuance of a certificate of authority; an exception from community rating requirements for the in-network component of a large group point-of-service product; and, requirements for review and prior approval of MCO and IPA name changes.

98-1.6 Issuance of the Certificate of Authority

Language is added requiring applicants for a certificate of authority to demonstrate that the governing authority will assemble at least four times annually and requiring approval of risk sharing arrangements. New language also includes holding companies and limited liability company members and managers in the character and competence reviews. This section is also updated for consistency with State statute regarding utilization review procedures, quality monitoring, complaints and grievances programs and open enrollment. A new provision requires approval of performance improvement programs prior to issuance of a certificate of authority. Approval authority for each line of business is specified.

98-1.7 Limitations of a Certificate of Authority

Changes to this section authorize the Commissioner and/or Superintendent to request financial projections related to an MCO's request to extend its service area.

98-1.8 Continuance of a Certificate of Authority

Changes provide the Commissioner authority to impose limitations and conditions on a certificate of authority, require that the notice period for new contracts and contract amendments be consistent with contract guidelines, and specify the approval requirements and entities for amendments to risk sharing arrangements, enrollee contracts and Medicaid rates of

payment. Provisions requiring demonstration of compliance with the regulations by December 10, 1986 have been eliminated.

98-1.9 Acquisition or Retention of Control of Managed Care Organizations

This section contains modified approval requirements for acquisitions of control of MCOs, including consideration of the MCO's holding company and its directors.

98-1.10 Transactions within a Holding Company System Affecting Controlled Managed Care Organizations

Changes to this section modify approval requirements for loans and extensions of credit between an MCO and anyone in its holding company system, as well as notice and approval requirements for certain transactions between an MCO and its holding company.

98-1.11 Operational and Financial Requirements for Managed Care Organizations

Changes in this section modify requirements for: transfers or loans between lines of business or to contractors, subsidiaries or members of the MCO's holding company system; contingent reserves, which are increased to 12.5 percent over eight years for HMOs, PHSPs and HIV SNPs except that reinsurance contract premiums may be substituted for up to half of the required annual reserve increase and the reserve may be offset by up to 50 percent of the required level at the end of a calendar year by means of an approved reinsurance agreement; escrow deposits, which must be in the form of trust accounts; governing authority composition and responsibilities, including an optional enrollee advisory council; management contracts, including what functions may and may not be delegated to a management contractor, management contract approval requirements and State authority to conduct character and competence and financial feasibility reviews. Changes also establish criteria for the declaration and distribution of dividends on capital stock by HMOs, including prior approval requirements in certain instances, authorize sanctions against MCOs engaging in improper management contracting activities and modify rules concerning the use of brokers. Several provisions related to obsolete contingency reserve requirements were eliminated.

98-1.12 Quality Management Program

Amendments to this section clarify the respective responsibilities of the internal quality assurance committee and the peer review committee, and modify requirements for quality assurance programs, including provider credentialing/recertification and removal of disciplined providers from the network, record retention and provider manual distribution.

98-1.13 Assurance of Access to Care

Amendments to this section require that covered services be provided within the network except when services are not available in-network, require the establishment of a process for the resolution of requests for medically necessary services when such services are not available in-network, require that limitations on accessing the entire network be communicated to enrollees and potential enrollees, establish requirements for prior approval of assignment of, and noticing for, termination of contracts with certain large providers, establish requirements for HIV SNP primary care practitioner (PCP) qualifications and HIV SNP member-to-PCP ratios, establish access and availability standards for HIV SNPs and MLTCPs, limit enrollee liability for referral services, modify enrollee consent and confidentiality provisions, establish criteria for retrospective review of pre-authorized services and require MCOs to have written procedures for implementation of transitional periods during which an enrollee may continue to see a health care provider after the provider leaves an MCO's network.

98-1.14 Enrollee Services and Grievance Procedures

Amendments to this section modify requirements for the content, approval and distribution of enrollee handbooks, modify language regarding complaint and grievance procedures for consistency with State law, require approval of grievance and complaint procedures prior to the start of enrollment and include requirements for acknowledgement of grievances and complaints and explanations of determinations.

98-1.16 Disclosure and Filing

Amendments to this section include requirements for the content and submission of financial statements, establish penalties for failure to submit complete reports or other information within 30 days of a written request, modify requirements for maintaining, distributing and submitting Health Provider Network information, add a requirement that MCOs serving Medicaid enrollees submit a compliance plan for the Americans with Disabilities Act (ADA) and establish reporting requirements for MLTCPs.

98-1.18 Relationship Between an MCO and an IPA

Amendments to this section makes MCOs responsible for agreements between a contracted IPA and other IPAs, specify the information required

for approval of risk sharing arrangements between an MCO and an IPA and add non-compliance with Title 1 of Article 49 as an offense subject to fines.

