

RULE REVIEW

Department of Agriculture and Markets

Pursuant to Section 207 of the State Administrative Procedure Act, notice is hereby provided of the following rules which the Department of Agriculture and Markets intends to review in 2007. Public comment on the continuation or modification of these regulations will be accepted until April 2, 2007. All section and Part references are to Title 1 of the New York Code of Rules and Regulations.

Section 139.2 Control of the Asian Long Horned Beetle.

Statutory authority: Agriculture and Markets Law sections 18, 164 and 167.

The continuation of this regulation is necessary to preserve the Asian Long Horned Beetle quarantine in certain areas of Brooklyn, Queens and Manhattan, New York. The quarantine area has been repeatedly expanded in an effort to control the spread of the beetle, most recently in 2003.

Part 351 Animal Health Requirements for Admission to Fairs.

Statutory authority: Agriculture and Markets Law sections 18, 31-b, 72, 74, and 287.

The continuation of this regulation is necessary to maintain health certification requirements for animal exhibited at fairs. Livestock exhibitions at fairs have the potential to facilitate the spread of communicable or infectious diseases among the domestic animal population of the state. The public is also exposed directly to these animals during the exhibitions, increasing the risk of transmission of certain diseases from animals to humans.

Comments should be addressed to:

Name: Diane B. Smith

Address: New York State Agriculture and Markets

Counsel's Office

10B Airline Drive

Albany, New York 12235

Phone: (518) 457-6468

E-mail: diane.smith@agmkt.state.ny.us

Banking Department

Pursuant to Section 207 of the State Administrative Procedure Act, Review of Existing Rules, notice is hereby given of the following rules which the Banking Department will be reviewing this year to determine whether they should be continued or modified. These rules were adopted in 2002.

Amendments to Part 41 of the General Regulations of the Banking Board, 3 NYCRR (Restrictions and Limitations on High Cost Home Loans)

- a. Description of rule: Prohibits the financing of single premium credit insurance in connection with high cost home loans and responds to requests from the residential mortgage lending industry for clarification of certain provisions of the regulation.

- b. Legal basis for the rule: Banking Law Sections 6-I, 590-a, 590(3) and Article 12-D.

- c. Need for the rule: The Department has adopted further amendments to this regulation.

Amendments to Parts 80 and 82 of the General Regulations of the Banking Board, 3 NYCRR (Investment in Junior Lien Mortgage Loans by Commercial Banks, Savings Banks, Credit Unions, Mortgage Bankers and Savings and Loan Associations; Alternative Mortgage Instruments)

- a. Description of rule: Amends Parts 80 and 82 to conform to Part 38 of the General Regulations of the Banking Board with respect to the use of electronic media for disclosure and notification requirements for junior lien and alternative mortgage loans and the description of certain permissible loan fees.

- b. Legal basis for the rule: Banking Law Sections 6, 14, 103, 235, 380, 454 and 590-d.

- c. Need for the rule: The amendments are necessary to permit banks, mortgage bankers and mortgage brokers to comply with certain disclosure and notification requirements through the use of electronic media and to clarify their ability to collect certain fees.

Amendments to Part 322 of the Superintendent's Regulations, 3 NYCRR (Pledge of Assets and Maintenance of Assets by Licensed Foreign Banking Corporations in New York)

- a. Description of rule: Reduces asset pledge requirement for foreign banking corporations operating a state-licensed branch or agency in New York from 5% of total third party liabilities to 1%.

- b. Legal basis for the rule: Banking Law Section 202-b(1).

- c. Need for the rule: Requiring foreign banking corporations with only a branch or agency office in New York to maintain some funds here gives the Superintendent the ability to utilize the funds in a liquidation scenario to pay liquidation expenses and protect creditors. The Department has proposed further amendments to these regulations, which it expects will be adopted in the near future.

Public comment on the continuation or modification of the above rule is invited. Comments must be received within 45 days of the date of publication of this notice. Comments should be submitted to: Sam L. Abram, Secretary of the Banking Board, State of New York Banking Department, One State Street, New York, NY 10004, Telephone: (212) 709-1658, Email: sam.abram@banking.state.ny.us

Office of Children and Family Services

Part 1 -Review of Existing Regulations

Pursuant to SAPA Section 207, the Office of Children and Family Services (OCFS) is required to review regulations that were

promulgated five years previously to determine whether to continue, consolidate or modify the regulations. The following information relates to regulations promulgated during 2002 that must be reviewed during 2007.

1. CFS-42-01-00004. Market rates for subsidized child care. 18 NYCRR 415.9. These regulations were amended in 2002, and thereafter reviewed and amended again in 2004 and 2006, in accordance with federal statutory requirements that require that the rates be updated biennially based on a market rate survey of child care providers. In 2007, OCFS will be conducting the next market rate survey. Therefore, these regulations will be reviewed pursuant to SAPA Section 207 in 2011.

2. CFS-34-02-00001. Business Enterprise Program. 18 NYCRR Part 729. These regulations established a basis in state regulation for the operation and administration of the Commission for the Blind and Visually Handicapped Business Enterprise program. Continuation of the regulations, which are required by Section 8714-a of the Unconsolidated Laws, is also deemed necessary by OCFS to continue the effective administration of the program.

