

RULE MAKING ACTIVITIES

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

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; 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.

Office of Children and Family Services

EMERGENCY RULE MAKING

Mother/Baby Facility

I.D. No. CFS-52-06-00012-E
Filing No. 157
Filing date: Feb. 1, 2007
Effective date: Feb. 1, 2007

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

Action taken: Amendment of section 442.25(a) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 462(1)

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

Specific reasons underlying the finding of necessity: To prevent the disruption of the placement of infants with their mothers. Because of the imminent closing of a previously available facility caring for mothers with their infants, existing regulation 18 NYCRR 442.25 must be amended to grant to the Office of Children and Family Services the authority to grant exceptions for the operation of mother/baby residential facilities pursuant to 18 NYCRR 442.17. Should the Office of Children and Family Services not have the authority to grant exceptions for the opening of a new

otherwise suitable program to receive the mothers and infants from the imminently closing program, the mothers and infants will not have a suitable program available to them. This will result in a further disruption in placement and services to the detriment of the mothers and their infants.

Subject: Regulatory standards for the operation of a mother/baby facility.

Purpose: To grant to the Office of Children and Family Services the authority to grant to authorized agencies an exception to the regulatory standards for the operation of mother/baby facilities.

Text of emergency rule: Subdivision (a) of section 442.25 is amended to read as follows:

(a) The [department] *Office of Children and Family Services* may grant an exception to compliance with one or more of the provisions of section 442.4, 442.5, [or] 442.15 and 442.17 of this Part upon finding that compliance will result in undue hardship upon an institution. The authorized agency applying for the exception must demonstrate that, aside from the exception, the facility is in substantial compliance with the provisions of this Part and that granting the exception will not create any hazardous conditions which could impair the health or safety of the children. An institution must comply with any alternative requirements the [department] *Office of Children and Family Services* may consider necessary for the protection of the health or safety of the children. All exceptions must be requested by the authorized agency in writing and approved by the [department] *Office of Children and Family Services* in writing.

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. CFS-52-06-00012-P, Issue of December 27, 2006. The emergency rule will expire April 1, 2007.

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

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules and regulations to carry out its powers and duties pursuant to the provisions of the SSL.

Section 34(3)(f) of the SSL requires the Commissioner of OCFS to establish regulations for the administration of public assistance and care within the State.

Section 462(1)(a) of the SSL authorizes OCFS to promulgate regulations concerning standards for care and treatment and fiscal, administrative, nutritional architectural and safety standards which apply to all facilities exercising care or custody of children or providing care or shelter to unmarried mothers.

Chapter 436 of the Laws of 1997 granted to OCFS the functions, powers, duties and obligations performed by the former Department of Social Services concerning foster care and other services and programs identified in Article 6 of the SSL.

2. Legislative objectives:

The regulation implements the authority bestowed on OCFS by section 462(1)(a) of the SSL and Chapter 436 of the Laws of 1997 in regard to the establishment, certification and regulation of residential programs for children, including facilities for mothers and their infants.

Residential program for dependent, neglected, abused, abandoned or delinquent children are subject to the inspection and supervision of OCFS pursuant to section 460-c of the SSL. Section 460-b(1) of the SSL provides

that no facility subject to the inspection and supervision of OCFS, except one administered or licensed by another state agency, may operate unless it has been issued an operating certificate from OCFS. In order for a facility to provide residential care for mothers and their infants, such program must comply with the regulatory standards established by OCFS and must obtain an operating certificate from OCFS.

The regulatory standards for the operation of a child care institution, which includes the care of 13 or more residents, are set forth in 18 NYCRR Part 442. The regulatory standards that specifically address the operation of mother and baby facilities are set forth in 18 NYCRR 442.17.

3. Needs and benefits:

The regulation amends 18 NYCRR 442.25 to authorize OCFS to grant to authorized agencies, either a social services district or a voluntary authorized agency, an exception to the regulatory standards for the operation of mother and baby facilities in accordance with 18 NYCRR 442.17. In order for an authorized agency to request an exception, the authorized agency must make a written request to OCFS. The authorized agency must demonstrate that the residential program is in substantial compliance with OCFS regulations in regard to the operation of child care institution, with the exception of the standard that is the subject to the request for the exception. The authorized agency must also demonstrate that granting the exception will not create any hazardous conditions which could impact the health or safety of the children in the residential program. OCFS may impose alternative requirements on the requesting authorized agency that OCFS considers necessary for the protection of the health or safety of the children in the residential program. OCFS regulation 18 NYCRR 442.25 also authorizes OCFS to grant an exception to standards for buildings and equipment (442.4), fire protection (442.5) and accident protection (442.15).

A mother and baby facility is a residential program that cares for a mother, who is also in foster care, and her infant. Such care is provided either by a social services district or a voluntary authorized agency. OCFS regulation 18 NYCRR 442.17 sets forth regulatory standards that address such subjects as capacity, plant and equipment, sleeping accommodations, day room and nursery and safety.

The regulation will add the regulation for the operation of a mother and baby facility to the list of regulations in 18 NYCRR Part 442 for which OCFS may grant an exception. The regulation will not change the current process for the seeking or granting of an exception. The addition of the regulatory standards for mother and baby facilities to the exception authority of OCFS will permit greater flexibility to the opening and operation of such programs, while maintaining the health and safety of the residents. The failure to afford OCFS such authority will preclude OCFS from approving otherwise safe and suitable residential programs. This may result in the disruption in care and services to mothers and their infants, which the possibility that the child may be separated from his or her mother.

4. Costs:

State reimbursement to local social services districts for foster care costs, including the costs of providing services in a mother and baby facility, is capped by the Foster Care Block Grant pursuant to section 153-k(2) of the Social Services Law. Therefore, there will not be any fiscal impact on the state resulting from the regulations. It also is not anticipated that the implementation of the regulation giving OCFS the authority to grant an exception in regard to the operation of a mother and baby facility will, in and of itself, have local social services district costs associated with it. The costs for a particular mother and baby facility may increase or decrease, on a case-by-case basis, if an exception is granted under this regulatory authority depending on the nature of the regulatory exception and any alternative actions required by OCFS. However, given the unique nature of each request for an exception and the rate setting process for mother and baby facilities, it is not possible to estimate the fiscal impact at this time.

5. Local government mandates:

Local governments are not obligated to operate mother and baby facilities. For those social services districts that currently operate such programs, the regulation will not have any impact. For those social services districts that propose to operate a mother and baby facility, the regulation would give them greater flexibility in the operation and administration of the program.

6. Paperwork:

The regulation will not impose any new record keeping requirements. OCFS regulation 18 NYCRR 442.25 currently requires that all requests for an exception must be in writing.

7. Duplication:

The regulation does not duplicate other State requirements.

8. Alternatives:

Since it is not possible to predict what requests for exceptions may arise in regard to the operation of a mother and baby facility, there is no other viable option to addressing the authority for OCFS to grant an exception to the standards set forth in 18 NYCRR 442.17.

9. Federal standards:

For a foster child to be eligible for federal foster care reimbursement under Title IV-E of the Social Security Act (SSA), the child must be cared for in a foster family home or a child care institution defined by federal law. Section 472(c)(2) of the SSA defines a child care institution (which would include a mother and baby facility) to mean a private child care institution, or a public child care institution which accommodates no more than 25 children, which is licensed by the state in which it is situated or has been approved by the agency of such state responsible for licensing or approval of institutions of this type, as meeting standards for such licensing.

10. Compliance schedule:

Compliance with the regulation will begin immediately upon emergency filing.

Regulatory Flexibility Analysis

1. Effect of Rule:

The regulation will affect social services districts and voluntary authorized agencies that operate mother and baby facilities. There are 58 social services districts and the St. Regis Mohawk Tribe which is authorized by section 371(10)(b) of the Social Services Law (SSL) to provide child welfare services pursuant to its State/Tribal Agreement with the Office of Children and Family Services (OCFS). There are approximately 180 voluntary authorized agencies in New York, of which 110 operate congregate foster care programs. There are currently eight mother and baby facilities in the State of New York.

2. Compliance Requirements:

In order to operate a mother and baby facility, a social services district or a voluntary authorized agency (authorized agency) must obtain an operating certificate issued by OCFS pursuant to section 460-b of the SSL. As a condition for the issuance of an operating certificate by OCFS, the authorized agency must demonstrate that the program is in compliance with the regulatory standards set forth in 18 NYCRR Part 442, including those set forth in 18 NYCRR 442.17 that includes standards specifically applicable to a mother and baby facility. A mother and baby facility is a residential program that cares for mothers, who are also foster children, and their children. Such care is provided either by a social services district or by a voluntary authorized agency.

The regulation amends 18 NYCRR 442.25 to authorize OCFS to grant an exception to the regulatory standards set forth in 18 NYCRR 442.17 for the operation of a mother and baby facility. In order for an authorized agency to request an exception, the authorized agency must make a written request to OCFS. The authorized agency must demonstrate that the residential program is in substantial compliance with OCFS regulations in regard to the operation of a child care institution, with the exception of the standards that is the subject of the request for an exception. The authorized agency must also demonstrate that granting the exception will not create any hazardous conditions which could impact the health or safety of the children in the residential program. OCFS may impose alternative requirements on the requesting authorized agency that OCFS deems necessary for the protection of the health and safety of the children in the residential program.

3. Professional Services:

The regulation authorizes OCFS to grant an exception for the operation of a mother and baby facility will not require social services districts or voluntary authorized agencies to hire additional staff in order to implement the regulation.

4. Compliance Costs:

State reimbursement to local social services districts for foster care costs, including the costs of providing services in a mother and baby facility, is capped by the Foster Care Block Grant pursuant to section 153-k(2) of the Social Services Law. Therefore, there will not be any fiscal impact on the state resulting from the regulations. It also is not anticipated that the implementation of the regulation giving OCFS the authority to grant an exception in regard to the operation of a mother and baby facility will, in and of itself, have local social services district costs associated with it. The costs for a particular mother and baby facility may increase or decrease, on a case-by-case basis, if an exception is granted under this regulatory authority depending on the nature of the regulatory exception and any alternative actions required by OCFS. However, given the unique

nature of each request for an exception and the rate setting process for mother and baby facilities, it is not possible to estimate the fiscal impact at this time.

5. Economic and Technological Feasibility:

The regulation will not impose additional economic or technological burdens on social services districts or voluntary authorized agencies.

6. Minimizing Adverse Impact:

The regulation will not change the current process for the seeking of an exception as set forth in 18 NYCRR 442.25. There is no obligation imposed on a social services district or a voluntary agency to operate a mother and baby facility. OCFS will continue to work with authorized agencies that seek to operate such a program to be aware of the options available to the authorized agency in regard to the seeking of an exception, if necessary.

7. Small Business and Local Government Participation:

OCFS consulted with the New York City Administration for Children's Services and the New York Foundling in the development of this regulation. The Administration for Children's Services has foster children who are cared for in such programs and the New York Foundling, a voluntary authorized agency, operates a mother and baby program.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers at Rural Areas:

The regulation will affect social services districts and voluntary authorized agencies that operate mother and baby facilities. There are 44 social services districts that are in rural areas and the St. Regis Mohawk Tribe, which is authorized by section 371(10)(b) of the Social Services Law (SSL) to provide child welfare services pursuant to its State/Tribal Agreement with the Office of Children and Family Services (OCFS). There are approximately 80 voluntary authorized agencies that contract with social services districts to provide foster care services. There are currently eight mother and baby facilities in operation in New York and the majority are operated in urban settings.

2. Reporting, Recordkeeping and Other Compliance Requirements:

In order to operate a mother and baby facility, a social services district or a voluntary authorized agency (authorized agency) must obtain an operating certificate issued by OCFS pursuant to section 460-b of the SSL. As a condition for the issuance of an operating certificate by OCFS, the authorized agency must demonstrate that the program is in compliance with the regulatory standards set forth in 18 NYCRR Part 442, including those set forth in 18 NYCRR 442.17 that includes standards specifically applicable to a mother and baby facility. A mother and baby facility is a residential program that cares for mothers, who are also foster children, and their children. Such care is provided either by a social services district or a voluntary authorized agency.

The regulation amends 18 NYCRR 442.25 to authorize OCFS to grant an exception to the regulatory standards set forth in 18 NYCRR 442.17 for the operation of a mother and baby facility. In order for an authorized agency to request an exception, the authorized agency must make a written request to OCFS. The authorized agency must demonstrate that the residential program is in substantial compliance with OCFS regulations in regard to the operation of a child care institution, with the exception of the standards that is the subject of the request for an exception. The authorized agency must also demonstrate that granting the exception will not create any hazardous conditions which could impact the health or safety of the children in the residential program. OCFS may impose alternative requirements on the requesting authorized agency that OCFS deems necessary for the protection of the health and safety of the children in the residential program.

3. Professional Services:

The regulation authorizing OCFS to grant an exception for the operation of a mother and baby facility will not require social services districts or voluntary authorized agencies to hire additional staff in order to implement the regulation.

4. Costs:

State reimbursement to local social services districts for foster care costs, including the costs of providing services in a mother and baby facility, is capped by the Foster Care Block Grant pursuant to section 153-k(2) of the Social Services Law. Therefore, there will not be any fiscal impact on the state resulting for the regulations. It also is not anticipated that the implementation of the regulation giving OCFS the authority to grant an exception in regard to the operation of a mother and baby facility will, in and of itself, have local social services district costs associated with it. The costs for a particular mother and baby facility may increase or decrease, on a case-by-case basis, if an exception is granted under this regulatory authority depending on the nature of the regulatory exception

and any alternative actions required by OCFS. However, given the unique nature of each request for an exception and the rate setting process for mother and baby facilities, it is not possible to estimate the fiscal impact at this time.

