

RULE MAKING ACTIVITIES

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

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

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

Banking Department

EMERGENCY RULE MAKING

Budget Planning Activities

I.D. No. BNK-12-05-00001-E

Filing No. 205

Filing date: March 3, 2005

Effective date: March 7, 2005

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

Action taken: Addition of Part 404 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-C, section 587

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

Specific reasons underlying the finding of necessity: Chapter 629 of the laws of 2002, which became effective on April 7, 2003, made substantial changes to the conduct of the business of budget planning in this state. Amendments made to Article 12-C of the New York Banking Law and Article 28-B of the New York General Business Law necessitated the emergency adoption of Part 402 of the Superintendent's Regulations on that date.

It has come to the attention of the Banking Department that many licensed budget planners utilize third party entities to assist them in distributing the monies of debtors to their creditors. Likewise, many applicants

for a budget planning license have indicated in their application that they intend to conduct their budget planning activities in a similar fashion. This type of "outsourcing", in which an entity other than the licensee which has a contract for budget planning services with a debtor has access to or controls the monies of debtors, raises the possibility that those monies will not be sufficiently protected, as intended by the Legislature. The rule is necessary in order to provide protection to debtors when a third party "outsourcer" is used in the process of paying debtor funds to creditors of the debtors. Specifically, if the third party "outsourcer" is another budget planner licensed under Article 12-C of the New York Banking Law, the amount of that licensee's bond or assets placed on deposit, as the case may be, the proceeds of which constitute a trust fund to reimburse payments made by debtors that have not been properly distributed to their creditors, must be increased to reflect the additional amount of debtors' funds that it has access to or controls as a result of its "outsourcing" activities. However, if the licensed budget planner which utilizes another licensed budget planner as an "outsourcer" places assets on deposit pursuant to Section 580(4) of the Banking Law in an amount sufficient to cover the debtors' funds that the licensed "outsourcer" has access to or controls, then the licensed "outsourcer" would not be required to obtain a surety bond in a greater amount, or place additional assets on deposit to cover the additional amount of debtors' funds that it has access to or controls, as a result of its outsourcing activities. In such case, the monies of debtors would be fully protected by the original licensee's asset deposit.

If the third party "outsourcer" is not a licensed budget planner in New York State, the issue of the safety of the monies of the debtors becomes more paramount as an entity unregulated by and probably unknown to the Banking Department will have access to or control of the monies of debtors. In such case, unless the licensed budget planner places assets on deposit sufficient to cover the debtors' funds that the non-licensed "outsourcer" has access to or controls, the non-licensed "outsourcer" would be required to place assets on deposit sufficient to protect the monies of the debtors that it has access to or controls as a result of its "outsourcing" activities.

The rule also contains provisions relating to the contractual relationship between the licensed budget planner and the service provider, which give protection to debtors who may be adversely affected if the contract between the licensee and the service provider is terminated.

The primary legislative objective of Chapter 629 is to provide greater consumer protection to New York residents who contract with licensed budget planners for budget planning services. Accordingly, considering the foregoing, emergency adoption of this rule is necessary and appropriate.

Subject: Regulation of budget planning activities.

Purpose: To set forth the regulatory requirements and standards of operation for entities licensed under art. 12-C of the Banking Law to conduct the business of budget planning when the licensees use the services of third party entities in making payments of debtor funds to creditors of the debtors.

Text of emergency rule:

PART 404

BUDGET PLANNERS/DELEGATION OF CERTAIN ACTIVITIES

(Statutory authority: Banking Law, § 587)

§ 404.1 Definitions.

For purposes of this Part:

(a) The term "debtor" shall mean an individual who enters into a contract with a licensee and is at that time a New York resident.

(b) The term "licensee" shall mean an entity licensed pursuant to Article 12-C of the New York Banking Law.

(c) The term "licensee service provider" shall mean an entity licensed pursuant to Article 12-C of the New York Banking Law that holds, or has access to, or can effectuate possession of, by any means, the monies of another licensee's debtors, or distributes, or is in the chain of distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee. This term shall not include entities that solely provide the electronic routing and settlement of financial transactions and their sponsoring banks.

(d) The term "non-licensee service provider" shall mean an entity that holds, or has access to, or can effectuate possession of, by any means, the monies of a licensee's debtors, or distributes, or is in the chain of distribution of such monies, to the creditors of such debtors, pursuant to an agreement or contract with the licensee. This term shall not include entities that solely provide the electronic routing and settlement of financial transactions and their sponsoring banks.

(e) The term "control party" shall mean with respect to a licensee, any individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a licensee. With respect to a non-licensee service provider it shall mean any individual or entity that has a 10% or more ownership interest in the non-licensee service provider and/or any individual or entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a non-licensee service provider.

§ 404.2 Explanatory note.

Section 580.4 of Article 12-C of the New York Banking Law requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, maintain certain assets on deposit, which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed by the licensee to the creditors of the debtors. In circumstances in which a licensee uses a licensee service provider or a non-licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of a licensee's debtors, the services of such service providers shall be subject to the terms and conditions set forth in sections 404.3, 404.4, 404.5 and 404.6 of this Part, in order to provide the consumer protections afforded to licensees' debtors as mandated under Article 12-C of the New York Banking Law.

In complying with these terms and conditions, a licensee that obtains a surety bond pursuant to Section 580.4 of the Banking Law and uses the services of a licensee service provider as described, is required to use a licensee service provider that either obtains a surety bond or maintains assets on deposit, in accordance with the provisions of Banking Law Section 580.4. Similarly, if the licensee obtains a surety bond and uses the services of a non-licensee service provider as described, the licensee is required to use a non-licensee service provider that maintains assets on deposit, in accordance with the provisions of Section 404.4(c)(2) of this Part.

If, however, a licensee elects to maintain assets on deposit pursuant to Banking Law Section 580.4 and uses the services of a licensee service provider or a non-licensee service provider as described, there is no requirement that the licensee service provider or the non-licensee service provider obtain a surety bond or maintain assets on deposit. The licensee service provider would, of course, be required to obtain a surety bond or maintain assets on deposit with respect to its own contracts with debtors for budget planning services, pursuant to Banking Law Section 580.4.

§ 404.3 Servicing By a Licensee Service Provider.

(a) If a licensee seeks to utilize a licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of another licensee's debtors in contract with the licensee for budget planning services, or to distribute, or be in the chain of distribution of such monies to creditors of the licensee's debtors, the licensee shall give the Superintendent ten days written notice of its intention to do so.

(b) Notice to the Superintendent shall contain the following information:

(1) Name and address of the licensee service provider.

(2) A description of the services to be provided by the licensee service provider.

(3) A copy of the agreement or contract between the licensee and the licensee service provider with respect to the provision of any or all of the services described in section 404.3(a) of this Part.

(4) The highest daily amount of debtor funds of the licensee to be held by the licensee service provider, or to which access is given to the licensee service provider, or to which possession can be effectuated, by any means, by the licensee service provider, or which are distributed by the licensee

service provider, or are in the chain of distribution, to the creditors of the licensee's debtors.

(c) Unless the licensee maintains assets on deposit in lieu of a surety bond, pursuant to Banking Law Section 580.4, the Superintendent, in his/her discretion, may require the licensee service provider to obtain a larger surety bond or maintain a greater amount of assets on deposit for the protection of debtors in accordance with the terms and conditions as set forth in Superintendent's Regulation Parts 402.5, 402.6 and 402.7 in connection with the services being provided by the licensee service provider to the licensee as described in section 404.3(a) of this Part.

(d) A licensee shall not use a licensee service provider until the licensee receives written notice from the Superintendent confirming that the Superintendent has received a copy of the licensee service provider's bond or asset deposit agreement, if required under Section 404.3(c) of this Part.

(e) Notwithstanding the provisions of Section 404.3(c) of this Part, if a licensee maintains a surety bond and seeks to utilize a licensee service provider, as defined in section 404.1(c) of this Part, the Superintendent, in his/her sole discretion, may permit the use of an alternate mechanism to the licensee service provider obtaining a larger surety bond or maintaining a greater amount of assets on deposit, consistent with the purposes of Section 580.4 of Article 12-C of New York's Banking Law and the requirements of this Part.

(f) If the use of an alternate mechanism pursuant to Section 404.3(e) of this Part is proposed by a licensee, the licensee must provide a description of the alternate mechanism and a copy of all applicable documents and records, as well as any other information requested by the Superintendent, in connection with obtaining and/or using the alternate mechanism, including all contracts/agreements pertaining or related thereto.

(g) If a licensee proposes the use of an alternate mechanism to a licensee service provider obtaining a larger surety bond or maintaining a greater amount of assets on deposit, pursuant to Section 404.3(e) of this Part, use of the alternate mechanism shall not be permitted until the licensee receives written notice from the Superintendent that he/she has no objection to such alternate mechanism.

§ 404.4 Servicing By A Non-Licensee Service Provider.

(a) If a licensee seeks to utilize a non-licensee service provider to hold, or have access to, or to effectuate possession of, by any means, the monies of the licensee's debtors in contract with the licensee for budget planning services, or to distribute, or to be in the chain of distribution of such monies, to the creditors of the licensee's debtors, the licensee shall give the Superintendent ten days written notice of its intention to do so.

(b) Notice to the Superintendent shall contain the following information:

(1) Name and address of the non-licensee service provider.

(2) Name, address, social security number and resume of the officers and directors of the non-licensee service provider, any other individual(s) who supervises the daily operations of the non-licensee service provider and any persons having a 10% or more ownership interest, directly or indirectly, in the non-licensee service provider. If an individual(s) has a 10% or more ownership interest in the non-licensee service provider and such individual is not a control party of the licensee with whom the non-licensee service provider is in contract to provide the services described in section 404.4(a) of this Part, such individual shall provide an affidavit attesting to that fact.

(3) A description of the services to be provided to the licensee by the non-licensee service provider.