3. CFS-35-02-00002. Adoption Subsidies for foster children. 18 NYCRR section 421.24. These regulations promote the adoption of foster children who have resided in a foster home for six months or more. Continuation of the regulations is deemed necessary by OCFS to continue to promote the expeditious adoption of foster children.

4. CFS-42-02-00021. Foster family boarding homes. 18 NYCRR Part 443. The regulations require the same standards for approved foster homes and certified foster homes pursuant to federal requirements. Those federal requirements remain in effect, therefore, continuation of the regulations is deemed necessary by OCFS.

5. CFS-23-01-00001-A. Criminal history record checks. 18 NYCRR sections 421.15(c)(8) and 421.27(d)-(g) and (k). These amendments relating to state criminal history record checks applicable to the application process for prospective adoptive parents were enacted to implement state law that remains in effect. Continuation of the regulations is deemed necessary by OCFS. OCFS will be amending the regulations in 2007 to incorporate new State and federal statutory provisions that require federal criminal history record checks.

Public comments on the above are invited and will be accepted through February 23, 2007 and should be directed to: Kathleen R. DeCataldo, Esq., Director of Legislation and Special Projects, NYS Office of Children and Family Services, 52 Washington Street, Room 135N, Rensselaer, New York 12144. Email address: GG5107@ocfs.state.ny.us.

Part 2 - Report of Prior Review of Existing Regulations

In January, 2006, OCFS published in the State Register, a list of regulations adopted by OCFS in 2001. The regulatory sections reviewed are listed below. No comments were submitted in response to the listing of the regulations to be reviewed. After reviewing the regulations on that list, OCFS has determined the following:

1. CFS-52-00-00003. Report of child abuse and maltreatment. 18 NYCRR sections 432.2(b)(3)(i) and (f)(3)(xxviii). The amendments relate to reports of child abuse and maltreatment and implement existing state law that remains in effect. After review during 2006, continuation of the regulations has been deemed necessary by OCFS.

2. CFS-02-01-00003. Standards for providers of subsidized child care services. 18 NYCRR sections 415.4(a), (c), (f) and 415.8. The regulations establishing standards for providers of subsidized child care services were promulgated in response to changes in federal and state law that require minimum health and safety standards for providers of subsidized child care. These federal and state requirements remain in effect. After review during 2006, continuation of the regulations has been deemed necessary by OCFS.

3. CFS-23-01-00002-A. Federal Adoption and Safe Families Act. 18 NYCRR 421.24(e)(2), 430.12(c), 431.9(e), 421.06(o)(5), 421.27(j) and 426.9. The amendments to regulations were required to comply with federal law that remains in effect. After review during 2006, continuation of the regulations has been deemed necessary by OCFS.

Education Department

Section 207 of the State Administrative Procedure Act (SAPA) requires that each State agency review, after five years and thereafter at five-year intervals, each of its rules that is adopted on or after January 1, 1997 to determine whether such rules should be modified or continued without modification.

Pursuant to SAPA section 207, the State Education Department submits the following list of its rules that were adopted during calendar year 2002 and invites public comment on the continuation or modification of such rules. All section and part references are to Title 8 of the New York Code of Rules and Regulations. Comments should be sent to the respective agency representative listed below for each particular rule, and must be received within 45 days of the date of publication of this Notice.

OFFICE OF ELEMENTARY, MIDDLE, SECONDARY AND CONTINUING EDUCATION

Section 3.32 of the Regents Rules and section 100.2(p) of the Commissioner's Regulations, regarding Public School registration

Description of Rule: to establish a formal process for the registration of new public schools to ensure the fulfillment of Regents standards relating to the accountability of public schools. The Board of Regents will grant approve if it is satisfactorily demonstrated that a school will be operated in an educationally sound manner; is in compliance with applicable statutes, rules and regulations relating to public schools; and will operate in accordance with applicable building codes and pursuant to a certificate of occupancy. Need for Rule: Clarification of policy for the registration of public schools.

Legal Basis for Rule: Education Law sections 101 (not subdivided), 207 (not subdivided), 210 (not subdivided), 214 (not subdivided), 215 (not subdivided), 305(1) and (2) and (19) and 309 (not subdivided).

Part 120 of the Commissioner's Regulations, relating to the No Child Left Behind Act of 2001 (Pub. L. 107-110)

Description of Rule: Ensure compliance of the State and local educational agencies with the federal No Child Left Behind Act of 2001 (Pub.L. 107-110) and the conforming State legislation enacted by Chapter 425 of the Laws of 2002 as a condition of receipt of federal funding under Title I of the Elementary and Secondary Education Act of 1965, as amended. Sections 120.1 and 120.2 of the Regulations of the Commissioner provide a description of the purposes of Part 120 and applicable general definitions. Section 120.3 provides for the implementation of the public school choice provisions that require a federal Title I local educational agency that has a school in school improvement status, corrective action status or restructuring status to provide all students enrolled in such school with the option to transfer to another public school served by the local educational agency at the same grade level that is not in school improvement, corrective action or restructuring status. Section 120.4 establishes criteria and procedures for the approval of providers of supplemental education services. Section 120.5 establishes requirements to ensure that local educational agencies implement provisions to allow any student who attends a persistently dangerous public elementary or secondary school or who is a victim of a violent criminal offense, to attend a safe public school within the local educational agency.

Need for Rule: Compliance with the federal No Child Left Behind Act of 2001 and Chapter 425 of the Laws of 2002.

