

# RULE MAKING ACTIVITIES

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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; or EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

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

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## Department of Civil Service

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

#### Jurisdictional Classification

**I.D. No.** CVS-34-07-00004-P

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

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

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify positions in the exempt class in the Department of Law.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Law, by adding thereto the positions of Special Assistant Attorney General (10).

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

#### Jurisdictional Classification

**I.D. No.** CVS-34-07-00005-P

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

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

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify positions in the exempt class in the Department of Correctional Services.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Correctional Services, by increasing the number of positions of Investigator from 11 to 15.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

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

#### Jurisdictional Classification

**I.D. No.** CVS-34-07-00006-P

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

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

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

**Subject:** Jurisdictional classification.

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

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Housing and Community Renewal," by increasing the number of positions of Assistant Commissioner from 8 to 9.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us  
**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

**Jurisdictional Classification**

**I.D. No.** CVS-34-07-00007-P

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

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

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify positions in the exempt class in the Office of the Lieutenant Governor.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, the Office of the Lieutenant Governor, by increasing the number of positions of Special Assistant from 2 to 10.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us  
**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-34-07-00008-P

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

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

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the exempt class in the Department of Mental Hygiene.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by increasing the number of positions of Legislative Coordinator from 1 to 2.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us  
**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-34-07-00009-P

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

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

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

**Subject:** Jurisdictional classification.

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

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the executive Department under the subheading "Office for Technology," by adding thereto the position of Counsel and by increasing the number of positions of NYS Deputy Chief Information Officer from 1 to 5.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us  
**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-34-07-00010-P

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

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

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete a position from the exempt class in the Department of Public Service.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Public Service, by deleting therefrom the title of Principal Cable Television Municipal Consultant.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us  
**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-34-07-00011-P

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

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

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

**Subject:** Jurisdictional classification.

**Purpose:** To delete a position from the exempt class in the Department of State.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of State, by deleting therefrom the position of Confidential Assistant.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-34-07-00012-P

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

**Proposed action:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify positions in the non-competitive class in the Executive Department.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Parole," by increasing the number of positions of Assistant Parole Services Program Specialist from 4 to 7 and Preliminary Hearing Office (Parole Revocation) from 5 to 9.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-34-07-00013-P

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

**Proposed action:** Amendment of Appendix(es) 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify positions in the non-competitive class in the Department of Environmental Conservation.

**Text of proposed rule:** Amend Appendix(es) 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Environmental Conservation, by adding thereto the positions of Agency Program Aide (4) (until first vacated), Calculations Clerk 1 (3) (until first vacated), Clerk 1 (3), Clerk 2 (7) (until first vacated), Environmental Education Assistant, Environmental Engineering Technician 1 (7) (until first vacated), Environmental Engineering Technician 2 (2) (until first vacated), Fish & Wildlife Technician 1 (14) (until first vacated), Forestry Technician 1 (5) (until first vacated), Keyboard Specialist 1 (2) (until first vacated), Laboratory Technician (1) (until first vacated), Park Worker 1, Park Worker 2, Park Worker 3, Photographer 1 (1) (until first vacated), Secretary 1 (4) (until first vacated), Ski Patrol Director (1), Ski Patroller 1 (6), Ski School Director (2), Ski School Instructor 1 (7) and Ski School Instructor 2 (2).

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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

**Jurisdictional Classification**

**I.D. No.** CVS-34-07-000014-P

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

**Proposed action:** Amendment of Appendix(es) 1 and Appendix 2 of Title 4 NYCRR.

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

**Subject:** Jurisdictional classification.

**Purpose:** To classify a position in the exempt class and to classify a position in the non-competitive class in the Department of Health.

**Text of proposed rule:** Amend Appendix(es) 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Health under the subheading "Office of the Medicaid Inspector General," by adding thereto the position of Counsel; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Health under the subheading "Office of the Medicaid Inspector General," by increasing the number of positions of Medicaid Investigator 3 from 4 to 5.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, Department of Civil Service, Albany, NY 12239, (518) 473-6598, e-mail: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Judith I. Ratner, Deputy Commissioner and Counsel, Department of Civil Service, Albany, NY 12239, (518) 473-2624, e-mail: judith.ratner@cs.state.ny.us

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

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

The proposed rule is subject to consolidated statements and analyses printed in the issue of January 10, 2007 under the notice of proposed rule making I.D. No. CVS-02-07-00003-P.

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## Department of Correctional Services

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

#### Mid-State Correctional Facility

**I.D. No.** COR-34-07-00003-P

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

**Proposed action:** Addition of section 100.111(d) to Title 7 NYCRR.

**Statutory authority:** Correction Law, sections 70 and 73

**Subject:** Mid-State Correctional Facility.

**Purpose:** To add a residential treatment facility.

**Text of proposed rule:** A new subdivision (d) is added to section 100.111, 7 NYCRR, as follows:

(d) *Mid-State Correctional Facility shall be classified as a residential treatment facility to temporarily house certain parolees in accordance with subdivision 10 of Correction Law section 73.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Anthony J. Annucci, Deputy Commissioner and Counsel, Department of Correctional Services, Bldg. 2, State Campus, Albany, NY 12226-2050, (518) 485-9613, e-mail: AJAnnucci@docs.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

The New York State Department of Correctional Services (DOCS) seeks to add a new subdivision (d) to section 100.111 of Title 7, NYCRR.

##### Statutory Authority

Sections 70 and 73 of the Correction Law requires that the commissioner designate each correction facility and residential treatment facility in the rules and regulations of the department.

##### Legislative Objective

By vesting the commissioner with this rulemaking authority, the legislature intended that each facility designation specify the facility name and location, gender and age range of the inmates, security level, and functions served.

##### Needs and Benefits

This proposal will add the additional designation of residential treatment facility, as set forth in Correction Law Section 73, to the functions performed by Mid-State Correctional Facility in order to allow certain inmates who are otherwise scheduled to be released, to voluntarily remain housed at Mid-State for an additional sixty day period pursuant to a Memorandum of Agreement (MOA) between the Department and the Division of Parole. Under this MOA, certain inmates will be temporarily placed at a Department residential treatment facility under interim orders of strict and intensive supervision and treatment in accordance with the Sex Offender Management and Treatment Act. During this sixty day period, a community preparation investigation will be undertaken by the Division of Parole. A similar arrangement is presently in effect at Fishkill Correctional Facility. This additional placement option will afford greater flexibility to the Department in the temporary housing of such individuals.

##### Costs

a. To regulated parties: None.

b. To agency, the state and local governments: None. This proposal merely provides the designation of a residential treatment facility as required by Correction Law.

c. Source of information: Departmental Budget staff.

##### Local Government Mandates

There are no new mandates imposed upon local governments by this proposal.

##### Paperwork

There are no additional reports or paperwork expected from this proposal.

##### Duplication

This proposed rule does not duplicate any existing State or Federal requirement.

#### Alternatives

No alternatives were considered as facility designations in the rules and regulations is required by Correction Law.

#### Federal Standards

There are no minimum standards of the Federal government for this or similar subject area.

#### Compliance Schedule

The Department of Correctional Services will achieve compliance with the proposed rule immediately.

#### Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This proposal merely provides the designation for a residential treatment facility at Midstate Correctional Facility as required by Correction Law.

#### Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. This proposal merely provides the designation for a residential treatment facility at Midstate Correctional Facility as required by Correction Law.

#### Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal merely provides the designation for a residential treatment facility at Midstate Correctional Facility as required by Correction Law.

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## Department of Health

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### EMERGENCY RULE MAKING

#### Serialized Official New York State Prescription Form

**I.D. No.** HLT-42-06-00005-E

**Filing No.** 810

**Filing date:** Aug. 6, 2007

**Effective date:** Aug. 6, 2007

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

**Action taken:** Addition of Part 910; amendment of Parts 80 and 85 of Title 10 NYCRR; and amendment of section 505.3 and repeal of sections 528.1 and 528.2 of Title 18 NYCRR.

**Statutory authority:** Public Health Law, section 21

**Finding of necessity for emergency rule:** Preservation of public health.

**Specific reasons underlying the finding of necessity:** We are proposing that these regulations be adopted on an emergency basis because immediate adoption is necessary to protect the public health and safety and to meet statutory requirements. The budget proposal enacting Section 21 contains explicit authority for the Commissioner to promulgate emergency regulations. This was done recognizing the need to provide for the implementation of the use of statewide forge proof prescriptions by the April 19, 2006 date mandated by the law.

Immediate adoption of these regulations is necessary to allow the implementation of Section 21 of Public Health Law, achieve the health care cost savings and to enhance the quality of health care by preventing drug diversion resulting from forged or stolen prescriptions.

The practitioner groups affected by this proposal, PSSNY, MSSNY and the Health Plan Association of New York were consulted during budget negotiations. Their concerns are addressed in the statutory proposal set forth in the state budget and in these regulations.

**Subject:** Enactment of a serialized New York State prescription form.

**Purpose:** To enact a serialized New York State prescription form.

**Substance of emergency rule:** Part 910 (10 NYCRR)

These regulations are being proposed on an emergency basis to implement Section 21 of the Public Health Law. The purpose of the law is to combat and prevent prescription fraud by requiring the use of an official

New York State prescription for all prescribing done in this state. Official prescriptions contain security features that will curtail alterations and forgeries that divert drugs to black market sale to unsuspecting patients and cost New York's Medicaid program and private insurers tens of millions of dollars annually in fraudulent claims.

The emergency regulations consist of a new Part 910 to Title 10 NYCRR. Section 910.1 defines terms used in the Part. Section 910.2 states requirements for practitioner prescribing, including that, until April 19, 2007, hospitals and comprehensive voluntary non-profit community diagnostic and treatment centers designated by the Department are exempted from the requirement for their staff practitioners to prescribe non-controlled substances on an official prescription form. The exemption will continue beyond April 19, 2007 if the hospital and the comprehensive voluntary non-profit community diagnostic and treatment center implements and utilizes an electronic prescribing system to transmit prescriptions to pharmacies capable of receiving them. The exemption also will continue beyond April 19, 2007 for those facilities approved by the Department that have implemented a computerized provider order entry system that is capable of generating paper prescriptions throughout the facility. This exemption will allow staff practitioners to issue printed prescriptions which minimize medication errors due to handwritten prescriptions for non-controlled substances on the prescription form of the facility until the Department approves and provides an alternative form of serialized official New York State prescription. Section 910.3 covers registration with the Department, which practitioners and healthcare facilities are required to do to order official prescriptions. Section 910.4 states the manner in which official prescriptions will be issued by the Department, while section 910.5 lists the practitioner and facility requirements for safeguarding the official prescriptions against theft, loss or unauthorized use. Section 910.6 states pharmacy requirements for dispensing official prescriptions and out-of-state prescriptions, which may be dispensed in lieu of an official prescription. Section 910.6 also states pharmacy requirements for submission of official prescription data to the Department. Section 910.6 also authorizes pharmacies to fill prescriptions for non-controlled substances until October 19, 2006 that are not written on an official prescription provided that the pharmacy notify the Department of the prescribing practitioner so that the practitioner may be contacted and issued official prescriptions for subsequent prescribing.

Both 10 NYCRR and 18 NYCRR have been revised to reflect the above regulations, update outdated/obsolete sections and to allow for greater flexibility for changes in law. The following changes are proposed:

Section 505.3 (18 NYCRR)

Language included to reflect use of facsimile prescriptions.

Language included to allow electronically transmitted prescriptions.

Language included to mandate that all claims for payments of drugs or supplies under the MA program shall contain the serial number of the Official NYS Prescription Form.

Delete language prohibiting telephone orders for OTCs.

Language amended—telephone prescriptions for non-controlled substances WILL NOT require a follow-up hard copy prescription (even with refills).

Delete Estimated Acquisition Cost—defined in Social Services Law section 367-a(9)(b)(ii).

Delete language referencing “triplicate” prescriptions and update to language consistent with Official NYS Prescription Form and Article 33 of the Public Health Law.

Delete language referencing other Sections that have been deleted (i.e. 10 NYCRR 85.25).

Delete language referencing dispensing fees—in Social Services Law section 367-a(9)(d).

Language is added to reference prescription drugs filled in compliance with section 6810 of the Education Law, Article 33 of the Public Health Law and new 10 NYCRR Part 910.

A change has been made to the prior version of the emergency filing for 18 NYCRR 505.3(b)(7). The words “or supplies” has been deleted since the enacting legislation (Section 21 of the Public Health Law) only mandated that forged proof prescriptions be utilized for prescription drugs. This change conforms the regulations to the law.

Part 528 (18 NYCRR)

Section 528.1 is deleted—obsolete listing of non-prescription drugs covered under the MA program. Listing of reimbursable drugs and rate is available on-line at the NYS eMedNY website.

Section 528.2 is deleted—language regarding “dispensing fees include routine delivery charges” is moved to 18 NYCRR 505.3(f)(6). Compounding fee language in 18 NYCRR 505.3 [6] (3).

Part 85 (10 NYCRR)

Section 85.21 amended—OTC List—quantities and dosage forms have been deleted to allow greater flexibility in coverage. Remove OTC categories that are no longer marketed.

Section 85.22 amended—establishment of OTC prices amended to more accurately reflect OTC pricing (Ad Hoc Committee is obsolete) and removal of references to deleted Sections (i.e., 18 NYCRR 528.2 and 10 NYCRR 85.25)

Section 85.23 deleted—Revisions to list of OTCs and Maximum Reimbursable Prices—in Social Services Law 365-a(4)(a).

Section 85.25 deleted—Prescription drug list covered under MA—obsolete. Drug list available on line at NYS eMedNY website.

Part 80 (10 NYCRR)

Part 80 table of contents has been revised to reflect amendments in titles of sections of regulations.

Sections have been amended throughout Part 80 to revise the previous title of ‘Bureau of Narcotic Control’ and ‘Bureau of Controlled Substances’ to the current title of ‘Bureau of Narcotic Enforcement’.

Sections have been amended throughout Part 80 to revise the previous title of ‘Bureau of Narcotics and Dangerous Drugs’ to the current title of ‘Drug Enforcement Administration’.

Section 80.1—language added to define ‘automated dispensing system’.

Section 80.5—language deleted for 3b Institutional Dispenser license due to registration of facilities to be issued official prescriptions. Language added for retail pharmacy license, installation, and operation of automated dispensing system in Residential Healthcare Facility (RHCF).

Section 80.11—language added to make requirements for supervising pharmacist of controlled substance manufacturer and distributor consistent with pharmacist licensure requirements in New York State Education Law.