5. Minimizing Adverse Impact:

The regulation will not change the current process for seeking an exception as set forth in 18 NYCRR 442.25. There is no obligation imposed on a social services district or a voluntary authorized agency to operate a mother and baby facility. OCFS will continue to work with authorized agencies that seek to operate such a program to be aware of the options available to the authorized agency in regard to the exception process, if necessary.

6. Rural Area Participation:

OCFS consulted with the New York City Administration for Children's Services and the New York Foundling in the development of this regulation. The Administration for Children's Services has foster children who are cared for in such programs and the New York Foundling is a voluntary authorized agency that operates a mother and baby program.

Job Impact Statement

A full job statement has not been prepared for the regulation amending 18 NYCRR 442.25 to authorize the Office of Children and Family Services (OCFS) to grant an exception to the regulatory standards for the operation of a mother and baby facility. The regulation will not have a substantial adverse impact on jobs or employment opportunities and will not result in the loss of any jobs. The regulation will not impact any current programs. OCFS regulation 18 NYCRR 442.17 does not specify staffing/resident ratios. In fact, where an exception to one of the other criteria for the operation of a mother and baby facility is requested, it is possible that OCFS may require enhanced staffing as a condition to approve the request for the exceptions.

NOTICE OF ADOPTION

Standards for Reimbursement for Foster Care Maintenance and/or Adoption Assistance

I.D. No. CFS-51-06-00013-A

Filing No. 163

Filing date: Feb. 6, 2007

Effective date: Feb. 21, 2007

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

Action taken: Amendment of Parts 426, 427, 428 and 431 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 407(4)

Subject: Standards for reimbursement for foster care maintenance and/or adoption assistance.

Purpose: To bring Office of Children and Family Services regulations current with Federal regulations concerning the conditions for eligibility for receiving Federal reimbursement for certain foster care and adoption expenses, and clarify the definition of special needs child.

Text or summary was published in the notice of proposed rule making, I.D. No. CFS-51-06-00013-P, Issue of December 20, 2006.

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

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

Assessment of Public Comment

The agency received no public comment.

Department of Civil Service

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Department of Civil Service publishes a new notice of proposed rule making in the NYS Register.

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-05-06-00007-P	February 1, 2006	February 1, 2007

State Consumer Protection Board

NOTICE OF ADOPTION

Telemarketing Registry Updates in the Do Not Call Law

I.D. No. CPR-46-06-00007-A

Filing No. 162

Filing date: Feb. 6, 2007

Effective date: Feb. 21, 2007

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

Action taken: Amendment of section 4603.3 of Title 21 NYCRR.

Statutory authority: Executive Law, section 553

Subject: To amend the rules regarding the requirements for Do Not Call Telemarketing Registry updates.

Purpose: To bring the rules into parity with recently amended General Business Law, section 399-z(7)(a).

Text or summary was published in the notice of proposed rule making, I.D. No. CPR-46-06-00007-P, Issue of November 15, 2006.

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

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

Assessment of Public Comment

The agency received no public comment.

No. 2006-18, also will expire on May 31, 2007. The Commission will also accept comment on alternative reservoir management strategies that may be adopted in the event that consensus on the proposed FFMP is not reached. The alternative reservoir releases options to be considered are (1) extending the current reservoir releases program or (2) reinstating a previous drought operating plan. Either option would be considered in combination with a seasonal spill mitigation program or an annual spill mitigation program for the three reservoirs. The releases program adopted in the event consensus is not reached on the FFMP would continue in effect until any expiration date contained in the program adopted or unless and until replaced by another program that has been approved by the Commission following a notice and comment rule making process. In accordance with Section 3.3 of the Delaware River Basin Compact, any program affecting the diversions, compensating releases, rights, conditions, and obligations of the 1954 Supreme Court Decree in the matter of *New Jersey v. New York*, 347 U.S. 995, 74 S. Ct. 842 also requires the unanimous consent of the decree parties, which include the states of Delaware, New Jersey and New York, the Commonwealth of Pennsylvania, and the City of New York.

Background. The flow management objectives considered by the Supreme Court Decree of 1954 -water supply and drought - were far narrower than the diverse objectives that have emerged in the decades since. Today, the finite waters of the Delaware and the limited storage available in the basin are being managed for multiple purposes, including among others, water supply, drought mitigation, flood mitigation, and habitat protection in the tailwaters fishery, the mainstem and the estuary. In accordance with the Delaware River Basin Compact, a statute concurrently enacted in 1961 by the U.S. Government and the four basin states - Delaware, New Jersey, New York and Pennsylvania -the Delaware River Basin Commission may modify diversions, releases, rights, conditions and obligations established by the decree, provided that the decree parties unanimously consent to such modifications. The Commission and decree parties have made use of this authority to provide flexibility to respond to fluctuating hydrologic conditions and evolving priorities throughout the Commission's history. In 1983, in accordance with an agreement among the parties known as the "Good Faith Agreement," a reservoir release regime was established on a permanent basis to supplement the provisions of the decree for the limited purpose of protecting and enhancing the tailwaters fishery. Since the adoption of this regime in the form of a docket (similar to a permit) issued to the New York State Department of Environmental Conservation - Docket D-77-20 CP (Revised) - the "fishery management program" as the plan is sometimes called, has been modified repeatedly by the Commission with the unanimous consent of the decree parties. Resolution No. 2004-3, approving Docket D-77-20 CP (Revision 7), established the three-year interim program that is set to expire on May 31, 2007. A series of temporary spill mitigation programs also have been established, the latest in the form of Docket D-77-20 CP (Revision 9), approved by DRBC Resolution No. 2006-18 in September 2006.

Unlike the experimental programs instituted by the Commission in the past, the FFMP is intended to provide a comprehensive framework for addressing multiple flow management objectives, including water supply, drought mitigation, protection of the tailwaters fishery, a diverse array of habitat protection needs in the mainstem, estuary and bay, flood mitigation, recreational goals and salinity repulsion. Some of the flow needs identified by the parties have not yet been defined sufficiently for the development of detailed plans. These include protection of the dwarf wedgemussel, a federal and state-listed endangered species present in the mainstem, oyster production in Delaware Bay, and protection of warm-water and migratory fisheries in the lower basin. Incremental and periodic adjustments are expected to be made to the FFMP for these purposes, based upon ongoing monitoring, scientific investigation, and periodic re-evaluation of program elements.

A central feature of the reservoir release programs implemented to date for management of the tailwaters fishery has been the use of reservoir storage "banks" to be used for narrowly defined purposes under specific hydrologic and temperature conditions and at specified times of the year. These are applied in conjunction with a set of fixed seasonal flow targets. The system requires complex daily flow and temperature modeling as a component of determining the releases, and as a result, the program is difficult and costly to administer. The current approach also lacks the seasonal fluctuations characteristic of a natural flow regime. The FFMP would largely eliminate the use of banks and would base releases instead on reservoir storage levels, resulting in larger releases when water is abundant and smaller releases when storage is at or below normal. The result would more closely approximate a natural flow regime. In addition, the FFMP

Delaware River Basin Commission

INFORMATION NOTICE DELAWARE RIVER BASIN COMMISSION NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING

The Delaware River Basin Commission (DRBC or "Commission") is a federal interstate compact agency charged with managing the water resources of the basin without regard to political boundaries. Its commissioners are the governors of the four basin states - New Jersey, New York, Pennsylvania and Delaware - and a federal representative appointed by the President of the United States. The Commission is not subject to the requirements of the New York State Administrative Procedure Act. This notice is published by the Commission for informational purposes.

Proposed Amendments to the Comprehensive Plan and Water Code Relating to a Flexible Flow Management Plan for Operation of the New York City Delaware Basin Reservoirs

Summary: The Delaware River Basin Commission (Commission) will hold a public hearing and accept written comment on a proposal to amend the agency's Comprehensive Plan and Water Code to establish a Flexible Flow Management Program (FFMP) for the New York City Delaware Basin Reservoirs ("City Delaware Reservoirs") for multiple objectives, including, among others, (a) water supply and drought mitigation; (b) management of the reservoir tailwater fisheries and other habitat needs, and (c) spill mitigation. The current reservoir releases program, which was established by Resolution No. 2004-3 in April of 2004, will expire on May 31, 2007. The current spill mitigation program, established by Resolution

would provide for more gradual transitions (or “ramping”) from higher to lower releases and vice versa than the current regime. The FFMP would include a spill mitigation component similar to but potentially more aggressive than the temporary programs implemented in the past. The storage represented by snowpack water content would continue to be considered.

Hydrologic modeling and habitat assessments are being undertaken to evaluate the sustainable benefits of the FFMP for the tailwaters fishery and for spill mitigation. In addition, an evaluation is being made of the potential benefits and costs of increasing storage in one or more of the City Delaware Reservoirs that may improve the capacity of the system to meet the full range of flow objectives.

If consensus among the decree parties and DRBC commissioners cannot be reached on details of the FFMP in time to approve and initiate implementation of the plan by June 1, 2007, the parties intend to continue to work at refining and improving the FFMP until such a consensus can be reached. The Commission will conduct a separate notice and comment rule making process on the proposed program at that time. Under such circumstances, for an interim period, the parties will consider extending the current fisheries management program or reinstating a previous regime. In either case, the releases program will be considered in combination with a spill mitigation plan.

The proposed FFMP in its entirety will be posted on the website of the Delaware River Basin Commission, www.drbc.net, on Tuesday, February 20, 2007.

Dates: Two public hearings on the proposal will be conducted at 2:30 p.m. and 6:30 p.m. respectively on Tuesday, March 27, 2007 at the Lake Wallenpaupack Environmental Learning Center in Hawley, PA. Written comments will be accepted through April 6, 2007. To allow sufficient time for consideration by the Commission, comments must be received, not merely postmarked, by that date. In addition, three informational meetings will be held on the proposal. The first will take place during the morning conference session of the Commission’s regularly scheduled meeting on Wednesday, February 28, 2007 at the DRBC office building in West Trenton, NJ. The second will take place during a meeting of the Commission’s Regulated Flow Advisory Committee (RFAC), which will take place at 10:00 a.m. on Tuesday, March 6, 2007 at the Commission’s office building in West Trenton, NJ. The third informational meeting will take place at 1:00 p.m. on Tuesday, March 27, 2007, immediately prior to the first public hearing on the proposal, scheduled for that date at the Lake Wallenpaupack Environmental Learning Center in Hawley, PA.

Addresses. Directions to the Commission’s office building, located at 25 State Police Drive in West Trenton, NJ, are available on the DRBC website at www.drbc.net. Please do not rely upon MapQuest or other Internet mapping services for directions to the DRBC, as they do not provide accurate directions to this location. Directions to the Lake Wallenpaupack Environmental Learning Center are available at <http://www.pplweb.com/lake+wallenpaupack/contacts+and+directions/get+directions.htm> and also will be posted on the DRBC website, www.drbc.net, by February 20, 2007. Written comments must include the name, address and affiliation of the commenter. Comments may be submitted by e-mail to paula.schmitt@drbc.state.nj.us; by U.S. Mail to: Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; and by fax to Attn: Commission Secretary at 609-883-9522. In all cases, the subject line, “Comment on Flexible Flow Management Plan for City Delaware Reservoirs” should be included.

Further Information, Contacts: The text of the proposed FFMP in its entirety will be posted on the website of the Delaware River Basin Commission, www.drbc.net, on Tuesday, February 20, 2007 and will remain posted through May 10, 2007. Please contact Pamela M. Bush, Esquire, Commission Secretary and Asst. General Counsel at 609-883-9500 ext. 203 with questions about the proposed rule change or the rule making process.

Department of Health

EMERGENCY RULE MAKING

OpioiD Overdose Prevention Programs

I.D. No. HLT-44-06-00005-E

Filing No. 155

Filing date: Feb. 1, 2007

Effective date: Feb. 1, 2007

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

Action taken: Amendment of section 80.138 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3309(1)

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

Specific reasons underlying the finding of necessity: The immediate adoption of this regulation is necessary for the preservation of the public health, safety and general welfare because any delay with the implementation of opioiD overdose prevention programs could result in additional deaths that could have been prevented through proper training to be offered through these programs. The legislation recognized the immediacy of the need for opioiD overdose prevention programs by making the effective date April 1, 2006. Since compliance with standard rule making procedures would make implementation by the effective date of this law impossible, compliance with those requirements is contrary to the public interest.

Subject: OpioiD overdose prevention programs.

Purpose: To implement L. 2005, ch. 413 which calls for the establishment of standards for opioiD overdose prevention programs to prevent fatalities due to overdose.

Text of emergency rule: The Table of Contents for Part 80 of Title 10 NYCRR is amended to read as follows:

PART 80

RULES AND REGULATIONS ON CONTROLLED SUBSTANCES
(Statutory authority: Public Health Law, Sections 338, 3300, 3305, 3307, 3308, 3309, 3381, 3701(1), (6), art. 33)

Sec.

GENERAL PROVISIONS

* * *

80.138. OpioiD Overdose Prevention Programs

A new Section 80.138 is added as follows:

Section 80.138. OpioiD Overdose Prevention Programs.

(a) Definitions.

(1) “Clinical Director” means a physician, physician assistant or nurse practitioner who provides oversight of the clinical aspects of the OpioiD Overdose Prevention Program. This oversight includes serving as a clinical advisor and liaison concerning medical issues related to the OpioiD Overdose Prevention Program, providing consultation on training and reviewing reports of all administrations of an opioiD antagonist.

(2) “OpioiD” means an opiate as defined in section 3302 of the public health law.