(4) A copy of the agreement or contract between the licensee and the non-licensee service provider with respect to the provision of any or all of the services described in section 404.4(a) of this Part.

(5) The highest daily amount of debtor funds to be held by the non-licensee service provider, or to which access is given to the non-licensee service provider, or to which possession can be effectuated, by any means, by the non-licensee service provider, or which are distributed by the non-licensee service provider, or are in the chain of distribution, to the creditors of the debtors.

(c) A licensee shall not use a non-licensee service provider for the services described in section 404.4(a) of this Part until:

(1) The non-licensee service provider gives the Superintendent or his/her authorized representative written authorization to examine all books, records, documents and materials, including those maintained in electronic form, as they relate to the debtors monies held by, or distributed by the non-licensee service provider to the creditors of the debtors, as the superintendent in his/her discretion deems necessary to protect the interests of the debtors. The cost of such examination shall be borne by the licensee in contract with the non-licensee service provider; and

(2) Unless the licensee maintains assets on deposit in lieu of a surety bond, pursuant to Banking Law Section 580.4, the non-licensee service provider shall maintain assets on deposit for the protection of the debtors whose monies it holds, or has access to, or can effectuate possession of, by any means, or which are distributed, or are in the chain of distribution, by the non-licensee service provider, to the creditors of the debtors. The maintenance of such assets shall be in accordance with the terms and conditions as set forth in Superintendent's Regulation Parts 402.6 and 402.7; and

(3) All information required in subdivision (b) of this section and a copy of the non-licensee service provider's asset deposit agreement, if required under Section 404.4(c)(2) of this Part, have been provided to the Superintendent, and the licensee receives written notice from the Superintendent confirming that the Superintendent has received all such information.

(d) Notwithstanding the provisions of Section 404.4(c)(2) of this Part, if a licensee maintains a surety bond and seeks to utilize a non-licensee service provider, as defined in Section 404.1(d) of this Part, the Superintendent, in his/her sole discretion, may permit the use of an alternate mechanism to the non-licensee service provider maintaining assets on deposit, consistent with the purposes of Section 580.4 of Article 12-C of New York's Banking Law and the requirements of this Part.

(e) If the use of an alternate mechanism pursuant to Section 404.4(d) of this Part is proposed by a licensee, the licensee must provide a description of the alternate mechanism and a copy of all applicable documents and records, as well as any other information requested by the Superintendent, in connection with obtaining and/or using the alternate mechanism, including all contracts/agreements pertaining or related thereto.

(f) If a licensee proposes the use of an alternate mechanism to a non-licensee service provider maintaining assets on deposit pursuant to Section 404.4(d) of this Part, use of the alternate mechanism shall not be permitted until the licensee receives written notice from the Superintendent that he/she has no objection to such alternate mechanism.

§ 404.5 Termination of Agreements or Contracts.

(a) Every agreement or contract between a licensee and a licensee service provider, or a non-licensee service provider, to hold, or have access to, or to effectuate possession of, by any means, the monies of the licensee's debtors in contract with the licensee for budget planning services, or to distribute, or be in the chain of distribution of such monies, to creditors of such debtors, shall provide that the agreement or contract shall not be terminated without at least 30 days written notice to the party against whom termination is being sought.

(b) A licensee shall immediately notify the Superintendent, in writing, of such termination, upon the sending of by the licensee, or upon the receipt by the licensee, of the notice of termination.

§ 404.6 Compliance.

Compliance with this Part shall be required on or before May 18, 2004.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire May 31, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Sam L. Abram, Secretary to the Banking Board, Banking Department, One State St., 6th Fl., New York, NY 10004-1417, (212) 709-1658, e-mail: sam.abram@banking.state.ny.us

Regulatory Impact Statement

1. Statutory authority:

Section 587 of Article 12-C of the New York Banking Law, as amended by chapter 629 of the Laws of 2002, provides the statutory authority for the Superintendent to propose this rule with respect to entities licensed under Article 12-C of the Banking Law to conduct the business of budget planning. Provisions of chapter 629 include the enactment of amendments to Article 12-C of the New York Banking Law and Article 28-B of the New York General Business Law that relate to the business of budget planning. Article 12-C of the New York Banking Law provides for the licensing and regulation of entities engaged in the business of budget planning. The business of budget planning is defined in Section 455 of Article 28-B of New York's General Business Law.

2. Legislative objective:

Entities that are licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning are authorized to enter into contracts with individuals ("Debtors") who seek to pay off their debts. The Debtors agree to pay sums of money periodically to the licensed budget planner. The licensed budget planner in turn uses the money received from the Debtors to pay the creditor(s) of the Debtors based on payment terms

set forth in the contracts between the licensed budget planner and the Debtors. Debtors pay a fee to licensed budget planners for this service.

Typically, Debtors who enter into such contracts with licensed budget planners have incurred significant amounts of consumer debt primarily through credit-card financed purchases. The expansion of unsecured consumer credit to the general public has resulted in an explosion of consumer debt. This has created situations where credit has been extended to, and utilized by, individuals who, if not for the available credit, would have been unable to engage in such consumer spending based on their disposable income. Individuals who have no funds to repay such debts may only possibly resolve their financial problems by either seeking out personal bankruptcy or by looking to the services provided by credit counselors or licensed budget planners. Debtors often have little ability to satisfy their creditors without the use of a structured payment plan negotiated with the creditors that may include some modification of the outstanding debt due to the creditor. Licensed budget planners perform an intermediary role between the Debtors and the creditors in negotiating a payment plan and in insuring that periodic payments are made to the creditors.

Under these circumstances the individuals in debt are often in dire economic circumstances. Consequently, they are potential targets of persons or entities that may seek to take advantage of them by accepting fees for the promise of services or programs that may not actually eliminate the debt.

The Legislature in amending various sections of Article 12-C of the New York Banking Law, which provides for the licensing and regulation of entities engaged in the business of budget planning, did so generally to establish a more rigorous regulatory environment within which entities licensed under New York law may engage in the business of budget planning. The Legislature addressed, among other things, the inherent risks associated with the payment of Debtor funds to creditors when Debtors choose to have such payments made via the services of a licensed budget planner instead of paying their creditors directly. Specifically, as one way of increasing consumer protections for the Debtors who contract with licensed budget planners in order to pay the debts they owe to creditors, Article 12-C was amended to require licensed budget planners to obtain a surety bond or place assets on deposit, the proceeds of which constitute a trust fund to reimburse payments made by debtors that have not properly been paid to their creditors.

In addition to the amendments to Article 12-C of the New York Banking Law, amendments were also made to Article 28-B of the New York General Business Law in connection with the business of budget planning. Specifically, Section 455 of Article 28-B of the New York General Business Law requires a person or entity, wherever located, that enters into a contract for budget planning with an individual then resident in New York State, to first obtain a license from the Superintendent of Banks to conduct the business of budget planning. Such a license is obtained pursuant to Article 12-C of the New York Banking Law. Because of the requirement that out-of-state entities that contract with New York residents for budget planning services be licensed under the Banking Law, New York residents who partake of the budget planning services offered by the out-of-state entities will also be afforded the consumer protections that have been put in place under Article 12-C of the Banking Law.

The proposed New Part 404 sets forth a framework for the regulation of entities licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning, when such licensees use third party entities in distributing the monies of Debtors to creditors. New Part 404 was drafted in furtherance of the public policy objectives that the Legislature sought to advance in enacting the amendments to Article 12-C of the New York Banking Law, in particular, Section 580(4), by providing protection when third party entities are used in distributing Debtor monies to creditors.

3. Needs and benefits:

Proposed New Part 404 is needed to enable the Banking Department to carry out its existing supervisory and regulatory responsibilities with respect to entities licensed under Article 12-C of New York's Banking Law to conduct the business of budget planning. Specifically, when Banking Law Section 580(4) was recently enacted, it placed the requirement upon licensed budget planners to obtain a surety bond or place assets on deposit, the proceeds of which constitute a trust fund to reimburse payments made by Debtors that have not been properly paid to their creditors. Since the enactment of the legislation, members of the Banking Department staff have received numerous applications from prospective licensees. Extensive discussions were had at meetings and in telephone conversations with a number of the prospective licensees, as well as with current licensees, regarding the operations of their budget planning businesses. This was

done in order to assess whether the business practices of the budget planning industry conformed to the consumer protections standards set forth in the new laws. The Department learned from many of the prospective and current licensees that with respect to the Debtors that they are in contract with for budget planning services, it is their practice to use third party entities in distributing the Debtors' monies to creditors. The third party entities that they contract with for such services are generally for-profit entities that are not, themselves, licensed to conduct the business of budget planning. However, one current licensee indicated that it uses the services of another New York State licensed budget planner in order to distribute Debtors' monies to creditors. The current and prospective licensees explained that it is necessary for them to use the services of third party entities in this way primarily because they do not have the computerized technology, staffing, and budgetary resources to provide the critical services performed by the third party entities.

Nevertheless, this type of "outsourcing" to a third party entity, in which an entity other than the licensee which has a contract for budget planning services with a Debtor, holds, or has access to, or can effectuate possession of, by any means, the monies of a licensee's Debtors, or distribute, or is in the chain of distribution of such monies, to the creditors of such Debtors, raises the possibility that those monies will not be sufficiently protected, as intended by the Legislature when it put into law the bond/asset deposit requirement as set forth in Section 580(4) of New York's Banking Law.

The rule is proposed in order to accommodate the budget planning industry's operational need to use the third party entities in distributing Debtor funds to creditors. At the same time, the rule provides the consumer protections afforded by the recently enacted budget planning legislation as set forth in Banking Law Section 580(4). In particular, if the licensee uses a third party entity in distributing Debtor funds to creditors, and the licensee elects to place assets on deposit, which assets constitute a trust fund to reimburse payments made by Debtors if not properly paid to their creditors, the rule allows for the use of such a third party entity and places no additional bond/asset deposit requirements on the third party entity. If, on the other hand, the licensee elects to obtain a surety bond rather than place assets on deposit, the licensee may only use a third party entity in distributing Debtor funds if the third party entity places assets on deposit or obtains a surety bond, as the case may be.