Legal Basis for Rule: Education Law sections 101 (not subdivided), 207 (not subdivided), 215 (not subdivided), 305(1), (2) and (33), 2802(7), 3214(3)(d) and (f) and Chapter 425 of the Laws of 2002.

Section 136.4 of the Commissioner's Regulations, relating to Automated External Defibrillators

Description of Rule: Require school districts, BOCES, county vocational education and extension boards and charter schools to provide and maintain on-site in each instructional school facility automated external defibrillator (AED) equipment in quantities and types deemed to be adequate to ensure ready and appropriate access for use during emergencies, and to ensure the presence of at least one staff person who is trained in the operation and use of an AED whenever the facility is used for school-sponsored or school-approved curricular or extracurricular events or wherever activities for school-sponsored athletic contests or competitive athletic events are held.

Need for Rule: Compliance with Chapters 60 and 61 of the Laws of 2002.

Legal Basis for Rule: Education Law sections 207 (not subdivided) and 917(1) and (2) and Chapters 60 and 61 of the Laws of 2002.

Sections 151-1.2 of the Commissioner's Regulations, relating to Universal Prekindergarten Programs

Description of Rule: Defines, for summer only universal prekindergarten programs, an "eligible child" as a child who resides within the school district and is five years of age on or after December 1st of the year in which he or she is enrolled, or who will otherwise be first eligible to enter public school kindergarten commencing with the current school year.

Need for Rule: Compliance with Chapter 383 of the Laws of 2001.

Legal Basis for Rule: Education Law sections 101 (not subdivided), 207 (not subdivided) and 3602-e(10)(a)(4) and (12) and section 1-a of Part F of Chapter 383 of the Laws of 2001.

Section 155.25 of the Commissioner's Regulations, relating to Electrically Operated Partitions

Description of Rule: Establish minimum standards for the construction, maintenance and operation of electrically operated partitions or room dividers located in classrooms or other facilities used by students in public and nonpublic schools, including charter schools, and BOCES within the State. It also requires appropriate and conspicuous notice regarding the safe and proper operation and supervision of the electrical device operating such partition, training of staff in the safe operation of the partition, and maintenance of all equipment.

Need for Rule: Compliance with Chapter 217 of the Laws of 2002 and Chapter 231 of the Laws of 2002.

Legal Basis for Rule: Education Law sections 101 (not subdivided), 207 (not subdivided), 305(1) and (2), 409-f(1) and (2) and 3602(6-c) and Chapter 217 of the Laws of 2001.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the continuation or modification of any of the above rules by contacting:

Jean Stevens

Interim Deputy Commissioner

New York State Education Department

Office of Elementary, Middle, Secondary and Continuing Education

Education Building Annex, Room 875

Albany, New York 12234

(518) 474-5915

OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES

Sections 246.3 and 246.6, relating to the Vocational Rehabilitation Program

Description of Rule: The rule simplifies and eliminates obsolete language and inserts up to date language in State regulations pertaining to the Department's operation of the vocational rehabilitation program, specifically, the provision of services through community rehabilitation programs.

Need for Rule: The rule is necessary to conform the Commissioner's Regulations to changes in federal law made in the 1998 reauthorization of the Rehabilitation Act (Pub.L. 105-22) and thereby ensure that the State vocational rehabilitation program is conducted according to federal standards.

Legal Basis for Rule: Education Law sections 101 (not subdivided), 207 (not subdivided) and 1004(1).

Section 200.2 of the Commissioner's Regulations, relating to Instructional Material in Alternative Formats

Description of Rule: The rule requires every school district and BOCES to develop a plan to ensure that all instructional materials to be used in the schools of the district (or in the programs of the BOCES) are available in a usable alternative format for every student with a disability in accordance with his or her individual needs and course selections at the same time that such materials are available to non-disabled students.

Need for Rule: The rule is necessary to implement Chapter 377 of the Laws of 2001, which requires every school district and BOCES to develop a plan to ensure that all instructional materials to be used in the schools of the district (or in the programs of the BOCES) are available in a usable alternative format for every student with a disability in accordance with his or her educational needs and course selections at the same time that such materials are available to non-disabled students. The rule was revised in 2005 to add the Individuals with Disabilities Education Act (IDEA) requirement that instructional materials meet the National Instructional Materials Accessibility Standard defined in section 1474(e)930(B) of the reauthorized IDEA (Public Law 108-446).

Legal Basis for Rule: Education Law sections 207, 1604(29-a), 1709(4-a), 1950(4-a), 2503(7-a), 2554(7-a), 3602(10)(b), 4403(3) and Chapter 377 of the Laws of 2001.

Sections 200.2, 200.4 and 200.16 of the Commissioner's Regulations, relating to Individualized Education Programs (IEPs)

Description of Rule: The rule provides copies of individualized education programs (IEP's) to teachers, related service providers and other providers.

Need for Rule: The rule is necessary to implement Education Law section 4402(7), as added by Chapter 408 of the Laws of 2002, which requires that school districts establish a policy that: ensures that teachers and other service providers are provided with students' individualized education programs (IEPs) prior to the implementation of such IEPs; ensures the confidentiality of such IEPs; and requires that teachers, assistants, support staff persons and other service providers be informed of their responsibilities in relation to the implementation of students' IEPs prior to the implementation of such IEPs. The rule was subsequently revised in 2003 and 2005 to clarify responsibilities and language and to ensure that amendments to the Individualized Education Plan (IEP) were also required to be provided to certain school personnel to implement the flexibility to provide the amendments to the IEP under the reauthorized IDEA.