Section 80.46—language added to require supervising physician countersignature of medical order of physician’s assistant if deemed necessary by supervising physician or hospital to bring regulation into consistency with PHL 3703.

Section 80.47—language revised to except administration of controlled substances in emergency kits to patients in Title 18 adult care facilities.

Section 80.49—language revised from prescription serial number to pharmacy prescription number.

Section 80.50—language added to require pharmacies to maintain separate stocks of controlled substances received for use in automated dispensing system in RHCF and to authorize storage of non-controlled substances in such system.

Section 80.60—language added for female gender reference to practitioner.

Section 80.63—deleted definition of written prescription and added definition of out-of-state prescription. Language added to authorize printed prescriptions generated by computer or electronic medical record system. Language added regarding practitioner oral prescribing requirement.

Section 80.67—midazolam and quazepam added to list of benzodiazepine controlled substances, as per PHL 3306. Language added requiring quantity of dosage units to be indicated in both numerical and written word form. Language amended to include chorionic gonadotropin as controlled substance for prescribing up to a 3-month supply. Language added to assign code letters to medical conditions for prescribing more than a 30-day supply.

Section 80.67 (con’t)—language deleted regarding Department’s issuance of official New York State prescriptions, due to added language in section 80.72. Language deleted for face and back of prescription to facilitate timely pharmacist dispensing. Language added authorizing practitioner faxing of prescription for hospice or RHCF patient and for prescription to be compounded for direct parenteral administration to patient.

Section 80.68—language added for certain other controlled substances. Language deleted requiring pharmacist to endorse pharmacy DEA number on official NYS prescription to facilitate timely dispensing. Language added requiring electronic transmission of prescription data to Department.

Section 80.69—language added requiring quantity of dosage units to be indicated in numerical and written word form. Language added to assign letters for condition codes. Deleted reference to PHL sections 3335 and 3336, which were deleted by PHL section 21, and added reference PHL sections 3332 and 3333, which are now the relevant sections. Deleted written prescription and added official prescription. Deleted back of the prescription and face of the prescription to facilitate timely dispensing. Language added authorizing practitioner faxing of prescription for hospice

or RHCf patient and for prescription to be compounded for direct parenteral administration to patient.

Section 80.70—Language added specifying oral prescriptions for 30-day supply or 100 dosage units does not apply to substance limited to 5-day supply by section 80.68. Deleted serial prescription number and added pharmacy prescription number. Added female gender language in reference to pharmacist. Language added requiring filing of prescription information with Department.

Section 80.71—Deleted section (b) to reflect that practitioners are no longer required by PHL 3331 to complete an official prescription when dispensing controlled substances. Corrected spelling of chorionic gonadotropin. Added reference to condition codes in sections 80.67 and 80.69. Added packaging and labeling requirements for practitioner dispensing of controlled substances. Added requirement for practitioners to submit dispensing information to Department by electronic transmission.

Section 80.72—deleted all references to practitioner dispensing and labeling requirements because practitioner dispensing now covered by section 80.71. Language added regarding practitioner registration with Department and Department issuance of official NYS prescription forms.

Section 80.73—added language specifying pharmacist dispensing of schedule II and controlled substances listed in section 80.67. Added female gender language in reference to pharmacist. Deleted requirement for pharmacist to endorse pharmacy DEA number on prescription for timely dispensing. Language added requiring pharmacy to verify identity of person picking up dispensed prescription. Language added requiring pharmacy electronic transmission of prescription data to Department.

Section 80.73 (con't)—language added specifying emergency oral prescriptions for schedule II and controlled substances listed in section 80.67 and filing of emergency oral prescription memorandum. Language added requiring pharmacy electronic transmission of oral prescription data to Department. Language added specifying partial filling of official prescription for schedule II and controlled substances listed in section 80.67. Language added authorizing pharmacist dispensing of faxed prescription and requiring delivery of original within 72 hours.

Section 80.74—language added in section title specifying pharmacist dispensing of controlled substances. Language added for prescription labeling requirements. Added female gender reference to pharmacist. Added requirement for filing prescription data with Department. Language added authorizing pharmacist dispensing of faxed prescription and requiring delivery of original within 72 hours.

Section 80.74 (con't)—language added for pharmacy requirement to verify identification of person picking up prescription. Deleted reference to schedule II controlled substances and those substances listed in section 80.67 because all controlled substances now require official NYS prescription. Deleted labeling requirement reference to section 80.72 and added reference to section 80.71.

Section 80.75—deleted language regarding requirement to purchase official prescriptions. Added language regarding registration and issuance of official prescriptions for institutional dispenser.

Section 80.78—Added a new section regarding pharmacist requirements for dispensing of out-of-state prescriptions for controlled substances, to be dispensed in conformity with provisions set forth for official prescriptions.

Section 80.84—deleted language requiring group practice providing treatment of opiate dependence with buprenorphine to be limited to 30 patients at any one time, making New York State regulations consistent with the federal Drug Addiction Treatment Act. Deleted language requiring practitioners and pharmacies to register with Department to prescribe and dispense buprenorphine. Deleted language requiring pharmacy to file prescription data and report loss of controlled substances because redundant. Deleted reference to PHL 3335 and 3336 because deleted by PHL 21 and added reference to PHL 3332 and 3333 because now relevant sections.

Section 80.106—added language requiring separate record-keeping for pharmacies installing automated dispensing system in RHCf.

Section 80.107—added language authorizing Department to notify practitioner of patient treatment with controlled substances by multiple practitioners, consistent with PHL 3371.

Section 80.131—deleted written prescription, added official prescription and out-of-state prescription. Language added increasing oral prescription for hypodermic needles and syringes to quantity of one hundred hypodermic needles and syringes.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule

making, I.D. No. HLT-42-06-00005-P Issue of October 18, 2006. The emergency rule will expire October 4, 2007.

**Text of emergency rule and any required statements and analyses may be obtained from:** William Johnson, Department of Health, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Albany, NY 12237-0097, (518) 473-7488, fax: (518) 473-2019, e-mail: regsqa@health.state.ny.us

#### **Regulatory Impact Statement**

##### Statutory Authority:

Section 3308(2) of the Public Health Law authorizes and empowers the Commissioner to make any regulations necessary to supplement the provisions of Article 33 of the Public Health Law in order to effectuate its purpose and intent.

The state budget for SFY 2004-2005 enacted new Section 21 of the Public Health Law which mandates a statewide official prescription form for all prescriptions written in New York for the purpose of curtailing prescription fraud and enhancing patient safety. The law, Chapter 58 of the Laws of 2004, permits the Commissioner to promulgate emergency regulations in furtherance of this new section of law.

##### Legislative Objectives:

Article 33 of the Public Health Law, officially known as the New York State Controlled Substances Act, was enacted in 1972 to govern and control the possession, prescribing, manufacturing, dispensing, administering and distribution of controlled substances within New York. New Section 21 of the Public Health law mandates a statewide official prescription, supports electronic prescribing and facilitates the dispensing process.

##### Needs and Benefits:

This regulation will support the enactment of an official New York State prescription form, which will deter fraud by curtailing theft or copying of prescriptions by individuals engaged in drug diversion. These regulations have been drafted after discussions with such provider groups as the State Health Plan Association, Medical Society of the State of New York and the Pharmacist Society of the State of New York.

Regulations are being proposed to implement Section 21 of the Public Health Law (PHL). The purpose of the law is to combat and prevent prescription fraud by requiring an official New York State prescription for every prescription written in New York. Official prescriptions contain security features designed specifically to curtail alterations, counterfeiting, and forgeries, all of which divert drugs to black market sale to unsuspecting patients and cost New York's Medicaid program and private insurers tens of millions of dollars annually in fraudulent claims.

Regulations have been amended to reflect the implementation of the above Public Health Law and to update obsolete or outdated language in the existing regulations. The proposed regulations also include amendments to authorize a practitioner to deliver a controlled substance prescription to a pharmacy by facsimile transmission in specified circumstances and to authorize a pharmacist to dispense such faxed prescription. By facilitating timely prescribing and dispensing, such facsimile transmission will enhance healthcare for patients enrolled in hospice programs or residing in a Residential Healthcare Facility (RHCf) and for patients who require controlled substance prescriptions to be compounded for administration by parenteral infusion.

Regulations have also been amended to authorize the Department to license a retail pharmacy to install and operate an automated dispensing system in a RHCf, which will bring New York regulations into consistency with federal regulations. The installation and operation of such systems will significantly benefit patient care through timely and efficient dispensing of prescriptions for controlled substances. Automated dispensing systems will also lessen the cost of medications remaining from waste due to discontinued drug therapy and will simultaneously decrease the amount of such controlled substances that are susceptible to diversion.

These regulations are found in amendments to 10 NYCRR Part 80 and in the newly promulgated regulations in 10 NYCRR Part 910. Included in the Part 910 regulations is an exemption allowing hospital practitioners or practitioners in a comprehensive voluntary non-profit diagnostic and treatment center designated by the Department to prescribe non-controlled substances on a non-official hospital prescription until April 19, 2007. The exemption will continue beyond April 19, 2007 for hospitals and designated comprehensive voluntary non-profit diagnostic and treatment centers that implement and utilize an electronic prescription system to transmit prescriptions to pharmacies capable of receiving them. The exemption also will continue beyond April 19, 2007 for those facilities that have implemented a computerized provider order entry system approved by the Department that is capable of generating printed paper prescriptions throughout the facility. This exemption will address concerns expressed by

the facilities regarding safeguarding of official prescription paper and the added expense to purchase and install additional dedicated computer printers in order to comply with the regulations. The exemption will allow staff practitioners to issue printed prescriptions—which minimize medication errors due to handwritten prescriptions—for non-controlled substances on the prescription form of the facility until the Department approves and provides an alternative form of serialized official New York State prescription.

Also included in the Part 910 regulations is an exemption allowing pharmacies to dispense prescriptions for non-controlled substances that are not issued on an official prescription until October 19, 2006 in order that optimum care may continue to be provided to patients. The regulation requires pharmacies to notify the Department so that the practitioner may be contacted and issued official prescriptions for all subsequent prescribing.

Costs:

Costs to Regulated Parties:

This program is being funded by an annual assessment on the State Insurance Department of \$16.9 million. The assessment funds the costs of providing 180 million official prescriptions annually as well as administrative and enforcement staffing to operate and enforce the program. The current fee to practitioners and institutions for the official prescription has been eliminated. Private insurers and the Medicaid program will realize, respectively, an estimated \$75 million and \$25 million in annual savings due to the reduction of fraudulent prescription claims.

The \$25 million estimated savings for the Medicaid program represents the 25% New York State share. \$50 million in estimated savings would accrue to the 50% federal government share of Medicaid, while \$25 million in estimated savings will accrue to the 25% local government share of Medicaid.

The allowance for electronic prescribing in the Medicaid program and the expedition of the dispensing process through the use of bar coding will save valuable professional time for practitioners and pharmacists.

There will be a slight expenditure to pharmacies for software adjustments, due to minor changes in reporting requirements for controlled substance prescriptions.

Costs to State and Local Government:

There will be no costs to state or local government. Savings to State government are estimated at \$25 million to the 25% New York State share of Medicaid. Savings to local government, from reduction in subsidizing of prescription costs for patients in their Medicaid population, will result in an estimated \$25 million to the 25% local government share of Medicaid.

Costs to the Department of Health:

There will be no additional costs to the Department. The decrease in prescription fraud as a result of use of the official prescription will result in savings for the Department for the Medicaid, EPIC, and Empire programs. An increase in the efficiency of investigations made possible by the official prescription program will result in additional savings for the Department.

Local Government Mandates:

The proposed rule does not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other specific district.

Paperwork:

No additional paperwork is required. The use of a single prescription form for controlled substances and non-controlled substances will simplify paperwork and record keeping for practitioners and institutions. Currently, practitioners use their own prescription form as well as the official prescription. The official prescription will replace existing prescriptions that are currently used in addition to the official prescription. Encouragement of electronic prescribing will significantly reduce paperwork requirements for practitioners, institutions and pharmacists.

Duplication:

The requirements of this proposed regulation do not duplicate any other state or federal requirement.

Alternatives:

There are no alternatives that would support the approach to be taken under the regulations. The limitation on reporting requirements by pharmacies (only for controlled substances as opposed to requiring reporting on all prescriptions) was done after consultation with affected provider organizations.

As a result of consultations with the hospital community, hospitals were granted a one-year exemption, until April 19, 2007, from the requirement for their staff practitioners to prescribe non-controlled substance medications on the official prescription. The purpose of the exemption is to serve as an incentive for hospitals to develop electronic prescription sys-

tems. The exemption will be extended if the hospital implements and utilizes an electronic prescription system to transmit such prescriptions directly to a pharmacy in lieu of an official prescription. The exemption also will be extended beyond April 19, 2007 if the hospital implements a computerized provider order entry system by the Department that is capable of generating printed paper prescriptions throughout the facility. This exemption will address concerns expressed by the facilities regarding the expense of safeguarding official prescription paper and purchasing and installing additional dedicated computer printers. The exemption will allow staff practitioners to issue printed prescriptions—which minimize medication errors due to misinterpretation of handwritten prescriptions—for non-controlled substances on a hospital prescription form until the Department approves and provides an alternative form of official New York State prescription.

Federal Standards:

The regulatory amendment does not exceed any minimum standards of the federal government.

Compliance Schedule:

These regulations will become effective immediately upon filing a Notice of Emergency Adoption with the Secretary of State.

#### **Regulatory Flexibility Analysis**

Effect of Rule on Small Business and Local Government:

This proposed rule will affect practitioners, pharmacists, retail pharmacies, hospitals and nursing homes.

According to the New York State Department of Education, Office of the Professions, there are approximately 120,000 licensed and registered practitioners authorized to prescribe and order prescription drugs. According to the New York State Board of Pharmacy, there are a total of approximately 4,500 pharmacies in New York State. According to the New York State Education Department's Office of the Professions, there are approximately 18,000 licensed and registered pharmacists in New York.

Compliance Requirements:

The regulations follow the newly enacted Section 21 of the Public Health Law and require the use of the official New York State Prescription form. In addition to curtailing fraud and diversion, these regulations will expedite the prescribing and dispensing process. Practitioners, institutions and pharmacists will benefit from the following amendments;

- (1) Eliminating the fee to practitioners and institutions for official prescriptions;
- (2) Eliminating the requirement that pharmacists write the DEA number of the pharmacy on the official prescription;
- (3) Bar coding of the serial number on the official prescription to expedite the dispensing process; and
- (4) Eliminating multiple prescription forms practitioners currently use to prescribe drugs.