98-1.19 Marketing by MLTCPs

This new section delineates MLTCP requirements for marketing plans, marketing materials, marketing activities, marketing prohibitions, application processing and enrollment agreements consistent with Social Services and Public Health Law.

98-1.20 Waived Requirements for Managed Long Term Care Plans

This new section is added to waive requirements of Section 365-i of the Social Services Law pertaining to prescription drug payments as authorized by Section 4403-f(7)(ii) of the Public Health Law.

98-1.21 Fraud and Abuse Prevention Plans and Special Investigation Units

This new section requires MCOs with 10,000 or more enrollees that participate in public or government sponsored programs to develop a fraud and abuse prevention plan, to include establishment of a Special Investigations Unit, and details the required contents of the plan. The section also details the required qualifications of staff of the Special Investigations Unit and the contents and timetable for submission of the required annual report.

98-1.22 Warning Statements

This new section provides requirements for language to be contained in paper claim forms warning individuals of the consequences of fraud.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 98-1.5(b)(19).

Revised rule making(s) were previously published in the State Register on April 20, 2005.

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

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

Although the regulation has been changed since it was published in the *State Register* on April 20, 2005, the changes do not necessitate any changes to the Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement.

Assessment of Public Comment

Comments on revisions to Subpart 98-1 were received from two entities representing managed care organizations (MCOs), a Western New York independent practice association (IPA), a federally waived provider sponsored organization (FWPSO), and the New York State Attorney General. One non-substantial change was made to the regulation as a result of the comments received and one technical correction was made to the numbering of sections in the regulation.

Comment: An interested party commented that changes made to the regulation as a result of comments from the first publication are appreciated. The interested party was specifically appreciative of changes to Section 98-1.11(e) concerning the custodian of the escrow account, Section 98-1.11(s) concerning establishment of MCO enrollee advisory councils, Section 98-1.12(f)(2)(iii) concerning the required frequency of meetings of MCO governing authorities and Section 98-1.13(c) concerning requirements for notification of the termination of a medical group contract.

Response: The Department acknowledges these comments.

Comment: Regarding Section 98-1.5(b)(6)(ii), an interested party asked for confirmation of their understanding that revisions are intended to clarify the protections afforded enrollees under the existing regulations and the Department's "HMO and IPA Provider Contract Guidelines." It is the interested party's understanding that the revised rule protects an enrollee from being billed when the enrollee has met all contractual obligations under his or her subscriber contract. Also, the interested party understands that MCO enrollees will continue to be shielded from provider billing when: 1) the MCO fails to respond to a claim for services from the provider; 2) the MCO denies the claim due to some administrative failure by the provider (e.g., the provider failed to submit the claim in a timely manner or with required information); and 3) the MCO denies the claim based on lack of medical necessity upon concurrent or retrospective review. The interested party further understands that the regulations and guidelines continue to require participating provider contracts to prohibit providers from billing enrollees for services denied as medically unnecessary if the provider has not given the enrollee prior notice that the service is not covered.

Response: The Department confirms that the interested party's understanding of the intent of the revised regulations, as described above, is correct.

Comment: An interested party opposes the elimination of the grandfather provision in Section 98-1.5(b)(6)(vii) which details the conditions that IPAs must meet to contract with an MCO and describes the activities in which IPAs are authorized to engage. The interested party is concerned that, without the grandfather clause, IPAs will have to amend their certificates of incorporation to include required language, thereby potentially jeopardizing any tax-exempt status. The interested party recommends that the grandfather provision be restored or that the Department expand its previous public comment to clarify that IPAs incorporated prior to August 8, 1986 are exempt from all certificate of amendment requirements.

Response: The Department previously responded to this comment in the Assessment of Public Comment included in the April 20, 2005 filing.

Comment: An interested party requests that Section 98-1.5(b)(6)(vii)(e) be amended to include a federally waived provider sponsored organization (FWPSO) as an entity authorized to contract with an independent practice association (IPA). The interested party argues that the absence of FWPSOs in the definition of "MCO" and the absence of express authority for a FWPSO to contract with an IPA will prevent FWPSOs from making an IPA's provider network available to its enrollees. This, in turn, will pose a serious obstacle to FWPSOs wishing to serve the Medicare population in New York State. The interested party explains that many IPAs will not allow a managed care entity to directly contract with its providers. They note that FWPSOs are subject to federal Centers for Medicare and Medicaid (CMS) oversight with respect to the ability to deliver a range of services to Medicare enrollees, solvency requirements, including minimum net work amounts, and oversight and review of downstream contracts, including all provider agreements.