Legal Basis for Rule: Education Law sections 101 (not subdivided), 207 (not subdivided), 4402(7), 4403(3), 4410(13) and Chapter 408 of the Laws of 2002.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of any of the above rules by contacting:

Rebecca H. Cort

Deputy Commissioner
New York State Education Department
Office of Vocational and Educational Services for Individuals with Disabilities

One Commerce Plaza, Room 1606
Albany, New York 12234
(518) 474-2714

OFFICE OF HIGHER EDUCATION

Sections 3.47(c)(4) and 3.50(b)(16) of the Regents Rules, relating to authorization of a degree abbreviation

Description of Rule: The rule authorizes the use by New York postsecondary degree-granting institutions authorized to confer the Bachelor of Music degree of the abbreviation "B.M." for that degree as an alternative to the existing abbreviation "Mus.B."

Need for Rule: The proposed rule is needed to authorize the B.M. as an additional abbreviation for the Bachelor of Music degree in order to be consistent with the abbreviation commonly used by other jurisdictions for this degree.

Legal Basis for Rule: Sections 207 (not subdivided), 210 (not subdivided), 218(1), and 224(4) of the Education Law.

Sections 3.14, Part 4 and 13.11 of the Regents Rules and section 52.23 of the Commissioner's Regulations, relating to accreditation of teacher education programs and voluntary institutional accreditation for Title IV purposes

Description of Rule: The rule establishes standards and procedures that must be met by institutions of higher education seeking accreditation of their teacher education programs by the Board of Regents; aligns related provisions in the Rules of the Board of Regents and the Regulations of the Commissioner of Education with the new standards and procedures; and renumbers the rule and clarifies language related to voluntary institutional accreditation for Title IV purposes by the Commissioner of Education and the Board of Regents.

Need for Rule: The rule is needed to improve the quality of teacher education programs to ensure that teachers are well qualified to teach to the State Learning Standards for Students, established by the Board of Regents in Part 100 of the Regulations of the Commissioner of Education. The rule carries out the policy of the Board of Regents as stated in its policy paper, "New York's Commitment: Teaching to Higher Standards," and prescribed in the Regulations of the Commissioner of Education, that each teacher education program must be accredited by the Board of Regents or an acceptable professional education accrediting association. The rule responds to requests from colleges that offer teacher education programs that the Regents offer an alternative means to become accredited.

Section 52.21(b)(2)(iv)(c) of the Commissioner's regulations requires the accreditation of programs that prepare classroom teachers for initial or professional certificates either by an acceptable professional education accrediting association or by the Regents, pursuant to a Regents accreditation process. The rule establishes this process.

The rule also is needed to align existing provisions in the Rules of the Board of Regents and the Regulations of the Commissioner of Education with the new procedures for Regents accreditation of teacher education programs. Specifically, it is needed to include responsibilities related to teacher education program accreditation explicitly among the duties of the State Professional Standards and Practices Board for Teaching; to retitle and renumber Part 4 of the Rules of the Board of Regents; to clarify language in the standards and procedures for institutional accreditation by the Commissioner of Education and the Regents for purposes of Title IV of the Higher Education Act of 1965; and to prescribe requirements relating to representations by colleges and universities as to accreditation by the Board of Regents and the Commissioner of Education.

In addition, the rule is needed to provide a substitute for existing procedures on denial of program reregistration, as prescribed in subdivision (a) of section 52.23 of the Regulations of the Commissioner of Education, when reregistration of a teacher education program is denied based upon a review conducted for the Regents accreditation of the program.

Legal Basis for Rule: Sections 207 (not subdivided), 210 (not subdivided), 212-c (not subdivided), 214 (not subdivided), 215 (not subdivided), and 305(1) and (2) of the Education Law.

Sections 87.3, 87.4, 87.5 and 87.9 of the Commissioner's Regulations, relating to fingerprinting and criminal history check of prospective school employees and applicants for teaching certification

Description of Rule: The rule sets forth requirements and procedures for the exchange of criminal history records between the State Education Department and City School District of the City of New York for statutorily prescribed individuals, and clarifies both appeal procedures for prospective school employees denied clearance for employment and the scope of the State Education Department's criminal history record check.

Need for Rule: The proposed rule is needed to implement Chapter 380 of the Laws of 2001, which authorizes the exchange of criminal history records of certain individuals, upon their authorization, between the State Education Department and the City School District of the City of New York.

Legal Basis for Rule: Sections 207 (not subdivided), 305(3)(a), 3004-b(1), 3035(3) and (3-a) of the Education Law and Chapter 380 of the Laws of 2001.

Section 52.21(b)(2)(iv)(b)(1) of the Commissioner's Regulations, relating to requirements for teacher education programs

Description of Rule: The rule requires teacher education programs to show that a minimum of 80 percent of its program graduates who have taken one or more of the examinations required for a teaching certificate in any given year, have received passing rates. A teacher education program in which fewer than 80 percent of its program graduates pass one or more state examinations required for a teacher certificate will undergo a registration review of its education programs.

Need for Rule: The rule aligns the definition for pass rates on teacher certification examinations, used for purposes of triggering a State Education Department registration review of teacher education programs, with the Federal definition, used for purposes of Title II of the Higher Education Act. This annual measurement provides a routine, systematic evaluation of teacher education programs, and a useful, proactive tool when used in conjunction with other data.