Budget Planning is a regulated financial service in New York State. Therefore, it is the obligation of the Superintendent of Banks, as the State financial regulator, to establish a rule as proposed in accordance with the legislative intent to protect vulnerable consumers from entities that may operate without the necessary business standards required to appropriately provide budget planning services. It is the Banking Department's belief that the rule as proposed is necessary. It provides the mechanism by which the budget planning entities that are currently licensed, as well as those seeking to obtain such a license, can continue to operate using the services of third party entities in distributing Debtor funds to creditors. At the same time, the rule satisfies the legislative requirement as set forth in Banking Law Section 580(4) to provide certain protection to Debtors in contract with licensees, in cases where third party entities are used by the licensees in distributing Debtor funds to creditors.

4. Costs:

(a) Costs to State government: None.

Any and all additional examination costs that may be incurred by the Banking Department, as a result of the requirements of the rule imposed on the licensees that use third party entities in the distributing Debtor funds to creditors, will be borne by the licensees.

(b) Costs to local government: None.

(c) Costs to regulated entities:

The proposed rule allows licensees to use third party entities in distributing Debtor funds to creditors. In summary, Part 404 provides the following. If a licensee elects to maintain assets on deposit and utilizes the services of a third party entity in distributing Debtor funds to creditors, (whether or not the third party entity is, or is not, another budget planner licensed in New York) there is no requirement that the third party entity obtain a surety bond or place assets on deposit with respect to the business of the licensee that it is servicing. If a licensee elects to obtain a surety bond and utilizes the services of a third party entity in distributing Debtor funds, which entity is also a licensed budget planner in New York, the third party entity must either obtain a surety bond or maintain assets on deposit with respect to the business of the licensee that it is servicing. If the licensee elects to obtain a surety bond and utilizes the services of a third party entity in distributing Debtor funds, which entity is not a New York licensed budget planner, the third party entity must maintain assets on deposit with respect to the business of the licensee that it is servicing.

A licensee is likely to incur no costs if it uses a third party entity in distributing Debtor funds and elects to maintain assets on deposit, rather than a surety bond. The reason being, that a licensee has to purchase a surety bond, whereas, by placing assets on deposit, the licensee does not have to make such a purchase. Moreover, when assets are placed on deposit, the licensee has the ability to earn interest on the deposited funds.

It is possible, however, that in circumstances where a licensee may not have all, or part of, the necessary funds to place on deposit, that it could incur some costs in connection with borrowing funds for its required deposit. The Banking Department is unable to determine what the costs to the licensees would be under those circumstances since the cost of borrowing funds is typically dependent upon factors such as, the amount of the borrowing and the financial condition of the entity doing the borrowing. Therefore, it is not possible to estimate, even in a general way, such borrowing costs. However, should costs be incurred to make the asset deposit, those costs will not outweigh the benefits derived by maintaining the assets on deposit should Debtor funds not be properly paid to creditors.

d) Costs to the Banking Department for implementation and continued administration of the rule: The rule requires Banking Department staff to review contracts or agreements that licensees have entered into, or plan to enter into, regarding the licensees use of third party entities in distributing Debtor funds to creditors. This review is done in order to assess compliance with rule to ensure, that where third party entities are involved, the Debtors in contract with the licensees are afforded the consumer protections provided by the bond/asset deposit requirements of Section 580(4) of the New York Banking Law. The Banking Department expects that its costs to implement and administer the rule will be minimal.

5. Local government mandates:

The proposed rule imposes no burdens on local governments.

6. Paperwork:

The reporting requirements as set forth in the rule will enable the Banking Department to provide the necessary supervisory oversight of the licensees, in furtherance of the legislative objective to provide more consumer protections for debtors in contract with licensees for budget planning services.

Under the proposed rule, licensed budget planners will have to provide the Banking Department with the following information: a) the name and address of the third party entity used in distributing Debtor funds to creditors, b) a description of the services being provided by the third party entity, c) a copy of the agreement or contract entered into with the third party entity, d) information regarding the highest daily amount of Debtor funds that the third party entity will be providing services for under the contract or agreement, and e) information with respect to the termination of any such agreement or contract. All of this information is of the type that licensees using third party entities in distributing Debtor funds will have readily available to provide to the Banking Department.

7. Duplication:

None.

8. Alternatives:

(a) Proposal—As is previously discussed in the Legislative Objective Section contained herein, the recent amendments to Article 12-C, Section 580(4) of New York's Banking Law include the requirement that New York State licensed budget planners obtain a surety bond, or in lieu of such bond, place certain assets on deposit to be used to reimburse payments made by Debtors that have not been properly distributed to creditors. Since the enactment of the legislation, Banking Department staff met with current and prospective licensees and learned that these businesses require the use of the services provided by third party entities in distributing Debtor funds. The rule was proposed keeping in mind both the legislative intent in enacting the bond/asset deposit requirements to provide increased consumer protection to New York residents in contract with licensees should their payments not be properly distributed to creditors, and the need that current and prospective licensees have in using the services of third party entities in distributing such payments. The rule allows licensees to use the services of third party entities in this way, and also provides the Debtors in contract with the licensee the consumer protections afforded under Section 580(4) of the Banking Law, as mandated by the Legislature.

(b) Do not propose the rule.

If this alternative were considered, the Banking Department would have to require that licensees not use the services of third party entities in distributing Debtor funds to creditors, in order to provide Debtors the consumer protections afforded under Section 580(4) of the Banking Law. This alternative is not feasible because, as many current and prospective licensees explained to the Banking Department, they need to use the services of the third party providers in distributing Debtor funds. The need

results primarily because they do not have the computerized technology, staffing and budgetary resources to provide the critical services that they perform.

Under these circumstances, the Banking Department believes that if the rule was not proposed, licensed budget planners would have to be prohibited from using third party entities in distributing Debtor funds. This could be severely harmful to the budget planning industry, particularly since, the inability to use the third party entities may prevent the licensees from continuing to operate their businesses. Moreover, the inability to use the third party entities may prevent many prospective licensees from seeking a budget planning license in New York because they may not be able to operate without the services of the third party entities. Accordingly, the proposed rule is needed not only to provide consumer protection to Debtors as mandated by Section 580(4) of the Banking Law, but also to prevent putting certain current licensees out of business, and to enable certain prospective licensees the opportunity to conduct the business of budget planning in New York.

9. Federal standards:

None.

10. Compliance schedule:

Compliance with the rule is required on or before May 18, 2004.

Regulatory Flexibility Analysis

The rule affects entities that are licensed under Article 12-C of the New York Banking Law to conduct the business of budget planning. Section 579 of Article 12-C requires entities that conduct the business of budget planning to be Type B not-for-profit corporations under New York's Not-For-Profit Corporation Law. Under New York's Not-For-Profit Corporation Law, there can be no ownership interest in Type B not-for-profit corporations. Accordingly, there can be no ownership interest in budget planners licensed in New York.

No local governments are licensed to conduct the business of budget planning, and all of the budget planners currently licensed under Article 12-C of the New York Banking Law have less than 100 employees.

When the Legislature enacted the recent amendments to Article 12-C of the New York Banking Law, it established a more rigorous regulatory environment within which entities licensed under New York Law were to engage in the business of budget planning. This was done in order to provide increased consumer protection to New York residents that contract for budget planning services with licensees.

The recent amendments to Article 12-C of the New York Banking Law include the bonding/asset deposit requirements set forth under Section 580(4) of Article 12-C. In particular, Section 580(4) requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, maintain certain assets on deposit, the proceeds of which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed to creditors.

In response to the legislation, members of the Banking Department staff met with and/or had conversations with current and prospective licensees. As is more fully described in the Regulatory Impact Statement, the Banking Department learned that many of the current and prospective licensees require the services of certain third party entities in distributing debtor funds to creditors. Accordingly, the rule was proposed in response to the industry need to use third party entities in this way. The rule is flexible in that it allows licensees to use the services of third party entities, who may be small business, in distributing debtor funds to creditors. At the same time, it provides the consumer protections afforded under Section 580(4) of the Banking Law, as mandated by the Legislature, to the debtors in contract with the licensees for budget planning services. The rule ensures that debtors' funds will be protected, as mandated by the statute, irrespective of which entity has control over and/or access to the funds.

Specifically, due to the servicing relationship between the licensee and the third party entities, when a licensee elects to use a third party entity in distributing debtors funds to creditors, under the proposed rule, the licensee can choose to either place assets on deposit, or obtain a surety bond. If the licensee places assets on deposit, there are no bond/asset deposit requirements placed on the third party entity. If the licensee elects to obtain a bond, the third party entity can either place assets on deposit or obtain a surety bond, as the case may be, with respect to the budget planning business of the licensee that it services.

Based on the dialogue that the Banking Department had with current and prospective licensees regarding their need to use third party entities in distributing debtor funds to creditors, it is not apparent, thus far, that the rule will impose any appreciable or substantial adverse impact on entities licensed under New York Law to conduct the business of budget planning.

Rural Area Flexibility Analysis

A Rural Area Flexibility analysis is not submitted because the rule does not result in any hardship to a regulated party in a rural area. The legislature mandated under Section 580(4) of the New York Banking Law, that licensees obtain a surety bond or place certain assets on deposit, the proceeds of which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly paid to creditors. In order to provide debtors with the consumer protections afforded under Section 580(4), the proposed rule allows licensees that use third party entities in distributing debtor funds to creditors to either place assets on deposit or obtain a surety bond. If the licensee elects to obtain the surety bond, it must only use the services of a third party entity that also places assets on deposit or obtains a surety bond, as the case may be, in connection with the licensees business that it is servicing. If the licensee elects to place assets on deposit, no bond/asset deposit requirements are placed on the third party entity.