(3) “OpioiD antagonist” means an FDA-approved drug that, when administered, negates or neutralizes in whole or in part the pharmacological effects of an opioiD in the body. The opioiD antagonist is limited to naloxone or other medications approved by the Department for this purpose.

(4) “OpioiD Overdose Prevention Program” means a program the purpose of which is to train individuals to prevent a fatal opioiD overdose in accordance with these regulations.

(5) “OpioiD Overdose Prevention Training Program” means a training program offered by an authorized OpioiD Overdose Prevention Program which instructs a person to prevent opioiD overdoses, including by providing resuscitation, contacting emergency medical services and administering an opioiD antagonist.

(6) “Person” means an individual other than a licensed health care professional, law enforcement personnel, and first responders otherwise permitted by law to administer an opioiD antagonist.

(7) “Program Director” means an individual who is identified to manage and have overall responsibility for the OpioiD Overdose Prevention Program.

(8) "Registered provider" for the purposes of this section shall mean any of the following that have registered with the Department pursuant to subsection (b):

- (i) a health care facility licensed under the public health law;
- (ii) a physician, physician assistant, or nurse practitioner who is authorized to prescribe the use of an opioid antagonist;
- (iii) a drug treatment program licensed under the mental hygiene law;
- (iv) a not-for-profit community-based organization incorporated under the not-for-profit corporation law and having the services of a Clinical Director;
- (v) a local health department.

(9) "Trained Overdose Responder" means a person who has successfully completed an authorized Opioid Overdose Prevention Training Program offered by an authorized Opioid Overdose Prevention Program within the past two years and has been authorized by a Registered Provider to possess the opioid antagonist.

(b) Registration.

(1) Registered providers may operate an Opioid Overdose Prevention Program if they obtain a certificate of approval from the Department authorizing them to operate an Opioid Overdose Prevention Program and otherwise comply with the provisions of this section.

(2) Providers eligible to register to operate an Opioid Overdose Prevention Program that are in good standing may apply to the Department to operate an Opioid Overdose Prevention Program on forms prescribed by the Department which must include, at a minimum, the following information:

- (i) the provider name, address, operating certificate or license number where appropriate, telephone number, fax number, e-mail address, Program Director and Clinical Director;
- (ii) the name, license type and license number of the affiliated prescriber(s);
- (iii) the name and location of the site(s) at which the Opioid Overdose Prevention Program will be conducted;
- (iv) a description of the targeted population to be served and recruitment strategies to be employed by the Opioid Overdose Prevention Program; and
- (v) the addresses, telephone numbers, fax numbers, e-mail addresses and signatures of the Program Director and Clinical Director.

(c) Program Operation.

(1) Each Opioid Overdose Prevention Program shall have a Program Director who is responsible for managing the Opioid Overdose Prevention Program and shall, at a minimum:

- (i) identify a Clinical Director to oversee the clinical aspects of the Opioid Overdose Prevention Program;
- (ii) establish the content of the training program, which meets the approval of the Department;
- (iii) identify and train other program staff;
- (iv) select and identify persons as Trained Overdose Responders;
- (v) issue certificates of completion to Trained Overdose Responders who have completed the prescribed program;
- (vi) maintain Opioid Overdose Prevention Program records including Trained Overdose Responder training records, Opioid Overdose Prevention Program usage records and inventories of Opioid Overdose Prevention Program supplies and materials;
- (vii) ensure that all Trained Overdose Responders successfully complete all components of Opioid Overdose Prevention Training Program;
- (viii) provide liaison with local emergency medical services and emergency dispatch agencies, where appropriate;
- (ix) assist the Clinical Director with review of reports of all overdose responses, particularly those including opioid antagonist administration; and
- (x) report all administrations of an opioid antagonist on forms prescribed by the Department.

(2) Each Opioid Overdose Prevention Program shall have a Clinical Director who is responsible for clinical oversight and liaison concerning medical issues related to the Opioid Overdose Prevention Program and, at a minimum, shall:

- (i) provide clinical consultation, expertise, and oversight;
- (ii) serve as a clinical advisor and liaison concerning medical issues related to the Opioid Overdose Prevention Program;
- (iii) provide consultation to ensure that all Trained Overdose Responders are properly trained;

(iv) adapt and approve training program content and protocols; and

(v) review reports of all administrations of an opioid antagonist.

(3) The Trained Overdose Responders shall:

- (i) complete an initial Opioid Overdose Prevention Training Program;
- (ii) complete a refresher Opioid Overdose Prevention Training program at least every two (2) years;
- (iii) contact the emergency medical system during any response to a victim of suspected drug overdose and advise if an opioid antagonist is being used;
- (iv) comply with protocols for response to victims of suspected drug overdose; and
- (v) report all responses to victims of suspected drug overdose to the Opioid Overdose Prevention Program Director.

(4) The opioid antagonist shall be dispensed to the Trained Overdose Responder in accordance with all applicable laws, rules and regulations.

(5) The Opioid Overdose Prevention Program will maintain and provide response supplies including: latex gloves, mask or other barrier for use during rescue breathing, and agent to prepare skin before injection.

(6) The Opioid Overdose Prevention Program will establish and maintain a record keeping system that will include, at a minimum, the following information:

- (i) list of Trained Overdose Responders, including dates of completion of training;
- (ii) a log of Opioid Overdose Prevention Trainings which have been conducted;
- (iii) copies of program policies and procedures;
- (iv) copy of the contract/agreement with the Clinical Director, if appropriate;
- (v) opioid antagonist administration usage reports and forms; and
- (vi) documentation of review of administration of an opioid antagonist.

(7) The Opioid Overdose Prevention Program will establish a procedure by which any administration of Opioid Antagonist to another individual by a Trained Overdose Responder affiliated with an Opioid Overdose Prevention Program, shall be reported on forms prescribed by the Department.

(8) Approval obtained pursuant to this section shall consist of a certificate of approval provided by the Department that shall remain in effect for two years or until receipt by the authorized provider of a written notice of termination of the program from the Department, whichever shall first occur. The Department may renew a certificate of approval for a subsequent two-year period if the registered provider is in good standing with all applicable state and federal licensing agencies and such provider is found to have complied with the requirements of this section and has submitted a request for renewal.

(9) Pursuant to Public Health Law Section 3309(2) the purchase, acquisition, possession or use of an opioid antagonist by an Opioid Overdose Prevention Program or a Trained Overdose Responder in accordance with this section and the training provided by an authorized Opioid Overdose Prevention Program shall not constitute the unlawful practice of a professional or other violation under title eight of the education law or article 33 of the public health law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously published a notice of proposed rule making, I.D. No. HLT-44-06-00005-P, Issue of November 1, 2006. The emergency rule will expire April 1, 2007.

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

Regulatory Impact Statement

Statutory Authority:

Chapter 413 of the Laws of 2005 amended the Public Health Law to add a new Section 3309 to provide for opioid overdose prevention programs in New York State. Section 3309(1) authorizes the Commissioner of Health to establish standards for approval of opioid overdose prevention programs, including, but not limited to, standards for program directors, clinical oversight, training, record keeping and reporting. The effective date of Chapter 413 of the Laws of 2005 is April 1, 2006.

Legislative Objectives:

This legislation was enacted to reduce the incidence of fatal opioid overdoses by providing training to individuals to increase the likelihood that timely administration of life-saving medication will be provided on an emergency basis to individuals who experience accidental opioid drug overdoses.

Needs and Benefits:

Approximately half of all injection drug users (IDUs) experience at least one nonfatal overdose during their lifetime. According to the New York State (NYS) Office of Alcoholism and Substance Abuse Services (OASAS) estimates, there are approximately 171,500 IDUs in NYS. Overdose is a preventable cause of death in the majority of cases involving opioids. Opioids include heroin, morphine, codeine, methadone, oxycodone (Oxycontin, Percodan, Percocet), hydrocodone (Vicodin), fentanyl (Duragesic) and hydromorphone (Dilaudid). In an opioid overdose, the user becomes sedated and gradually loses the urge to breathe, leading to death from respiratory depression. Naloxone is an opioid receptor antagonist that can be used to reverse an opioid overdose within 1-2 minutes of administration. An untreated heroin overdose will result in death in 1-3 hours.

Although a comprehensive picture of the extent of opioid overdose in NYS does not yet exist, drug overdose is known to be a major cause of death among heroin users (Garfield and Drucker, 2001). Accidental fatal drug overdose continues to be a substantial cause of death. It has been one of the top ten causes of death in New York City (NYC) from 1993 to present (NYC Department of Health and Mental Hygiene, 2003). According to a study conducted by the New York Academy of Medicine, between 1990 and 1998 there were 5,506 accidental fatal overdoses in NYC involving opiates (Galea et al., 2003). These reflected 74% of all accidental overdose deaths (7,451) in NYC during that period.

NYS Department of Health (NYSDOH) hospital data show that, during 1998-2004, there were 3,408 hospital discharges reflecting admissions for which heroin-overdose was a factor. Of these, 2,183 (64%) were in NYC. Another 25% were in the Syracuse, Rochester, Buffalo, Albany and Nassau-Suffolk regions.

The federal Substance Abuse and Mental Health Services Administration (SAMHSA) determined that the case rate for emergency department heroin admissions in NYC in 2002 was reported to be 123 per 100,000 population, which was more than three times the national rate of 36 per 100,000 (SAMHSA, March 2004). Between 1995 and 2002, heroin-related emergency department visits in Buffalo increased 125 percent (from 41 to 93 visits per 100,000 population with a 29 percent increase from 2001 to 2002 (from 72 visits) (SAMHSA, April 2004).

Most overdoses are not instantaneous and the majority of them are witnessed by others. Therefore, many overdose fatalities are preventable, especially if witnesses have had appropriate training and are prepared to respond in a safe and effective manner. Prevention measures include education on risk factors (such as polydrug use and recent abstinence), recognition of the overdose and an appropriate response. Response includes contacting emergency medical services (EMS) and providing resuscitation while awaiting the arrival of EMS. Resuscitation consists of rescue breathing, or if available, injectable naloxone which immediately reverses the effects of heroin overdose. Naloxone is an opioid antagonist with no abuse potential and no effect on a recipient who has not taken opioids. Provision of naloxone has been suggested for many years and is being offered in a variety of settings in jurisdictions outside of NYS. Complications of naloxone in the medical setting are rare. Naloxone is inexpensive (\$1.00-\$1.50) and there have been no cases in which it has developed a street value.

Opioid overdose prevention programs have proven effective in preventing unnecessary deaths abroad and elsewhere in the United States (US). In the US, opioid overdose prevention programs exist in New Mexico; Chicago, Illinois; Baltimore, Maryland; and San Francisco, California, for example, and programs are being planned elsewhere. A recently published evaluation of an opioid overdose prevention program in San Francisco showed that of the 20 heroin overdoses witnessed by trained program participants there were no deaths. (Seal et al., 2005). As of August 2005, the New Mexico Department of Health had trained and provided naloxone to a total of 1,168 individuals. There were over 191 reports of lives saved, of which 185 involved administration of naloxone. Almost all administrations of naloxone were accompanied by rescue breathing and 5 lives were saved with rescue breathing alone. (Fiuty, P., personal communication, November 3, 2005). The Chicago Recovery Alliance has reported training over 4,500 individuals, with 374 reported reversals using naloxone, as of November 3, 2005. There has been a 30% overall decline in overdose

related deaths reported in Cook County, Illinois (Carlberg, S. Personal communication, November 3, 2005). The Baltimore City Health Department has reported 888 persons trained, 101 reported reversals and over 20 persons placed into drug treatment. A 17% decrease in overdose deaths was observed from 2001 to 2002 (Rucker, M., personal communication, November 3, 2005).

The potential exists to achieve similar outcomes in NYS through the establishment of opioid overdose prevention programs. Potential providers that may register voluntarily with NYSDOH to offer such programs include health and human service providers serving IDUs (such as NYSDOH-approved syringe exchange programs and other community-based organizations, health care practitioners (specifically physicians, physician assistants and nurse practitioners), local health departments, health care facilities licensed by NYSDOH under Article 28 of the NYS Public Health Law and drug treatment programs licensed by the NYS Office of Alcoholism and Substance Abuse Services (OASAS) pursuant to the NYS Mental Hygiene Law).

The proposed rule, which is entirely within the legislative mandate of Section 3309 of the Public Health Law, is consistent with established models for opioid overdose prevention programs elsewhere. Common features of opioid overdose prevention programs operating elsewhere that have been incorporated into the proposed rule include: a Program Director who is responsible for managing the program and assuring that program participants receive adequate training; a Clinical Director who oversees clinical aspects; use of a curriculum that provides program participants with the necessary knowledge, skills and abilities to prevent fatal overdoses through administration of naloxone, use of rescue breathing and contacting emergency medical services; maintaining program records, such as those surrounding trainings offered, including issuance of certificates of completion to those who successfully complete the training; and collection of basic information about impact of the program in terms of incidents and lives saved.

The anticipated benefits under the proposed rule are: reduced incidence of fatal opioid overdoses, increased contact of IDUs with medical personnel, greater awareness of risk factors for overdose, increased knowledge of safer injection practices and an increased number of persons trained in rescue breathing. The creation of opioid overdose prevention programs will not lead to increased drug use. Naloxone is not addictive and does not cause a "high." It has no potential for abuse or street value.

Costs:

Since this regulation allows providers to establish opioid overdose prevention programs, but does not require a provider to establish such a program, no provider will be required to incur costs as a result of the adoption of this regulation. Existing staff can serve as the Program Director and provide clinical oversight. No registration fee will be collected and the reporting requirements will be minimal. A one-time, registration process to receive a certificate of approval is required with review and renewal every two years. An internal operational policy and procedure and training of staff regarding program implementation will be required. Since it is expected that registration, record keeping and the development of policies, procedures and training materials will be done by existing staff, the costs of complying with this regulation will be minimal. Costs to the Department of Health are also expected to be minimal since the production and review of all documents will be done by existing staff.