Previous regulations of the Commissioner of Education subjected teacher education programs to a registration review when fewer than 80 percent of students who complete the programs at an institution have passed teacher certification examinations. The rule changed the time period for determining the student pass rate for purposes of determining whether a teacher education program should be subject to registration review. It provides that the Department will consider the performance on each certification examination of those students completing an examination not more than five years before the end of the academic year in which the program is completed or not later than the September 30th following the end of such academic year. This definition is consistent with the definition required by the U.S. Department of Education for determining pass rates for teacher education programs for purposes of Title II of the Higher Education Act.

The rule simplifies the reporting requirements for higher education institutions in New York State. Staff at these institutions will not have to verify additional test takers for the computation a second pass rate used for the purpose of determining whether their teacher education programs would be subject to a registration review. The rule also

reduces confusion that may result from computing two pass rates for the same teacher education programs.

Legal Basis for Rule: Sections 207 (not subdivided), 210 (not subdivided), 215 (not subdivided), 305(1), and 3004(1) of the Education Law.

Section 80-2.6(c) of the Commissioner's Regulations, relating to requirements for certificate of teachers of the speech and hearing handicapped

Description of Rule: The rule enables licensed and registered speech-language pathologists in New York State to become certified as teachers of the speech and hearing handicapped through an alternative path. The rule enables such licensed individuals to become provisionally certified immediately based upon their preparation for licensure and permanently certified after having completed specified education, experience, and examination requirements.

Need for Rule: The rule is needed to address personnel shortages faced by New York schools. Teachers of the speech and hearing handicapped provide communication and language acquisition services to students who have Individualized Education Plans (IEPs). These teachers do not provide direct instruction in academic subjects but, rather, provide foundational skills that will impact on the students' current and future educational success. As a part of their clinical training, professionally licensed speech-language pathologists have experience working with children and have already attained a master's degree in speech-language pathology prior to licensure. They have also passed the national licensing examination in speech-language pathology. The rule will allow these licensed professionals, who have met a high standard of clinical training, to begin working in schools, and require them to meet specific pedagogy-related requirements before receiving the permanent certificate.

Legal Basis for Rule: Sections 207 (not subdivided), 305(1), (2), and (7), 3004(1) and 3006(1) of the Education Law.

Section 27-1.1 of the Regents Rules, relating to student eligibility for the Higher Education Opportunity Program

Description of Rule: The rule concerns income criteria for determining student eligibility to participate in the Higher Education Opportunity Program at nonpublic institutions of higher education. The rule also pertains to the economic eligibility criteria for the City University of New York's SEEK and College Discovery Programs, and the State University of New York's Educational Opportunity Program.

Need for Rule: The rule is needed in order to update the current criteria for determining student economic eligibility for the Higher Education Opportunity Program by: (1) taking into account inflationary conditions and changes in annual income; (2) accounting for New York State and local taxes and regional maintenance costs; (3) assuring consistency across the State-supported postsecondary opportunity programs; (4) maintaining the continuing linkage of these eligibility criteria with federally approved methods of needs analysis; and (5) recognizing the costs associated with a household that is solely supported by one member who is employed by two or more employers.

Legal Basis for Rule: Sections 207 (not subdivided) and 6451(1) of the Education Law.

80-1.7 and 80-5.15 of the Commissioner's Regulations, relating to requirements for the renewal of a provisional teaching certificate and the issuance of a limited certificate in the classroom teaching service

Description of Rule: The rule establishes the requirements for the renewal of an expired provisional teaching certificate for an additional five-year term and for the issuance of a limited certificate in the classroom teaching service which would permit candidates to teach for the period September 1, 2003 through August 31, 2004, while they are completing academic requirements for the provisional certificate.

Need for Rule: The rule was needed to address personnel shortages faced by New York public schools, by implementing initiatives,

endorsed by the Board of Regents Committee on Higher and Professional Education in May 2002, which were designed to increase the number of qualified candidates for teaching positions in the State's public schools. Section 80-1.7, which established the conditions for renewal of the Provisional teaching certificate, was subsequently repealed, effective April 13, 2006, and replaced with a new section 80-1.7. Section 80-5.15 established a Limited certificate available to candidates who taught under a temporary license during the 2002-2003 school year, enabling them to continue teaching during the 2003-2004 school year while completing coursework requirements to qualify for a Provisional certificate. Limited certificates were valid only for the period September 1, 2003 through August 31, 2004 and are not renewable.

Legal Basis for Rule: Sections 207 (not subdivided), 305(1), (2), and (7), 3004(1) and 3006(1) of the Education Law.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of any of the above rules by contacting:

Johanna Duncan-Poitier
Deputy Commissioner
Office of Higher Education and Office of the Professions
New York State Education Department
State Education Building
West Wing, Second Floor Mezzanine
Albany, New York 12234
(518) 474-3862
OFFICE OF THE PROFESSIONS

Section 29.13(a) of the Regents Rules, relating to unprofessional conduct in the practice of massage therapy

Description of Rule: The rule defines unprofessional conduct in the practice of massage therapy.