There is nothing about the character and nature of the rules requirements that would make it difficult for, or prevent, licensed budget planners from complying with the rule based on a particular office location. Accordingly, it is unlikely that the rule would cause regulated parties to seek flexibility with respect to any part, or parts thereof, even if the regulated parties were located in a designated rural area as defined in New York State Executive Law Section 481(7).

To the extent that the rule, if adopted, may have any impact on rural areas, it has the ability to provide increased consumer protection to debtors residing in rural areas who enter into contracts with licensees for budget planning services, when such licensees use the services of third party entities in distributing debtors funds to creditors.

Job Impact Statement

The purpose of Article 12-C of the New York Banking Law, which provides for the licensing and regulation of persons or entities engaged in the business of budget planning, is to ensure that budget planners operate in accordance with rigorous standards. Recent amendments to Article 12-C of New York Banking Law and Article 28-B of New York's General Business Law were adopted in connection with the business of budget planning to increase consumer protections for the clients of licensed budget planners.

In particular, Section 580(4) of Article 12-C of the New York Banking Law was recently amended in connection with budget planning in New York State. It requires licensees to obtain a surety bond, or in lieu of obtaining such a bond, to maintain certain assets on deposit, the proceeds of which constitute a trust fund to be used to reimburse payments made by debtors that have not been properly distributed to creditors.

As is explained in the Regulatory Impact Statement, it has come to the attention of the Banking Department that both current and prospective licensees require the services of third party entities in distributing debtors to creditors. The rule has been proposed in order to allow the licensees to continue using such third party entities in the operations of their businesses. At the same time, the rule provides the consumer protections afforded under Section 580(4) to debtors that contract with licensees for budget planning services when the licensees use third party entities in distributing the funds of the debtors to creditors.

Under the rule, if a licensee elects to use a third party entity in distributing debtor funds to creditors, a licensee can choose to either place certain assets on deposit or obtain a surety bond, the proceeds of which constitute a trust fund to reimburse payments made by debtors that have not been properly paid to creditors. If a licensee places assets on deposit, there is no bond/asset deposit requirement placed on the third party entity. If a licensee, instead, chooses to obtain a surety bond, the rule requires that the third party entity place certain assets on deposit, or obtain a surety bond, as the case may be, with respect to licensees business that it services.

Accordingly, based on the rules requirements, it will have no impact on jobs in New York State.

State Consumer Protection Board

NOTICE OF ADOPTION

Fines for Do Not Call Violations

I.D. No. CPR-01-05-00003-A

Filing No. 210

Filing date: March 8, 2005

Effective date: March 23, 2005

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

Action taken: Amendment of section 4603.4(a) of Title 21 NYCRR.

Statutory authority: Executive Law, section 553(1)(d)

Subject: Fines for Do Not Call violations.

Purpose: To bring the rules into parity with recently amended General Business Law, section 399-z(6).

Text or summary was published in the notice of proposed rule making, I.D. No. CPR-01-05-00003-P, Issue of January 5, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Lisa Renee Harris, General Counsel, Consumer Protection Board, Five Empire State Plaza, Suite 2101, Albany, NY 12223, (518) 474-2348, e-mail: Lisa.Harris@consumer.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Review Criteria for Therapeutic Radiology

I.D. No. HLT-12-05-00003-P

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

Proposed action: Amendment of sections 708.2, 708.5 and 709.16 of Title 10 NYCRR.

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

Subject: Review criteria for therapeutic radiology.

Purpose: To revise review criteria for therapeutic radiology.

Text of proposed rule: Paragraph (1) of subdivision (b) of section 708.2 is deleted and remaining paragraphs (2) through (8) are renumbered (1) through (7) respectively as follows:

(b) The services subject to review are defined as follows:

(1) [Therapeutic radiology or radiation oncology is the branch of medicine concerned with the use of ionizing radiation and its appropriate delivery (with or without other therapeutic ancillary modalities) to treat human disease.]

Section 708.5 is amended as follows:

708.5 Specific review criteria. In the review of the following specific hospital and home care services, in order to arrive at a determination regarding the appropriateness thereof, the following criteria shall be applied:

(a) *Reserved.* [Therapeutic radiology or radiation oncology. (1) The standards of Chapter V of this Title shall be applicable to the extent that such standards relate to the service under review or to the physical location in which the service is being provided.

(2) No equipment other than four or more MEV or cobalt teletherapy units with a source axis distance of 80 or more centimeters and rotational capabilities will be considered appropriate as the primary unit in a multi-

unit radiotherapy service or as the sole unit in a smaller radiotherapeutic unit.

(3) Ninety-five percent of the total population of each health region is within a one-hour mean travel time, adjusted for permitting weather conditions, of a facility providing therapeutic radiology services.

(4) Each facility providing the service being reviewed shall not refuse treatment of a patient or client on the basis of the referring physician or his/her facility affiliation.

(5) Institutions accommodate patients who require radiation therapy services outside normal working hours.

(6) On a regional basis, an MEV machine unit serves a population of at least 150,000 persons. As appropriate, the standard may be adjusted to reflect actual cancer incidence in a health service area.

(7) A radiation therapy program operating an MEV (megavoltage) unit with photon or electron beam energies greater than 10 megavolts must be part of a comprehensive program of cancer care which includes surgical oncology, medical oncology, pathology and diagnostic radiology; in addition, such a program must meet the following standards:

(i) There shall be at least two full-time equivalent radiation oncologists on staff who are board-certified in radiation oncology or have equivalent training and experience and whose professional practice is limited to radiation oncology.

(ii) The patient load for the radiation therapy program with electron beam capability shall be at least 400 new cases per year. For those facilities where 95 percent of their primary service area population would have in excess of one-hour travel time to an MEV unit with electron beam capability, the patient load shall be at least 350 new cases per year. Individual facilities that do not meet these utilization standards may be considered based upon joint arrangements with other facilities.

(iii) There shall be a full-time physicist employed in the radiation therapy program.

(iv) There shall be a simulator available within the radiation therapy program.

(8) On a regional basis, MEV machine unit utilization is at an average of 6,000 treatments or 13,200 fields per unit per year.

(9) Each MEV unit's utilization is at least 5,000 treatments or 11,000 fields per year.

(10) The cost of each treatment, without the physician's salary or charges, is within a 35-percent range above the mean cost per treatment for the hospitals grouped for the purposes of the review. As appropriate, radiation therapy relative value units or other standard work measures may be used instead of, or in addition to, the cost of each treatment field as a measure of cost effectiveness.

(11) A therapeutic radiology service is provided by a financially viable facility.

(12) A therapeutic radiology service is headed by a board-eligible or board-certified radiation therapist or a general radiologist who devotes at least 80 percent of his/her time in the practice of therapeutic radiology and who treats not fewer than 175 patients per year.

(13) A therapeutic radiology service has on staff;

(i) one full-time New York State-licensed radiation therapy technologist for every MEV unit; and

(ii) a full-time nurse.

(14) A facility with a therapeutic radiology service has on staff or through formal arrangements:

(i) a board-eligible or board-certified medical oncologist, hematologist or other specialist who devotes at least 80 percent of his/her time in the practice of medical oncology and who treats not fewer than 175 oncology patients per year;

(ii) a radiological physicist holding a degree in physics who is either certified or eligible for certification by the American Board of Radiology or the American Board of Health Physicists; or

(a) a person holding a degree in physics and having full-time radiation therapy experience; or

(b) a physicist in training or a dosimetrist supervised by a part-time radiological physicist who will be involved in treatment planning and dosimetry as well as calibrating the machines.

(15) Either through formal arrangement or in the facility, the therapeutic radiology service is part of a multidisciplinary approach to the management of cancer patients, involving a variety of specialists in a joint treatment program.

(16) Each patient has a treatment plan in his/her medical records.

(17) Each therapeutic radiology service has access, either through formal arrangements or in the facility, to the full range of diagnostic

services, including ultrasound, hematology, pathology, nuclear medicine and diagnostic radiology.

(18) Each facility providing therapeutic radiology services has access to the full range of rehabilitation therapies, i.e., physical therapy, occupational therapy, vocational therapy, and psychological counseling services for its radiotherapeutic patients.]

A new section 709.16 is added to Part 709 to read as follows:

709.16 Therapeutic radiology or radiation oncology.

(a) *This methodology will be utilized to evaluate certificate of need applications involving the acquisition of megavoltage (MEV) devices used in therapeutic radiology. It is the intent of the State Hospital Review and Planning Council that this methodology, when used in conjunction with the planning standards and criteria set forth in section 709.1 of this Part, become a statement of planning principles and decision making tools for directing the distribution of MEV devices. The goals and objectives of the methodology expressed herein are expected to ensure that an adequate number of therapeutic radiology units are available to provide access to care and avoid the unnecessary duplication of resources.*

(b) *The factors for determining the public need for MEV devices used in therapeutic radiology shall include, but not be limited to, the following:*

(1) *No equipment other than four or more MEV or cobalt teletherapy units with a source axis distance of 80 or more centimeters and rotational capabilities will be considered appropriate as the primary unit in a multi-unit radiotherapy service or as the sole unit in a smaller radiotherapeutic unit.*

(2) *Ninety-five percent of the total population of each health region is within a one-hour mean travel time, adjusted for weather conditions, of a facility providing therapeutic radiology services.*

(3) *The expected volume of utilization sufficient to support the need for an MEV machine shall be calculated as follows:*

(i) *Each applicant and MEV machine shall provide a minimum of 5,000 treatments per year and have the capacity to provide 6,500 treatments per year. These volumes may be adjusted for the expected case-mix of a specific facility.*

(ii) *Sixty percent of the annual incidence of cancer cases in a service area will be candidates for radiation therapy.*

(iii) *Fifty percent of radiation therapy patients will be treated for cure with an average course of treatment of 35 treatments and fifty percent of patients will be treated for palliation with an average course of treatment of 15 treatments. These estimates may be adjusted based on the case-mix of a specific facility.*

Text of proposed 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

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

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

Regulatory Impact Statement

Statutory Authority

The authority for the proposed revision to 10 NYCRR Parts 708 and 709 is section 2803(2)(a) of the Public Health Law (PHL), which authorizes the State Hospital Review and Planning Council (SHRPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner of Health, to effectuate the provisions and purposes of Article 28 of the PHL with respect to hospitals, including but not limited to, requirements for construction projects subject to Certificate of Need (CON) review.