Local Government Mandates:

This regulation does not impose any program, service, duty, or other responsibility on any county, city, town, village, school, fire district, or other special district except to the extent that such entities choose to provide opioid overdose prevention programs and, consequently, would be subject to the same requirements as all other providers.

Paperwork:

The NYSDOH anticipates a simple and streamlined registration process for seeking a certificate of approval to establish an opioid overdose prevention program. Additional record keeping requirements and reporting requirements will be minimal. Paperwork will include documentation of staff training, program policies and procedures, logs of training sessions offered and certificates of completion provided, inventories of program supplies and materials, reports of overdoses to which trained program participants have responded and reports to the Department. Only those providers voluntarily participating will be required to provide information to the Department.

Duplication:

The proposed regulation does not duplicate any existing state or federal law or regulation regarding opioid overdose prevention.

Alternatives:

The proposed regulation does not exceed the specific requirements of the legislation. Because offering an opioid overdose prevention program is voluntary, the regulation was designed to encourage eligible individuals and organizations to provide opioid overdose prevention services allowed under law and regulation. The registration process will be simple and the reporting and financial impact of establishing a voluntary opioid overdose prevention program will be minimal. Any other alternatives would require a more complex and more costly approach for both the NYSDOH and volunteer operators of opioid overdose prevention programs.

Federal Standards:

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

Compliance Schedule:

Each individual or organization that chooses to establish an opioid overdose prevention program must submit a registration form to the Department. Information will be distributed to eligible parties to allow implementation on April 1, 2006. Registration information will be used to develop a listing of opioid overdose prevention programs holding certificates of approval issued by the Department. Registration forms from those seeking to establish opioid overdose prevention programs will be accepted on a continuous basis, with review and renewal of certificates of approval taking place at two-year intervals.

Regulatory Flexibility Analysis

Effect of Rule:

The proposed rule will have no impact on small businesses unless such businesses voluntarily decide to operate an Opioid Overdose Prevention Program. The types of businesses that could be affected include hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local governments (health departments). In New York State there are 7 hospitals, 245 clinics, 1,164 drug treatment programs, an unknown number of community-based organizations and 36 county health departments that are considered small businesses.

Compliance Requirements:

Under the proposed rule, hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments that elect to establish opioid overdose prevention programs will report aggregate data on forms prescribed by the NYSDOH. Providers must have a Program Director who is responsible for managing the program and assuring that program participants receive adequate training; a Clinical Director who oversees clinical aspects; use of a curriculum that provides program participants with the necessary knowledge, skills and abilities to prevent fatal overdoses through administration of naloxone, use of rescue breathing and contacting emergency medical services; maintaining program records, such as those surrounding trainings offered, including issuance of certificates of completion to those who successfully complete the training; and collection of basic information about impact of the program in terms of incidents and lives saved.

Programs must also keep records including but not limited to documentation of staff training, program policies and procedures, logs of training sessions offered and certificates of completion provided, inventories of program supplies and materials, reports of overdoses to which trained program participants have responded and reports to the Department. Aside from simple reporting of certain easy-to-collect data, no new requirements are mandated.

Professional Services:

No additional professional services will be required since providers and others will be able to utilize existing staff.

Compliance Costs:

Since this regulation allows providers to establish opioid overdose prevention programs, but does not require a provider to establish such a program, no provider will be required to incur costs as a result of the adoption of this regulation. Existing staff can serve as the Program Director and provide clinical oversight. No registration fee will be collected and the reporting requirements will be minimal. A one-time, registration process to receive a certificate of approval is required with review and renewal every two years. An internal operational policy and procedure and training of staff regarding program implementation will be required. Since it is expected that registration, record keeping and the development of policies, procedures and training materials will be done by existing staff, the costs of complying with this regulation will be minimal. Costs to the Department of Health are also expected to be minimal since the production and review of all documents will be done by existing staff.

Economic and Technological Feasibility:

Most health care facilities, health care practitioners, drug treatment programs, community-based organizations and local health departments

that are eligible to offer opioid overdose prevention programs have the capacity and expertise to carry out the necessary activities. Small businesses that opt to voluntarily offer opioid overdose prevention programs will be provided with necessary forms and instructions to register and comply with reporting requirements. In large part, these forms and instructions are being/will be developed with specific input from regulated parties and NYSDOH staff are being made available to provide instructions and technical assistance.

Minimizing Adverse Impact:

There are no alternatives to the proposed recordkeeping and reporting requirements due to the need for the NYSDOH to assure that registered providers holding certificates of approval to operate opioid overdose prevention programs conduct activities in a safe and effective manner. Reporting requirements are those minimally necessary for the Department to coordinate oversight and provide information to the Governor and the Legislature as required by Section 3309(4) of the Public Health Law.

Small Business and Local Government Participation:

The regulations are minimal and consultation on program implementation will take place prior to the April 1, 2006 effective date of the law, and beyond. Small businesses (hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments) will have opportunities to review and comment on the proposed regulations. The NYSDOH has already begun to have conversations with providers interested in offering this service that are small businesses and local health departments and has consulted with representatives of opioid overdose prevention programs already operating in other states that are offered by small businesses and local health departments.

NYSDOH staff will consult with statewide organizations representing hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments. Examples include the Hospital Association of NYS, Greater New York Hospital Association, Community Health Center Association of NYS (CHCANYS), Medical Society of the State of New York, New York Academy of Medicine, Harm Reduction Coalition, NYSDOH-approved syringe exchange programs, New York AIDS Coalition, and the NYS Association of County Health Officials (NYSACHO). The proposed regulation will be discussed at meetings of the NYS AIDS Advisory Council and the NYS HIV Prevention Planning Group (PPG), both of which include representatives from a variety of types of organizations.

The NYSDOH has considered all comments received in this process in development of the proposed rule. Additional comments are being sought and will be considered.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. There are 44 counties in NYS with a population less than 200,000. Nine counties have certain townships with population densities of 150 persons or less per square mile. The proposed rule will have no impact on hospitals, clinics, health care practitioners, drug treatment programs and local governments in these rural areas, unless such providers voluntarily decide to operate opioid overdose prevention programs.

Hospital, clinic, health care practitioner, drug treatment program, community-based organization and local health department participation in making opioid overdose prevention programs available will be on a voluntary basis and potential providers will make individual decisions regarding participation. Potential providers are most likely to be located in urban or suburban, not rural, areas. For example, NYSDOH SPARCS data show 3,408 hospital discharges for admissions related to opioid overdose during 1998-2002. Of these, 2,183 (64%) were in NYC. Another 25% were in the Syracuse, Rochester, Buffalo, Albany and Nassau-Suffolk regions. Similarly, OASAS county-level estimates of treatment need show that the greatest need for opioid overdose prevention programs is in urban or suburban areas (OASAS, 2004 County Resource Book, Volume 1. Service Need and Utilization Data, Table 2).

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

The NYSDOH anticipates a simple and streamlined registration process for seeking a certificate of approval to establish an opioid overdose prevention program. Additional record keeping requirements and reporting requirements will be minimal. Paperwork will include documentation of staff training, program policies and procedures, logs of training sessions offered and certificates of completion provided, inventories of program supplies and materials, reports of overdoses to which trained program

participants have responded and reports to the Department. Only those providers voluntarily participating will be required to provide information to the Department.

Costs:

Since this regulation allows providers to establish opioid overdose prevention programs, but does not require a provider to establish such a program, no provider will be required to incur costs as a result of the adoption of this regulation. Existing staff can serve as the Program Director and provide clinical oversight. No registration fee will be collected and the reporting requirements will be minimal. A one-time, registration process to receive a certificate of approval is required with review and renewal every two years. An internal operational policy and procedure and training of staff regarding program implementation will be required. Since it is expected that registration, record keeping and the development of policies, procedures and training materials will be done by existing staff, the costs of complying with this regulation will be minimal. Costs to the Department of Health are also expected to be minimal since the production and review of all documents will be done by existing staff.

Minimizing Adverse Impact:

The program is designed to minimize impact on those who will participate: participation is voluntary, the registration process will be simple, no fee will be charged, and record-keeping requirements will be minimal.

The new opioid overdose prevention programs will build upon already-existing programs and services for IDUs - - through hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments. The NYSDOH will maintain and make available a list of registered programs holding certificates of approval.

Rural Area Participation:

The regulations are minimal and consultation on program implementation will take place prior to the April 1, 2006 effective date of the law, and beyond. Hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments in rural areas will have opportunities to review and comment on the proposed regulations. The NYSDOH has already consulted with representatives of opioid overdose prevention programs already operating in rural areas of other states.

NYSDOH staff will consult with statewide organizations representing hospitals, clinics, health care practitioners, drug treatment programs, community-based organizations and local health departments. Examples include the Hospital Association of NYS, Greater New York Hospital Association, Community Health Center Association of NYS (CHCANYS), Medical Society of the State of New York, New York Academy of Medicine, Harm Reduction Coalition, NYSDOH-approved syringe exchange programs, New York AIDS Coalition, and the NYS Association of County Health Officials (NYSACHO). The proposed regulation will be discussed at meetings of the NYS AIDS Advisory Council and the NYS HIV Prevention Planning Group (PPG), both of which include representatives from a variety of types of organizations.

The NYSDOH has considered all comments received in this process in development of the proposed rule. Additional comments are being sought and will be considered.

Job Impact Statement

A Job Impact Statement is not required. The proposed rule will not have a substantial adverse impact on jobs and employment opportunities based upon its nature and purpose.

Assessment of Public Comment

The agency received no public comment.

EMERGENCY RULE MAKING

Non-Prescription Emergency Contraceptive Drugs

I.D. No. HLT-08-07-00003-E

Filing No. 154

Filing date: Feb. 1, 2007

Effective date: Feb. 1, 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) of Title 18 NYCRR.

Statutory authority: Social Services Law, section 365-a

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: To allow Federal Drug Administration (FDA) approved non-prescription emergency contraceptive drugs to be dispensed by a pharmacy without a fiscal order for women 18 years of age or older.

Purpose: To allow access to FDA approved non-prescription emergency contraceptive drugs without a federally required fiscal order to women 18 years and older who request it.

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 May 1, 2007.

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

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") or 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 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 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.

Compliance Schedule:

The proposed regulatory amendment will become effective upon filing with the Department of State.

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.

NOTICE OF ADOPTION

Department of Health Fees for the Operational Periods

I.D. No. HLT-47-06-00004-A

Filing No. 156

Filing date: Feb. 1, 2007

Effective date: March 1, 2007

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

Action taken: Repeal of section 87.22 and addition of section 400.22 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2868 and 2881; and Public Authorities Law, section 2976-A3

Subject: Department of Health fees for the operational period.

Purpose: To increase Department of Health fees as allowed by the State budget.

Text or summary was published in the notice of proposed rule making, I.D. No. HLT-47-06-00004-P, Issue of November 22, 2006.

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

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

Assessment of Public Comment

The agency received no public comment.

Insurance Department

EMERGENCY RULE MAKING

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

I.D. No. INS-08-07-00004-E

Filing No. 161

Filing date: Feb. 5, 2007

Effective date: Feb. 5, 2007

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

Action taken: Amendment of Part 52 (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 HMO's 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 HMO's 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. The notice must be provided by February 15, 2007.

This amendment is necessary to require insurers, Article 43 corporations, and HMO's 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 promulgated on an emergency basis.

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

Purpose: To require insurers, art. 43 corporations and HMOs to send notices to their policyholders, certificateholders and members describing L. 2006, ch. 748.

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 May 15, 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, e-mail: fusco@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.

To permit policyholders, certificateholders, and members to learn the details of the mental health coverage, insurers, Article 43 corporations and HMOs must provide a written notice that explains the benefits and provides a toll-free customer service telephone number from which policyholders, certificateholders and members may obtain information on the mental health coverage. 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.

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.

Office of Mental Health

EMERGENCY RULE MAKING

Program and Fiscal Requirements for Personalized Recovery-Oriented Services

I.D. No. OMH-08-07-00001-E

Filing No. 151

Filing date: Jan. 31, 2007

Effective date: Jan. 31, 2007

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

Action taken: Repeal of Part 512 and addition of new Part 512 to Title 14 NYCRR.

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

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

Specific reasons underlying the finding of necessity: In order to continue to provide essential services to individuals now served by personalized recovery-oriented services programs (PROS) and to prevent a loss of services to potential recipients as new PROS programs are approved, it is necessary to adopt this regulation on an emergency basis.

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

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

Substance of emergency rule: This rule will repeal the current Part 512 which established a new licensed program category for Personalized Recovery-Oriented Services (PROS) programs. It will adopt a new Part 512 which has significant clarifications and expanded guidance. The revisions are noted in this summary.

OVERVIEW OF CURRENT STANDARDS

The purpose of PROS programs is to assist individuals to recover from the disabling effects of mental illness through the coordinated delivery of a customized array of rehabilitation, treatment and support services. Such services are available both in traditional program settings and in off-site locations where such individuals live, learn, work or socialize. Providers are expected to create a therapeutic environment which fosters awareness, hopefulness and motivation for recovery, and which supports a harm reduction philosophy.

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

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

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

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

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

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

All PROS providers, regardless of licensure category, are required to offer individualized recovery planning services and pre-admission screening services. Furthermore, depending on the licensure category, providers are required to offer a specified array of services that are delineated in Part 512. Any additional services may be offered if they are clinically appropriate and approved in advance by OMH. Persons eligible for admission to a PROS program must: be 18 years of age or older; have a designated mental illness diagnosis; have a functional disability due to the severity and duration of mental illness; and have been recommended for admission by a licensed practitioner of the healing arts. Such recommendation may be made by a member of the PROS staff, or through a referral from another provider.