Response: The prohibition against contracting with other IPAs/MCOs that an IPA may impose on its providers is intended to prevent them from contracting to participate in a competing MCO, i.e., an MCO that does not contract with that IPA. Since IPAs can not contract with a FWPSO, the FWPSO should not be considered a competing MCO. Therefore, the contractual prohibitions should not apply. No change has been made to the regulation in response to this comment.

Comment: An interested party stated that Sections 98-1.5(b)(19) and 98-1.6(l) should be revised to be consistent. Whereas the former section includes the phrase, "consistent with applicable State law", the latter section includes the phrase, "pursuant to articles 32 and 43 of the Insurance Law".

Response: The Department agrees that these provisions should be identical. A non-substantial change has been made to Section 98-1.5(b)(19) to make the wording consistent with 98-1.6(l). The change is considered non-substantial because Articles 32 and 43 of the Insurance Law comprise "applicable State law".

Comment: An interested party recommends that Section 98-1.8(d) be revised to clarify that contracts between an MCO and a Medicare Advantage provider are not subject to approval by the Department.

Response: By federal law, the Department has no authority over Medicare Advantage provider contracts, and therefore, there is no need to state this fact in the regulations.

Comment: An interested party reiterated its opposition to the phase-in of increased reserve requirements in Section 98-1.11(e)(1). The interested party acknowledged the longer phase-in period reflected in the new proposed regulation (eight years, as opposed to six years), but stated that this change did not ameliorate concerns over the potential impact. Specifically, the commenter stated that, while most, if not all PHSPs currently satisfy the new requirements, there is no guarantee that the same level of reserves will be available in eight years, given that PHSPs are at the end of a four to five year financial upturn, rates are being cut, costs are rising and the future economic performance of PHSPs is uncertain. The interested party argues that PHSPs are not able to raise premiums to generate additional income if necessary to increase reserves, and that in the event of an economic downturn, the increased reserve requirement may threaten the viability of many PHSPs. Further, the commenter states that the current system has worked for 20 years and that the change is not necessary.

Another interested party commented that the contingent reserve phase-in period is neither necessary nor appropriate for commercial HMOs, as a 12.5 percent reserve should be the industry standard and most commercial HMOs already meet this requirement. The interested party recommends revising the regulation to require commercial HMOs to comply with the 12.5 percent contingent reserve amount within one year, while retaining the eight year phase-in period for PHSPs and HIV SNPs.

Response: The first interested party is repeating a comment submitted in response to the March 31, 2004 filing. The Department previously responded to this comment in the Assessment of Public Comment included in the April 20, 2005 filing.

In response to the second interested party, the Department believes that MCOs certified under Article 44 should be held to the same regulatory standards. The Department does not agree that a more stringent implementation schedule is appropriate for commercial HMOs. No change has been made to the regulation in response to these comments.

Comment: An interested party commented that, under the definition of "risk sharing" (Section 98-1.2(kk)) which includes both capitation and "other" risk sharing arrangements, Section 98-1.11(j)(6) and (7) would prohibit the delegation of both utilization review (UR) and quality management (QM) even in a fee-for-service arrangement that included withholds. It is the interested party's understanding that the Department intended to prohibit delegation of both UR and QM only in the context of a capitation or capitation-like arrangement. Therefore, the interested party recommends that Sections 98-1.11(j)(6) and (7) be revised to clarify that delegating both UR and QM is prohibited only in a capitation arrangement, not in other risk sharing arrangements such as withholds and surplus sharing arrangements.

Response: It is the Department's intent to restrict the delegation of both utilization review and quality management in all risk sharing arrangements, including withholds and surplus sharing arrangements. Therefore, no change has been made to the regulation in response to this comment.

Comment: An interested party stated that the Department's review time frames in Section 98-1.11(k) continue to be a significant impediment to timely implementation of negotiated agreements and expressed disappointment that the Department has not adopted a "file and wait" (sic) process. The interested party requested that the Department's Article 49 regulations be revised to require character and competence reviews of UR agents as part of the registration and renewal process. This would eliminate the need for such a review as part of the management contract review process.

Response: The only regulation that currently exists with respect to Article 49 is Subpart 98-2 which comprises the companion regulations to Title II of Article 49, External Appeals of Adverse Determinations. No regulation currently exists concerning the registration and renewal process for utilization review agents for two reasons: a) the statutory language already provides comprehensive guidance; and b) Article 49 included no explicit direction to the Commissioner to develop regulations. Therefore, the Department is unable to adopt the interested party's recommendation to change Article 49 regulations to require character and competence reviews of UR agents as part of the registration and renewal process. Concerning recommendations to adopt "file and use" rules, the Department previously responded to this comment in the Assessment of Public Comment included in the April 20, 2005 filing. No change has been made to the regulation in response to this comment.

Comment: An interested party commented that Section 98-1.12(o) be revised to give plans the option of providing the required information via participating provider agreements, provider manuals or other means (i.e. web sites, provider bulletins). The interested party notes that this flexibility would be analogous to that already provided to plans with respect to information required by Section 4408 of the Public Health Law.