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 introduce the public need criteria for therapeutic radiology services to reflect the current status of radiation technology and oncological medicine as well as recent changes in the health care system in New York State. In addition, the proposed amendments would repeal appropriateness review regulations for therapeutic radiology or radiation oncology which are outdated or duplicate operational standards for therapeutic radiology services found elsewhere in New York regulations.

Current Requirements

10 NYCRR Part 708 sets forth criteria for the review of the appropriateness of a number of specialized hospital services. Appropriateness review criteria relate to the need, accessibility and availability, financial

viability, cost effectiveness and quality of the services. The principal purposes of appropriateness review are to control costs, facilitate access and ensure quality. In actual practice, the appropriateness review criteria are also used as public need criteria for specialized services that are subject to Certificate of Need (CON) review but for which a formal need methodology is not set forth in 10 NYCRR Part 709 or elsewhere in Article 28 regulations.

The technical standards for therapeutic radiology in 10 NYCRR section 708.5(a) were developed in the early 1980s based on guidelines issued by the Inter-Society Council for Radiation Oncology ("the Council"). A nationally recognized body composed of various groups of expert physicians, researchers and other professionals involved in radiation and oncology, the Council periodically issues Radiation Oncology in Integrated Cancer Management, a "Blue Book" of guidelines that put forth treatment protocols, staffing requirements and suggested levels of utilization for therapeutic radiology programs. Drawing on the 1981 edition of the Blue Book, criteria in section 708.5(a) set forth requirements for staffing and for the megavoltage (MEV) and cobalt teletherapy equipment used in the service. Section 708.5(a) also prescribes average levels of utilization for each MEV machine unit on a regional basis and stipulates acceptable ranges of costs for treatment within hospitals grouped for purposes of appropriateness review.

Because appropriateness review is no longer required by Federal statute, nor undertaken by the department with any regularity, the repeal of section 708.5(a) is being proposed. Similarly, the repeal of section 708.5(a) provides an opportunity to eliminate duplication with the operational standards for therapeutic radiology services, which appear in 10 NYCRR section 405.15. Accordingly, the proposed amendments repeal the operational standards for therapeutic radiology services from section 708.5(a). Volume, utilization and access requirements for MEV machines that are not outdated appear as public need criteria in proposed section 709.16.

Needs and Benefits

The appropriateness review standards in Part 708 were designed to monitor the utilization of health care services at a time when inpatient care was paid for largely on a per diem basis and ambulatory care was supported mainly by fee-for-service payments. Appropriateness review, along with the CON process, was designed to evaluate specific hospital services during a time when the prevailing systems of payment and reimbursement encouraged the inauguration of high technology specialty services and the purchase of associated equipment.

Today, market considerations play a much larger role in the type and number of services that hospitals choose to offer. Nevertheless, the original reasons for review of therapeutic radiology and other high technology specialty services remain valid. Because public funds still subsidize the purchase of MEV machines through the Medicaid capital pass-through mechanism and, in some instances, through debt guaranteed by public agencies such as the Dormitory Authority of the State of New York (DASNY), there remains a taxpayer interest in the public need and use of therapeutic radiology devices approved to operate in New York State. Revisions to review criteria in current regulations acknowledge progress in radiological technology and treatment and recognize the dynamics of a more market-oriented health care environment.

Changes in Technology and Treatment

Progress in the development of therapeutic radiology devices and in the refinement of treatment techniques since the regulations in section 708.5(a) were first issued have expanded the scope of radiation oncology and significantly altered practice patterns in the treatment of cancer. The changed state of technology and medical practice, together with continued research in the epidemiology of cancers amenable to radiation therapy, have enabled the Inter-Society Council for Radiation Oncology to issue guidelines that are more precise predictors of need and utilization for MEV devices and radiation services. The latest edition of the Council's recommendations (1991) now address more fully such factors as:

- The number of treatments that an MEV machine can be expected to provide per year
- The percentage of the annual incidence of cancer cases in a service area that will be candidates for radiation therapy
- The percentage of radiation therapy patients that a given program can expect to treat for cure and the percentage that will need treatment for palliation
- The average number of treatments each in curative and palliative regimens.

These new factors are incorporated in the proposed amendments. Changes in the Health Care System

In recent years, the growth of managed care, the advent of negotiated rates between providers and payers, and the growing consolidation and integration of services into collaborative networks have altered the organization and management of hospital-based specialty services, including therapeutic radiology. In these new circumstances, the maintenance of a population-based limit on the number of therapeutic radiology services that can be made available in a given area may contribute to the efficient regionalization of these services; but it may also restrict the entry of new providers into areas where demand can still be demonstrated using alternative approaches that take into account the features of the local health care market. If the review criteria for therapeutic radiology are to continue to foster judicious and efficient use of services, they must acquire a flexibility that is precluded by the application of a population-based standard that may not recognize the characteristics of the service area of the individual facility or of an established network of two or more hospitals.

In lieu of the current requirement that each MEV machine serve a minimum population of up to 150,000 persons, the proposed amendments would base utilization on three factors:

- Each program and MEV machine shall provide a minimum of 5,000 treatments per year and a capacity to provide 6,500 treatments. These volumes may be adjusted for the expected case mix of the facility.
- Sixty percent of the annual incidence of cancer cases in an applicant's service area shall be candidates for radiation therapy.
- Fifty percent of radiation therapy patients will be treated for cure with an average course of treatment of 35 treatments and fifty percent of patients will be treated for palliation with an average course of treatment of 15 treatments.

These criteria are more specific than the criteria currently in section 708.5(a), which offer no guidance as to the expected mix of curative and palliative cases and do not specify an expected annual incidence of cancer cases per service area that will be candidates for radiation therapy. These new, more precise criteria reflect both an expansion of the epidemiological knowledge base for cancer and growth in the use of radiation therapy for a broader range of cancer types since the regulations in section 708.5(a) were first issued in 1981.

Despite the greater specificity of the new volume and utilization criteria, the proposed amendments would make the application of these new standards more flexible than under current rules by allowing consideration of the applicant's overall case mix as well as its mix of curative and palliative cancer cases. Therefore, a program that expected to deliver fewer than the minimum 5,000 treatments could be considered for approval if the applicant proposed to focus on cases requiring palliation, which involve fewer treatments and if, for example, existing providers in the region were serving a high proportion of curative cases. Similarly, an applicant could be considered for approval to serve an area where fewer than 60 percent of cancer cases were candidates for radiation therapy if its own overall admissions showed a disproportionately high number of cancer cases amenable to radiation therapy.

The removal of the population-based restriction on MEV devices, together with the evaluation of applications based on consideration of case mix and the applicant's actual service area, will make the CON review process for therapeutic radiology services more sensitive to innovation in the organization and delivery of services by providers responding to a more competitive health care system. The absence of a population-based restriction on allowable MEV machines and the recognition of individual facility case mix will also permit the SHRPC, the Public Health Council and the Department to approve new applications for therapeutic radiology programs as research and progress in oncological medicine indicate. In view of the expanded use of radiation therapy in cancer treatment since the standards in section 708.5(a) were first promulgated, this is an important consideration.

At the same time that the proposed amendments seek to make the process for CON approval of therapeutic radiology services more flexible, they also include as a public need requirement that 95 percent of the total population of a health planning region be within a one-hour mean travel time of a facility providing therapeutic radiology services. This standard (which is identical to an appropriateness review standard in section 708.5(a)) will continue to support proposals that would improve access to therapeutic radiological care, especially in underserved rural areas. The proposed amendments would repeal provisions of section 708.5(a) that require that the cost of each MEV treatment be within a 35 percent range above the mean cost per treatment for groups of hospitals reviewed within a region. The proposed amendments would also repeal in section 708.5(a) the requirement that a therapeutic radiology service be provided by a

financially viable facility. This requirement reflects Federal appropriateness review requirements, which were repealed in the 1980's. Its original purpose of cost containment is today better served by the imperatives for efficiency in a more market-oriented health care system. In addition, CON review of therapeutic radiology proposals already involves an assessment of the financial feasibility of the proposed facility or service, as required by PHL section 2801; hence, the presence of a financial viability provision in proposed section 709 which is similar to this requirement in section 708.5(a) duplicates existing statutory requirements.

The proposed amendments also remove the rule in section 708.5(a) governing volume and usage requirements for therapeutic radiology devices with electron beam capability. Because all MEV machines have the same capacity for utilization, MEV machines with electron beam capability are not expected to meet a higher utilization standard than other MEV machines. Therefore, it is not necessary to distinguish between types of MEV machines in the revised regulations.

COSTS

Costs to the Department of Health

There are currently 186 MEV devices operating or approved but not yet operational in Article 28 facilities in New York State. The proposed revised need methodology for therapeutic radiology would allow the approval of up to 26 new MEV machines throughout the State, or a 14 percent increase over current numbers.