Currently, dispensing data is required from all Schedule II and benzodiazepines prescriptions. The only new requirement is the submission of dispensing data from the original dispensing of all prescriptions for controlled substances.

Professional Services:

No additional professional services are necessary.

Compliance Costs:

Pharmacies may require minor adjustments in computer software programming due to additional prescription data submission requirements.

Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. The process utilizes existing electronic systems for reporting of dispensing by pharmacies. The regulations encourage the use of electronic prescribing by practitioners. Electronic prescribing is not only more efficient than the current paper process, it is also a secure procedure that will reduce prescription fraud. Electronic prescribing will protect the public health and result in substantial savings to the Medicaid program and private insurance as well as enhancing public safety.

Minimize Adverse Impact:

The regulations require only a minimal increase in reporting requirements. These requirements were negotiated with organizations representing the affected groups. The use of bar coding and the encouragement of electronic prescribing minimize any adverse impact.

Small Business and Local Government Participation:

During the drafting of the statute which is the basis of these regulations, the Department met with the Pharmacist Society of the State of New York (PSSNY), the Medical Society of the State of New York (MSSNY) and the Health Plan Association of New York. The regulations were drafted considering their comments. Local governments are not affected.

#### **Rural Area Flexibility Analysis**

## Types and Estimated Numbers of Rural Areas:

The proposed rule will apply to participating pharmacies, practitioners and institutions located in all rural areas of the state. Outside of major cities and metropolitan population centers, the majority of counties in New York contain rural areas. These can range in extent from small towns and villages and their surrounding areas, to locations that are sparsely populated.

## Compliance Requirements:

The only compliance requirements are the use of the official prescription provided free of charge and additional minimal reporting requirements by pharmacies. The regulations are in furtherance of new Section 21 of the Public Health Law authorizing a statewide official prescription aimed at reducing fraud. Additionally, the regulations assist practitioners and pharmacies by making the prescribing and dispensing process more efficient through the use of electronic prescribing.

## Professional Services:

None necessary.

## Compliance Costs:

The new law requires all pharmacies in New York State to electronically transmit information from controlled substance prescriptions to the Department on a monthly basis, for monitoring and analysis purposes in combating prescription fraud. Pharmacies may require minor adjustments in computer software programming due to this additional prescription data submission requirement.

## Economic and Technological Feasibility:

The proposed rule is both economically and technologically feasible. The process will utilize existing electronic systems for reporting of dispensing information by pharmacies. The regulations encourage the use of electronic prescribing, which is more efficient and more secure than a paper process. Electronic prescribing will also enhance patient safety through a reduction in medication error due to legibility issues.

## Minimize Adverse Impact:

The regulations require only a minimal increase in reporting requirements. This requirement is minimized by permitting pharmacies to scan the bar code of the prescription serial number onto the Medicaid claim form also through the allowance of electronic prescribing. Additionally, the benefits on regulated entities resulting from these regulations and described herein outweigh any adverse impact.

## Rural Area Participation:

During the drafting of this regulation, the Agency met with and solicited comments from pharmacist, health plan and practitioner associations who represent these professions in rural areas. No particular issues relating to the effect of this program on rural areas was expressed.

**Job Impact Statement**

## Nature of Impact:

This proposal will not have a negative impact on jobs and employment opportunities. In benefiting the public health by ensuring that drug diversion does not occur through the use of forged or stolen prescriptions, the proposed amendments are not expected to either increase or decrease jobs overall. The fiscal savings to public and private insurers will result in an economic benefit to these groups and could have a positive influence on jobs. Additionally, the anticipated time saved by practitioners and pharmacists will benefit all parties involved as well as patients.

**Assessment of Public Comment**

The agency received no public comment.

## EMERGENCY RULE MAKING

**Non-Prescription Emergency Contraceptive Drugs**

**I.D. No.** HLT-34-07-00002-E

**Filing No.** 809

**Filing date:** Aug. 2, 2007

**Effective date:** Aug. 2, 2007

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

**Action taken:** Amendment of section 505.3(b)(1) of Title 18 NYCRR.

**Statutory authority:** Public Health Law, sections 201(l)(v) and 206(l)(f) and Social Services Law, section 363-a(2)

**Finding of necessity for emergency rule:** Preservation of public health.

**Specific reasons underlying the finding of necessity:** We are proposing that this regulatory amendment be adopted on an emergency basis because emergency contraceptive drugs have been approved by the Federal Food and Drug Administration as a non-prescription drug for women 18 years of

age and older. Medicaid law requires a written order for non-prescription drugs. A written order requires that a qualified medical practitioner provide the pharmacy with a written, telephone or fax order for a specific drug for a specific patient. This requirement can delay the use of non-prescription emergency contraceptive drugs. Such drugs are effective if taken within 72 hours of unprotected intercourse but are most effective if taken sooner, ideally within 12 hours. The requirement for a written order impedes earliest access to the drug and reduces the effectiveness of the drug.

The FDA approval of emergency contraceptive drugs as non-prescription drugs is limited to women 18 years of age and older. New York State Medicaid will limit dispensing of this drug to 6 courses of treatment in any 12 month period without a prescription or written order for women 18 years of age and older.

**Subject:** Non-prescription emergency contraceptive drugs.

**Purpose:** To allow access to Federal Drug Administration approved non-prescription contraceptive drugs to be dispensed by a pharmacy without a fiscal order to women 18 years of age and older.

**Text of emergency rule:** Paragraph (1) of subdivision (b) of Section 505.3 is amended to read as follows:

(b) Written order required. (1) Drugs may be obtained only upon the written order of a practitioner, except for *non-prescription emergency contraceptive drugs as described in subparagraph (i) of this paragraph, and for telephone and electronic orders for drugs filled in compliance with this section and 10 NYCRR Part 910.*

(i) *Non-prescription emergency contraceptive drugs for recipients 18 years of age or older may be obtained without a written order subject to a utilization frequency limit of 6 courses of treatment in any 12 month period.*

[(i)] (ii) The ordering/prescribing of drugs is limited to the practitioner's scope of practice.

[(ii)] (iii) The ordering/prescribing of drugs is limited to practitioners not excluded from participating in the medical assistance program.

**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 October 30, 2007.

**Text of emergency rule and any required statements and analyses may be obtained from:** Department of Health, Regulatory Affairs Unit, Rm. 2438, ESP Tower Bldg., Albany, NY 12237-0097, (518) 473-7488

**Regulatory Impact Statement**

## Statutory Authority:

The authority for the proposed rule is contained in Sections 363, 363-a and 365-a of the Social Services Law (SSL). Section 363 of the SSL states that the goal of the Medicaid program is to make available to everyone, regardless of race, age, national origin or economic standing, uniform, high quality medical care. Section 363-a of the SSL designates the Department of Health (Department) as the single state agency for the administration of the Medicaid program and provides that the Department shall make such regulations, not inconsistent with law, as may be necessary to implement the provisions of the program. Section 365-a(2)(g) of the SSL defines "medical assistance" as including prescription and non prescription drugs.

## Legislative Objective:

The proposed rule meets the legislative objective of providing timely access to medically necessary care for indigent Medicaid recipients 18 years of age and older who require emergency contraception. The proposed rule will exempt Federal Food and Drug Administration (FDA) approved over-the-counter drugs for emergency contraception from the Department's regulations which require that a pharmacy have a written order from a practitioner prior to dispensing drugs to Medicaid recipients.

## Needs and Benefits:

Emergency contraceptive drugs have been available for some time by prescription only. In August of 2006, the FDA approved emergency contraceptive drugs as non-prescription drugs ("over the counter") when used by women 18 years of age and older. According to current State Medicaid regulations, 18 NYCRR Section 505.3(b)(1), pharmacies must have a written order (also known as a fiscal order) from a practitioner prior to dispensing an over-the-counter drug to a Medicaid recipient. The regulations do provide an exception, however, for telephone orders from a practitioner which comply with the provisions of the Education Law with respect to such orders. The requirement for a written order necessitates that the recipient visit or call a licensed practitioner prior to going to the pharmacy and then either bring the written order to the pharmacy, have the pharmacist and the practitioner talk on the phone, or have the practitioner send the order by fax. The Department wants to avoid any time barriers to accessing emergency contraceptive drugs since the drugs are most effective

tive in preventing pregnancy if taken within 72 hours after an act of unprotected sex. The Department is eliminating the written order requirement specifically for FDA approved over-the-counter emergency contraceptive drugs dispensed for use by women 18 years of age and older. Women under 18 years of age must still obtain and present a prescription which meets the requirements of section 6810 of the Education Law in order to obtain these drugs.

**COSTS:**

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

There would be no increased costs to the pharmacies for implementation of and continuing compliance with this rule.

Costs to State Government:

Because the Department is eliminating the requirement that there be a written order of a practitioner prior to dispensing this over-the-counter drug, payment for emergency contraceptive drugs under New York's Medicaid program will no longer comply with the federal requirement for such an order. The Department, therefore, proposes using 100% State funds for payment for these drugs. The agency will absorb costs associated with system changes to remove these claims from the federal payment program. These costs are considered minimal. It is estimated that the additional annual cost of payment for emergency contraceptive drugs to the State will be \$1.5 million. These costs to the State will be offset, however, by estimated cost avoidance from reduced births and deliveries attributed to increased access to emergency contraceptive drugs.

The Department examined two years of Medicaid claim data for emergency contraceptive drugs (date of payment from December 1, 2004 to November 30, 2006). The data was extracted from the eMedNY Data warehouse. The Department made the assumption that costs for these drugs would roughly double after this regulation became effective with 100% of rebate adjusted costs being assumed by the State.

Gross annual savings estimates of approximately \$3.2 million were calculated using birth and delivery costs determined in a recent New York State Department of Health, Office of Medicaid Management study. This study analyzed New York State Department of Health vital statistics and New York State Department of Health Medicaid claim data pertaining to prenatal care, delivery and other associated health care costs. Assuming that eliminating the fiscal order mandate would double prescriptions for contraceptive drugs, the Department used claim data for the one year period December 1, 2005 to November 30, 2006 and assumed that approximately 2 in 100 of these claims would have resulted in a birth and delivery cost. The Department used a two year period to determine the expected ongoing increase in the cost of these drugs. The Department only used the one year period (December 1, 2005 to November 30, 2006) to calculate savings, which had the effect of creating a more conservative savings estimate. The gross annual savings in the cost of prenatal care, delivery and other health care costs associated with delivery using this methodology would be \$3.2 million, with approximately \$1.5 million each representing the federal and state share of savings. There is no local share in savings because of the local share cap which is set at calendar year 2005 (trended) levels.

Costs to Local Government:

There will be no cost to local government.

Local Government Mandates:

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

Paperwork:

This regulatory amendment will decrease paperwork for medical providers and pharmacies since a fiscal order is not needed for this drug for women 18 years of age or older.

Duplication:

This regulatory amendment does not duplicate, overlap or conflict with any other State or federal law or regulations.

Alternatives:

Currently, a written order of a practitioner is required by federal regulations (42 CFR 440.120(a)(3)) and State Medicaid regulations for the dispensing of emergency contraceptive drugs. The Department considered another proposal to eliminate the need for each recipient to obtain an individual written order from a practitioner for emergency contraceptive drugs. That alternative was to replace the requirement for a fiscal order with a "non-patient specific order" as provided for in section 6909(5) of the Education Law. The non-patient specific order would be written by a

qualified medical practitioner in agreement with a specific pharmacy to dispense emergency contraception as an over the counter drug to any eligible woman 18 years of age and older who requests it. The order is not patient specific so it would eliminate the delay in treatment inherent in requiring the recipient to obtain a written order. The Department determined this alternative would not likely be available without a statutory amendment because the Education Law and regulations limit its use to situations involving immunizations, emergency treatment of anaphylaxis, purified protein derivative tests and HIV testing.

Federal Standards:

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

**Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis is not required because the proposed rule will not have a substantial adverse impact on small businesses or local governments.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not required because the proposed rule will not have any adverse impact on rural areas.

**Job Impact Statement**

A Job Impact Statement is not required because the proposed rule will not have any adverse impact on jobs and employment opportunities.

## State Division of Human Rights

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

**Address and Gender Reference**

**I.D. No.** HRT-34-07-00015-P

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

**Proposed action:** This is a consensus rule making to amend section 466.7(g) of Title 9 NYCRR.

**Statutory authority:** Executive Law, sections 290.3, 293.2, 295.5 and 297

**Subject:** Address and gender reference.

**Purpose:** To update an address and make the section gender neutral.

**Text of proposed rule:** 466.7(g) Duty of administrative officer. The administrative officer of the division shall maintain a record setting forth the name, public office address, title and salary of every officer or employee of the division, as required by section 87.3(b) of the Freedom of Information Law. He/she shall respond to and comply with requests for any such record made pursuant to the Freedom of Information Law. His/her business address is [55 West 125th Street, New York, NY 10027] *One Fordham Plaza, Bronx, New York 10458.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Caroline J. Downey, General Counsel, Division of Human Rights, One Fordham Plaza, Fourth Fl., Bronx, NY 10458, (718) 741-8402, e-mail: cdowney@dhr.state.ny.us

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

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

**Consensus Rule Making Determination**

It is unlikely that any person will object to the rule as revised, as no substantive changes have been made. The change to 9 NYCRR 466.7(g) consists of an address update and changes to make the section gender neutral.

**Job Impact Statement**

1. Nature of impact: None.
2. Categories and numbers affected: None.
3. Regions of adverse impact: None.
4. Minimizing adverse impact: None.
5. Self-employment opportunities: Not applicable.

## Insurance Department

### EMERGENCY RULE MAKING

#### High Deductible Health Plans

**I.D. No.** INS-34-07-00001-E

**Filing No.** 808

**Filing date:** Aug. 2, 2007

**Effective date:** Aug. 2, 2007

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

**Action taken:** Addition of sections 362-2.7(d), (e) and (f) and 362-2.8 to Title 11 NYCRR.

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

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

**Specific reasons underlying the finding of necessity:** 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 individual proprietors and working uninsured individuals to purchase insurance coverage. The federal Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. No. 108-173, added a new Section 223 to the Internal Revenue Code. The new section authorizes those insured by a high deductible health plan, as defined in the federal legislation, to establish a tax-deductible health savings account to pay for certain medical expenses. In his 2006 State of the Union Address, President Bush emphasized the importance of high deductible health plans and health savings accounts (HSAs) in expanding health care options and reducing the number of the uninsured. Changes to the federal law at the end of 2006 made high deductible health plans more advantageous for tax savings by removing many limitations and making certain retirement funds as eligible for deposit into an HSA. People with HSAs can now roll over funds from a health reimbursement arrangement, flex spending account, or individual retirement account into an HSA on a one-time basis.