Response: The information required in the provider manual reflects operational components such as the details of claims processing, utilization management, standards, phone numbers, rights and obligations. The Department has found that plans do not generally include detailed process information in provider agreements. This allows them to make changes more easily and to provide the detail under a separate document. Each plan provides considerable information on plan activities and processes after contracting. We believe it is essential for providers to receive this information to minimize confusion; therefore no change has been made to the regulation in response to this comment.

Comment: An interested party strongly objects to prior approval requirements in Section 98-1.13(a) for processes developed by MCOs for resolution of requests for referrals to out-of-network providers. The interested party recommends that this requirement be eliminated and that the Department continue working with the industry to develop guidelines which may then be monitored via the existing surveillance/site review process.

Response: The Department will continue its discussions with the industry on this issue: however, each plan must have an internal process in place for handling requests for accessing a non-participating provider. Prior approval of these processes will promote consistency within the industry

regarding the manner in which these requests are evaluated. The content of the approval process will be based upon the discussions with the industry. No change has been made to the regulation in response to this comment.

Comment: An interested party commented that the requirement in Section 98-1.13(c)(ii) for MCOs to notify the Department when a provider termination results in fewer than two providers of that type in the county is a problem in rural areas. Specifically, MCOs operating in rural areas often have only one core provider type in network. These MCOs have established standard processes allowing access to non-participating providers in the county or participating providers in contiguous counties. The interested party requests that this provision be revised to state that, in the case of a termination resulting in fewer than two providers of that type within a county, MCOs may use a previously approved standardized access plan in lieu of an impact analysis.

Response: MCOs must maintain an adequate array of providers since consumers are generally limited to receiving care within these networks. As networks are fluid, it is imperative that the Department be informed of cases in which agreements with core providers are terminated so that processes can be identified to provide needed care to members. If the MCO is operating in a rural area and an acceptable response has been previously submitted, it may utilize the previously submitted and approved response to any network issues resulting from the termination. No change has been made to the regulation in response to this comment.

Comment: An interested party requested confirmation that, with respect to Section 98-1.13(l), the Department does not intend to require MCOs to obtain consent from an enrollee's spouse and/or dependents for the release of medical records.

Response: The interested party's understanding is confirmed.

Comment: An interested party reiterated a previous comment that provisions in Section 98-1.13(m) requiring compliance with HIV confidentiality laws are duplicative to existing provisions requiring compliance with all applicable laws and regulations. The interested party recommends that the Department revise its standard contract appendix to include an HIV confidentiality provision to bring MCOs into compliance with this requirement.

Response: The interested party's comment that requirements regarding compliance with HIV confidentiality laws are duplicative were previously addressed in the Assessment of Public Comment included in the April 20, 2005 filing. The Department will consider the feasibility of adding HIV confidentiality provisions to its standard contract clauses. No change has been made to the regulation in response to this comment.

Comment: An interested party objects to the imposition, in Section 98-1.14(e), of an across-the-board appeal right for enrollees dissatisfied with the resolution of a complaint. The interested party argues that Section 4403(1)(g) of the Public Health Law requires only that MCOs have a mechanism for resolving complaints — it does not specifically require an appeal process to be part of that mechanism. Also, the interested party states that Section 4408-a of the Public Health Law requires an appeal process only for grievances, not complaints. The interested party states that an appeal process for complaints would be needlessly burdensome and unnecessary. The commenter recommends that the provision be revised to clarify that only complaints related to quality of care, access to care and billing would be subject to an appeal, consistent with language in this section regarding written determinations.

Response: The first interested party is repeating a comment submitted in response to the March 31, 2004 filing. The Department previously responded to this comment in the Assessment of Public Comment included in the April 20, 2005 filing. In addition to these previous comments, the Department believes that consumers should be allowed to submit additional information to the MCO regarding complaints and to request a re-review if they are not satisfied with the MCO's determination. If the member can not provide additional information on the complaint, no appeal is required. No change has been made to the regulation in response to this comment.

Comment: With respect to Section 98-1.18(b), an interested party seeks confirmation that the Department does not intend to impose new or stricter requirements regarding the specificity of payment rates contained in reimbursement attachments, e.g., actual fee-for-service fee schedules.

Response: It is not the Department's intent to review provider fee schedules associated with fee-for-service payment arrangements. However, the reimbursement methodology must be reflected in the provider agreement.

Comment: An interested party expressed opposition to the fraud and abuse prevention plans in Section 98-1.21. The commenter states that the requirements are onerous and inconsistent with the Department's efforts to

cap plans' administrative costs. In addition, the commenter argues that the requirements are overly prescriptive, and rather than adopting a "cookie cutter approach", the regulation should require plans to conduct a formal risk assessment and develop a fraud program that responds to the findings. The commenter believes that this approach would be more cost effective. The interested party recommends that the Department require managed care plans, through contract language, to comply with the federal requirement to adopt a compliance program consistent with CMS guidance.