While purchases of new machines would be eligible for support under the capital pass-through provisions of Medicaid, the precise impact on that program, and hence on the State Medicaid budget as administered by the Department of Health, is difficult to predict. The growth of Medicaid managed care and the negotiation of payment rates between approved Medicaid managed care organizations (MCOs) and health care providers means that hospitals would seek to recover the costs of new MEV devices in payment negotiations with MCOs. However, an increase in the supply of MEV devices as allowed by the proposed need methodology could cause greater competition between hospitals for MCO dollars, thus creating a "buyer's market" for MCOs and leading to the negotiation of lower payment rates between MCOs and hospitals. This could help control Medicaid expenditures for therapeutic radiology, even as the number of approved MEV machines increased and consumers experienced more convenient access to a broader geographic distribution of approved therapeutic radiology programs. It is also unlikely that the new need methodology would lead to excess capacity in therapeutic radiology, given that the occurrence of cancer in the population is the principal determinant of demand for the service.

It is further possible that the approval of additional MEV devices for Article 28 facilities would lead to the more efficient provision of therapeutic radiology services in certain areas by providing a disincentive for the operation of MEV machines by private practitioners (whose services are not subject to Article 28 CON review). To the extent that hospitals could offer therapeutic radiology services more efficiently than non-Article 28 providers because of higher patient volume and consequent economies of scale, the approval of additional MEV devices for hospitals as permitted by the proposed need methodology could help control the costs of cancer treatment in New York State, for Medicaid as well as for other payers.

Although its cost impact cannot be predicted with certainty nor calculated with any precision, the proposed need methodology would allow the freer play of competitive forces among providers and between providers and payers, while still guarding against excess capacity and unnecessary capital expenditures. Such a development would have a favorable effect on the Medicaid program.

In terms of the costs of administering the revised rule, the department expects to handle proposals for new MEV machines with its current complement of CON program staff. Therefore, the revised rule will result in no additional administrative or personnel costs to the Department of Health. This has already occurred, in that the Department has employed the draft rules in connection with the review CON applications for therapeutic radiology devices using existing personnel and other resources.

The Department also notes that this use of draft rules is compatible with the general provisions of section 709.1, which state that the evaluative procedure for review of public need shall include an assessment of the need that the population to be served has for the proposed service. Because of medical advances and the associated growth of radiological therapy in cancer treatment in the intervening years, the methodology developed in 1981 could, by the late 1990's, no longer measure accurately the need for therapeutic radiology devices. The Department wished to ensure that access to MEV devices and the associated cancer therapy was not limited inappropriately while a new methodology was under consideration. It has

been in keeping with the purposes and intent of section 709.1 for the Department and the State Hospital Review and Planning Council to employ the new methodology in evaluating applications for MEV devices, pending final approval of this proposed rule.

Costs to Other State Agencies

There are no costs to other State agencies or offices of State government.

Costs to Local Government

There are no costs to local government.

Costs to Private Regulated Parties

Because the proposed amendments impose no new burdensome requirements, duties or responsibilities on any entity subject to Article 28 of the PHL, there are no costs to private regulated parties.

Local Government Mandates

The proposed amendments do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork

The proposed amendments impose no new reporting requirements, forms or other paperwork.

Duplication

There are no relevant State or Federal rules which duplicate, overlap or conflict with the proposed amendments.

Alternatives

The Department considered repeal altogether of volume and utilization requirements for therapeutic radiology services. However, the Department concluded that the continued public subsidy of therapeutic radiology services through support of capital costs for therapeutic radiology equipment by Medicaid capital pass-through payments warranted retention of minimum volume and utilization criteria, as well as the addition of new factors addressing current cancer incidence and expected combinations of curative and palliative treatments. The Department notes that the addition of a new element in the rules which permits consideration of individual facility case mix in review of CON applications will allow volume and utilization criteria to be applied with a flexibility not characteristic of the current regulations.

The Department further concluded that retention of the travel time criterion in the current rules was necessary to help ensure access to therapeutic radiology services throughout the State.

Federal Standards

The proposed amendments do not exceed any minimum standards of the Federal government. Federal rules affecting public need and appropriateness of therapeutic radiology services were repealed in the 1980's. There are no Federal rules currently affecting CON approval of applications for therapeutic radiology machines by Article 28 facilities.

Compliance Schedule

It is anticipated that the proposed amendments will be announced within one month of the effective date through the posting of an announcement on the Department of Health's Internet site.

The proposed amendments will be effective upon publication of a Notice of Adoption in the New York State Register. There is no schedule of compliance since the proposed amendments only indicate how applications will be processed with the Department of Health, and repeal other requirements.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendments do not impose an adverse economic impact on small businesses or local governments, and they do not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendments do not impose an adverse impact on facilities in rural areas, and they do not impose reporting, record keeping or other compliance requirements on facilities in rural areas.

Job Impact Statement

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendments, that they will not have a substantial adverse impact on jobs and employment opportunities. To the extent that they increase the number of therapeutic radiology devices in New York State, the amendments will expand employment opportunities for health care personnel involved in the operation of therapeutic radiology programs.

Insurance Department

EMERGENCY RULE MAKING

Healthy New York Program

I.D. No. INS-12-05-00004-E

Filing No. 209

Filing date: March 8, 2005

Effective date: March 8, 2005

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

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

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

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

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

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

Subject: Healthy New York Program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 5, 2005.

Text of emergency rule and any required statements and analyses may be obtained from: Mike Barry, Insurance Department, 25 Beaver St., New York, NY 10004-2319, (212) 480-5265, e-mail: mbarry@ins.state.ny.us

Regulatory Impact Statement

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

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

3. Needs and benefits: This amendment to Part 362 of 11 NYCRR is necessary to introduce a second Healthy New York benefit package at a reduced premium rate. The second benefit package provides for a lower cost alternative and gives individuals and small businesses choice of a benefit package that meets their needs. Any change in benefit package selection may occur at the time of annual recertification or when the

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

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

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

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

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

8. Alternatives: Throughout the initial implementation of Healthy New York, input has been obtained from interested parties including consumer groups; health plans; health plan associations; business groups; association groups; local chambers of commerce and academics. In addition, indepen-

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

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

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

Regulatory Flexibility Analysis

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

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

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

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

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

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

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

Rural Area Flexibility Analysis

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

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

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

to purchase insurance on behalf of their employees. This regulation has no impact unique to rural areas.

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

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

Job Impact Statement

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

Office of Mental Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Residential Treatment Facilities for Children and Youth

I.D. No. OMH-12-05-00002-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 584.5(e) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09(b), 31.04(a)(2) and 31.26(b)

Subject: Operation of residential treatment facilities for children and youth.

Purpose: To continue the temporary increase in the capacity of certain RTF's to serve the needs of emotionally disturbed children and youth.

Text of proposed rule: Subdivision 584.5(e) of Part 584 of 14 NYCRR is amended to read as follows:

(e) An operating certificate shall be issued for a residential treatment facility for a resident capacity of no less than 14 and no more than 56; provided, however, that for the period commencing April 1, 2000 through [September 30, 2004,] *September 30, 2007*, bed capacity for facilities primarily serving New York City residents may be temporarily increased up to an additional ten beds over the maximum certified capacity with the prior approval of the Commissioner. In order to receive such approval, the residential treatment facility must demonstrate that the additional capacity will be used to serve those children and youth deemed most in need of RTF services by the New York City Preadmission Certification Committee as set forth in Section 583.8.

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

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

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

Regulatory Impact Statement

1. Statutory Authority: §§ 7.09(b), 31.04(a)(2) and 31.26(b) of the Mental Hygiene Law grant the Commissioner the power and responsibility to adopt regulations that are necessary and proper to implement matters under his jurisdiction, to set standards of quality and adequacy of facilities,

and to adopt regulations governing Residential Treatment Facilities for Children and Youth, respectively.

2. Legislative Objectives: NYCRR Part 584 sets forth standards for the operation of Residential Treatment Facilities for Children and Youth. This amendment to Part 584 allows for the temporary increase of capacity of certain facilities to allow additional children and youth to be served in the program.

3. Needs and Benefits: The Office of Mental Health has determined that it is necessary to continue the existing capacity of these Residential Treatment Facilities for Children and Youth (RTFs) which serve seriously emotionally disturbed children and youth who are residents of New York City. Under the existing regulation, (14 NYCRR Section 584.5(e)), RTF bed capacity serving primarily New York City residents may be temporarily increased until September 30, 2004 by up to 10 additional beds over the permitted maximum of 56 per facility. This amendment would extend the referenced expiration date, to September 30, 2007.

There are a number of initiatives underway that focus on improving the use of the current RTF resources by decreasing the length of stay. These initiatives include focused development of supervised community residences, family based treatment programs, case management and family support to assist the youth discharged from an RTF to successfully reintegrate into the community.

To expand capacity in 2000, a total of 21 temporary beds were added to 5 existing RTF facilities serving New York City residents. These beds were added on a voluntary basis with the cooperation of the facilities and the support of the New York City Department of Mental Health. Three of the facilities that were not at the 56 bed maximum had their capacity increased administratively by a total of 13, without going over the maximum. One of the facilities, St. Christopher Oillie, was at 56 beds and another, Linden Hill, was at 55 beds. St. Christopher Oillie added 5 beds. Linden Hill added 3 beds. Therefore, 7 beds are permitted to be added under 14 NYCRR Section 584.5(e). That permission expired on September 30, 2004. Although significant improvements in development of residential alternatives, such as the supervised community residences and the family based treatment beds, have been made in the last four years. However, these additional beds are still needed.

4. Costs:

(a) Costs to private regulated parties: There will be no mandated costs to the regulated parties associated with allowing an increase in capacity to the RTF program.

(b) Cost to state and local government: The annual state cost for the 7 beds is estimated to be \$465,000. These additional funds will be covered by the State share of Medicaid appropriation. There is no local share for the RTF program. Funding for these beds is included in the enacted budget for State Fiscal Year 2004-2005.

(c) The cost projection was calculated by applying the per bed projected Medicaid rate to the 7 additional beds.