Need for Rule: The rule removes an exception in the definition of unprofessional conduct in the practice of massage therapy relating to patient records, which pertains to licensed practitioners who are providing massage therapy services to clients in a health spa or similar setting, when such services are not provided pursuant to a prescription by a health care practitioner. It makes applicable requirements that must be met by licensed massage therapists in all other settings, defining unprofessional conduct as: (1) failing to make available to a patient or client, upon request, copies of documents in the possession or under the control of the licensee which have been prepared for and paid for by the patient or client; and (2) failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. The rule also requires all patient records to be retained for at least six years, unless otherwise provided by law, and that obstetrical records and records of minor patients be retained for six years, and until one year after the minor patient reaches the age of 21 years.

Legal basis for rule: Education Law sections 207 (not subdivided), 6504 (not subdivided), 6506(1) and 6509(9).

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of the above rule by contacting:

Dr. Kathleen Doyle
State Board for Massage Therapy
State Education Building, 2nd Floor
89 Washington Avenue
Albany, NY 12234
(518) 474-3817 x 150

Section 29.7(a)(21)(ii)(a) of the Regents Rules, relating to unprofessional conduct in the practice of pharmacy and assistance to licensed pharmacists by unlicensed individuals

Description of Rule: The rule revises the list of activities, performed by an unlicensed individual while assisting a licensed pharmacist in the dispensing of a prescription, that would invoke the requirement that a licensed pharmacist supervise no more than two unlicensed persons.

Need for Rule: A licensed pharmacist may receive the assistance of unlicensed individuals to perform certain specified activities relating to the dispensing of drugs. Generally, a licensed pharmacist may not supervise more than two unlicensed individuals in the performance of these activities. An exception exists for unlicensed individuals who simply receive written or electronically transmitted prescriptions. The rule adds another exception for unlicensed individuals who perform the ministerial task of handing or delivering completed prescriptions to the patient or person authorized to act on behalf of the patient.

The rule is needed to enable pharmacists to supervise more than two unlicensed individuals doing the routine ministerial task of handing or delivering a prescription to a patient. Liberalizing the supervision requirement will not adversely affect public health or safety, while enabling licensed pharmacists to better utilize staff resources of the pharmacy.

Legal basis for rule: Education Law sections 207 (not subdivided), 6504 (not subdivided), 6506(1) and 6509(7) and (9), and 6801 (not subdivided).

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of the above rule by contacting:

Lawrence Mokhiber
State Board for Pharmacy
State Education Building, 2nd Floor
89 Washington Avenue
Albany, NY 12234
(518) 474-3817 x 130

Section 29.10 of the Regents Rules, relating to the definition of unprofessional conduct and work paper documentation and retention in the practice of public accountancy

Description of Rule: The rule establishes, in the definition of unprofessional conduct in the practice of public accountancy, standards that licensees must meet in relation to documentation in work papers and the retention of such papers.

Need for Rule: The rule is needed to establish uniform standards for the documentation in work papers and retention of such work papers in the profession of public accountancy. The rule is needed to ensure that work papers that support work products produced in the practice of public accountancy are maintained for a reasonable period of time, and that such work papers contain adequate documentation. The rule will serve to protect the public interest by ensuring that adequate documentation is available when a potential problem in a public accounting work product is identified. It will provide information that may be used by the State Education Department's Office of Professional Discipline when it conducts investigations of possible instances of professional misconduct.

Legal basis for rule: Education Law sections 207 (not subdivided), 6504 (not subdivided), 6506(1) and 6509(9), and 7401 (not subdivided).

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of the above rule by contacting:

Daniel Dustin
State Board for Accountancy
State Education Building, 2nd Floor
89 Washington Avenue
Albany, NY 12234

(518) 474-3817 x 160

Section 64.6 of the Commissioner's Regulations, relating to the practice of nursing and midwifery

Description of Rule: The rule identifies, in regulation, the licensed profession of midwifery as one of the licensed health care professions that is authorized to prescribe medical regimens to be executed by registered professional nurses that may direct the care provided by licensed practical nurses.

Need for Rule: Subdivisions (1) of section 6902 of the Education Law authorizes licensed physicians and dentists or other licensed health care providers legally authorized under Title VIII of the Education Law and in accordance with Commissioner's regulations to prescribe medical regimens to be executed by registered professional nurses. Subdivision (2) of section 6902(2) of the Education Law authorizes registered professional nurses or licensed physicians, dentists or other licensed health care providers legally authorized under Title VIII of the Education Law and in accordance with Commissioner's regulations to direct care provided by licensed practical nurses.

Legal basis for rule: Education Law sections 207 (not subdivided), 6507(1) and (2), 6902(1) and (2), and 6951(1), (2) and (3).

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of the above rule by contacting:

Barbara Zittel
State Board for Nursing
State Education Building, 2nd Floor
89 Washington Avenue
Albany, NY 12234
(518) 474-3817 x 120

Part 77 of the Commissioner's Regulations, relating to the licensing of physical therapists and certification of physical therapy assistants

Description of Rule: The rule implements Chapter 404 of the Laws of 2002 by establishing requirements for the renewal of a limited permit for a physical therapist assistant and prescribes the examination that must be passed for certification as a physical therapist assistant, and makes nonsubstantial changes in the requirements for licensure as a physical therapist.