Response: The interested party is repeating a comment submitted in response to the March 31, 2004 filing. The Department previously responded to this comment in the Assessment of Public Comment included in the April 20, 2005 filing. No change has been made to the regulation in response to this comment.

Comment: An interested party recommended that Section 98-1.21 expressly require MCOs to have procedures in place to report credible information of violations of law to the New York State Medicaid Fraud Control Unit (MFCU).

Response: The process for reporting violations of law, as established in the proposed rule, envisions MCOs reporting cases to the Department which, in turn, will report to the MFCU. This process is intended to streamline reporting to one agency to minimize confusion and simplify the process for MCOs. As the Department will take responsibility for forwarding confirmed cases of fraud and abuse to the MFCU, we do not believe that adding an additional reporting requirement is necessary. Therefore, no change has been made to the regulation in response to this comment.

In addition to the aforementioned, the Department is proposing the following non-substantial technical change to the regulation:

Section 98-1.5(e)(i) through (v) is renumbered (e)(1) through (e)(5).

Office of Mental Health

EMERGENCY RULE MAKING

Criminal History Record Review

I.D. No. OMH-26-05-00002-E

Filing No. 651

Filing date: June 10, 2005

Effective date: June 10, 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 section 551.7 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 4/1/05. 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 OMH.

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 September 7, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Julie Anne Rodak, Director, Bureau of Policy, Regulation and Legislation, 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.

Paragraph (12) of subdivision (h) 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 575 of the Laws of 2004 requires 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 Local Provider Applicant Registration system, 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.

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 Local Provider Applicant Registration system, 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.

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 Local Provider Applicant Registration system, 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 Local Provider Applicant Registration 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 Local Provider Applicant Registration 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, 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.

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-06-05-00008-P	February 9, 2005
PSC-14-05-00005-P	April 6, 2005

NOTICE OF ADOPTION

Gas Efficiency Program Plan for Consolidated Edison Company of New York, Inc.

I.D. No. PSC-07-05-00013-A

Filing date: June 13, 2005

Effective date: June 13, 2005

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

Action taken: The commission, on May 18, 2005, adopted an order in Case 03-G-1671 approving the gas efficiency program plan for Consolidated Edison Company of New York, Inc. (Con Edison).

Statutory authority: Public Service Law, sections 2, 4, 5, 65, 66 and 66-c

Subject: Gas efficiency program plan for Con Edison.

Purpose: To approve the gas efficiency plan.

Substance of final rule: The Commission approved the New York State Energy Research and Development Authority's (NYSERDA) Gas Efficiency Program Plan for Consolidated Edison Company of New York, Inc., and directed NYSERDA to carefully monitor program costs and make appropriate program adjustments to ensure sufficient funds remain available to cover the plan's administrative costs and associated lost reve-

nues, and to file quarterly status reports, 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-G-1671SA3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Exempt Wholesale Generator Status by FirstEnergy Corporation

I.D. No. PSC-26-05-00006-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 if it is in the public interest to allow certain generating facilities now owned by subsidiaries of FirstEnergy Corporation to become exempt wholesale generators, and if findings related to exempt wholesale generator status should be made.

Statutory authority: Public Service Law, sections 5(b), 65(1), 66(1), (5), (8), (9), (10), (11) and (12)

Subject: Exempt wholesale generator status of certain generating facilities now owned by subsidiaries of FirstEnergy Corporation.

Purpose: To allow certain generating facilities now owned by subsidiaries of FirstEnergy Corporation to become exempt wholesale generators owned by a newly-formed subsidiary of FirstEnergy Corporation.

Substance of proposed rule: The Public Service Commission is considering if it is in the public interest to allow certain generating facilities now owned by subsidiaries of FirstEnergy Corporation to become exempt wholesale generators, and if findings related to exempt wholesale generator status should be made. The Commission may grant, deny, or modify, in whole or in part, the relief requested.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

Data, views or arguments may be submitted to: Jaelyn A. Brillling, 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-0610SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection of Networks between Warwick Valley Telephone Company and Frontier Communications of America, Inc.

I.D. No. PSC-26-05-00007-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 Warwick Valley Telephone Company and Frontier Communications of America, Inc. for approval of a mutual traffic exchange agreement executed on May 9, 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: Warwick Valley Telephone Company and Frontier Communications of America, Inc. have reached a negotiated agreement whereby Warwick Valley Telephone Company and Frontier Communications of America, Inc. will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

Data, views or arguments may be submitted to: Jaclyn A. Brillig, 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-0674SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Telecommunications Issues

I.D. No. PSC-26-05-00008-P

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

Proposed action: The commission will conduct a broad review of its telecommunications policies, practices and rules in light of the fast changing telecommunications environment. The commission will examine rates, service quality, infrastructure, corporate structure, rules on affiliated transactions, directory, and level playing field issues and related matters, and may order changes in the manner in which it approaches these issues or take other actions designed to effectuate its policy objectives.