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

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

The regulation provides standards and requirements that must be met in order for providers to receive Medicaid reimbursement. The reimbursement is a monthly case payment based on the services provided to a PROS participant or collateral in each of the PROS components and the total amount of program participation for the individual during the month. The rate of payment will be a monthly fee determined by the Commissioner and approved by the Division of the Budget. Fee schedules, based on defined Upstate and Downstate geographic area, are included in the regulation.

Part 512 also addresses requirements relating to the content of the case record, co-enrollment in PROS and other mental health programs, quality improvement, organization and administration, governing body, recipient rights, and physical space and premises.

REVISIONS REGARDING REIMBURSEMENT METHODOLOGY

To ensure that the PROS reimbursement standards more clearly support the programmatic intent of the PROS model, and more clearly articulate the billing expectations, the Office of Mental Health (OMH), in collaboration with the Department of Health, has revised the PROS reimbursement methodology. While the concept of a monthly tiered case payment is unchanged, the building blocks of the methodology are now based on program "units."

PROS units are determined by a combination of program participation (measured in time) and service frequency (measured in number), and are accumulated during the course of each day that the individual participates in the PROS program. The units are then aggregated to a monthly total to determine the level of the PROS monthly base rate that can be billed each month. These program units support the billing concept of a "modified threshold visit."

- Program participation is defined as the length of allowable time that recipients or collaterals participate in the PROS program, both on-site and off-site.

- Scheduled meal periods or planned recreational activities that are not specifically designated as medically necessary are excluded from the calculation of program participation.

- Time spent in the provision of services with collaterals, other than a period of the program day that is simultaneously being credited to the recipient, may be included in the calculation of program participation.

- An individual must have at least 15 minutes of continuous program participation within a program day to accumulate any units.

- Program participation is measured and accumulated in 15 minute increments. Increments of less than 15 minutes must be rounded down to the nearest quarter hour to determine the program participation for the day.

- Service frequency is defined as the number of medically necessary services delivered to a recipient, or his or her collateral, during the course of a program day.

- A minimum of one service must be delivered during the course of a program day to accumulate any units.

- Services provided in a group format must be at least 30 minutes in duration.

- Services provided in an individual modality must be at least 15 minutes in duration.

- Medically necessary PROS services include:

- Crisis intervention services;

- Pre-admission screening services;

- Services provided in accordance with the screening and admission note; and

- Services provided in accordance with the IRP.

- PROS units are calculated in accordance with the following rules:

- PROS units are accumulated in .25 increments.

- The maximum number of PROS units per individual per day is five.

- The formula for accumulating PROS units during a program day is as follows:

- If one medically necessary PROS service is delivered, the number of PROS units is equal to the duration of program participation, rounded down to the nearest quarter hour, or two units, whichever is less.

- If two medically necessary PROS services are delivered, the number of PROS units is equal to the duration of program participation, rounded down to the nearest quarter hour, or four units, whichever is less.

- If three or more medically necessary PROS services are delivered, the number of PROS units is equal to the duration of program participation, rounded down to the nearest quarter hour, or five units, whichever is less.

- A minimum of two PROS units must be accrued for an individual during a calendar month in order to bill the monthly base rate.

- Under the revised methodology, providers will continue to bill on a monthly case payment basis.

- To determine the monthly base rate, the daily PROS units accumulated during the calendar month are aggregated and translated into one of the five payment levels. While the current rate codes and billing process will continue to be utilized, new PROS rates are effective for the 2006-07 State fiscal year. The 2005-06 rate adjustment for OMH licensed clinics has been applied to the PROS Clinical Treatment rate.

REVISIONS REGARDING DOCUMENTATION

The PROS documentation standards have been revised in order to clarify the record-keeping requirements for documenting medical necessity, as well as to support the revised reimbursement methodology.

Within a PROS program, evidence of medical necessity is supported through a combination of screening and assessments, the IRP, and periodic progress notes. In an effort to strengthen the evidence of medical necessity within the IRP, consistent with the principles of person-centered planning, the related requirements have been modified to clarify the programmatic intent. To that end, there is a more explicit requirement for an identified connection between an individual's recovery goals, the barriers to the achievement of those goals that are due to the individual's mental illness, and the recommended course of action. Furthermore, there is a more precise requirement related to justifying the need for services that are more expensive or intensive than those in the CRS component (i.e., IR, ORS or Clinical Treatment services). Finally, there are specific and detailed requirements for the documentation of service delivery used as the basis for the monthly bill.

REVISIONS REGARDING GROUP SIZE

In many instances, PROS services will be provided in a group format. While the PROS program model did not contemplate groups of excessive size, the existing regulations did not explicitly address this issue. To ensure that group services are delivered in a clinically optimal manner, the PROS standards are being revised to limit the size of groups. Each CRS or Clinical Treatment group will generally be limited to 12 participants (recipients and/or collaterals) and each IR group will generally be limited to 8 participants (recipients and/or collaterals) with specified exceptions. From a program operations perspective, the size of the groups (consistent with the above limitations) cannot be exceeded on a "regular and routine" basis. This standard will be monitored and addressed through OMH's certification process.

From a fiscal perspective, reimbursement on behalf of participating group members will be subject to certain limits (assuming that all services are medically necessary).

REVISIONS REGARDING STAFFING

As the result of feedback from a variety of stakeholders, two components of the existing PROS staffing requirements are being revised. One of the modifications relates to the use of psychiatric nurse practitioners in lieu of a portion of the psychiatrist coverage; the second revision relates to the

transition of newly licensed providers to full compliance with the professional staffing requirements.

REVISIONS REGARDING REGISTRATION SYSTEM

Following the original promulgation of the PROS regulations, OMH developed and implemented a PROS registration system. The intent of this system is to establish a process whereby PROS providers and other service providers can be informed, at the earliest possible date, of potential co-enrollment situations that are not otherwise authorized. Therefore, the use of the registration system is intended to prevent duplicative Medicaid billing, and thus reduce the need for post-payment adjustments. The PROS regulations have been revised to accommodate the concept of registration.

REVISIONS REGARDING TRANSITION

With the Commissioner's permission, providers operating pursuant to a PROS operating certificate on or before November 1, 2006, may, subject to certain conditions, continue to operate pursuant to the requirements of Part 512 in effect prior to that date.

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 April 30, 2007.

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

Regulatory Impact Statement

1. Statutory Authority: Subdivision (b) of Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health (OMH) the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Subdivision (a) of Section 31.04 of the Mental Hygiene Law empowers the Commissioner to issue regulations setting standards for licensed programs for the rendition of services for persons with mental illness.

Section 41.05 of the Mental Hygiene Law provides that a local governmental unit shall direct and administer a local comprehensive planning process for its geographic area in which all providers of service shall participate and cooperate through the development of integrated systems of care and treatment for people with mental illness.

Subdivision (a) of Section 43.02 of the Mental Hygiene Law provides that payments under the medical assistance program for services approved by the Office of Mental Health shall be at rates certified by the Commissioner of Mental Health and approved by the Director of the Budget. Subdivision (b) of Section 43.02 of the Mental Hygiene Law gives the Commissioner authority to request from operators of facilities licensed by the OMH such financial, statistical and program information as the Commissioner may determine to be necessary. Subdivision (c) of Section 43.02 of the Mental Hygiene Law gives the Commissioner of Mental Health authority to adopt rules and regulations relating to methodologies used in establishment of schedules of rates for services.

Sections 364(3) and 364-a(1) of the Social Services Law give OMH responsibility for establishing and maintaining standards for medical care and services in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

2. Legislative Objectives: Articles 7, 31 and 43 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs and establish rates of payments for services under the Medical Assistance program. Sections 364 and 364-a of the Social Services Law reflect the role of the Office of Mental Health regarding Medicaid reimbursed programs.

3. Needs and Benefits: The Personalized Recovery-Oriented Services (PROS) initiative creates a framework to assist individuals and providers in improving both the quality of care and outcomes for people with serious mental illness in New York State.

In 2005, OMH, with input from local government, consumers, family members and provider organizations, developed a new Medicaid license: PROS. This license takes advantage of the flexibility offered through the Rehabilitation Option of the Federal Medicaid Program. The license gives local government and providers the ability to integrate multiple programs into a comprehensive rehabilitation service. Providers may combine clubhouses, intensive psychiatric rehabilitation treatment (IPRT) programs and other rehabilitation program categories, reducing fragmentation and increasing continuity of care and accountability for achieving recovery goals. Also, there is the option to incorporate Continuing Day Treatment (CDT) programs and clinical treatment into a PROS license. These two program categories are currently licensed separately under mental health regulations.

The PROS license gives service providers the ability to support consumers as they progress with their recovery. The purpose of PROS programs is to assist individuals in recovering from the disabling effects of mental illness through the coordinated delivery of a customized array of rehabilitation, treatment and support services. Such services are expected to be available both in traditional program settings and in off-site locations where such individuals live, learn, work or socialize. Providers must create a therapeutic environment which fosters awareness, hopefulness and motivation for recovery, and which supports a harm reduction philosophy.

The PROS program structure combines under one license basic rehabilitation services; time limited, goal focused intensive rehabilitation, which a consumer can access at various points in the recovery process; ongoing mental health supports to individuals who have secured employment; and an optional clinical treatment component, which allows treatment services to be fully integrated into rehabilitation planning and service provision. All these components are coordinated toward a person's recovery using an Individualized Recovery Plan (IRP).

The PROS license is used to advance the adoption on the front lines of care of several scientifically proven practices which have produced superior outcomes for individuals with severe and persistent psychiatric conditions. These include wellness self-management (also referred to as illness management and recovery), family psycho-education, ongoing rehabilitation and support related to the evidence based practice of supported employment, integrated treatment for co-occurring mental illness and substance abuse, and evidence-based medication practices. By using the comprehensive nature of the PROS license and the IRP, these practices will be able to be provided in combination, offering the potential to amplify recovery outcomes.

Providers collect outcome data in the areas of psychiatric hospitalization, emergency room use, contact with the criminal justice system, consumer satisfaction, employment, education and housing stability. These data are used to help determine program effectiveness and each provider will be asked to develop an ongoing quality improvement process using their outcome data.

The design of PROS addresses many of the care delivery system problems. Access to the range of services needed to facilitate recovery will be increased due to the comprehensive nature of the license. The use of an IRP promotes consumer and provider collaboration toward recovery and fosters integration of rehabilitation, support and treatment, thereby reducing fragmentation. The flexibility of the license stimulates creative development of recovery-oriented services. Consumers are allowed to choose services from more than one PROS provider, so consumer choice is preserved. The design encourages a provider to work with a consumer throughout the recovery process, enhancing accountability for outcomes. By collecting outcome data and using it to help improve individual outcomes and program effectiveness, a data-based continuous quality improvement process is introduced. The various aspects of the PROS license, when viewed as a whole, support and encourage a recovery-focused culture and service delivery system.

To ensure that the PROS reimbursement standards more clearly support the programmatic intent of the PROS model, and more clearly articulate the billing expectations, OMH, in collaboration with the Department of Health, has revised the PROS reimbursement methodology. While the current concept of a monthly tiered case payment is unchanged, the building blocks of the methodology are now based on program "units."

PROS units are determined by a combination of program participation (measured in time) and service frequency (measured in number), and are accumulated during the course of each day that the individual participates in the PROS program. The units are then aggregated to a monthly total to determine the level of the PROS monthly base rate that can be billed each month. These program units support the billing concept of a "modified threshold visit." The revised methodology, using units, provides for a more accurate and effective approach to billing.

Under the revised methodology, providers will continue to bill on a monthly case payment basis. To determine the monthly base rate, the daily PROS units accumulated during the calendar month are aggregated and translated into one of the five payment levels. While the current rate codes and billing process will continue to be utilized, new PROS rates are effective for the 2006-07 State fiscal year. The 2005-06 rate adjustment for OMH licensed clinics has been applied to the PROS Clinical Treatment rate.

The PROS documentation standards have been revised in order to clarify the record-keeping requirements for documenting medical necessity, as well as to support the revised reimbursement methodology. Within a PROS program, evidence of medical necessity is supported through a

combination of screening and assessments, the IRP, and periodic progress notes. In an effort to strengthen the evidence of medical necessity within the IRP, consistent with the principle of person-centered planning, the related requirements have been modified to clarify the programmatic intent. To that end, there will be a more explicit requirement for an identified connection between an individual's recovery goals, the barriers to the achievement of those goals that are due to the individual's mental illness, and the recommended course of action. Furthermore, there will be a more precise requirement related to justifying the need for services that are more expensive or intensive. Finally, there are specific and detailed requirements for documentation of service delivery used as the basis for the monthly bill.

In many instances, PROS services offered will be provided in a group format. While the PROS program model did not contemplate groups of excessive size, the previous regulation did not explicitly address this issue. To ensure that group services are delivered in a clinically optimal manner, the PROS standards have been revised to limit the size of certain groups. From a program operations perspective, the size of the groups cannot be exceeded on a "regular and routine" basis. This standard will be monitored and addressed through OMH's certification process. From a fiscal perspective, reimbursement on behalf of participating group members will be subject to certain limits (assuming that all services are medically necessary).

As the result of feedback from a variety of stakeholders, two components of the existing PROS staffing requirements have been revised. One of the modifications relates to the use of psychiatric nurse practitioners in lieu of a portion of the psychiatrist coverage; the second revision relates to the transition of newly licensed providers to full compliance with the professional staffing requirements.