5. Local Government Mandates: There will be no additional mandates to local government.

6. Paperwork: There are no new paperwork requirements associated with this amendment.

7. Duplication: There are no duplicate, overlapping or conflicting mandates which may effect this rule.

8. Alternatives: The only alternative would be to allow the temporary additional capacity authority to expire, which is not acceptable given the critical need for these services.

9. Federal Standards: The rule does not exceed any Federal standards.

10. Compliance Schedule: Providers will be able to comply with this rule immediately.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rules will not impose any adverse economic impact on small businesses, or local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this notice because the amended rules impact only Residential Treatment Facilities for Children and Youth serving children who are New York City residents.

Job Impact Statement

This amendment will have no impact on jobs. At present only two providers of Residential Treatment Facilities for Children and Youth have re-

ceived permission to exceed the 56 bed limit by a total of seven beds. These beds have been in operation for the past four years.

Department of Motor Vehicles

NOTICE OF ADOPTION

Transportation of Logs and Other Materials

I.D. No. MTV-01-05-00007-A

Filing No. 208

Filing date: March 8, 2005

Effective date: March 23, 2005

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

Action taken: Amendment of section 48.1 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 377

Subject: Transportation of logs and other materials.

Purpose: To conform amendments.

Text or summary was published in the notice of proposed rule making, I.D. No. MTV-01-05-00007-P, Issue of January 5, 2005.

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

Text of rule and any required statements and analyses may be obtained from: Michele Welch, Counsel's Office, Department of Motor Vehicles, Empire State Plaza, Swan St. Bldg., Rm. 526, Albany, NY 12228, (518) 474-0871, e-mail: mwelc@dmv.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Division of Probation and Correctional Alternatives

NOTICE OF ADOPTION

Interstate/Intrastate Transfer and Related Supervision Rule

I.D. No. PRO-50-04-00013-A

Filing No. 207

Filing date: March 8, 2005

Effective date: March 23, 2005

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

Action taken: Amendment of Parts 349 and 351 of Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1); and Criminal Procedure Law, section 410.80

Subject: Interstate/intrastate transfer and related supervision rule.

Purpose: To regulate interstate and intrastate transfers.

Text or summary was published in the notice of emergency/proposed rule making, I.D. No. PRO-50-04-00013-EP, Issue of December 15, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Linda J. Valenti, Counsel, Division of Probation and Correctional Alternatives, 80 Wolf Rd., Suite 501, Albany, NY 12205, (518) 485-2394

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Calculation of Franchise Fees by Cablevision of Ossining and the City of Peekskill

I.D. No. PSC-28-04-00010-A

Filing date: March 2, 2005

Effective date: March 2, 2005

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

Action taken: The commission, on Jan. 12, 2005, adopted an order in Case 04-V-0767 granting Cablevision of Ossining, L.P. d/b/a Cablevision a waiver of the requirements of 9 NYCRR section 595.1(o).

Statutory authority: Public Service Law, section 216(1)

Subject: Calculation of franchise fees.

Purpose: To determine the franchise fee to be paid to the City of Peekskill.

Substance of final rule: The Commission approved a request by Cablevision of Ossining, L.P. d/b/a Cablevision for a waiver of the requirements of 9 NYCRR 595.1(o) to permit exclusion of franchise fee collections from calculation of gross revenues for the purpose of determining the franchise fee to be paid to the City of Peekskill.

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.

(04-V-0767SA1)

NOTICE OF ADOPTION

Calculation of Franchise Fees by Cablevision of Wappingers Falls, Inc. and the Town of Cortlandt

I.D. No. PSC-28-04-00011-A

Filing date: March 2, 2005

Effective date: March 2, 2005

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

Action taken: The commission, on Jan. 12, 2005, adopted an order in Case 04-V-0768 granting Cablevision of Wappingers Falls, Inc. d/b/a Cablevision a waiver of the requirements of 9 NYCRR section 595.1(o).

Statutory authority: Public Service Law, section 216(1)

Subject: Calculation of franchise fees.

Purpose: To determine the franchise fee to be paid to the Town of Cortlandt.

Substance of final rule: The Commission approved a request by Cablevision of Wappingers Falls, Inc. d/b/a Cablevision for a waiver of the requirements of 9 NYCRR 595.1(o) to permit exclusion of franchise fee collections from calculation of gross revenues for the purpose of determining the franchise fee to be paid to the Town of Cortlandt.

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.

(04-V-0768SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Intercarrier Agreements between PaeTec Communications, Inc. and Citizens Telecommunications of New York, Inc.

I.D. No. PSC-12-05-00005-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 modification filed by PaeTec Communications, Inc. and Citizens Telecommunications of New York, Inc. to revise the interconnection agreement effective on Jan. 5, 2002.

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

Subject: Intercarrier agreements to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between PaeTec Communications, Inc. and Citizens Telecommunications of New York, Inc. in January 2002. The companies subsequently have jointly filed amendments to clarify the provisions regarding interconnection trunking arrangements. The Commission is considering these changes.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn A. Brillong, 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.

(01-C-1956SA5)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Intercarrier Agreements between Verizon New York Inc. and TelCove Operations, Inc., et al.

I.D. No. PSC-12-05-00006-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 whether to approve or reject, in whole or in part, a modification filed by Verizon New York Inc. and TelCove Operations, Inc., TelCove Investment, LLC and TelCove Atlantic, Inc. (f/k/a Adelphia Business Solutions Operations, Inc., Adelphia Business Solutions Investments, LLC and Adelphia Business Solutions Atlantic, Inc.) to revise the interconnection agreement effective on Oct. 31, 2004.

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

Subject: Intercarrier agreements to interconnect telephone networks for the provisioning of local exchange service.

Purpose: To amend the agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Verizon New York Inc. and TelCove Operations, Inc., TelCove Investment, LLC and TelCove Atlantic, Inc. (f/k/a Adelphia Business Solutions Operations, Inc., Adelphia Business Solutions Investments, LLC and Adelphia Business Solutions Atlantic, Inc.) in October 2004. The companies subsequently have jointly filed amendments to clarify the provisions regarding compensation for local and ISP-bound traffic. The Commission is considering these changes.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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.

(02-C-0645SA2)

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

New Credit Facility by the New York Independent System Operator

I.D. No. PSC-12-05-00007-P

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

Proposed action: The commission is considering a petition from the New York Independent System Operator for approval of a new credit facility to finance the purchase and improvement of certain real property.

Statutory authority: Public Service Law, section 69

Subject: Request of a new credit facility.

Purpose: To purchase and improve real property.

Substance of proposed rule: The Commission is considering a petition from the New York Independent System Operator requesting approval of a new credit facility to finance the purchase and improvement of certain real property. The Commission may adopt, modify or reject, in whole or in part, the relief requested.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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-0270SA1)

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

Complaint Against KeySpan Gas East Corporation Inc. by Pepco Energy Services

I.D. No. PSC-12-05-00008-P

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

Proposed action: The Public Service Commission is considering whether to affirm or reject, in whole or in part, a complaint filed by Pepco Energy Services against the KeySpan Gas East Corporation Inc. (KeySpan) that KeySpan is, without adequate justification, refusing to permit it to operate as an Energy Services Company in its franchise area. The commission will also consider other related matters.

Statutory authority: Public Service Law, sections 3, 5, 65 and 66

Subject: Complaint involving the ability of Pepco Energy Services to operate on KeySpan's delivery system.

Purpose: To consider the complaint.

Substance of proposed rule: The Public Service Commission is considering whether to affirm or reject, in whole or in part, a complaint filed by Pepco Energy Services (Pepco) against the KeySpan Gas East Corporation Inc. (KeySpan) that KeySpan is, without adequate justification, refusing to permit it to operate as an Energy Services Company in its franchise area.

KeySpan states that Pepco should not operate in its franchise area because Pepco has a relationship with an individual who operated an Energy Service Company that was previously discontinued from KeySpan's service territory. Pepco states that whatever relationship KeySpan had with this individual should not affect KeySpan's relationship with Pepco since Pepco will have ultimate responsibility over its actions including those of the individual. The Commission will also consider other related matters.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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-G-0257SA1)

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

Complaint Against KeySpan Gas East Corporation Inc. by North Atlantic Utilities Inc.

I.D. No. PSC-12-05-00009-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 affirm or reject, in whole or in part, a complaint filed by North Atlantic Utilities Inc. against the KeySpan Gas East Corporation Inc. (KeySpan) that the declaration of a critical day by KeySpan on Dec. 5, 2000 was in violation of KeySpan's tariff and operating procedures, that the penalty assessed by KeySpan to North Atlantic Utilities Inc. should be rescinded and that North Atlantic Utilities Inc. should be reinstated on KeySpan's delivery system. The commission will also consider other related matters.

Statutory authority: Public Service Law, sections 3, 5, 65 and 66

Subject: Complaint involving operation of North Atlantic Utilities Inc. on KeySpan's system and KeySpan's and North Atlantic Utilities Inc.'s adherence to tariff provisions.

Purpose: To consider the complaint filed by North Atlantic Utilities Inc. against KeySpan concerning the definition of a critical day, the penalties imposed by KeySpan on North Atlantic Utilities Inc., and North Atlantic Inc.'s ability to operate on KeySpan's delivery system.

Substance of proposed rule: The Public Service Commission is considering whether to affirm or reject, in whole or in part, a complaint filed by North Atlantic Utilities Inc. against the KeySpan Gas East Corporation Inc. (KeySpan) that the declaration of a critical day by KeySpan on December 5, 2000 was in violation of KeySpan's tariff and operating procedures, that the penalty assessed by KeySpan to North Atlantic Utilities Inc. should be rescinded, and that North Atlantic Utilities Inc. should be reinstated on KeySpan's delivery system. The Commission will also consider other related matters.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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-G-0258SA1)

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

Electric Safety Standards

I.D. No. PSC-12-05-00010-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 (commission) is considering whether to allow several waiver requests that have been filed with the commission concerning the electric safety standards adopted by the commission on Jan. 5, 2005. The commission may also consider other matters related to the application and implementation of the safety standards.