Need for Rule: Section 6741-a of the Education Law, as added by Chapter 404 of the Laws of 2002, establishes an examination requirement for certification as a physical therapist assistant. This statutory requirement was added to ensure the competency of individuals who are certified in this field. The memorandum in support of Chapter 404 of the Laws of 2002, submitted by the sponsor of this legislation, states: "Passage of an appropriate examination provides a demonstration of a candidate's competency to work. Most states including those bordering New York require passage of an examination in order to work as a physical therapist assistant." The rule is needed to identify that specific examination, the National Physical Therapy Examination for Physical Therapist Assistants, that must be passed.

Section 6741-a of the Education Law, as added by Chapter 404 of the Laws of 2002, also adds provisions for limited permits for physical therapist assistants to practice under the supervision of a licensed physical therapist pending successful completion of the required examination. Subdivision (c) of section 6741-a provides that such permits may be renewed for no more than 6 months for justifiable cause. The rule is needed to establish the conditions upon which a limited permit may be renewed. These conditions are identical to the conditions that are applicable for the renewal of limited permits for physical therapists.

Finally, the rule is needed to make a number of nonsubstantial changes in the provisions relating to requirements for the licensure of physical therapists. Among other changes, citations to Education Law

have been changed to be consistent with changes in the numbering of Education Law provisions, as amended by Chapter 404 of the Laws of 2002; the title of the licensing examination has been corrected; and section headings have been modified to identify provisions concerning physical therapists.

Legal basis for rule: Education Law sections 207 (not subdivided), 6506(1), 6507(2)(a), 6734(d), 6735(c), 6740(c-1), and 6741-a(c), and Section 4 of Chapter 404 of the Laws of 2002.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of the above rule by contacting:

Claudia Alexander
State Board for Ophthalmic Dispensing
State Education Building, 2nd Floor West
89 Washington Avenue
Albany, NY 12234
(518) 474-3817 x 18

Section 61.15(a) of the Commissioner's Regulations, relating to mandatory continuing education for dentists

Description of Rule: The rule implements Chapter 237 of the Laws of 2001 which requires licensed dentists to complete, on a one-time basis, no fewer than two hours of acceptable coursework regarding the recognition, diagnosis, and treatment of the oral health effects of the use of tobacco and tobacco products, as part of the dentist's continuing education requirement.

Need for Rule: The rule is needed to make regulatory requirements consistent with this statutory change.

Legal Basis for Rule: Education Law sections 207 (not subdivided), 6502(1), 6504 (not subdivided), 6507(2)(a), and 6604-a(2) and (4).

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of the above rule by contacting:

Milton Lawney
State Board for Dentistry
State Education Building, 2nd Floor
89 Washington Avenue
Albany, NY 12234
(518) 474-3817 x 550

OFFICE OF CULTURAL EDUCATION

Sections 185.5, 185.13 and 185.14 of the Commissioner's Regulations, relating to Local Government Records Management

Description of Rule: The rule makes necessary changes and additions in order to update Records Retention and Disposition Schedule CO-2 and Records Retention and Disposition Schedule MI-1.

Need for Rule: The rule is needed to issue amendments to Records Retention and Disposition Schedule CO-2 and Records Retention and Disposition Schedule MI-1, thus providing counties and miscellaneous local governments with means to dispose of valueless records not listed on the existing schedules, to maintain voluminous records no longer than the records are needed, and to make the schedules easier to understand.

Legal basis for rule: Education Law section 207 (not subdivided) and Arts and Cultural Affairs Law section 57.25(2).

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of the above rule by contacting:

Christine Ward
Assistant Commissioner for the State Archives
New York State Education Department
New York State Archives
Room 9C49
Cultural Education Center

Albany, New York 12230
(518) 474-6926

OFFICE OF MANAGEMENT SERVICES

Sections 3.16 and 3.17 of the Commissioner's Regulations, relating to Charter School complaints

Description of Rule: The rule establishes procedures for the conduct of charter school revocation proceedings initiated by the Board of Regents, and delegates to the Commissioner the authority of the Board of Regents to investigate and respond to complaints against charter schools pursuant to Education Law section 2855(4), authority to issue remedial orders to charter schools pursuant to Education Law section 2855(4), and the authority to place a charter school on probationary status and to develop and impose a remedial action plan pursuant to Education Law section 2855(3).

Need for Rule: The rule is necessary to prescribe procedures for the conduct of charter school revocation proceedings by the Board of Regents pursuant to Education Law section 2855.

Legal basis for the Rule: Education Law sections 101 (not subdivided), 206 (not subdivided), 207 (not subdivided), 305(1), (2) and (20) and 2855(1), (2), (3), and (4).

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of any of the above rules by contacting:

Kathy A. Ahearn
Counsel and Deputy Commissioner for Legal Affairs
New York State Education Department
State Education Building, Room 112
Albany, New York 12234
(518) 474-6400
legal@mail.nysed.gov

Department of Environmental Conservation

The following rules were adopted by the NYS Department of Environmental Conservation (Department) during 2002, and pursuant to SAP A Section 207 have been reviewed. Comments on the rules that are being amended this year should be directed to the contact person listed in the main body of the Regulatory Agenda. Comments on any rules that are not being changed at this time will be accepted for 45 days and should be directed to the regulatory coordinator for the appropriate program, as listed below the rules.

DIVISION OF AIR RESOURCES

6 NYCRR Part 200, General Provisions. Statutory Authority: Environmental Conservation Law, Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 190302, 19-0303, 19-0305, 19-0306, 19-0311, 19-0319, 70-0109, and 71-2103. This Part contains general provisions that apply to many of the Part 200 series or regulations. This Part is modified often and there is currently an amendment to Part 200 proposed. This rule was last amended and updated effective August 9, 2006.