Following the original promulgation of the PROS regulations, OMH developed and implemented a PROS registration system. The intent of this system is to establish a process whereby PROS providers and other service providers can be informed, at the earliest possible date, of potential co-enrollment situations that are not otherwise authorized. The use of the registration system is intended to prevent duplicative Medicaid billing, and thus reduce the need for post-payment adjustments. The PROS regulations have been revised to accommodate the concept of registration. The revised PROS regulation will support the growth of the PROS program as it develops to its full potential. Note: The Commissioner may permit providers operating pursuant to a PROS operating certificate on or before November 1, 2006, to continue to operate pursuant to the requirements of Part 512 in effect prior to November 1, 2006. Such permission shall be granted only if such providers shall have submitted and the Commissioner shall have approved a transition plan setting forth a timetable for complying with the requirements of this Part.

4. Costs: a. Any additional costs to existing efficiently and economically run programs that are converting to PROS will be fully funded through the PROS Medicaid fee and/or startup funding provided by the Office of Mental Health.

b. Sufficient funding has been included in the current enacted budget to enable economically and efficiently run programs to convert to PROS. Approximately 350 providers have programs that are eligible for conversion to PROS. Existing resources associated with these programs include approximately \$251 million in gross program funding, of which \$139 million is State funding, \$14 million is local funding and \$97 million is Federal funding. After conversion to PROS, gross program funding is estimated to be \$283 million of which State resources are \$129 million, local resources are \$14 million and Federal resources are \$140 million. The implementation of PROS is estimated to result in no increase in local funding.

5. Local Government Mandates: The regulation will not mandate any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts. The regulation will provide for optimal county involvement in the process of evaluating the quality and appropriateness of PROS programs. Counties may choose to participate in this process with the Office of Mental Health, but it is not required.

6. Paperwork: This rulemaking will require programs that participate to complete the paperwork which is necessary to receive medical assistance payments and will not result in a substantial change in paperwork requirements.

7. Duplication: The regulatory amendment does not duplicate existing State or federal requirements.

8. Alternatives: The only alternative considered was to continue to use the current program and licensing standards without revision. This alternative was rejected because of the need for further clarification of the current

standards and additional regulatory guidance to ensure compliance with programmatic intent and federal requirements for Medicaid reimbursement.

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

10. Compliance Schedule: The regulatory amendment will be effective November 1, 2006.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis is not submitted with this notice because this new rule will not impose an adverse economic impact on small businesses or local governments. This rule, which repeals Part 512, the current regulation authorizing the Personalized Recovery-Oriented Services (PROS) program, and adds a new Part 512, will revise certain PROS program standards including those relating to the process of obtaining reimbursement, reimbursement rates, establishing group size, staffing and registration.

The providers who will be subject to this rule will be organizations that now hold or in the future apply to establish a PROS program. The majority of these provider organizations are not-for-profit corporations and county governments who currently operate outpatient programs funded and licensed by the Office of Mental Health and/or provide mental health services under contract with local governments and/or OMH and are supported by state and/or local funding.

The existing programs and services that have transitioned or will transition into PROS include Intensive Psychiatric Rehabilitation Treatment and Continuing Day Treatment, currently licensed by the Office of Mental Health (OMH). They also include services previously or currently funded by OMH, but not licensed, such as Psychosocial Clubs, On-Site Rehabilitation, Ongoing Integrated Employment, Enclave in Industry, Affirmative Business, Client Worker and Supported Education.

The licensed programs are currently required to be established through a process that is subject to Part 551 of 14NYCRR and must comply, on an ongoing basis, with the appropriate program and fiscal regulations as contained in Title 14, including standards for receiving Medicaid reimbursement. The unlicensed programs are established and provide services under contracts with OMH and/or the local governmental unit (the county or the City of New York, depending on location) and are subject to contractual program and fiscal requirements. The requirements are, in part, specific to the funding streams involved, which include: Local Assistance Regular, Community Support Services, Reinvestment, Ongoing Integrated Employment, Psychiatric Rehabilitation, Flexible Funding and Medicaid. While many of the fiscal contractual requirements are the same, there are certain fiscal requirements specific to certain funding streams. Most funding passes from the State to local governments and then to providers and is subject to both State and local government contract requirements.

The PROS program, as revised, will continue to promote comprehensive and coordinated services, foster continuity, and result in more effective program organization and service delivery. It will reduce program-related paper work involved with transfers; for example, an Intensive Psychiatric Rehabilitation Treatment Program must currently discharge an individual when that person achieves the stated goal even if the person needs ongoing support to maintain that goal. That individual's ongoing needs may then require transfer to another program in order to obtain necessary clinical services. The PROS program provides for integration of programs and services, and it will serve to reduce the paperwork required in such a situation, as what were formerly separate programs and services will now be service components under a single PROS license.

The revised PROS regulation continues to provide for a case payment approach to reimbursement which simplifies the Medicaid billing process. The multiple program and service components that formerly had to comply with separate contract requirements for each program funding stream and/or Medicaid fee-for-service with a more complex billing process will, under the revised PROS regulation, come together into a single program and be funded by a comprehensive per client case payment, billed on a monthly basis. For a number of service providers, billing Medicaid, as opposed to contract funding, may be a new experience. In recognition of this, OMH has and will continue to provide start-up funding for Medicaid billing development costs for providers transitioning to a PROS license in Phase I of implementation. Such start-up funds will be provided in accordance with need and availability of appropriations. Model record-keeping forms will also be developed by OMH and made available to all providers, for use at their discretion. The case payment rate has been enhanced under the revised regulation to a level sufficient to fund the costs of providing the PROS services, including the costs of documenting compliance and billing for services.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the amended rule will not impose any adverse economic impact on rural areas. Rural and non-rural programs will benefit from the integration of now separate programs and services and the revisions will not have a unique or negative impact on Personalized Recovery-Oriented Services (PROS) programs in rural areas.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because it will have no negative impact on jobs and employment opportunities. It is expected that employment opportunities for individuals receiving services from a new Personalized Recovery-Oriented Services (PROS) provider will increase when compared to the current fragmented service system and that the revised PROS regulation will not significantly differ from the current regulation in terms of impact on jobs and employment opportunities.

NOTICE OF ADOPTION**Life Safety Code**

I.D. No. OMH-41-06-00024-A

Filing No. 152

Filing date: Jan. 31, 2007

Effective date: Feb. 21, 2007

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

Action taken: Amendment of sections 594.16 and 595.15 of Title 14 NYCRR.

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

Subject: Updating reference to the Life Safety Code in the Premises section of Part 594-Operation of Licensed Housing Programs for Children and Adolescents and Part 595-Operation of Residential Programs for Adults.

Purpose: To update certain citations.

Text or summary was published in the notice of proposed rule making, I.D. No. OMH-41-06-00024-P, Issue of October 11, 2006.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Criminal History Record Review**

I.D. No. OMH-46-06-00014-A

Filing No. 158

Filing date: Feb. 2, 2007

Effective date: Feb. 21, 2007

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

Action taken: Amendment of Part 550 of Title 14 NYCRR.

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

Subject: Criminal history record checks.

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

Text or summary was published in the notice of proposed rule making, I.D. No. OMH-46-06-00014-P, Issue of November 15, 2006.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION**Suburban/Rural Comprehensive Emergency Program**

I.D. No. OMH-46-06-00016-A

Filing No. 159

Filing date: Feb. 5, 2007

Effective date: Feb. 21, 2007

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

Action taken: Amendment of Part 591 and repeal of Part 596 of Title 14 NYCRR.

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

Subject: Suburban/Rural Comprehensive Emergency Program.

Purpose: To amend a rule and repeal an obsolete rule.

Text or summary was published in the notice of proposed rule making, I.D. No. OMH-46-06-00016-P, Issue of November 15, 2006.

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

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

Assessment of Public Comment

The agency received no public comment.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

Rate/Fee Setting

I.D. No. MRD-08-07-00002-EP

Filing No. 153

Filing date: Feb. 1, 2007

Effective date: Feb. 1, 2007

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

Action taken: Amendment of sections 81.10, 635-10.5, 671.7, 680.12 and 681.14 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 43.02

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

Specific reasons underlying the finding of necessity: Fiscal uncertainties precluded OMRDD from securing necessary control agency approvals to allow for timely proposal and promulgation of these amendments within the regular SAPA procedural time frames. The emergency amendments revise the rates/fees of reimbursement of the referenced facilities and services. If OMRDD did not file this emergency adoption and establish the regulatory authority to pay the revised rates and fees effective February 1, 2007, the loss of revenues could have a deleterious effect on the fiscal viability of some providers, especially those which have smaller operations. This potential negative effect could translate into compromised services for citizens with developmental disabilities who need such services.

Subject: Rate/fee setting in voluntary agency operated integrated residential community programs (81.10); individualized residential alternative (IRA) facilities and home and community-based (HCBS) waiver services (635-10.5); HCBS waiver community residential habilitation services (671.7); specialty hospitals (680.12); and intermediate care facilities for persons with developmental disabilities (681.14).

Purpose: To revise the methodologies used to calculate rates/fees of the referenced facilities or programs. More specifically, the amendments are concerned with establishing trend factors to be applied within the context of the referenced reimbursement methodologies, effective Feb. 1, 2007.

Public hearing(s) will be held at: 10:30 a.m., April 9, 2007* at Brooklyn DDSO, 888 Fountain Ave., Bldg. 1, 2nd Fl. Conference Rm., Brooklyn, NY; and 10:30 a.m., April 10, 2007* at Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY.

*Please call OMRDD at (518) 474-1830 no later than Monday, April 2 to indicate that you intend to participate.

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

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

Text of emergency/proposed rule: Subdivision 81.10(b) - Add new paragraph (4):

(4) *Trend factors applicable to reimbursement fees for integrated residential communities. The following trend factors shall be applied to the IRC fee established pursuant to paragraphs (b)(1)-(2) of this section and approved by the commissioner acting with the concurrence of the Director of the Budget.*

(i) *Effective February 1, 2007, integrated residential communities shall receive an amount they would have received if there had been a trend factor of 5.33 percent applied to the fee in effect for calendar year 2005. The fee in effect for the fee period ending December 31, 2004 shall be deemed to be increased in the amount of 5.33 percent.*

(ii) *Effective February 1, 2007, integrated residential communities shall receive an amount they would have received if there had been a trend factor of 3.03 percent applied to the fee in effect for calendar year 2006. The fee in effect for the fee period ending December 31, 2005 shall be deemed to be increased in the amount of 3.03 percent.*

(iii) *From February 1, 2007 to December 31, 2007, integrated residential communities shall be reimbursed operating costs that result in a full annual trend factor of 2.97 percent for the fee period. On January 1, 2008, the trend factor for the previous fee period shall be deemed to be the 2.97 percent full annual trend.*

Paragraph 635-10.5(i)(1) - Add new subparagraph (xxv):

(xxv) *2.97 percent to trend 2006-2007 costs to 2007-2008. The application of these trend factors shall include services provided in accordance with paragraph (c)(2) of this section. For agency sponsored family care, the agency must pay the trend related to the difficulty of care payment to the individual family care provider.*

Note: Rest of paragraph is renumbered accordingly.

Paragraph 635-10.5(i)(2) - Add new subparagraph (xxv):

(xxv) *From February 1, 2007 to December 31, 2007, facilities will be reimbursed operating costs that result in a full annual trend factor of 2.97 percent for the fee period. On January 1, 2008, the trend factor for the previous fee period shall be deemed to be the 2.97 percent full annual trend. The application of these trend factors shall include services provided in accordance with paragraph (c)(2) of this section. For agency sponsored family care, the agency must pay the trend related to the difficulty of care payment to the individual family care provider.*

Note: Rest of paragraph is renumbered accordingly.

Clause 671.7(a)(1)(vi)(a) - Add new subclause (15):

(15) *For calendar year 2007: NYC and Nassau, Rockland, Suffolk, and Westchester Counties \$ 30.63 per day Rest of State \$ 29.63 per day*

Note: Rest of clause remains unchanged.

Clause 671.7(a)(1)(xvi)(a) - Add new subclause (13):

(13) *0.00 percent from January 1, 2007 through December 31, 2007.*

Clause 671.7(a)(1)(xvi)(b) - Add new subclause (13):

(13) *0.00 percent from July 1, 2007 through June 30, 2008.*

Paragraph 680.12(d)(3) - Add new subparagraph (xx):

(xx) *From February 1, 2007 to December 31, 2007, the specialty hospital will be reimbursed operating costs that result in a full annual trend factor of 2.97 percent for the rate period. On January 1, 2008, the trend factor for the previous rate period shall be deemed to be the 2.97 percent full annual trend.*

Add new subclause 681.14(c)(3)(ii)(b)(7):

(7) *If a facility is subject to an expanded desk audit per subclause (2) of this clause, but the desk audit has not been completed by January 1, 2007 or July 1, 2007, OMRDD shall continue the rate estab-*

lished according to the first sentence of subclause (3) of this clause and, if applicable, further trended to 2007 or 2007-2008 dollars until OMRDD completes the expanded desk audit. Upon OMRDD's completion of the expanded desk audit, for the base period and subsequent periods beginning January 1, 2003 or July 1, 2003, the methodology described in this section will apply.