Prior to January 1, 2007, Healthy New York participants seeking comprehensive health insurance coverage could not access high deductible health plans and establish health savings accounts in accordance with the federal standards. These employers and individuals were not eligible for the tax deductions they would otherwise enjoy for funds deposited into health savings accounts and used for qualified medical expenses. The funds deposited into the health savings accounts accrue tax-deferred until the account owner seeks reimbursement for medical expenses or reaches Medicare eligibility.

Health insurance costs have escalated dramatically in recent years, with some health plans implementing increases in the range of 25% to 30%. The increased cost of insurance has, in turn, contributed to a decline in the number of employers who offer insurance to their employees. Recent census data indicates that approximately 15% of New York's population is uninsured. A large portion of New York State's uninsured population is individuals who are self-employed or who work for small employers.

This amendment to Part 362 of 11 NYCRR requires health maintenance organizations and insurers participating in the Healthy New York program to offer high deductible health plans, as defined by the federal Medicare legislation, to qualifying small employers and individuals. The high deductible health plans have lower premiums than the standard Healthy New York plans. The reduction in cost encourages more small businesses and individuals to purchase health insurance coverage and should therefore result in a decrease in the number of uninsured. In addition, the high deductible health plans purchased with the health savings accounts give New Yorkers access to another health insurance alternative that complies with federal standards. The new option also provides New Yorkers with access to a tax-advantaged method of purchasing health insurance that was previously not available to individuals.

Employers generally renew existing insurance arrangements or enroll in new insurance policies during the fall. These new policies become effective in January of the following year. In order for these high deductible health plans to be sold with a January 1, 2007 effective date, the health

plans had to be able to market them to employers along with other new product offerings in the fall. The prior emergency filings of this amendment required health plans to issue high deductible health plan contracts beginning January 1, 2007. This amendment must be filed as an emergency measure in order to keep existing program requirements concerning high deductible health plans in place.

This emergency filing is necessary to continue the requirement that health plans provide new benefits under the program. A prior emergency filing of this amendment added the following new benefits to the Healthy New York program as of January 1, 2007: diagnostic screening for prostate cancer and a limited number of post-hospital or post-surgical home health care and physical therapy services. The addition of the prostate cancer screening benefit facilitates prompt and early detection of prostate cancer, which in turn should decrease mortality and reduce treatment costs. Prior to January 1, 2007, the Healthy New York program covered surgery and hospitalizations but did not cover subsequent home health care and physical therapy care. Consequently, Healthy New York enrollees experienced extended hospitalizations in order to receive therapy. It is anticipated that the addition of post-hospitalization and post-surgical home health and physical therapy services will result in shorter hospital stays and lower hospital costs, which will in turn reduce costs to the State.

On April 16, 2007, the Governor's Office of Regulatory Reform signed off on the proposed regulation. The agency is moving forward with the process to adopt the regulation. This emergency filing is necessary to keep program requirements in place until the final adoption becomes effective.

Consequently, it is critical that this amendment 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:** Minimum standards for the form and content of policies and contracts subject to the provisions of section 4326 of the Insurance Law.

**Purpose:** To create additional health insurance options for qualifying small employers and individuals by requiring health maintenance organizations and participating insurers to offer high deductible health plans in conjunction with the Healthy New York Program.

**Text of emergency rule:** New subdivisions (d), (e) and (f) are added to section 362-2.7 to read as follows:

§ 362-2.7 Healthy New York benefit adjustments.

(d) Beginning January 1, 2007, qualifying health insurance contracts shall include a benefit for up to forty post-hospital or post-surgical home health care visits per calendar year.

(e) Beginning January 1, 2007, qualifying health insurance contracts shall include a benefit for up to thirty post-hospital or post-surgical physical therapy visits.

(f) Beginning January 1, 2007, qualifying health insurance contracts shall include a benefit for diagnostic screening for prostatic cancer consistent with the benefit set forth in section 4303(z-1) of the Insurance Law.

A new section 362-2.8 is added to read as follows:

§ 362-2.8 High deductible health plan under the Healthy New York Program.

(a) For purposes of this section:

(1) "High deductible health plan" shall mean a qualifying health insurance contract with a plan year deductible of at least \$1,150 for individual coverage and \$2,300 for family coverage. Out-of-pocket expenses, including the deductible and copayments, shall be capped at \$5,250 for individual coverage and \$10,500 for family coverage for the plan year.

(2) "Family coverage" means any coverage that is not self-only.

(b) Effective January 1, 2007, every health maintenance organization and insurer participating in the Healthy New York program shall offer a high deductible health plan with a plan year deductible of \$1,150 for individual coverage and \$2,300 for family coverage to qualifying small employers and qualifying individuals under the Healthy New York program in connection with a Health Savings Account (hereinafter "HSA") authorized by the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Pub. L. No. 108-173). The health maintenance organization or insurer must provide qualifying small employers and qualifying individuals that select a high deductible health plan with a separate disclosure statement which prominently discloses the existence of the deductible.

(c) Health maintenance organizations and participating insurers may also offer additional high deductible health plans with deductibles exceeding the minimum amounts set forth in subdivision (a) of this section in connection with qualifying health insurance contracts. Any such addi-

tional options must contain the cap on out-of-pocket expenses set forth in subdivision (a) of this section.

(d) When necessary to meet the federal minimums for a high deductible health plan, each of the dollar amounts referred to in subdivision (a) of this section shall be adjusted by an amount which is consistent with the automatic cost-of-living adjustment as set forth in section 223(g) of the Internal Revenue Code, 26 USC section 223.

(e) The plan year deductible shall not apply to those services described in section 4326(d)(7) and (8) of the Insurance Law, prostatic cancer screenings, or routine prenatal care. Health maintenance organizations and participating insurers may also exempt from the deductible such other preventive services which would not jeopardize the eligibility of the high deductible health plan to be used in conjunction with an HSA.

(f) The calendar year prescription drug deductible set forth in section 4326(e)(5) of the Insurance Law shall not be applied in addition to the overall plan year deductible for the high deductible health plan.

(g) At the time of application, the health maintenance organization or participating insurer shall obtain a certification that the applicant or their employees, as appropriate, intend to establish an HSA, or if applicable, HSAs. At the time of annual recertification, the qualifying employer or individual shall submit a recertification confirming the status of the HSA or HSAs.

(h) A small employer or individual may choose between a high deductible health plan or a qualifying health insurance contract at the time of enrollment. Once enrolled, any change from one type of plan to another may occur only at the time of the annual recertification.

**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 October 30, 2007.

**Text of emergency rule and any required statements and analyses may be obtained from:** Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

#### **Regulatory Impact Statement**

1. Statutory authority: The superintendent's authority for the adoption of the third amendment to 11 NYCRR 362 is derived from sections 201, 301, 1109, 3201, 3217, 3221, 4235, 4303, 4304, 4305 and 4326 of the Insurance Law.

Sections 201 and 301 authorize the superintendent to prescribe regulations interpreting the provisions of the Insurance Law, effectuate any power granted to the superintendent under the Insurance Law, and prescribe forms.

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 (HMO) 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 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 governs the accident and health insurance contracts written by non-for-profit corporations and sets forth the benefits that must be covered under such contracts.

Section 4304 includes requirements for individual health insurance contracts written by not-for-profit corporations.

Section 4305 includes requirements for group health insurance contracts written by not-for profit corporations.

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) also authorizes the superintendent to establish additional standardized health insurance benefit packages to meet the needs of the public after January 1, 2002.

2. Legislative objectives: The federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, added a new section 223 to the Internal Revenue Code. The new section authorizes those insured by a high deductible health plan, as defined in the

federal legislation, to establish a tax-deductible health savings account to pay for certain medical expenses. 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 individual proprietors and working uninsured individuals to purchase insurance coverage.

3. Needs and benefits: Currently, small employer and individual participants in the Healthy New York program seeking comprehensive health insurance coverage cannot purchase high deductible health plans and establish health savings accounts in accordance with federal standards. These participants in the Healthy New York program are not currently eligible for the tax deductions for funds deposited into health savings accounts and used for qualified medical expenses. This amendment will create products that are compatible with health savings accounts. Health savings accounts allow users to deposit pre-tax money into an account and withdraw the money tax-free for qualified medical expenses.

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. The high cost of insurance prevents many individual proprietors and working individuals from purchasing their own coverage.

These amendments to Part 362 of 11 NYCRR will require HMOs and participating insurers to offer high deductible health plans using the Healthy New York small employer and individual programs. The high deductible health plans will have lower premiums than current Healthy New York benefit packages. The reduction in premium will encourage more small businesses and individuals to purchase comprehensive health insurance coverage. In addition, the high deductible health plans purchased for use with the health savings accounts will give New Yorkers access to another health insurance alternative that complies with recently-enacted federal standards. This new option will also provide New Yorkers with access to a tax-advantaged method of purchasing health insurance.

In addition, this amendment will provide for prostatic cancer screening and a limited home health care and physical therapy benefit. The addition of the prostate cancer screening benefit will facilitate prompt and early detection of prostate cancer, which in turn should decrease mortality and reduce treatment costs. The addition of post-hospitalization and post-surgical home health and physical therapy services will result in insureds being discharged from the hospital sooner now that they can obtain these services in an outpatient setting. Shorter hospital stays will reduce costs. The addition of the new benefits will in turn reduce costs to the State, because the State reimburses the health plans for certain claims.

4. Costs: This amendment imposes no compliance costs upon state or local governments. HMOs and participating insurers will incur some minor costs in drafting the contract riders that will create the high deductible health plans and add the new benefits. The Department has provided HMOs and participating insurers with model language and forms to use in implementing the amendment. 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 may decrease the per head cost to the State to be distributed from the overall allocation for the program for workers enrolled in Healthy New York because the addition of the home health care and physical therapy benefits will reduce hospitalization costs by allowing insureds to receive services in less costly settings. In addition, the prostatic screening benefit may reduce costs to the state by resulting in some instances of cancer being detected earlier, with fewer medical costs. The amendment creates a less expensive option under Healthy New York, which should attract additional people to the program and increase enrollment. The overall costs of the program are capped at the appropriated funding amounts.

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: Healthy New York requires HMOs and participating insurers 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. This amendment will not impose any new reporting requirements, though it will require separate identification of enrollment in the high deductible health plan option.

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

8. Alternatives: The adoption of this amendment will require high deductible health plans to be issued under the Healthy New York program for qualifying individuals and small employers. One alternative would be

to not offer the high deductible health plan option. The Department has determined that this is not an attractive alternative, because without a high deductible health plan, these small businesses, individuals, and sole proprietors could not open health savings accounts. The Department also considered alternative levels of deductibles. However, deductible amounts lower than those chosen would either not qualify for use with health savings accounts, or would require revision soon after implementation due to deductible limit adjustments each year for use with health savings accounts. Another alternative considered by the Department was to require only one set of deductible amounts, rather than to allow additional amounts. After discussions with industry representatives, the flexibility to offer additional deductible amounts in qualifying health insurance contracts appeared to better serve the intended enrollees, and allowed the health plans to be creative in their product offerings. This amendment also adds prostatic cancer screening and a limited post-hospital and post-surgical physical therapy and home health care benefit to the Healthy New York program. Currently, the program does not cover these benefits. The Department has received extensive comments and suggestions from the health insurance industry in preparing these regulations. The Department has met several times with representatives from groups that represent the health maintenance organization and not-for-profit health insurance industry and has held numerous phone conferences. Some of these conversations have been with experts in high deductible health plans and health savings accounts. These industry representatives have provided the Department with comments and suggestions on the drafting of this regulation, including technical advice and cost analysis of the deductibles and benefits.

9. Federal standards: The federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, added a new section 223 to the Internal Revenue Code. The new section authorizes those insured by a high deductible health plan, as defined in the federal legislation, to establish tax-deductible health savings accounts to pay for certain medical expenses.

10. Compliance schedule: HMOs and participating insurers were required to comply by January 1, 2007.

#### **Regulatory Flexibility Analysis**

This amendment will not impose reporting, recordkeeping or other requirements on small businesses since the provisions of this Part apply only to health maintenance organizations (HMOs) and participating insurers. The Insurance Department has reviewed the filed Reports on Examination and Annual Statements of HMOs and participating insurers and concluded that none of them comes within the definition of "small business" contained in section 102(8) of the State Administrative Procedure Act, because there are none that are both independently owned and that employ fewer than 100 persons.

This amendment will also have no adverse economic impact on local governments and does not impose reporting, recordkeeping or other compliance requirements on local governments. The basis for this finding is that this rule is directed at participating insurance companies and HMOs, none of which is a local government.

#### **Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: Health maintenance organizations (HMOs) and participating 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 employers 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 HMOs and participating insurers 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. This revision will not add any new reporting requirements, though it will require separate identification of enrollment in the high deductible health plan option. Nothing in this revision distinguishes between rural and non-rural areas. No special type of professional services will be needed in a rural area to comply with this requirement.

3. Costs: HMOs and participating insurers may incur some modest costs in drafting the contract riders that will create the high deductible plans and include the additional benefits. There are no costs to local governments. This amendment 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 have the same impact on all affected entities.

5. Rural area participation: None.

#### **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 small employers and working individuals. This amendment provides qualifying small employers and individuals with the ability to obtain a federal tax deduction through the purchase of a high deductible health plan. It also reduces the cost of Healthy New York health insurance by adding a deductible and benefits that will reduce costs to the program, which will in turn improve access to health insurance by lowering health insurance premiums.

## **EMERGENCY RULE MAKING**

### **Minimum Standards for the Form, Content and Sale of Health Insurance**

**I.D. No.** INS-34-07-00018-E

**Filing No.** 815

**Filing date:** Aug. 7, 2007

**Effective date:** Aug. 7, 2007

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

**Action taken:** Amendment of section 52.70 (Regulation 62) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301, 1109, 3103, 3201, 3217, 3221, 4235, 4303, 4305 and 4308

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

**Specific reasons underlying the finding of necessity:** Chapter 748 of the Laws of 2006, commonly referred to as "Timothy's Law", became effective on January 1, 2007. This law amends Sections 3221 and 4303 of the Insurance Law to require health insurance coverage for inpatient and outpatient mental health services. Insurers, Article 43 corporations, and HMOs are required to amend policies and contracts and/or modify premium rates to comply with the requirements of Timothy's Law. Because the bill became effective date two weeks after it was signed, affected insurers, Article 43 corporations and HMOs were not able to obtain prior approval of policy form and rate submissions that pertain to the mental health benefits. Nonetheless, policyholders, certificateholders and members must be made aware of the impact of Timothy's Law on their benefits as soon as possible.