Statutory authority: Public Service Law, sections 5, 90, 91(1), 92, 94, 101, 105 and 110

Subject: Telecommunications issues.

Purpose: Review of telecommunications policies.

Substance of proposed rule: The Commission will conduct a broad review of its telecommunications policies, practices and rules in light of the fast changing telecommunications environment. The Commission will examine rates, service quality, infrastructure, corporate structure, rules on affiliated transactions, directory, and level playing field issues and related matters, and may order changes in the manner in which it approaches these issues or take other actions designed to effectuate its policy objectives.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

Data, views or arguments may be submitted to: Jaclyn A. Brillig, 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-0616SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Interconnection of Networks between T-Mobile USA, Inc. and Independent Telephone Companies

I.D. No. PSC-26-05-00009-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 T-Mobile USA, Inc. and independent telephone companies for approval of a mutual traffic exchange agreement executed on Jan. 1, 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: T-Mobile USA, Inc. and Independent Telephone Companies (Armstrong Telephone Company, Berkshire Telephone Corporation, Cassadaga Telephone Corporation, Champlain Telephone Company, Chautauqua & Erie Telephone Corporation, Chazy & Westport Telephone Corporation, Citizens Telephone Company of Hammond, NY, Crown Point Telephone Corporation, Delhi Telephone Company, Dunkirk & Fredonia Telephone Company, Empire Telephone Corporation, Fishers Island Telephone Company, Germantown Telephone Company, Inc., Hancock Telephone Company, Margaretville Telephone Company, Inc., Middleburgh Telephone Company, Newport Telephone Company, Inc., Nicholville Telephone Company, Oneida County Rural Telephone Company, Ontario Telephone Company, Inc., Pattersonville Telephone Company, State Telephone Company, Taconic Telephone Corporation, TDS Telecom - Deposit Telephone, TDS Telecom - Edwards Telephone, TDS Telecom - Oriskany Falls Telephone, TDS Telecom - Port Byron Telephone, TDS Telecom -Township Telephone, TDS Telecom - Vernon Telephone Company, Trumansburg Telephone Company, Warwick Valley Telephone Company) have reached a negotiated agreement whereby T-Mobile USA, Inc. and Independent Telephone Companies will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

Data, views or arguments may be submitted to: Jaclyn A. Brillig, 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-0675SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Issuance of Debt by the James V. Lettiere, Jr. d/b/a Lettiere Water System

I.D. No. PSC-26-05-00010-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, or modify, a request filed by the James V. Lettiere, Jr. d/b/a Lettiere Water System to issue debt in order to purchase and install radio read meters and related software.

Statutory authority: Public Service Law, section 89-f

Subject: Issuance of debt.

Purpose: To purchase and install a radio read meter system.

Substance of proposed rule: On March 17, 2005, the James V. Lettiere, Jr. d/b/a Lettiere Water System (Lettiere) filed a letter requesting Public Service Commission approval to finance a \$24,000 loan to purchase and install, in less than one year, radio read meters and associated software for its customers. The company plans to finance the loan with a local bank and recover the associated carrying costs from its customers over a seven year period. Lettiere currently provides water service to 100 customers and is located in the Town of Watertown, Jefferson County. The Commission may approve or reject, in whole or in part, or modify the company's request.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

Data, views or arguments may be submitted to: Jaclyn A. Brillig, 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-W-0696SA2)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Water Rates and Charges by James V. Lettiere, Jr. d/b/a Lettiere Water System

I.D. No. PSC-26-05-00011-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, or modify, a request filed by the James V. Lettiere, Jr. d/b/a Lettiere Water System to make various changes in the rates and charges contained in its tariff schedule P.S.C. No. 1—Water, to become effective Oct. 1, 2005.

Statutory authority: Public Service Law, section 89-c(10)

Subject: Water rates and charges.

Purpose: To increase James V. Lettiere, Jr. d/b/a Lettiere Water System’s annual revenues by about \$12,000 or 20 percent.