Subparagraphs 681.14(h)(1)(xvi)-(xviii) are amended as follows:

(xvi) *Effective February 1, 2006, facilities will receive an amount that they would have received if the trend factor in subparagraph (xv) of this paragraph for the rate period of July 1, 2005 to June 30, 2006 were increased in the amount of 2.0 percent. The trend factor in effect for the rate period ending June 30, 2006 shall be deemed to be increased in the amount of 2.0 percent; [and]*

(xvii) *3.03 percent for 2005-2006 to 2006-2007[.]; and*

(xviii) *2.97 percent for 2006-2007 to 2007-2008.*

Subparagraphs 681.14(h)(2)(xvi)-(xviii) are amended as follows:

(xvi) *Effective February 1, 2006, facilities will receive an amount that they would have received if the trend factor in subparagraph (xv) of this paragraph for calendar year 2005 were increased in the amount of 2.0 percent. The trend factor for the rate year ending December 31, 2005 shall be deemed to be increased in the amount of 2.0 percent; [and]*

(xvii) *3.03 percent for 2005 to 2006 [.]; and*

(xviii) *From February 1, 2007 to December 31, 2007, facilities will be reimbursed operating costs that result in a full annual trend factor of 2.97 percent for the rate period. On January 1, 2008, the trend factor for the previous rate period shall be deemed to be the 2.97 percent full annual trend.*

Subparagraphs 681.14(h)(3)(xxiv)-(xxvi) are amended as follows:

(xxiv) *Effective February 1, 2006, facilities will receive an amount that they would have received if the trend factor in subparagraph (xxiii) of this paragraph for the rate period of July 1, 2005 to June 30, 2006 were increased in the amount of 2.0 percent. The trend factor in effect for the rate period ending June 30, 2006 shall be deemed to be increased in the amount of 2.0 percent; [and]*

(xxv) *3.03 percent for 2005-2006 to 2006-2007 [.]; and*

(xxvi) *2.97 percent for 2006-2007 to 2007-2008.*

Subparagraphs 681.14(h)(4)(xxiv)-(xxvi) are amended as follows:

(xxiv) *Effective February 1, 2006, facilities will receive an amount that they would have received if the trend factor in subparagraph (xxiii) of this paragraph for calendar year 2005 were increased in the amount of 2.0 percent. The trend factor for the rate year ending December 31, 2005 shall be deemed to be increased in the amount of 2.0 percent; [and]*

(xxv) *3.03 percent for 2005 to 2006 [.]; and*

(xxvi) *From February 1, 2007 to December 31, 2007, facilities will be reimbursed operating costs that result in a full annual trend factor of 2.97 percent for the rate period. On January 1, 2008, the trend factor for the previous rate period shall be deemed to be the 2.97 percent full annual trend.*

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 May 1, 2007.

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office of Mental Retardation and Developmental Disabilities, 44 Holland Ave., Albany, NY 12229, (518) 474-1830; e-mail: barbara.brundage@omr.state.ny.us

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

Public comment will be received until: 5 days after the last scheduled public hearing.

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and in accordance with 14 NYCRR Part 622, OMRDD has on file a negative declaration with respect to this action. Thus, consistent with the requirements of 6 NYCRR Part 617, OMRDD, as lead agency, has determined that the action described herein will not have a significant effect on the environment, and an environmental impact statement will not be prepared.

Regulatory Impact Statement

1. Statutory Authority:

a. The New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD) statutory responsibility to assure and encourage the development of programs and services in the area of care, treatment, rehabilitation, education and training of persons with mental retardation and developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

b. OMRDD's authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

c. OMRDD's responsibility, as stated in section 43.02 of the Mental Hygiene Law, for setting Medicaid rates for services in facilities licensed by OMRDD.

2. Legislative Objectives: These emergency/proposed amendments further the legislative objectives embodied in sections 13.07, 13.09(b), and 43.02 of the Mental Hygiene Law. The enactment of these emergency/proposed amendments will ensure the funding to voluntary agency providers of the following services:

a. Programs authorized by OMRDD to operate as integrated residential communities (amendments to section 81.10).

b. Individualized Residential Alternative (IRA) facilities and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5).

c. Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7).

d. Specialty Hospitals (amendments to section 680.12).

e. Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD) (amendments to section 681.14).

This funding is necessary in order to enable voluntary agencies that operate the above facilities to maintain services in the areas of care, treatment, rehabilitation, and training of persons with mental retardation and developmental disabilities.

3. Needs and Benefits: From the time of their inception and implementation in New York State, OMRDD has provided funding for the above referenced facilities and services. Such funding is necessary to assure the continued delivery of services to persons with developmental disabilities. The emergency/proposed amendments are concerned with identifying the respective trend factors applicable to these facilities and services, effective February 1, 2007.

Fiscal uncertainties precluded OMRDD from securing necessary control agency approval to allow for previous proposal and timely promulgation of these amendments within the regular SAPA procedural time frames. The loss of revenues, if OMRDD did not file this Emergency/Proposed Agency Action and establish the regulatory authority to reimburse providers of the above referenced facilities and services at revised rates/fees beginning February 1, 2007, could have a negative effect on the fiscal viability of some providers, especially those which have smaller operations. This potentially negative effect could translate into compromised services for citizens with developmental disabilities.

4. Costs:

a. Costs to the Agency and to the State and its local governments. The aggregate cost of the application of the trend factors contained in the emergency/proposed amendments is approximately \$81.7 million. This represents approximately \$40.8 million in State funds and \$40.8 million in federal funds.

Pursuant to Social Services Law sections 365 and 368-a, local governments incur no costs for most of the above referenced facilities or services, or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. Further, for the current State fiscal year, there are no costs to local governments as a result of these specific amendments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

The specific impacts by facility or program type are as follows:

For the one program currently certified by OMRDD as an integrated residential community (amendments to section 81.10). The estimated cost to the State of the proposed trend factor amendments will be approximately \$ 115,000. There is no federal or local government share associated with this cost.

For Individualized Residential Alternative (IRA) facilities and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5). New York State currently funds IRA facilities and all authorized HCBS Waiver residential habilitation, day habilitation, supported employment, respite, and prevocational services for the approximately 58,000 persons receiving such services as of December 2006.

The emergency/proposed amendments implement a trend factor of 2.97 percent. The estimated cost for implementation of the trend factor contained in the emergency/proposed amendments on an annual aggregate basis is approximately \$57.6 million for the fee periods beginning January 1, 2007 and July 1, 2007. This represents approximately \$29.8 million in State share and \$29.8 million in federal funds. There are no costs to local governments as a result of these amendments.

For Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7). Currently, OMRDD funds voluntary operated community residence facilities which are providing services to approximately 660 persons as of December 2006. The emergency/proposed amendments implement a trend factor of zero percent. There are therefore no costs attributable to this amendment, either to the State or to local governments.

The amendments to section 671.7 also update the SSI per diem allowances consistent with levels determined by the Federal Social Security Administration. There are no additional costs attributable to this conforming amendment, either to the State or to local governments.

For Specialty Hospitals (amendments to section 680.12). New York State funds the one such facility currently in operation. The emergency/proposed amendments implement a trend factor of 2.97 percent. The estimated total cost for implementation of this trend factor on an aggregate annualized basis is approximately \$274,000 for the period beginning February 1, 2007. This represents approximately \$137,000 in State share and \$137,000 in federal funds. There are no costs to local governments as a result of the amendments.

For Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD), (amendments to section 681.14). As of December 2006, there were approximately 5,900 people served in ICF/DD facilities in New York State. The emergency/proposed amendments implement a trend factor of 2.97 percent. The estimated cost for implementation of the trend factor contained in the emergency/proposed amendments on an annual aggregate basis is approximately \$17.9 million for the rate periods beginning January 1, 2007 and July 1, 2007. This represents approximately \$8.9 million in State share and \$8.9 million in federal funds. There are no costs to local governments resulting from emergency/proposed amendments to section 681.14.

In all instances, these estimated cost impacts have been derived by applying the trend factor provisions of the emergency/proposed amendments within the context of the respective reimbursement methodologies to the providers of services certified or authorized as of December, 2006.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs associated with implementation and continued compliance with the rule. The emergency/proposed amendments are necessary to maintain funding of the above cited facilities at revised levels of reimbursement in effect as of February 1, 2007. To the extent that the amendments provide trend factor increases to the providers of the various facilities and services, the amendments will result in increased funding to provider agencies.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: No additional paperwork will be required by the emergency/proposed amendments.

7. Duplication: The emergency/proposed amendments do not duplicate any existing State or Federal requirements that are applicable to the above cited facilities or services for persons with developmental disabilities.

8. Alternatives: The current course of action as embodied in these emergency/proposed amendments reflects what OMRDD believes to be a fiscally prudent, cost-effective reimbursement of the facilities and developmental disabilities services in question. No alternatives to these trend factors were considered. There is no alternative to emergency adoption that would allow for prompt, timely implementation of the trend factor provisions contained in the emergency/proposed amendments.

9. Federal Standards: The emergency/proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: The emergency rule is effective February 1, 2007. OMRDD has concurrently filed the rule as a Notice of Proposed Rule Making, and it intends to finalize the rule as soon as possible within the time frames mandated by the State Administrative Procedure Act. The emergency/proposed amendments are concerned with revising the various reimbursement methodologies to implement trend factor adjustments for facilities and providers of services to persons with developmental disabilities. These amendments do not impose any significant new requirements with which regulated parties are expected to comply.

Regulatory Flexibility Analysis

1. Effect of rule: These emergency/ proposed regulatory amendments will apply to voluntary not-for-profit corporations that operate the following facilities and/or provide the following services for persons with developmental disabilities in New York State:

Programs certified by OMRDD as integrated residential communities (amendments to section 81.10). As of December 2006, there was only one program authorized by OMRDD to operate as an integrated residential community.

Individualized Residential Alternative (IRA) facilities, and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5). New York State currently funds IRA facilities and all authorized HCBS Waiver residential habilitation, day habilitation, supported employment, respite and prevocational services for the approximately 58,000 persons receiving such services as of December 2006.

Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7). Currently, OMRDD funds voluntary operated community residence facilities which serve approximately 660 persons.

Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD), (amendments to section 681.14). As of December 2006, there were approximately 5,900 people served in ICF/DD facilities in New York State.

The OMRDD has determined, through a review of the certified cost reports, that the organizations which operate the above referenced facilities or provide the developmental disabilities services employ fewer than 100 employees at the discrete certified or authorized sites and would, therefore, be classified as small businesses.

There is only one Specialty Hospital (amendments to section 680.12) certified to operate in New York State. It employs more than 100 persons and would therefore not be considered a small business as contemplated under the State Administrative Procedure Act (SAPA).

The emergency/proposed amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will continue to provide appropriate funding for small business providers of developmental disabilities services. Further, OMRDD expects that the emergency/proposed amendments will not cause undue hardship to small business providers due to increased costs for additional services or increased compliance requirements. In fact, the provisions contained in the emergency/proposed amendments will either have no fiscal impact, or they will provide for increased reimbursements to small business providers of services, due to the application of the trend factors established by the amendments. Specific impacts of the increased funding are set forth in the accompanying Regulatory Impact Statement as costs to State and Federal government.

Pursuant to Social Services Law sections 365 and 368-a, local governments incur no costs for most of the above referenced facilities or services, or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. Further, for the current State fiscal year, there are no costs to local governments as a result of these specific amendments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

2. Compliance requirements: There are no additional compliance requirements for small businesses or local governments resulting from the implementation of these emergency/proposed amendments.

3. Professional services: In accordance with existing practice, providers are required to submit annual cost reports by certified accountants. The emergency/proposed amendments do not alter this requirement. Therefore, no additional professional services are required as a result of most of these amendments. The amendments will have no effect on the professional service needs of local governments.

4. Compliance costs: There are no additional compliance costs to small business regulated parties or local governments associated with the implementation of, and continued compliance with, these emergency/proposed amendments.

5. Economic and technological feasibility: The emergency/proposed amendments are concerned with rate/fee setting in the affected facilities or services, and only revise the reimbursement methodologies which describe the ways in which OMRDD calculates the appropriate reimbursement of such facilities and services. The amendments do not impose on regulated parties the use of any technological processes.

6. Minimizing adverse impact: The purpose of these emergency/proposed amendments is to allow OMRDD to reimburse providers of the referenced services at revised levels in effect as of February 1, 2007. Specifically, these amendments establish trend factor adjustments for the regulations governing the reimbursement of the referenced facilities/services for the rate/fee periods beginning January 1, 2007 and July 1, 2007. The trend factor provisions will either have no impact on funding of small

business providers of services, or will have positive impacts resulting from increased reimbursements to the providers.

As previously stated, the emergency/proposed amendments will have no fiscal impact on local governments due to the implementation of the trend factors.

These amendments impose no adverse economic impact on regulated parties or local governments. Therefore, regulatory approaches for minimizing adverse economic impact suggested in section 202-b(1) of the State Administrative Procedure Act are not applicable.

7. Small business and local government participation: To the extent that information regarding provider reimbursement has been available, OMRDD has shared and discussed such information with provider representatives.

In addition, OMRDD is required to hold public hearings only on those amendments to section 671.7 as they may affect reimbursement of the room and board components of the community residence fees. However, it has been OMRDD's longstanding practice to enlarge the scope of these scheduled public hearings so as to include all of the emergency/proposed amendments contained in this rule making, as well as to provide an opportunity to comment on any aspect of the various rate and fee setting methodologies. These hearings are scheduled to be held on April 9, 2007 (Brooklyn DDSO) and April 10 (OMRDD, 44 Holland Avenue), according to the specifications contained in the Notice for this rule making.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not submitted because the amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. The amendments are concerned with providing necessary revisions to the reimbursement methodologies which OMRDD uses in determining the reimbursement of the affected developmental disabilities services or facilities. OMRDD expects that adoption of the amendments will not have adverse effects on regulated parties. Further, the amendments will have no adverse fiscal impact on providers as a result of the location of their operations (rural/urban), because the overall reimbursement methodologies are primarily based upon reported costs of individual facilities, or of similar facilities operated by the provider or similar providers in the same area. Thus, the reimbursement methodologies have been developed to reflect variations in cost and reimbursement which could be attributable to urban/rural and other geographic and demographic factors.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial impact on jobs and/or employment opportunities. This finding is based on the fact that the amendments are concerned with providing revisions to the reimbursement methodologies which OMRDD uses in determining the appropriate reimbursement of the affected developmental disabilities services or facilities. The amendments establish trend factors to be applied within the context of reimbursement methodologies for the various facility/program types. These trend factor increases are not expected to result in changes in reimbursements significant enough to affect staffing patterns within the regulated facilities or programs. They will not have any adverse impacts on jobs or employment opportunities in New York State.