To inform policyholders, certificateholders and members as soon as possible of the details of these new benefits, this amendment requires affected insurers, Article 43 corporations and HMOs to provide written notification explaining the key features of the mental health benefits required under Timothy's Law to affected policyholders, certificateholders, and members. The notice must state that a formal contract and/or certificate amendment will be sent that will explain the new benefits in greater detail. The notice must contain a toll-free customer telephone number that certificateholders and members may use to contact the company with questions concerning these benefits. Insurers were required to provide the notice by February 15, 2007.

This amendment is necessary to require insurers, Article 43 corporations, and HMOs to provide notice to policyholders, certificateholders and members of the coverage. It is imperative that consumers be aware of the availability of this coverage. Inasmuch as the coverage is already mandated for the preservation of the public health and general welfare, the amendment must be continued on an emergency basis until such time as it can be adopted in final form.

**Subject:** Minimum standards for the form, content and sale of health insurance, including standards for full and fair disclosure.

**Purpose:** To require insurers, article 43 corporations and HMO's to send notices to their policyholders, certificateholders, and members describing chapter 748 of the Laws of 2006.

**Text of emergency rule:** Subdivision (d) of section 52.70 is amended by adding a new paragraph (9) to read as follows:

(9) Every insurer issuing school blanket insurance policies pursuant to Insurance Law section 3221 shall send written notice of the enactment of Chapter 748 of the Laws of 2006 (commonly referred to as "Timothy's

Law”) to all affected policyholders, certificateholders and members. If permitted by the school blanket policy, insurers may provide notice to the group policyholder for distribution to individual certificateholders but shall be responsible for providing the notice. The notice shall be provided no later than February 15, 2007. The notice shall:

- (i) describe the key features of the benefits required under Chapter 748 of the Laws of 2006;
- (ii) state that a formal contract or certificate amendment shall be forthcoming that will explain the new benefits in greater detail;
- (iii) provide a toll-free customer service telephone number that insureds may call to contact the insurer with questions concerning the new law; and
- (iv) advise the policyholders that their premiums may be adjusted.

Subdivision (e) of Section 52.70 is amended by adding a new paragraph (5) to read as follows:

(5) Every insurer, Article 43 corporation and health maintenance organization (“HMO”) shall send written notice of the enactment of Chapter 748 of the Laws of 2006 to all affected group policyholders, certificateholders, and members. If permitted by the group contract, an insurer, Article 43 corporation or HMO may provide notice to the group policyholder for distribution to individual certificateholders and members, but such insurer, Article 43 corporation or HMO ultimately shall be responsible for providing the notice. The notice shall be provided no later than February 15, 2007. The notice shall:

- (i) describe the key features of the benefits required pursuant to Chapter 748 of the Laws of 2006;
- (ii) state that a formal contract or certificate amendment will be forthcoming that will explain the new benefits in greater detail;
- (iii) provide a toll-free customer service telephone number that insureds may call to contact the insurer, Article 43 corporation, or HMO with questions concerning the new law; and
- (iv) advise the policyholders that their premiums may be adjusted.

**This notice is intended** to serve only as a notice of emergency adoption. This agency does not intend to adopt the provisions of this emergency rule as a permanent rule. The rule will expire November 4, 2007.

**Text of emergency rule and any required statements and analyses may be obtained from:** Thomas Fusco, Insurance Department, 65 Court St., Rm. 7, Buffalo, NY 14202, (716) 847-7618, email: tfusco@ins.state.ny.us  
**Regulatory Impact Statement**

1. Statutory authority: The Superintendent’s authority for the 38th amendment to 11 NYCRR 52 derives from Sections 201, 301, 1109, 3103, 3201, 3217, 3221, 4235, 4303, 4305 and 4308 of the Insurance Law.

Sections 201 and 301 of the Insurance Law authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law, and to effectuate any power given to him under the provisions of the Insurance Law to prescribe forms or otherwise make regulations.

Section 1109 authorizes the Superintendent to promulgate regulations to effectuate the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law with respect to contracts between a health maintenance organization and its subscribers.

Section 3103 provides that any policy of insurance delivered or issued for delivery in this state in violation of any of the provisions of the Insurance Law shall be valid and binding upon the insurer issuing the same, but in all respects in which its provisions are in violation of the requirements or prohibitions of the Insurance Law it shall be enforceable as if it conformed with such requirements or prohibitions.

Section 3201 authorizes the Superintendent to approve accident and health insurance policies for delivery or issuance for delivery in this state.

Section 3217 authorizes the Superintendent to issue regulations to establish minimum standards for the form, content and sale of health insurance.

Section 3221 sets forth standard health insurance policy provisions.

Section 4235 establishes requirements for group accident and health insurance.

Article 43 of the Insurance Law sets forth requirements for non-profit medical and dental indemnity corporations and non-profit health or hospital corporations, including requirements pertaining to minimum benefits of individual and small group contracts. Section 4303 and 4305 set forth required benefits and standard provisions for group contracts. Section 4308 authorizes the Superintendent to approve contracts, certificates, applications, riders and endorsements issued by Article 43 corporations and HMOs.

2. Legislative objectives: The statutory sections cited above establish a framework for the form, content and sale of health insurance. The proposed amendment to Regulation 62 is consistent with legislative objectives

in that it would ensure that the policyholders, certificateholders, and members receive notice of the mental health benefits to which they are now entitled by operation of law as soon as possible prior to the formal revision of the insurance policy forms.

3. Needs and benefits: This emergency amendment requires insurers, Article 43 corporations, and HMOs to provide written notice to insureds by February 15, 2007 of the details of Chapter 748 of the Laws of 2006 (commonly referred to as “Timothy’s Law”). The notice shall also provide a toll-free customer service telephone number that insureds may use to contact the company with questions concerning mental health coverage.

Chapter 748 of the Laws of 2006 became effective on January 1, 2007, less than two weeks after it was signed into law. The law requires insurance companies, Article 43 corporations and HMOs to provide coverage for inpatient and outpatient mental health services in certain policies and contracts that are issued, renewed, modified, altered or amended on or after that date. Typically, insurers, Article 43 corporations and HMOs advise policyholders, certificateholders and members of the addition of a new benefit to their coverage by making a formal amendment to their policies, contracts and certificates of coverage in advance of the effective date. But because of the short time frame between the law’s enactment and its effective date, insurers, Article 43 corporations and HMOs were not able to develop formal amendments to their policies, contracts and certificates on a timely basis. This emergency regulation requires insurers, Article 43 corporations and HMOs to notify their policyholders, certificateholders and members of the impact of Chapter 748 on their coverage and to provide a toll-free customer service telephone number from which policyholders, certificateholders and members may obtain information about their mental health coverage. The notice required by this regulation serves to education consumers about the possible impact of Timothy’s Law on their coverage until such time as their policy, certificate or contract is amended to address the benefit. It is important that the notice be provided to affected parties no later than February 15, 2007 because a significant number of policies and contracts were renewed or were issued on January 1, 2007, and thus are subject to Timothy’s Law requirements.

The regulation therefore promotes the general welfare and public health.

4. Costs: This regulation imposes no compliance costs upon state or local governments.

There will be minimal additional costs of compliance to insurers, Article 43 corporations and HMOs that may need to delegate or reassign staffing responsibilities to prepare and distribute the notices. There are no costs to the Insurance Department. The notice requirement is one-time only and not ongoing since insurers must conform their policies to explicitly provide for the coverage mandated by Timothy’s Law.

5. Local government mandates: The proposed regulation imposes no new programs, services, duties or responsibilities on local government.

6. Paperwork: The proposed regulation imposes no new reporting requirements. However, there are paperwork associated with preparing and distributing the notice.

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

8. Alternatives: There are no significant alternatives to be considered at this time due to the short timeframe between the date of enactment and the effective date of the law.

9. Federal standards: There are no minimum standards of the federal government for the same of similar subject areas.

10. Compliance schedule: The provisions of this amendment will take effect immediately. Insurers, Article 43 corporations and HMOs shall have until February 15, 2007 to send written notice to their insureds.

#### **Regulatory Flexibility Analysis**

This amendment will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

This amendment will affect insurers, Article 43 corporations and HMOs licensed to do business in this state. Based upon information provided in the annual statements filed with the Insurance Department, insurers, Article 43 corporations and HMOs do not fall within the definition of small business found in Section 102(8) of the State Administrative Procedure Act because none of them are both independently owned and have under one hundred employees. This amendment does not apply to or affect local governments. As a result, there are no reporting, recordkeeping or other affirmative acts that a small business or local government will have to undertake to comply with this proposed regulation. The amendment will not impose any compliance costs on local governments or small businesses.

**Rural Area Flexibility Analysis**

The amendment will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Insurers, Article 43 corporations and HMOs to which the amendment applies do business in every county of the state, including rural areas as defined under State Administrative Procedure Act Section 102(13). Since the amendment applies to the health insurance market throughout New York, not only to rural areas, the same regulation will apply to regulated entities across the state. Therefore, there is no adverse impact on rural areas as a result of this amendment.

**Job Impact Statement**

The amendment to Regulation 62 will not adversely impact job or employment opportunities in New York. The proposed amendments are likely to have no measurable impact on jobs. The notice is a one-time only requirement. Insurers and health maintenance organizations may need to delegate or reassign staffing responsibilities to prepare and distribute the notices; however, it is anticipated that such responsibilities will be handled by existing personnel.

## REVISED RULE MAKING NO HEARING(S) SCHEDULED

**Continuing Care Retirement Communities**

**I.D. No.** INS-33-06-00003-RC

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

**Revised action:** Amendment of Part 350 (Regulation 140) of Title 11 NYCRR.

**Statutory authority:** Insurance Law, sections 201, 301 and 1119; and Public Health Law, sections 4604(4)(a), 4607 and 4611

**Subject:** Continuing care retirement communities authorized pursuant to article 46 of the Public Health Law.

**Purpose:** To adopt revised standards pertaining to continuing care retirement communities authorized pursuant to article 46 of the Public Health Law.

**Expiration date:** February 17, 2008

**Substance of revised rule:** The title of this part is revised from Life Care Communities to Continuing Care Retirement Communities and conforming changes are made throughout Part 350. Section references are revised to reflect renumbering of several sections.

Section 350.5 is repealed and sections 350.1-350.4 are renumbered to be sections 350.2-350.5.

A new section 350.1 is added, which consolidates the definitions used in this Part in one section. Definitions used in various sections are repealed and moved to this new section. Some new definitions are added to enhance the clarity of the regulation.

Subdivisions (a)-(c) of newly renumbered section 350.2 are repealed.

Subdivision (d) of newly renumbered section 350.4 is amended to clarify that class 4 assets are amortized instead of depreciated.

Subdivision (e) of newly renumbered section 350.4 is repealed and subdivisions (f)-(l) of newly renumbered section 350.4 are renumbered to be subdivisions (e)-(k).

Newly renumbered subdivision (g) of newly renumbered section 350.4 is amended to revise the criteria for the assumption as to the average monthly fees per resident for the initial year of a prospective reserve liability calculation.

Newly renumbered subdivision (i) of newly renumbered section 350.4 is amended to delete a reference to a basis other than the closed group basis when calculating the prospective reserve liability.

Subdivision (a) of newly renumbered section 350.5 is repealed and subdivision (b) of newly renumbered section 350.5 is renumbered accordingly. The content of the required demonstration to the superintendent has been clarified.

Subdivision (a) of section 350.6 has been completely rewritten. The minimum liquid requirement has been restructured so that there are now two liquidity requirements. The first is a debt reserve fund to cover the aggregate of all interest and principal payments becoming due within the next 12 months under a mortgage loan, bond indenture or other long term financing of the community. The second is an operating reserve fund equal to thirty five percent of the sum of certain operating expenses of the community during the next 12 months. Assets used to meet these requirements must be in high quality fixed income securities. The current requirement that such securities have one year or less remaining to maturity has been eliminated. Each continuing care retirement community is required to

test as of the end of each quarter that it meets the requirements of subdivision (a) of section 350.6, and if not, to notify the superintendent and submit a plan to achieve compliance.

Section 350.6 is amended by adding a new subdivision (f), which requires that each continuing care retirement community develop formal investment guidelines and policies to be approved by its board of directors. The responsibility for oversight of the investment program shall be retained by the community's board of directors. All investment policies and guidelines and any subsequent changes must be submitted to the superintendent.

The unlettered paragraph of section 350.6 was moved to a new subdivision (g) of section 350.6.

Subdivision (a) of section 350.7 is repealed and subdivisions (b)-(e) of section 350.7 are renumbered to be subdivisions (a)-(d). Newly renumbered subdivisions (b)-(d) of section 350.7 are amended to revise the conditions under which a distribution to an operator may be made.

Section 350.8 is completely rewritten. If a continuing care retirement community is not in satisfactory actuarial balance, the operator shall develop a plan designed to achieve satisfactory actuarial balance, and submit the plan to the superintendent for approval. The allowable time period for such a plan to achieve compliance has been lengthened.

Section 350.9 is renumbered to section 350.11. A new section 350.9 is added, which describes the minimum contents of the periodic actuarial study that is to be performed on behalf of the continuing care retirement community.

A new section 350.10 is added, which discusses the minimum content of fee schedule submissions.

**Revised rule compared with proposed rule:** Substantial revisions were made in sections 350.1, 350.6(f), 350.8(a)(2), 350.9 and 350.10.

**Text of revised proposed rule and any required statements and analyses may be obtained from:** Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: Amais@ins.state.ny.us

**Data, views or arguments may be submitted to:** Gary Teitel, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-7709, e-mail: gteitel@ins.state.ny.us

**Public comment will be received until:** 30 days after publication of this notice.

**Revised Regulatory Impact Statement**

## 1. Statutory authority

The superintendent's authority for the amendment to Regulation 140 (11 NYCRR 350) is derived from sections 201, 301 and 1119 of the Insurance Law, and sections 4604(4)(a), 4607 and 4611 of the Public Health Law.

Sections 201 and 301 authorize the superintendent to effectuate any power granted to the superintendent under the Insurance Law and to prescribe regulations interpreting the provisions of the Insurance Law.

Section 1119(a) authorizes the superintendent to prescribe regulations pertaining to organizations operating pursuant to Article 46 of the Public Health Law with respect to (1) the financial feasibility of the continuing care retirement community (CCRC), (2) the actuarial principles established relating to such communities, and (3) the approval of continuing care retirement contracts and the rates and rating system for such contracts.

Section 1119(b) authorizes the superintendent to promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 46 of the Public Health Law.