Substance of proposed rule: On June 8, 2005, the James V. Lettiere, Jr. d/b/a Lettiere Water System (Lettiere) filed First Revised Leaf No. 12 to its tariff schedule P.S.C. No. 1 - Water to become effective October 1, 2005. The proposed rate increase filing would produce additional annual revenues of \$12,000 or 20%, and increase the average annual residential customer bill by approximately \$142 or 25%. The company is also requesting that an automatic mechanism be included in its tariff to recover, on an on-going basis, the increased costs of purchased water resulting from any rate increases imposed by the City of Watertown from which it purchases all of its water. Lettiere currently provides water service to 100 residential metered customers and is located in the Town of Watertown, Jefferson County. The Commission may approve or reject, in whole or in part, or modify the company’s request.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

Data, views or arguments may be submitted to: Jaclyn A. Brillig, 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-W-0696SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Transfer of Franchise by New York State Electric and Gas Corporation

I.D. No. PSC-26-05-00012-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, or modify, a petition by New York State Electric and Gas Corporation for approval to continue the leases of its Plattsburgh and Albion Service Centers for an additional five years.

Statutory authority: Public Service Law, section 70

Subject: Transfer of franchise.

Purpose: To consider the request to extend a lease.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole, in part or modify, a petition filed by New York State Electric and Gas Corporation for approval to continue the leases of Plattsburgh and Albion Service Centers for an additional 5 years.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

Data, views or arguments may be submitted to: Jaclyn A. Brillig, 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-M-0642SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Rider N—Emergency Service by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-26-05-00013-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 Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 9.

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

Subject: Rider N—emergency service.

Purpose: To make revisions applicable to Service Classifications Nos. 4 and 9.

Substance of proposed rule: On June 9, 2005, Consolidated Edison Company of New York, Inc. (Con Edison or the company) filed proposed tariff amendments to revise Rider N - Emergency Service to permit customers to negotiate a separate arrangement for service under Rider N if such customers plan to supply, maintain, transport and operate mobile generators. The company also proposes to revise language about the seven-customer ceiling with language that permits the company to reserve the right to limit customers enrollment to seven generators. The proposed effective date of Con Edison’s filing is September 1, 2005. The Commission may approve, reject or modify, in whole or in part, Con Edison’s proposed tariff revisions.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

Data, views or arguments may be submitted to: Jaclyn A. Brillig, 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-0695SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Gas Supply Charge by Rochester Gas and Electric Corporation

I.D. No. PSC-26-05-00014-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, a proposal filed by Rochester Gas and Electric Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service—P.S.C. No. 16.

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

Subject: Gas supply charge.

Purpose: To implement monthly proration of the company's gas supply charge.

Substance of proposed rule: The Commission is considering Rochester Gas and Electric Corporation's request to implement monthly proration of the company's Gas Supply Charge on customer bills.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

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-0680SA1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

New Types of Electricity Meters, Transformers and Auxiliary Devices by Trench Limited

I.D. No. PSC-26-05-00015-P

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

Proposed action: The commission is considering whether to approve or reject, in whole or in part, a petition dated May 18, 2005 by Trench Limited for commission approval of the combination current and voltage measuring transformers type N5 and N5H.

Statutory authority: Public Service Law, section 67(1)

Subject: Approval of new types of electricity meters, transformers, and auxiliary devices—Case 279.

Purpose: To permit electric utilities in New York State to use the Trench Limited current and voltage measuring transformers.

Substance of proposed rule: The Commission will consider a request from Trench Limited for the approval of the Combined Metering Potential Transformer and Current Transformer, Type N5 and N5H at 69kV through 230kV.

According to the applicant, these transformers are capable of providing ANSI revenue metering class accuracy, and have been tested to exceed the compliance accuracy requirements as stated in ANSI C12.11 and IEEE C57.13 test specifications. In accordance with 16 NYCRR Part 93, Trench Limited has indicated that Niagara Mohawk Power Corporation has submitted a letter of intent to use the Trench Limited Type N5 and N5H in its customer billing and metering applications.

Text of proposed rule may be obtained from: Elaine Lynch, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 486-2660

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-0607SA1)

**Office of Real Property
Services**

NOTICE OF ADOPTION

State Reimbursement of Expenses of Local Officials in Satisfying Training Requirements

I.D. No. RPS-14-05-00004-A

Filing No. 657

Filing date: June 14, 2005

Effective date: June 29, 2005

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

Action taken: Amendment of section 188-2.9(b)(4) of Title 9 NYCRR.

Statutory authority: Real Property Tax Law, sections 202(1)(l), 318(4) and 1530(3)(f); and L. 2004, ch. 53

Subject: State reimbursement of expenses of local officials in satisfying training requirements.

Purpose: To authorize payment of late vouchers if funds are available.

Text or summary was published in the notice of proposed rule making, I.D. No. RPS-14-05-00004-P, Issue of April 6, 2005.

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

Text of rule and any required statements and analyses may be obtained from: James J. O'Keeffe, General Counsel, Office of Real Property Services, 16 Sheridan Ave., Albany, NY 12210-2714, (518) 474-8821, e-mail: internet.legal@orps.state.ny.us

Assessment of Public Comment

The agency received no public comment.