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-33-06-00022-P	August 16, 2006
PSC-33-06-00023-P	August 16, 2006
PSC-37-06-00013-P	September 13, 2006
PSC-37-06-00014-P	September 13, 2006
PSC-38-06-00003-P	September 20, 2006
PSC-38-06-00004-P	September 20, 2006

PSC-38-06-00005-P	September 20, 2006
PSC-38-06-00006-P	September 20, 2006
PSC-38-06-00007-P	September 20, 2006
PSC-38-06-00008-P	September 20, 2006
PSC-38-06-00009-P	September 20, 2006
PSC-38-06-00010-P	September 20, 2006
PSC-39-06-00014-P	September 27, 2006
PSC-44-06-00011-P	November 1, 2006
PSC-44-06-00012-P	November 1, 2006
PSC-44-06-00013-P	November 1, 2006
PSC-45-06-00010-P	November 8, 2006

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Service Improvement Plans by Verizon New York Inc.

I.D. No. PSC-08-07-00006-P

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

Proposed action: The commission is considering Verizon New York Inc.'s service improvement plans filed with the commission on Feb. 2, 2007. The commission may accept the proposed plans, or take other action as required to ensure that performance meets the level specified in the commission's rules.

Statutory authority: Public Service Law, art. 5, sections 91(1), 97 and 98

Subject: Verizon New York Inc.'s service improvement plans.

Purpose: To consider Verizon New York Inc.'s service improvement plans.

Substance of proposed rule: The Commission is considering Verizon New York Inc.'s service improvement plans filed with the Commission on February 2, 2007. The Commission may accept the proposed plans, or take other action, as required to ensure that performance meets the level specified in the Commission's rules.

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.

(03-C-0971SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Citizens Telecommunications Company of New York, Inc. and Sprint Communications Company L.P.

I.D. No. PSC-08-07-00007-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Citizens Telecommunications Company of New York, Inc. and Sprint Communications Company L.P.

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

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

Purpose: To amend the agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Citizens Telecommunications Company of New York, Inc. and Sprint Communications Company L.P. in October 2003.

The companies subsequently have jointly filed amendments to clarify the provisions regarding their interconnection trunking arrangements.

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.

(03-C-1790SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Frontier Telephone of Rochester, Inc. and Sprint Communications Company L.P.

I.D. No. PSC-08-07-00008-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Frontier Telephone of Rochester, Inc. and Sprint Communication Company L.P.

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

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

Purpose: To amend agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Frontier Telephone of Rochester, Inc. and Sprint Communications Company L.P. in March 2004. The companies subsequently have jointly filed amendments to clarify the provisions regarding their interconnection trunking arrangements.

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.

(03-C-1789SA2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Interconnection Agreement between Sprint Communications Company L.P. and Frontier Communications of AuSable Valley, Inc., et al.

I.D. No. PSC-08-07-00009-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Sprint Communications Company L.P. and Frontier Communications of AuSable Valley, Inc. Frontier Communications of Sylvan Lake, Inc., Frontier Communications of New York, Inc., Frontier Communications of Seneca-Gorham, Inc. and Ogden Telephone Company.

Statutory authority: Public Service Law, section 94(2)
Subject: Inter-carrier agreement to interconnect telephone networks for the provisioning of local exchange service.
Purpose: To amend the agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Sprint Communications Company L.P. and Frontier Communications of AuSable Valley, Inc., Frontier Communications of Sylvan Lake, Inc., Frontier Communications of New York, Inc., Frontier Communications of Seneca-Gorham, Inc. and Ogden Telephone Company in March 2004. The companies subsequently have jointly filed amendments to clarify the provisions regarding their interconnection trunking arrangements.

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.
 (04-C-0617SA2)

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

Applicability Clauses by Consolidated Edison Company of New York, Inc.

I.D. No. PSC-08-07-00010-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison) to make various changes in the rates, charges, rules and regulations contained in its schedule for electric service, P.S.C. No. 9, to become effective May 18, 2007.

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

Subject: Applicability clause—residential service.

Purpose: To revise the applicability clauses for service classification nos. 1 and 7.

Substance of proposed rule: The Commission is considering Consolidated Edison Company of New York, Inc.'s (Con Edison's) request to revise the applicability clauses for Service Classification (SC) No. 1 - Residential and Religious and No. 7 - Residential and Religious - Heating. Con Edison proposes to permit a landlord to take service under the landlord's name under SC Nos. 1 and 7, as applicable, for apartments having a Rent Increase Exemption at the time a multiple dwelling is converted from rent inclusion to direct metering, subject to certain conditions. Con Edison's filing has a proposed effective date of May 18, 2007. The Commission may approve, reject or modify, in whole or in part, Con Edison'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-E-0157SA1)

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

Water Rules, Rates and Charges by Bristol Water Works Corporation

I.D. No. PSC-08-07-00011-P

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

Proposed action: The Public Service Commission is considering whether to approve or reject, in whole or in part, or modify, the complaint filed by 44 customers of Bristol Water Works Corporation to investigate the metering and billing practices of the water company.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (10), and 89-i

Subject: Water rules, rates and charges.

Purpose: To investigate the metering and billing practices of Bristol Water Works Corporation.

Substance of proposed rule: On December 18, 2006, 44 customers of Bristol Water Works Corporation (Bristol or the company), who are residents of Bristol Harbour Condominiums, filed a complaint requesting that the New York State Public Service Commission investigate the company's metering and billing practices. The company provides metered water service to 4 commercial customers and flat rate water service to approximately 316 residential customers in a real estate development known as Bristol Harbour Village Development in the Town of South Bristol, Ontario County. The Commission may approve or reject, in whole or in part, or modify, the customer's complaint.

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.

(06-W-1546SA1)

State University of New York

NOTICE OF ADOPTION

Traffic and Parking Regulations at SUNY College at New Paltz

I.D. No. SUN-45-06-00006-A

Filing No. 160

Filing date: Feb. 5, 2007

Effective date: Feb. 21, 2007

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

Action taken: Amendment of sections 582.3 and 582.10 of Title 8 NYCRR.

Statutory authority: Education Law, section 360(1)

Subject: Traffic and parking regulations of the State University of New York College at New Paltz.

Purpose: To increase the allowable amount for fines for violations of parking and traffic regulations and to bring the traffic and parking regulations into conformity with L. 2005, ch. 699, by authorizing the exemption

of veterans attending the State University of New York College at New Paltz from parking and registration fees.

Text or summary was published in the notice of proposed rule making, I.D. No. SUN-45-06-00006-P, Issue of November 8, 2006.

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

Text of rule and any required statements and analyses may be obtained from: Ellen Lacy Messina, Associate Counsel, State University of New York, State University Plaza, S321, Albany, NY 12246, (518) 443-5400, e-mail: Ellen.Messina@suny.edu

Assessment of Public Comment

The agency received no public comment.

Department of Transportation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

National Manual on Uniform Traffic Control Devices for Streets and Highways

I.D. No. TRN-08-07-00005-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 repeal Chapter V and add a new Chapter V to Title 17 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 1680(a); and Transportation Law, section 14(18)

Subject: Repeal the existing provisions of Title 17 NYCRR Chapter V commonly known as the New York State Manual of Uniform Traffic Control Devices. Add a new Title 17 NYCRR Chapter V, to be commonly known as the New York State Supplement to the National Manual on Uniform Traffic Control Devices for Streets and Highways - 2003 Edition.

Purpose: To modify certain provisions of the National Manual on Uniform Traffic Control Devices for Streets and Highways - 2003 Edition (MUTCD) in order to retain certain New York authorized traffic control devices and practices related to traffic control devices that are currently authorized by the existing Title 17 NYCRR, Chapter V but are not recognized by the National Manual on Uniform Traffic Control Devices for Streets and Highways - 2003 Edition as adopted by L. 2006, ch. 722.

Substance of proposed rule (Full text is posted at the following State website: www.nysdot.gov and www.nysdot.gov/portal/page/portal/divisions/operating/oom/transportation-systems/traffic-operations-section/mutcd): This rule making repeals existing provisions of Title 17 NYCRR Chapter V relating to the regulations commonly known as the New York State Manual of Uniform Traffic Control Devices (MUTCD). The rule making is necessitated by the September 13, 2006 changes to Section 1680 of the New York State Vehicle and Traffic Law, wherein the provisions of the National Manual on Uniform Traffic Control Devices for Streets and Highways – 2003 Edition (National MUTCD) will be adopted effective September 13, 2007 as New York's standards governing the use of traffic control devices on streets, highways and bicycle paths open to public travel.

While the changes to the New York State Vehicle and Traffic Law adopt the provisions of the National MUTCD, they also allow the Commissioner to promulgate regulations to modify certain provisions of the National MUTCD in order to retain the standards and practices that currently meet the unique needs of New York. This rule making provides for the New York State Supplement and contains:

1. Existing devices not found in the National MUTCD (e.g., the YIELD TO THE BLIND sign);
2. Existing provisions that are stricter than their associated provisions in the National MUTCD (e.g., New York does not allow for the creation of new traffic control devices without Department approval);
3. Existing devices and provisions that must be retained in order to remain in conformance with New York State law (e.g., legal bridge clearances); and

4. Existing devices and provisions that differ from their parallel provisions in the National MUTCD, but do not violate any National mandates (e.g., general service symbol signs are subject to different rules of use).

While the adoption of the National MUTCD imposes some changes upon traffic control devices in New York, these regulations providing for a New York State Supplement will serve to mitigate the total number of changes that would have otherwise been made necessary due to the adoption of the National MUTCD as the New York State Standard for traffic control devices on public ways of travel. The New York State Supplement accomplishes this mitigation by modifying approximately 175 of the National MUTCD's 1000 sections, and adding approximately 50 new sections that carry forward provisions of the existing New York State Manual of Uniform Traffic Control Devices.

Text of proposed rule and any required statements and analyses may be obtained from: David Woodin, Department of Transportation, Traffic Operations Section, Transportation System Operations Bureau, 50 Wolf Rd., POD 4-2, Albany, NY 12232, (518) 457-1793, e-mail: dwoodin@dot.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

Pursuant to Chapter 722 of the Laws of 2006, New York State has adopted the National Manual on Uniform Traffic Control Devices for Streets and Highways – 2003 Edition (National MUTCD) as the primary standard governing the use of traffic control devices on streets, highways and bicycle paths open to public travel within the State, effective September 13, 2007. However, this primary standard only governs the use of traffic control devices to the extent that the National MUTCD does not conflict with current State law.

Section 1680 of the Vehicle and Traffic Law allows the Commissioner of Transportation to modify the provisions of the National MUTCD by the adoption of a New York State Supplement in order to carry forward existing devices and provisions that must be retained in order to remain in conformance with New York State Law.

Two facets of this proposed rule making result from, and are necessitated by, the amendments to subdivision (a) of Section 1680 of the Vehicle and Traffic Law enacted by Chapter 722 of the Laws of 2006. First, adoption of the National MUTCD as New York State's primary standard governing the use of traffic control devices requires, in parallel, the repeal of New York State's current standard, which resides in existing regulation as Title 17 NYCRR Chapter V. Second, a subset of currently authorized traffic control devices and other provisions of the existing Title 17 NYCRR Chapter V need to be brought forward to supplement the National MUTCD. This rule making adds a new Title 17 NYCRR Chapter V as the New York State Supplement to bring forward existing devices and provisions that must be retained in order to remain in conformance with New York State Law. The traffic control devices and their provisions for use brought forward into the New York State Supplement simply restate:

1. Existing New York signs and/or other traffic control devices that are unique to New York State, and that are not found in the National MUTCD; and/or
2. Existing New York regulations and standards that are stricter or different than those outlined in the National MUTCD and are found not to violate any National MUTCD mandate.

The actual text of mailings and the proposed regulation can be retrieved directly from the following web address: www.nysdot.gov/portal/page/portal/divisions/operating/oom/transportation-systems/traffic-operations-section/mutcd.

As this proposed rule making does not contain any substantive changes to current standards or practices, no impact is expected to any State or local government and industry. Accordingly, the Department is treating this proposed change as a consensus rule making.

Job Impact Statement

1. Nature of impact:

The repeal of the existing provisions of Title 17 NYCRR Chapter V (New York State Manual of Traffic Control Devices) is necessitated by the September 13, 2006 action of the New York State Legislature, which amended Section 1680 of New York State Vehicle and Traffic Law. This change to the Vehicle and Traffic Law adopted the National Manual on Uniform Traffic Control Devices for Streets and Highways-2003 Edition, as New York State's standard for traffic control devices. The content of the proposed new Title 17 NYCRR Chapter V regulation retains provisions of New York State Regulations not recognized by the National MUTCD and

will not have a significant impact as it only contains those portions currently found in existing regulation.

2. Categories and numbers affected:

This regulation applies to all governments that install traffic control devices, all highway users, all businesses that depend on transportation, and all businesses that make, distribute or install traffic control devices.

3. Regions of adverse impact:

These regulations will not have any adverse impact on jobs or employment in any regions of the state.

4. Minimizing adverse impact:

The Department expects no adverse impact due to this rule making.

5. Self-employment opportunities:

This rule making has no effect on small businesses or professional services.