Public Health Law Section 4604(4)(a) states that an operator may use a rating methodology approved by the superintendent to determine entrance fees, monthly care fees, and/or any separate charges for the housing component of the continuing care contract, and that any increase in any entrance fee or monthly care fee in excess of fees calculated pursuant to the approved rating methodology shall require approval of the superintendent.

Public Health Law Section 4607 states that the annual statement is due within four months of the close of the operator's fiscal year and that an updated actuarial study is periodically required.

Public Health Law Section 4611 authorizes the superintendent to promulgate a regulation setting forth the reserve requirements, the quantitative and qualitative standards for assets supporting the reserve requirements, the minimum level of liquid assets a CCRC must maintain, and the qualitative standards for such liquid assets.

## 2. Legislative objectives

The legislative objectives are found in section 4600 of the Public Health Law as created by Chapter 689 of the laws of 1989. If carefully planned and monitored, CCRCs have the potential to provide a continuum of care for older people that will provide an attractive residential option for

such persons, while meeting their long term care needs. To ensure that the financial, consumer, and health care interest of individuals who enroll in such communities will be protected, CCRCs must be effectively managed and carefully overseen. The intent of the legislature is to allow for the prudent development of such communities.

The legislature was aware that numerous CCRCs failed during the 1980s; therefore, it authorized an actuarial based model for such communities and mandated that the Superintendent of Insurance develop reserve standards for such communities.

### 3. Needs and benefits

A CCRC is a residential facility for seniors that provides stated house-keeping, social, and health care services in return for some combination of advance fee, periodic fees, and additional fees. A CCRC is often designed to provide a full continuum of care as the health status of a resident deteriorates with age.

This amendment reduces the minimum liquid requirement amount and liberalizes the investments eligible to support the minimum liquid requirement, which should increase investment income to a CCRC. This amendment allows a longer period of time for a CCRC to achieve satisfactory actuarial balance, which should have a positive affect on the fees charged to residents.

This amendment is necessary to address various issues that have come to the attention of the Insurance Department, as well as to clarify and simplify certain sections of the regulation.

The first actuarial study for a CCRC after commencement of operations is prepared at the end of the third fiscal year of operation. This first actuarial study captures the differences between originally projected results and the actual results that have emerged. The Department has found that the current requirement to correct an emerging actuarial under-funding within the mandated three year time frame is often not practicable. A longer initial time period would provide the operator with more flexibility in how to achieve full actuarial funding.

The industry has requested some leeway in maintaining a full funding level. The seven year time frame established in the amendment enables a CCRC to smooth out any adverse year to year fluctuations among the various assumptions used in the actuarial study or due to operating expenses emerging higher than what was budgeted.

A CCRC is expected to maintain at all times at least the required minimum level of liquid funds to cover unexpected expenses or unexpected revenue shortfalls. Therefore, these funds are not to cover budgeted expenses. This amendment reduces the minimum liquid amount requirement to a level more in line with the investment community's "days cash on hand" benchmark for an entrance fee community. The "days cash on hand" benchmark is designed to provide sufficient funds to cover unexpected expenditures, provide refunds for unanticipated living unit turnover without an attendant new entrance fee, or meet other unbudgeted expenses.

The current requirement for funds supporting the minimum liquid requirement is that these funds be in fixed income securities with one year or less remaining to maturity. Normally the annual net cash flow for a CCRC is positive and the minimum liquid funds would only be needed should there be unexpected expenses or unexpected revenue shortfalls. Therefore, since the minimum liquid funds would normally not be spent, the Department has concluded that it is appropriate for these funds to be in high quality and readily marketable fixed income securities. This amendment revises the requirement so that funds supporting the minimum liquid requirement must be in high quality fixed income securities and eliminates the one year maturity restriction.

Concerns were expressed about the use of the term "impaired" for a CCRC that is actuarially under-funded. This amendment introduces the concept of a CCRC being in satisfactory actuarial balance, which is the criteria actuaries customarily use in analyzing a CCRC's financial condition.

A new section outlining the minimum requirements for the periodic actuarial study codifies current guidelines in order to clarify what should be included in an actuarial study submission.

The new section outlining the fee submission requirements codifies the material that the Department currently asks for to support a fee schedule increase submission. The Department has found that operators often do not know what documentation should be included in a fee schedule submission. This section also provides guidance for developing a rating methodology.

### 4. Costs

The additional cost to a CCRC of complying with this amendment should be minimal since reserve standards for CCRCs already exist in this regulation.

The cost of complying with the new requirement to notify the Department and develop a plan for correcting any minimum liquid deficiency should be minimal. The cost of complying with the new requirement to develop a formal statement of investment guidelines and policies should be minimal.

The additional reporting requirements noted above should not require the CCRC to hire additional staff or engage outside experts not currently employed. The current financial staff and/or management company of the CCRC would monitor compliance with the minimum liquid requirement, and would notify the superintendent if the CCRC was not in compliance and develop the plan for achieving compliance. The board of directors and management staff of the CCRC would develop the investment guideline and policy statements for the CCRC.

The cost to the Insurance Department will be minimal. There are no costs to other government agencies or local governments.

The increased flexibility a CCRC will have in achieving satisfactory actuarial balance and in investing the minimum liquid required amount should offset any additional administrative costs that might be imposed by this amendment.

### 5. Local government mandates

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

### 6. Paperwork

This amendment requires that any CCRC that fails to meet the minimum liquid requirement level notify the Department and then submit a plan for correcting the deficiency.

This amendment requires that each CCRC develop formal investment guidelines and policies. No required format is specified. The investment guidelines and policies, and all subsequent changes, are to be submitted to the superintendent. It is good business practice for a Board of Directors to oversee the general investment policy of the CCRC.

This amendment requires that an operator submit a plan to achieve satisfactory actuarial balance if the actuarial study submitted shows that the CCRC is not in satisfactory actuarial balance. A similar paperwork requirement is included in the current regulation.

### 7. Duplication

Department of Health Regulations (10 NYCRR Parts 900-903) apply to CCRCs. Sections 901.5 and 901.9(e) address rate increases. Section 901.7 addresses reserves and supporting assets. Section 901.8 addresses the annual statement submission and the periodic actuarial study.

Pursuant to Article 46 of the Public Health Law, both the Insurance Department and Department of Health regulations complement each other.

### 8. Alternatives

During the past two years the Department has had many conversations with actuaries and other interested parties involved with CCRCs. The Department attended a forum sponsored by the Department of Health in which interested parties discussed the current regulatory environment regarding CCRCs. The Department also received input from the residents' council of one CCRC. The Department also met with the Department of Health and representatives from the industry's umbrella organization to discuss concerns and the regulatory intent of the Department.

Having heard the various concerns, the Department concluded that an amendment to the regulation was warranted. The changes reflected in this amendment address the concerns raised while still maintaining the actuarial basis for monitoring a CCRC as intended by the Legislature and required by Article 46 of the Public Health Law.

This amendment addresses the following key concerns that were expressed: (a) lower the minimum liquid requirement to a more reasonable level, (b) allow more investment flexibility for funds supporting the minimum liquid requirement, and (c) allow a longer time period for a CCRC to reach satisfactory actuarial balance.

Not including the new section describing the actuarial study might lead to needed information being omitted from the study, which would delay such reviews.

Not including the new section describing fee submission requirements might lead to required documentation being omitted, which would delay the review of the submission and could cause the proposed effective date of the fee increase to be delayed.

After publication of the proposed rule, in the August 16, 2006 State Register, the Department received comments from an industry organization representing, among others, operators of CCRCs. Based upon a review of the comments, the Department concluded that revisions to the proposed rule were warranted. Clarifying language, including a definition, was added regarding rating methodologies that may be utilized by CCRCs.

The Department will continue to listen to issues raised by interested parties for consideration in a future amendment.

#### 9. Federal standards

There are no federal standards in this subject area.

#### 10. Compliance schedule

This rulemaking will be effective upon publication in the State Register after adoption. Since the requirements for the minimum liquid requirement and achieving full actuarial funding are being liberalized, CCRCs should have no difficulty in meeting the revised requirements.

Some of the information indicated for an actuarial study may not currently be included in all such studies, but the information should be available as a by-product of the study. Therefore, there should be no difficulty in providing the requested information.

The amendment provides sufficient time for the eight operational CCRCs to comply with the new requirement for a statement of investment policies and guidelines.

#### **Revised Regulatory Flexibility Analysis**

Changes made to the last published rule do not require changes to the last published Regulatory Flexibility Analysis for Small Businesses and Local Governments.

#### **Revised Rural Area Flexibility Analysis**

Changes made to the last published rule do not require a change to the last published Rural Area Flexibility Analysis.

#### **Revised Job Impact Statement**

Changes made to the last published rule do not require changes to the last published Job Impact Statement.

#### **Assessment of Public Comment**

The proposed regulation was published in the New York State Register on August 16, 2006. Comments were received from an industry organization representing, among others, operators of CCRCs.

**COMMENT:** The regulation should include a definition of an "approved rating methodology" as referenced in the new proposed section 350.10 and in Article 46 under section 4604(4)(a)(ii). The definition and details of the "approved rating methodology" should be provided by the department.

**RESPONSE:** A definition for "rating methodology" has been added to section 350.1. Section 350.10 has been expanded to discuss rating methodologies and the information that should be included when a proposed rating methodology is submitted to the superintendent for approval. The specific details of a rating methodology are developed by the management of the CCRC and submitted to the superintendent for review and approval.

**COMMENT:** The new requirement under section 350.6(a)(4) for reporting quarterly on the status of liquid assets is an unnecessary reporting requirement that adds an additional cost to the CCRC; an annual report on liquid assets would suffice.

**RESPONSE:** With the reduction in the minimum liquidity requirement included in the amendment, the Department feels it should be notified immediately if the minimum liquidity requirement is not being met so that the liquidity of the community can be monitored on an ongoing basis until the deficiency is corrected. The proposal for only an annual report on the community's liquidity is insufficient for the Department to fulfill its financial monitoring responsibility as mandated by the legislature. Based on discussions with the industry, the Department decided that a quarterly self testing of the minimum liquidity requirement, and notification to the Department only when the minimum liquidity requirement is not met, would meet the Department's need to be promptly informed while minimizing the reporting efforts of the CCRC. Therefore, no modification to the rule was made.

**COMMENT:** The new section 350.6(f) requiring the development of formal investment policies and guidelines to be approved by the CCRCs board of directors is duplicative and appears to be an unnecessary requirement.

**RESPONSE:** The Department considers it a good practice for a CCRC to have a formal set of investment policies and guidelines and for the board of directors to have oversight of the investment program. Given the reduction in the minimum liquidity requirement and the liberalization in the investments allowed for the minimum liquidity requirement included in the amendment, it is important to ensure that the board of directors of each CCRC is overseeing the investment program. Therefore, no modification to the rule was made.

**COMMENT:** The new test for solvency set forth in section 350.8 is more flexible in allowing more time for CCRCs to achieve actuarial balance and more in line with the national standard for solvency.

**RESPONSE:** The new requirement is intended to allow the operator more flexibility in how to achieve satisfactory actuarial balance.

**COMMENT:** Since the actuarial study is expensive, section 350.9(b) should specify the conditions under which the superintendent would require a new actuarial study for the CCRC to allow the CCRC to make the proper budget adjustment required by the department.

**RESPONSE:** The circumstances that might cause a new actuarial study to be requested are too numerous to be specifically listed. The primary reason for requesting an actuarial study prior to the normal three year time frame would be a concern about the financial condition of the community and the determination by the superintendent that it would not be prudent to wait for the next regularly scheduled actuarial study. When a community is not in satisfactory actuarial balance, and a long time period for the correction plan is proposed, the Department may conclude that actuarial studies should initially be every two years until the situation has stabilized, and in this case the community will be informed about the more frequent time table in order to properly budget. A community may be proposing an expansion of the facilities, a significant change to the fee structure, a new contract type, or issuance of new bonds, and given the specific circumstances the Department may decide that an updated actuarial study, or other appropriate actuarial communication, is required in order to evaluate the proposal and approve the request. Therefore, no modification to the rule was made.

**COMMENT:** The Department should allow greater latitude in investments for funds in excess of the minimum liquidity requirement, and should eliminate the retrospective reserve calculation.

**RESPONSE:** Both of these comments do not concern a change proposed in this rule making. The Department will consider these comments when it develops a next amendment to the regulation.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Healthy New York Program

**I.D. No.** INS-34-07-00016-P

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

**Proposed action:** Addition of sections 362-2.7(d), (e) and (f) and 362-2.8 to Title 11 NYCRR.

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

**Subject:** Minimum standards for the form and content of policies and contracts subject to the provisions of section 4326 of the Insurance Law.

**Purpose:** To offer high deductible health plans in conjunction with the Healthy New York Program; and add additional benefits to the program.

**Text of proposed rule:** New subdivisions (d), (e) and (f) are added to section 362-2.7 to read as follows:

§ 362-2.7 Healthy New York benefit adjustments.

(d) *Beginning January 1, 2007, qualifying health insurance contracts shall include a benefit for up to forty post-hospital or post-surgical home health care visits per calendar year.*

(e) *Beginning January 1, 2007, qualifying health insurance contracts shall include a benefit for up to thirty post-hospital or post-surgical physical therapy visits.*

(f) *Beginning January 1, 2007, qualifying health insurance contracts shall include a benefit for diagnostic screening for prostatic cancer consistent with the benefit set forth in section 4303(z-1) of the Insurance Law.*

A new section 362-2.8 is added to read as follows:

§ 362-2.8 *High deductible health plan under the Healthy New York program.*

(a) *For purposes of this section:*

(1) *"High deductible health plan" shall mean a qualifying health insurance contract with a plan year deductible of at least \$1,150 for individual coverage and \$2,300 for family coverage. Out-of-pocket expenses, including the deductible and copayments, shall be capped at \$5,250 for individual coverage and \$10,500 for family coverage for the plan year.*

(2) *"Family coverage" means any coverage that is not self-only.*

(b) *Effective January 1, 2007, every health maintenance organization and insurer participating in the Healthy New York program shall offer a high deductible health plan with a plan year deductible of \$1,150 for individual coverage and \$2,300 for family coverage to qualifying small employers and qualifying individuals under the Healthy New York program in connection with a Health Savings Account (hereinafter "HSA") authorized by the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Pub. L. No. 108-173). The health maintenance organi-*

zation or insurer must provide qualifying small employers and qualifying individuals that select a high deductible health plan with a separate disclosure statement which prominently discloses the existence of the deductible.