**Office of Temporary and
Disability Assistance**

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Federal Poverty Lines

I.D. No. TDA-26-05-00001-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 sections 352.7(g)(3)(vii), 370.3(b)(2) and 372.2(a)(2) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 131(1) and 355(3)

Subject: Federal poverty lines.

Purpose: To refer to the correct Federal agency that establishes the Federal poverty lines.

Text of proposed rule: Section 352.7(g)(3)(vii) is amended to read as follows:

(vii) in the case of an applicant who is not eligible for [Home Relief, Aid to Dependent Children] *Safety Net Assistance, Family Assistance, Emergency Assistance to Families, or Emergency Assistance to Adults*, such applicant is without income or resources immediately available to meet an emergency need, such applicant's gross household income at the time of application does not exceed 125 percent of the Federal income official poverty line as defined and annually revised by the [Federal Office of Management and Budget,] *United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2)*, and such applicant signs an agreement to repay the assistance in a period not to exceed 12 months from receipt of such assistance. The repayment agreement must set forth a schedule of payments that will assure repayment within the 12-month period, and must specify the frequency of the pay-

ments, the due date of the first payment, the address where payments must be made and the consequences of failing to repay the assistance as agreed. Subsequent assistance to pay arrears may not be granted unless there are no past-due amounts owed under any such repayment agreement. The social services district, in addition to any rights it has pursuant to the Social Services Law, may enforce the repayment agreement in any manner available to a creditor.

Section 370.3(b)(2) is amended to read as follows:

(2) the individual or household is without income or resources immediately available to meet the emergency need and the individual's or household's gross income at the time of application does not exceed 125 percent of the current Federal income official poverty line, as defined and annually revised by the [Federal Office of Management and Budget.] *United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2)*. For purposes of determining eligibility for assistance pursuant to this section, these annually revised poverty lines are effective April 1st through March 31st of each *State* fiscal year. If the emergency is the result of a fire, flood or other like catastrophe or if the emergency assistance is granted in accordance with section 352.5(c) - (e) of this Title, the individual's or household's gross income at the time of application can exceed 125 percent of the Federal income official poverty guideline;

Section 372.2(a)(2) is amended to read as follows:

(2) the child is without available income or resources immediately accessible to meet his or her needs and those needs cannot be met under Part 352 of this Title by an advance allowance and the household's available income on the date of application is at or below 200 percent of the current federal poverty level *as defined and annually revised by the United States Department of Health and Human Services under the authority of 42 U.S.C. 9902(2)* for that household size [(the Federal Office of Management and Budget defines and annually revises federal income official poverty lines in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 [P.L. 97-35]), or the household is financially eligible to receive public assistance in accordance with Part 352 of this Title or, for households in receipt of child protective, child preventive or other child welfare services, at least one member of the household is in receipt of public assistance or Supplemental Security Income (*for purposes of determining eligibility for assistance pursuant to this section, the annually revised poverty lines are effective April 1st through March 31st of each State fiscal year*)];

Text of proposed rule and any required statements and analyses may be obtained from: Ronald Speier, Office of Temporary and Disability Assistance, 40 N. Pearl St., Albany, NY 12243, (518) 474-6573

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

The proposed amendments would make technical changes to 18 NYCRR 352.7(g)(3)(vii), 370.3(b)(2) and 372.2(a)(2) to delete references to the Federal Office of Management and Budget. Those sections, which concern eligibility for emergency assistance, base such eligibility upon meeting certain levels of the Federal income poverty line, as established annually by the Federal Office of Management and Budget. In the Federal Register of February 18, 2005, the Federal Department of Health and Human Services issued a notice that stated: "Due to confusing legislative language dating back to 1972, the poverty guidelines have sometimes been mistakenly referred to as the 'OMB' (Office of Management and Budget) poverty guidelines or poverty line. In fact, OMB has never issued the guidelines; the guidelines are issued each year by the Department of Health and Human Services. The poverty guidelines may be formally referenced as 'the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2)'." The proposed amendments are consistent with the instructions contained in the notice published by the Department of Health and Human Services.

In addition, 18 NYCRR 372.2(a)(2) would be amended to establish the period when the poverty line would be effective. The time period, April 1st through March 31st of each State fiscal year, is consistent with the period contained in 18 NYCRR 370.3(b)(2). Since both sections concern eligibility for emergency assistance, it is appropriate that the proposed amendment to section 372.2(a)(2) also add a time period so that section is consistent with section 370.3(b)(2).

Because the proposed amendments make only technical changes and it is expected that no person is likely to object to its adoption, the Office of Temporary and Disability Assistance is proposing to adopt the amend-

ments on an expedited basis under the consensus rule provisions of section 102(11) of the State Administrative Procedure Act.

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.