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

Subject: Consideration of waivers of the commission's electric safety standards and related matters.

Purpose: To consider waivers to the electric safety standards applicable to all New York electric utilities subject to the commission's jurisdiction and matters related thereto.

Substance of proposed rule: The Public Service Commission (Commission) adopted safety standards on January 5, 2005 that apply to all electric utilities subject to its jurisdiction, both investor-owned and municipal. Central Hudson gas & Electric Corporation (Central Hudson), New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, and Rochester Gas and Electric Corporation filed waiver requests from the scheduling requirements of the safety standards. Central Hudson also requested a waiver from the requirement that it inspect fiberglass secondary enclosures. If the Commission grants one or more of the waiver requests, it will consider whether and how to modify the safety standards. The Commission may also consider other matters related to the application and implementation of the safety standards.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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

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

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

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

(04-M-0159SA3)

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

Transfer of Real Property by Consolidated Edison Company of New York, Inc. and 735 Avenue of the Americas LLC

I.D. No. PSC-12-05-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a joint petition of Consolidated Edison Company of New York, Inc. (Con Edison) and 735 Avenue of the Americas LLC for authority under section 70 of the Public Service Law to transfer certain real property located at 735-51 6th Ave., Manhattan, also known as 101-7 West 24th Street. The commission is also considering the accounting and rate treatment for the sale, and other related matters.

Statutory authority: Public Service Law, sections 5(b), (c), 65(1), and 66(1), (2), (5), (8), (9), (10), (11), (12) and 70

Subject: Approval of the transfer of a parcel of property located on Sixth Ave. in Manhattan, consideration of appropriate accounting and rate treatment for the transaction, and consideration of related matters.

Purpose: To consider granting approval.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a joint petition to transfer a parcel of property owned by Consolidated Edison Company of New York, Inc. to 735 Avenue of the Americas LLC. The

parcel is located in Manhattan and is identified as 735-51 6th Avenue, also known as 101-7 West 24th Street. The Commission is also considering approval of various contracts related to the transfer, granting other regulatory authorizations and making other related findings. The Commission will further consider the accounting and rate treatment for the transaction, and other related matters.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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-M-0181SA1)

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

Cable Franchising Issues by the Town of Babylon, the Cable Telecommunications Association of New York, Inc. and CSC Holdings, Inc.

I.D. No. PSC-12-05-00012-P

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

Proposed action: The commission is considering a petition filed by the Town of Babylon, the Cable Telecommunications Association of New York, Inc. and CSC Holdings, Inc., seeking a declaratory ruling and other relief by the joint petitioners regarding the issue of whether or not certain fiber to the premises (FTTP) build out requires a cable franchise before construction as well as related issues.

Statutory authority: Public Service Law, section 215

Subject: Cable franchising issues.

Purpose: To solicit comments on the joint petitioner's request for a declaratory ruling and other relief regarding certain cable franchising issues.

Substance of proposed rule: The Commission is considering a Petition filed by the Town of Babylon, the Cable Telecommunications Association of New York, Inc. and CSC Holdings, Inc., seeking a Declaratory Ruling and other relief by the Joint Petitioners regarding the issue of whether or not certain fiber to the premises (FTTP) build out requires a cable franchise before construction, as well as related issues.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

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-M-0250SA1)

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

Renewal of a Franchise Agreement between Mid-Hudson Cablevision, Inc. and the Town of Westerlo

I.D. No. PSC-12-05-00013-P

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

Proposed action: The commission is considering whether to approve or reject, in whole or in part, a petition for rehearing, filed by Mid-Hudson

Cablevision, Inc., of the commission's order issued Jan. 28, 2005 regarding the term of its franchise with the Town of Westerlo.

Statutory authority: Public Service Law, section 216

Subject: Reconsideration of the commission's Jan. 28, 2005 order approving renewal of a franchise agreement between Mid-Hudson Cablevision, Inc. and the Town of Westerlo regarding the term of the agreement.

Purpose: To reconsider an order approving renewal.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, a petition for rehearing, filed by Mid-Hudson Cablevision, Inc., of the Commission's Order issued January 28, 2005 regarding the term of its franchise with the Town of Westerlo.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn 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.

(01-V-1921SA1)

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

Franchising Process by the Town of Angelica

I.D. No. PSC-12-05-00014-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 petition by the Town of Angelica (Allegany County) for a waiver of 9 NYCRR sections 594.1 through 594.4 and 594.4(b)(2) pertaining to the franchising process.

Statutory authority: Public Service Law, section 216(1)

Subject: Franchising process.

Purpose: To expedite the cable television franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve or reject, in whole or in part, a petition by the Town of Angelica (Allegany County) for a waiver of Section 594.1 through 594.4 and 594.4(b)(2) in order to expedite the cable television franchising process.

Text of proposed rule may be obtained from: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn 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-V-0182SA1)

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

Water Rates and Charges by the Hudson Valley Water Companies, Inc.

I.D. No. PSC-12-05-00015-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, a request filed by the

Hudson Valley Water Companies, Inc. to make changes in the rates and charges contained in its tariff schedule, P.S.C. No. 2—Water to become effective May 31, 2005.

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

Subject: Water rates and charges.

Purpose: To increase Hudson Valley Water Companies, Inc.'s restoration of service charges.

Substance of proposed rule: On March 4, 2005, the Hudson Valley Water Companies, Inc. (Hudson Valley) filed to become effective May 31, 2005, First Revised Leaf No. 10 to its tariff schedule P.S.C. No. 2—Water. Hudson Valley consists of five water systems located in Northeast Ulster County and currently provides water service to approximately 430 customers. The proposed filing would increase the restoration of service charge from \$35 to \$110 during normal business hours (8:00 a.m. to 4:00 p.m., Monday through Friday); from \$60 to \$150 outside of normal business hours (Monday through Friday); and, from \$75.00 to \$200 on week-ends or holidays. 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: Margaret Maguire, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223, (518) 474-3204

Data, views or arguments may be submitted to: Jaclyn 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-W-0262SA1)

Racing and Wagering Board

NOTICE OF ADOPTION

Programming and Naming of Jockeys Entered to Ride Thoroughbred Horses

I.D. No. RWB-48-04-00011-A

Filing No. 211

Filing date: March 8, 2005

Effective date: March 23, 2005

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

Action taken: Amendment of section 4025.33 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 101 and 212

Subject: Programming and naming of jockeys entered to ride thoroughbred race horses and the manner and time at which they must be named and programmed.

Purpose: To eliminate the existing requirement that a back up rider be named to ride the second call horse where a jockey is programmed to ride more than one horse in a race.

Text or summary was published in the notice of proposed rule making, I.D. No. RWB-48-04-00011-P, Issue of December 1, 2004.

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

Text of rule and any required statements and analyses may be obtained from: Erin E. Dahlmeyer, Secretary to the Board, Racing and Wagering Board, One Watervliet Ave. Ext., Albany, NY 12206-1668, (518) 453-8460, ext. 3300, e-mail: edahlmeyer@racing.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Temporary Absences

I.D. No. TDA-17-04-00001-A

Filing No. 206

Filing date: March 4, 2005

Effective date: March 23, 2005

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

Action taken: Amendment of section 349.4 and repeal of section 352.3(c) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f), 131-a, 158, 349 and 355(3)

Subject: Temporary absences.

Purpose: To make it easier for social services districts to determine public assistance recipients, who are temporarily absent from the district of residence, continue to be eligible for assistance.

Text of final rule: Subdivision (a) of section 349.4 is amended to read as follows:

Section 349.4. Temporary absence. (a) [Federally aided programs other than MA] *Public assistance*. (1) Definition of temporary absence. For the purpose of administration of [the federally aided] *public assistance* programs, except the program of medical assistance, temporary absence shall mean any absence from the district administering the grant *and/or public assistance household*, during which the *applicant or recipient*:

- (i) does not leave the United States;
- (ii) does not evidence intent to establish residence elsewhere; and
- (iii) complies with this subdivision and other provisions of this

Title.

(2) [Continuation] *Determination* of grant during temporary absence. The social services district's decision to [continue] *provide* a grant during temporary absence as defined in paragraph (1) of this subdivision shall be based upon consideration of the following factors:

[(i) General requirements.

(a)] (i) Evidence of intent to return to the district of administration *and/or public assistance household* when the purposes of his *or her* absence have been accomplished. If such temporary absence extends beyond a six-month period, the absent person shall submit affirmative evidence satisfactory to the district of administration of his *or her* continuing intention to return to the district *and/or public assistance household*, and that he *or she* is prevented from returning to the district *and/or public assistance household* because of illness or other good cause. If a recipient fails to comply with this requirement, he *or she* shall be deemed ineligible for a continuance of his *or her* grant.

[(b)] (ii) Continuing financial need for a grant in the same or a different amount.

[(c)] (iii) Continuing contact with the recipient by the district through correspondence or through use of the services of another social services agency located within or [without] outside the State.

[(ii) Additional requirements. In addition to subparagraph (i) of this paragraph, the social services district shall consider the following factors when making a determination to continue a grant in the Aid to Dependent Children program. Evidence that the status of the parents has not changed so as to constitute ineligibility, that the child or minor continues to live with the parent or other specified relative, and that the welfare of the child or minor continues to be safeguarded, shall be obtained. Reconsideration of the welfare of the child or minor shall be made within 30 days of the date the agency is informed of the temporary absence, and thereafter at least once in three months.]

(3) Nothing in this subdivision shall limit the continuing responsibility of a social services district for payment of costs of care provided in another social services district in New York State.

Subdivision (c) of section 352.3 is repealed.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 349.4(a)(1), (2)(i) and (iii).

Text of 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

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

Although changes were made to the proposed amendments, the changes do not require that the regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and job impact statement be revised.

Assessment of Public Comment

The agency received no public comment.