(c) Health maintenance organizations and participating insurers may also offer additional high deductible health plans with deductibles exceeding the minimum amounts set forth in subdivision (a) of this section in connection with qualifying health insurance contracts. Any such additional options must contain the cap on out-of-pocket expenses set forth in subdivision (a) of this section.

(d) When necessary to meet the federal minimums for a high deductible health plan, each of the dollar amounts referred to in subdivision (a) of this section shall be adjusted by an amount which is consistent with the automatic cost-of-living adjustment as set forth in section 223(g) of the Internal Revenue Code, 26 USC section 223.

(e) The plan year deductible shall not apply to those services described in section 4326(d)(7) and (8) of the Insurance Law, prostatic cancer screenings, or routine prenatal care. Health maintenance organizations and participating insurers may also exempt from the deductible such other preventive services which would not jeopardize the eligibility of the high deductible health plan to be used in conjunction with an HSA.

(f) The calendar year prescription drug deductible set forth in section 4326(e)(5) of the Insurance Law shall not be applied in addition to the overall plan year deductible for the high deductible health plan.

(g) At the time of application, the health maintenance organization or participating insurer shall obtain a certification that the applicant or their employees, as appropriate, intend to establish an HSA, or if applicable, HSAs. At the time of annual recertification, the qualifying employer or individual shall submit a recertification confirming the status of the HSA or HSAs.

(h) A small employer or individual may choose between a high deductible health plan or a qualifying health insurance contract at the time of enrollment. Once enrolled, any change from one type of plan to another may occur only at the time of the annual recertification.

**Text of proposed rule and any required statements and analyses may be obtained from:** Andrew Mais, Insurance Department, 25 Beaver St., New York, NY 10004, (212) 480-2285, e-mail: amais@ins.state.ny.us

**Data, views or arguments may be submitted to:** Leigha O. Basini, Insurance Department, One Commerce Plaza, Albany, NY 12257, (518) 486-7815, e-mail: lbasini@ins.state.ny.us

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

#### **Regulatory Impact Statement**

1. Statutory authority: The superintendent's authority for the adoption of the third amendment to 11 NYCRR 362 is derived from sections 201, 301, 1109, 3201, 3217, 3221, 4235, 4303, 4304, 4305 and 4326 of the Insurance Law.

Sections 201 and 301 authorize the superintendent to prescribe regulations interpreting the provisions of the Insurance Law, effectuate any power granted to the superintendent under the Insurance Law, and prescribe forms.

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 (HMO) 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 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 governs the accident and health insurance contracts written by non-for-profit corporations and sets forth the benefits that must be covered under such contracts.

Section 4304 includes requirements for individual health insurance contracts written by not-for-profit corporations.

Section 4305 includes requirements for group health insurance contracts written by not-for profit corporations.

Section 4326 authorizes the creation of a program to provide standardized health insurance to qualifying small employers and qualifying work-

ing uninsured individuals. Section 4326(g) authorizes the superintendent to modify the copayment and deductible amounts for qualifying health insurance contracts. Section 4326(g) also authorizes the superintendent to establish additional standardized health insurance benefit packages to meet the needs of the public after January 1, 2002.

2. Legislative objectives: The federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, added a new section 223 to the Internal Revenue Code. The new section authorizes those insured by a high deductible health plan, as defined in the federal legislation, to establish a tax-deductible health savings account to pay for certain medical expenses. 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 individual proprietors and working uninsured individuals to purchase insurance coverage.

3. Needs and benefits: Currently, small employer and individual participants in the Healthy New York program seeking comprehensive health insurance coverage cannot purchase high deductible health plans and establish health savings accounts in accordance with federal standards. These participants in the Healthy New York program are not currently eligible for the tax deductions for funds deposited into health savings accounts and used for qualified medical expenses. This amendment will create products that are compatible with health savings accounts. Health savings accounts allow users to deposit pre-tax money into an account and withdraw the money tax-free for qualified medical expenses.

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. The high cost of insurance prevents many individual proprietors and working individuals from purchasing their own coverage.

These amendments to Part 362 of 11 NYCRR will require HMOs and participating insurers to offer high deductible health plans using the Healthy New York small employer and individual programs. The high deductible health plans will have lower premiums than current Healthy New York benefit packages. The reduction in premium will encourage more small businesses and individuals to purchase comprehensive health insurance coverage. In addition, the high deductible health plans purchased for use with the health savings accounts will give New Yorkers access to another health insurance alternative that complies with recently-enacted federal standards. This new option will also provide New Yorkers with access to a tax-advantaged method of purchasing health insurance.

In addition, this amendment will provide for prostatic cancer screening and a limited home health care and physical therapy benefit. The addition of the prostate cancer screening benefit will facilitate prompt and early detection of prostate cancer, which in turn should decrease mortality and reduce treatment costs. The addition of post-hospitalization and post-surgical home health and physical therapy services will result in insureds being discharged from the hospital sooner now that they can obtain these services in an outpatient setting. Shorter hospital stays will reduce costs. The addition of the new benefits will in turn reduce costs to the State, because the State reimburses the health plans for certain claims.

4. Costs. This amendment imposes no compliance costs upon state or local governments. HMOs and participating insurers will incur some minor costs in drafting the contract riders that will create the high deductible health plans and add the new benefits. The Department has provided HMOs and participating insurers with model language and forms to use in implementing the amendment. 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 may decrease the per head cost to the State to be distributed from the overall allocation for the program for workers enrolled in Healthy New York because the addition of the home health care and physical therapy benefits will reduce hospitalization costs by allowing insureds to receive services in less costly settings. In addition, the prostatic screening benefit may reduce costs to the state by resulting in some instances of cancer being detected earlier, with fewer medical costs. The amendment creates a less expensive option under Healthy New York, which should attract additional people to the program and increase enrollment. The overall costs of the program are capped at the appropriated funding amounts.

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: Healthy New York requires HMOs and participating insurers 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. This amendment will not impose any new reporting requirements, though it will require separate identification of enrollment in the high deductible health plan option.

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

8. Alternatives: The adoption of this amendment will require high deductible health plans to be issued under the Healthy New York program for qualifying individuals and small employers. One alternative would be to not offer the high deductible health plan option. The Department has determined that this is not an attractive alternative, because without a high deductible health plan, these small businesses, individuals, and sole proprietors could not open health savings accounts. The Department also considered alternative levels of deductibles. However, deductible amounts lower than those chosen would either not qualify for use with health savings accounts, or would require revision soon after implementation due to deductible limit adjustments each year for use with health savings accounts. Another alternative considered by the Department was to require only one set of deductible amounts, rather than to allow additional amounts. After discussions with industry representatives, the flexibility to offer additional deductible amounts in qualifying health insurance contracts appeared to better serve the intended enrollees, and allowed the health plans to be creative in their product offerings. This amendment also adds prostatic cancer screening and a limited post-hospital and post-surgical physical therapy and home health care benefit to the Healthy New York program. Currently, the program does not cover these benefits. The Department has received extensive comments and suggestions from the health insurance industry in preparing these regulations. The Department has met several times with representatives from groups that represent the health maintenance organization and not-for-profit health insurance industry and has held numerous phone conferences. Some of these conversations have been with experts in high deductible health plans and health savings accounts. These industry representatives have provided the Department with comments and suggestions on the drafting of this regulation, including technical advice and cost analysis of the deductibles and benefits.

9. Federal standards: The federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, added a new section 223 to the Internal Revenue Code. The new section authorizes those insured by a high deductible health plan, as defined in the federal legislation, to establish tax-deductible health savings accounts to pay for certain medical expenses.

10. Compliance Schedule: HMOs and participating insurers were required to comply by January 1, 2007.

#### **Regulatory Flexibility Analysis**

This amendment will not impose reporting, recordkeeping or other requirements on small businesses since the provisions of this Part apply only to health maintenance organizations (HMOs) and participating insurers. The Insurance Department has reviewed the filed Reports on Examination and Annual Statements of HMOs and participating insurers and concluded that none of them comes within the definition of "small business" contained in section 102(8) of the State Administrative Procedure Act, because there are none that are both independently owned and that employ fewer than 100 persons.

This amendment will also have no adverse economic impact on local governments and does not impose reporting, recordkeeping or other compliance requirements on local governments. The basis for this finding is that this rule is directed at participating insurance companies and HMOs, none of which is a local government.

#### **Rural Area Flexibility Analysis**

1. Types and estimated numbers of rural areas: Health maintenance organizations (HMOs) and participating 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 employers 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 HMOs and participating insurers 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. This revision will not add any new reporting requirements, though it will require separate identification of enrollment in the high deductible health plan option. Nothing in this

revision distinguishes between rural and non-rural areas. No special type of professional services will be needed in a rural area to comply with this requirement.

3. Costs: HMOs and participating insurers may incur some modest costs in drafting the contract riders that will create the high deductible plans and include the additional benefits. There are no costs to local governments. This amendment 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 have the same impact on all affected entities.

5. Rural area participation: None.

#### **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 small employers and working individuals. This amendment provides qualifying small employers and individuals with the ability to obtain a federal tax deduction through the purchase of a high deductible health plan. It also reduces the cost of Healthy New York health insurance by adding a deductible and benefits that will reduce costs to the program, which will in turn improve access to health insurance by lowering health insurance premiums.

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## Division of the Lottery

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### EMERGENCY RULE MAKING

#### **Lotto Extra Game Feature**

**I.D. No.** LTR-34-07-00017-E

**Filing No.** 814

**Filing date:** Aug. 7, 2007

**Effective date:** Aug. 7, 2007

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

**Action taken:** Addition of section 2817.12 to Title 21 NYCRR.

**Statutory authority:** Tax Law, section 1604(a)

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

**Specific reasons underlying the finding of necessity:** The New York Lottery is conducting Lotto Extra as a feature to the existing game available to New York's Lotto players. Game sales commenced on March 1, 2007. This game is necessary to assist the Lottery in reaching its projected revenue target for this fiscal year. A Notice of Proposed Rulemaking for this rule is expected to be filed shortly; however to continue operation of this game feature, this emergency adoption is necessary. This feature is intended to improve somewhat slow revenues and will provide needed aid to education this fiscal year.

**Subject:** Lotto Extra game feature.

**Purpose:** To add the Lotto Extra game feature to current New York Lottery regulations.

**Text of emergency rule:** Section 1. Part 2817 is amended by adding a new section 2817.12 to read as follows:

*Section 2817.12 Lotto Extra.*

(a) *Lotto Extra is a feature of New York's Lotto game. Except as otherwise noted in this section, the rules of Lotto apply to all Lotto Extra wagers.*

(b) *Lotto Extra shall determine winners from bet tickets by correctly matching some or all of the numbers in the player's number selection against the winning numbers, bonus number and Extra bonus number drawn by the Lottery for that drawing.*

(c) *Players of Lotto Extra are automatically included in the respective Lotto drawing, and have the added benefit of matching their number selections against the Extra bonus number for additional prize levels not available to Lotto players.*

(d) *To place a bet, a purchaser must communicate the desired game bet data to an agent by presenting a completed Lotto Extra playcard or by requesting a Lotto Extra quick pick. The playcard provides for the player's number selections, number of drawings requested and the option for Cash*

Value or Annuity Payments if the jackpot is won. The agent will issue a bet ticket. Such bet ticket will reflect the numbers played by the purchaser on that wager as the Lotto Extra.

(e) Forty percent of the gross Lotto Extra sales for each Lotto drawing shall be paid into the New York Lottery prize account for allocation of prize winnings.

(f) Not less than 38 percent of gross Lotto Extra sales for a particular drawing shall be the amount allocated to the winning pool for that particular game.

(g) During each Lotto drawing, the Lottery will draw an Extra bonus number. Numbers will be drawn in the following sequence: the first randomly chosen six numbers will be the winning numbers; the seventh number will be the bonus; and the eighth number will be the Extra bonus number.

(h) Lotto Extra bets may be purchased for a minimum of \$2.00 per two game panels; \$1.00 of such bet is on the Lotto game, and \$1.00 of such bet is for the Lotto Extra feature.

(i) Determination of Prizes: The prize structure and odds for this feature are:

Match	Odds	Pool Percentage
5 + Either Bonus	3,754,789.50	14.50%
5	147,246.65	5.50%
4 + Either Bonus	29,449.33	25.25%
4	2,355.95	5.75%
3 + Either Bonus	883.48	15.00%
3	108.18	11.00%
2 + Either Bonus	72.12	23.00%
Overall Odds	40.47	100.00%

(j) In the event that supplemental prize funds are necessary to fund prizes for Lotto Extra, those funds will be supplemented from unclaimed prize funds in accordance with sixteen hundred fourteen (a) of this article.

**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 November 4, 2007.

**Text of emergency rule and any required statements and analyses may be obtained from:** Julie B. Silverstein Barker, Acting General Counsel, New York Lottery, One Broadway Center, P.O. Box 7500, Schenectady, NY 12301-7500, (518) 388-3408, e-mail: jrbarker@lottery.state.ny.us

**Regulatory Impact Statement**

1. Statutory authority: Pursuant to the authority conferred in New York State Tax Law, Section 1604[a] and the Official Compilation of Codes, Rules and Regulations of the State of New York, Title 21, Chapter XLIV, Section 2817, the following official game rules shall take effect and shall remain in full force and effect throughout the New York Lottery's LOTTO Extra as a feature to the existing LOTTO game.

2. Legislative objectives: The purpose of operating Lottery games is to generate revenue for the support of education in the State. Amendment of these regulations forwards the mission of the New York State Lottery to generate revenue for education.

3. Needs and benefits: The New York Lottery has sustained competitive pressure from large jackpot lottery games in adjoining states. New Yorkers routinely travel outside the state to participate in those games. The New York Lottery's LOTTO Extra, as an existing game feature, allows the New York Lottery to continue its effort to keep and enlarge its market share of players (from within New York State and those visiting New York State from other states) who participate in large jackpot lottery games while also providing more opportunities for players to win prizes. The New York Lottery's LOTTO Extra as a feature to an existing game is anticipated on a full annual basis, to bring in more than \$5.4 million in revenue to benefit education in the State.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: None.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated, since funds originally appropriated for the expenses of operating the existing lottery games are expected to be sufficient to support this new game.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the New York State Lottery's experience in operating State Lottery games for more than 30 years.

5. Local government mandates: None.

6. Paperwork: There are no changes in paperwork requirements. Game feature brochures will be issued by the New York State Lottery for public convenience at retailer locations free of charge.

7. Duplication: None.

8. Alternatives: The alternative to continuing New York Lottery's LOTTO Extra as an existing game feature is not to proceed and forfeit the investment already made by the New York State Lottery for the game feature. The failure to proceed will also result in lost revenue to education that is anticipated to be earned.

9. Federal standards: None.

10. Compliance schedule: None.

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

The proposal does not require a Regulatory Flexibility Statement, Rural Flexibility Statement or Job Impact Statement. There will be no adverse impact on jobs, rural areas, small business or local governments.

**Public Service Commission**

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

**Rider U Enrollment Period by Consolidated Edison Company of New York, Inc.**

**I.D. No.** PSC-34-07-00019-EP

**Filing date:** Aug. 7, 2007

**Effective date:** Aug. 7, 2007

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

**Action taken:** The Public Service Commission adopted an order approving an amendment to Consolidated Edison Company of New York Inc.'s schedule for electric service—P.S.C. No. 9.

**Statutory authority:** Public Service Law, 66(12)(b)

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

**Specific reasons underlying the finding of necessity:** Tariff modifications are necessary to ensure the full benefit of the enhanced Rider U Program is available during the summer peak period which could be essential to the provision of safe and reliable electric service in the event a contingency situation arises. Without the demand reduction that can be implemented through the Distribution Load Relief Program as proposed to be modified, the electric delivery system could become overloaded and service interruptions might occur.

**Subject:** August 2007 Rider U enrollment period.

**Purpose:** To approve the re-opening of the August 2007 Rider U enrollment period and accept applications received through Aug. 15, 2007.

**Substance of emergency/proposed rule:** The Public Service Commission adopted an order approving an amendment to Consolidated Edison Company of New York Inc.'s (Con Edison or the Company) Tariff Schedule P.S.C. 9 - Electricity and directed Con Edison to re-open the August 2007 Rider U enrollment period to August 15, 2007, and to report its efforts to reduce the installation time for future interval meter installation intended for participation in the Company's demand response programs in its January 31, 2008 report to the Commission on the Rider U Program, subject to the terms and conditions of the order.

**This notice is intended** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire November 4, 2007.

**Text of rule may be obtained from:** Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 486-2655, e-mail: leann\_ayer@dps.state.ny.us

**Data, views or arguments may be submitted to:** Jaclyn A. Brillling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223-1350, (518) 474-6530, e-mail: Jaclyn\_brillling@dps.state.ny.us

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

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

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.  
(07-E-0392SA2)

**NOTICE OF ADOPTION**

**Leasing of Distribution Lines by Niagara Mohawk Power Corporation**

**I.D. No.** PSC-05-07-00006-A  
**Filing date:** Aug. 2, 2007  
**Effective date:** Aug. 2, 2007

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

**Action taken:** The commission, on July 18, 2007, adopted an order approving the joint petition of Niagara Mohawk Power Corporation d/b/a National Grid and New Vision Powerline Communications, Inc. to install broadband over powerlines services.

**Statutory authority:** Public Service Law, sections 66(1), 70 and 107

**Subject:** Broadband over powerlines.

**Purpose:** To approve Niagara Mohawk Power Corporation d/b/a National Grid's request for leasing distribution lines to New Vision Powerline Communications, Inc. for broadband over powerline services.

**Substance of final rule:** The Public Service Commission adopted an order approving the Joint Petition of Niagara Mohawk Power Corporation d/b/a National Grid and New Vision Powerline Communications, Inc. for leasing distribution lines to install Broadband Over Powerlines services, subject to the terms and conditions of the order.

**Final rule compared with proposed rule:** No changes.

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

**Assessment of Public Comment**

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
(06-M-1528SA1)

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

**Interconnection Agreement between Windstream New York, Inc. and Buffalo Lake Erie Wireless Systems, Co.**

**I.D. No.** PSC-34-07-00020-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Windstream New York, Inc. and Buffalo Lake Erie Wireless Systems, Co. for approval of an interconnection agreement executed on July 16, 2007.

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

**Subject:** Interconnection of the networks between Windstream New York, Inc. and Buffalo Lake Erie Wireless Systems, Co. for local exchange service and exchange access.

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

**Substance of proposed rule:** Windstream New York, Inc. and Buffalo Lake Erie Wireless Systems, Co. have reached a negotiated agreement whereby Windstream New York, Inc. and Buffalo Lake Erie Wireless Systems, Co. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until July 17, 2009, or as extended.

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

**Data, views or arguments may be submitted to:** Jaclyn A. 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.  
(07-C-0875SA1)

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

**Interconnection Agreement between Verizon New York Inc. and InfoTelecom LLC**

**I.D. No.** PSC-34-07-00021-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Verizon New York Inc. and InfoTelecom LLC for approval of an interconnection agreement executed on June 28, 2007.

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

**Subject:** Interconnection of the networks between Verizon New York Inc. and InfoTelecom LLC for local exchange service and exchange access.

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

**Substance of proposed rule:** Verizon New York Inc. and InfoTelecom LLC have reached a negotiated agreement whereby Verizon New York Inc. and InfoTelecom LLC will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their networks lasting until November 21, 2007 or as extended.

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

**Data, views or arguments may be submitted to:** Jaclyn A. 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.  
(07-C-0885SA1)

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

**Mini Rate Filing by the Village of Spencerport**

**I.D. No.** PSC-34-07-00022-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by the Village of Spencerport to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 1—Electricity, to become effective Dec. 1, 2007.

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

**Subject:** Mini rate filing.

**Purpose:** To increase annual electric revenues by approximately \$299,657 or 16.8 percent.

**Substance of proposed rule:** The Commission is considering the Village of Spencerport's (Spencerport) request to increase its annual electric revenues by approximately \$299,657 or 16.8%. Spencerport's proposal includes an increase to the insufficient funds check charge from \$25 to \$33, which is the current rate charged to Spencerport by its bank. Spencerport also proposes to increase the reconnection charges of \$50 and \$70 to \$75 and \$200, respectively. The proposed filing has an effective date of December 1, 2007. The Commission may approve, reject or modify, in whole or in part, Spencerport's request.

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

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

(07-E-0892SA1)

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

**Standby Contract Demand Charge by Niagara Mohawk Power Corporation**

**I.D. No.** PSC-34-07-00023-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service—P.S.C. No. 207 to become effective Oct. 22, 2007.

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

**Subject:** Standby contract demand charge—S.C. No. 7.

**Purpose:** To extend the waiver of the competitive transition charge (CTC) contained in special provision L of S.C. No. 7 through Dec. 31, 2009.

**Substance of proposed rule:** On August 1, 2007, Niagara Mohawk Power Corporation (Niagara Mohawk) filed proposed tariff amendments to extend through December 31, 2009, Special Provision L of Niagara Mohawk's tariff which permits waiver of the Competitive Transition Charge (CTC) associated with standby demand charges for qualifying combined heat and power distributed generation projects installed on or after July 1, 2002. The proposed effective date of Niagara Mohawk's filing is October 22, 2007. The Commission may approve, reject or modify, in whole or in part, Niagara Mohawk's proposed tariff revisions.

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

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

(07-E-0907SA1)

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

**New Incremental Gas Supply Charge by New York State Gas & Electric Corporation**

**I.D. No.** PSC-34-07-00024-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by New York State Electric & Gas Corporation (NYSEG) to make various changes in the rates, charges, rules and regulations contained in its schedules for gas service, P.S.C. Nos. 87 and 90—Gas, to become effective Nov. 1, 2007.

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

**Subject:** New incremental gas supply charge.

**Purpose:** To establish an incremental gas supply charge that will be applicable to daily metered transportation customers requesting supply service from NYSEG.

**Substance of proposed rule:** The Commission is considering New York State Electric & Gas Corporation's (NYSEG) request to revise its gas tariff schedules, P.S.C. Nos. 87 and 90, to establish an incremental gas supply charge that will be applicable to daily metered transportation customers requesting supply service from NYSEG. The proposed filing has an effective date of November 1, 2007. The Commission may approve, reject or modify, in whole or in part, NYSEG's request.

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

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

(07-G-0920SA1)

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

**New Incremental Gas Supply Charge by Rochester Gas & Electric Corporation**

**I.D. No.** PSC-34-07-00025-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Rochester Gas & Electric Corporation (RG&E) to make various changes in the rates, charges, rules and regulations contained in its schedule for gas service, P.S.C. No. 16—Gas, to become effective Nov. 1, 2007.

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

**Subject:** New incremental gas supply charge.

**Purpose:** To establish an incremental gas supply charge that will be applicable to daily metered transportation customers requesting supply service from RG&E.

**Substance of proposed rule:** The Commission is considering Rochester Gas & Electric Corporation's (RG&E) request to revise its gas tariff schedule, P.S.C. No. 16, to establish an incremental gas supply charge that will be applicable to daily metered transportation customers requesting supply service from RG&E. The proposed filing has an effective date of November 1, 2007. The Commission may approve, reject or modify, in whole or in part, RG&E's request.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our**

website <http://www.dps.state.ny.us/f96dir.htm>. For questions, contact: Central Operations, Public Service Commission, Bldg. 3, Empire State Plaza, Albany, NY 12223-1350, (518) 474-2500

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

(07-G-0921SA1)

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

**Competitive Transition Charges by Niagara Mohawk Power Corporation**

**I.D. No.** PSC-34-07-00026-P

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

**Proposed action:** The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Niagara Mohawk Power Corporation to make various changes in the rates, charges, rules and regulations contained in its schedules for electric services—P.S.C. Nos. 207 and 214 to become effective Jan. 1, 2008.

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

**Subject:** Competitive transition charges.

**Purpose:** To reset competitive transition charges in retail delivery rates and to adjust delivery rates associated with deferral recoveries for calendar years 2008 and 2009.

**Substance of proposed rule:** On August 1, 2007, Niagara Mohawk Power Corporation (Niagara Mohawk) filed proposed tariff amendments to reset its Competitive Transition Charges (CTC) in retail delivery rates and to adjust rates associated with deferral recoveries for calendar years 2008 and 2009. Niagara Mohawk's proposal includes an adjustment to its delivery rates to recover the deferral balance in excess of \$100 million recorded through June 30, 2007 and its forecast of deferral activity through December 31, 2009, the end of the Third CTC Reset period. The proposed effective date of Niagara Mohawk's filing is January 1, 2008. The Commission may approve, reject or modify, in whole or in part, Niagara Mohawk's proposed tariff revisions.

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

**Data, views or arguments may be submitted to:** Jaclyn A. 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-M-0075SA35)

**Office of Real Property  
Services**

**NOTICE OF ADOPTION**

**Public Access to Agency Records**

**I.D. No.** RPS-15-07-00004-A

**Filing No.** 813

**Filing date:** Aug. 6, 2007

**Effective date:** Aug. 22, 2007

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

**Action taken:** Renumbering of section 185-1.1(a)(61)-(64) to (a)(60)-(63); addition of section 185-1.1(a)(64); and amendment of sections 185-2.2(b)(4), 185-2.4(a) and (d), 185-2.5, 185-2.6(a)(2) and 185-2.8(d) and (e) of Title 9 NYCRR.

**Statutory authority:** Public Officers Law, section 87(1)(b) and Real Property Tax Law, section 202(1)(l)

**Subject:** Public access to agency records.

**Purpose:** To update and conform the agency's rules to statutory amendments made to the Freedom of Information Law and to make technical corrections thereto.

**Text or summary was published** in the notice of proposed rule making, I.D. No. RPS-15-07-00004-P, Issue of April 11, 2007.

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

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

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**License Fees**

**I.D. No.** RPS-21-07-00002-A

**Filing No.** 811

**Filing date:** Aug. 6, 2007

**Effective date:** Aug. 22, 2007

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

**Action taken:** Amendment of section 190-3.2(c)(2) of Title 9 NYCRR.

**Statutory authority:** Real Property Tax Law, section 202(1)(l) and State Finance Law, section 97-kk

**Subject:** License fees for school district users of the real property system (RPS).

**Purpose:** To amend the annual license fee charged to school district users.

**Text or summary was published** in the notice of proposed rule making, I.D. No. RPS-21-07-00002-P, Issue of May 23, 2007.

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

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

**Assessment of Public Comment**

The agency received no public comment.

**NOTICE OF ADOPTION**

**Training for Assessors and County Directors**

**I.D. No.** RPS-21-07-00003-A

**Filing No.** 812

**Filing date:** Aug. 6, 2007

**Effective date:** Aug. 22, 2007

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

**Action taken:** Amendment of sections 188-1.1, 188-2.1, 188-2.6, 188-2.7, 188-4.1, 188-4.6 and 188-4.7 of Title 9 NYCRR.

**Statutory authority:** Real Property Tax Law, sections 202(1)(l), 310(5), 318 and 1532

**Subject:** Training for assessors and county directors.

**Purpose:** To revise the basic course of training for assessors and directors of county real property tax service agencies.

**Text or summary was published** in the notice of proposed rule making, I.D. No. RPS-21-07-00003-P, Issue of May 23, 2007.

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

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

**Assessment of Public Comment**

The only comment received from the public was a memorandum dated July 5, 2007, from John R. Trauzel, Associate Director for Regulatory Affairs of the New York Farm Bureau. While generally supportive, Mr. Trauzel criticized the reduction in the number of towns for which assessors must complete the Farm Appraisal component. Under the existing rules, assessors in 814 towns, or 89% of the town assessing units in the State, must take the component. Under the proposal, assessors in 778 towns, or 85% of the of the town assessing units, must take the component. The implication of Mr. Trauzel's comments is that assessors in towns with any agricultural property should take the component. The State Board concluded that the proposed standard of 10% of a town being within the boundaries of an agriculture district, rather than the current standard of any portion of the town being within such a district, was reasonable. The amendments were adopted as originally proposed.

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## State University of New York

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### NOTICE OF ADOPTION

**Traffic Patterns and Control at SUNY at Stony Brook**

**I.D. No.** SUN-23-07-00001-A

**Filing No.** 807

**Filing date:** Aug. 2, 2007

**Effective date:** Aug. 22, 2007

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

**Action taken:** Amendment of Part 584 of Title 8 NYCRR.

**Statutory authority:** Education Law, section 360(1)

**Subject:** Traffic patterns and control on the campus of the State University of New York at Stony Brook.

**Purpose:** To more clearly designate traffic flow and control as well as clarify new street designations and fine schedule for violations.

**Text or summary was published** in the notice of proposed rule making, I.D. No. SUN-23-07-00001-P, Issue of June 6, 2007.

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

**Text of rule and any required statements and analyses may be obtained from:** Lynette M. Phillips, State University of New York at Stony Brook, 328 Administration Bldg., Stony Brook, NY 11794-1212, (631) 632-6110, e-mail: Lynette.Phillips@sunysb.edu

**Assessment of Public Comment**

The agency received no public comment.