6 NYCRR Part 201, Permits and Registrations. Statutory Authority: ECL, Sections 10101, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 19-0306, 190311, 70-0109; United States Code, Section 7661[b]. This rule was last amended effective October 22, 2004. This regulation is included in the 2007 Regulatory Agenda.

6 NYCRR Part 217, Motor Vehicle Emissions. Statutory Authority: ECL Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 19-0320, 71-2103, 71-2105. This rule was amended effective October 30, 2002. This regulation is included in the 2007 Regulatory Agenda.

6 NYCRR Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines. Statutory Authority: ECL Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 190301, 19-0303,

19-0305, 71-2103, and 71-2105. This rule was amended and updated effective December 22, 2005. This regulation is included in the 2007 Regulatory Agenda.

6 NYCRR Part 219-7, Mercury Emission Limitations for Large Municipal Waste Combustors Constructed on or before September 20, 1994. This subpart was adopted in September 2002 to include federally mandated mercury emission limits. No further changes are anticipated for this rule.

6 NYCRR Part 219-8, Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or before August 30, 1999. This subpart was adopted in September 2002 to include federally mandated emission limits. No further changes are anticipated for this rule.

6 NYCRR Part 235, Consumer Products. Statutory Authority: Environmental Conservation Law Sections 1-0101,3-0301, 19-0103, 19-0105, 19-0301, and 19-0305. Part 235 regulates the Volatile Organic Compound (VOC) content of consumer products. VOCs contribute to the formation of ozone. Many areas of New York State currently are designated as non-attainment for the federal ozone standard, and additional VOC reductions are needed in order for New York to be able to demonstrate attainment with the standard. The Department has worked with other Ozone Transport Commission (OTC) states to develop VOC controls to be implemented throughout the OTC states. Part 235 is one of the rules that will be amended as part of this effort.

6 NYCRR Part 239, Portable Fuel Containers and Spouts. Statutory Authority: Environmental Conservation Law Sections 1-0101,3-0301, 19-0103, 19-0105, 19-0301, and 19-0305. Part 239 regulates the design of portable fuel containers (gas cans) and spouts. These design controls are intended to limit the emission of gasoline vapors through evaporation and spillage. Gasoline is a Volatile Organic Compound (VOC). VOCs contribute to the formation of ozone. Many areas of New York State currently are designated as non-attainment for the federal ozone standard, and additional VOC reductions are needed in order for New York to be able to demonstrate attainment with the standard. The Department has worked with other Ozone Transport Commission (OTC) states to develop VOC controls to be implemented throughout the OTC states. Part 239 is one of the rules that will be amended as part of this effort.

Regulatory Coordinator for the Division of Air Resources is Laura Becker, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3250. Telephone: 518-4028451. E-mail: ljbecker@gw.dec.state.ny.us

DIVISION OF ENVIRONMENTAL PERMITS

Regulatory Coordinator for the Division of Environmental Permits is Charles B. Gardner, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-1750. Telephone: 518-402-9154. E-mail: cbgardne@gw.dec.state.ny.us

DIVISION OF FISH, WILDLIFE AND MARINE RESOURCES

6 NYCRR Chapter 1, Fish and Wildlife. Statutory Authority: Environmental Conservation Law Articles 11 and 13. This chapter regulates hunting, fishing and trapping; and commercial fishing and shellfishing in the marine environment. This Chapter is reviewed annually regarding season dates, take limits, manner of taking, and sanitary condition of the shellfish lands, and amendments are made as appropriate.

Regulatory Coordinator for the Division of Fish, Wildlife & Marine Resources is Gordon R. Batcheller, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754. Telephone: 518-402-8885. E-mail: grbatche@gw.dec.state.ny.us

DIVISION OF SOLID AND HAZARDOUS MATERIALS

6 NYCRR Part 370 Series, Hazardous Waste Management Regulations. Statutory Authority: Environmental Conservation Law, art. 3, title 3; art. 27, titles 7 and 9; and art. 71, titles 27 and 35. The amendments updated the regulations to be consistent with and at least

as stringent as federal regulations as of July 6, 1999. Since this rule making, the hazardous waste regulations have continued to be amended to incorporate ongoing federal changes including: incorporation of federal changes through January 2002, updating the used oil regulations, and incorporating the federal changes to the hazardous waste manifest regulations. The next rule making action to adopt federal changes into the State hazardous waste management regulations is not expected to be proposed during 2007.

6 NYCRR Part 380, Radioactive Materials regulations. Statutory Authority: Environmental Conservation Law, arts. 1,3, and 27. The amendment added regulations to control the disposal of wastes contaminated with the radioactive wastes from the extraction of uranium and thorium from ores. No further action is planned.

Regulatory Coordinator for the Division of Solid and Hazardous Materials is Deborah Aldrich, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-7250. Telephone: 518-402-8730. E-mail: hwregs@gw.dec.state.ny.us.

DIVISION OF WATER

6 NYCRR Part 750, State Pollutant Discharge Elimination System Permits - Corrections. Statutory Authority: Environmental Conservation Law Article 17. Typographical errors and minor revisions to update reference are necessary to incorporate new federal criteria and standards. A new rule making is anticipated to begin development in the coming year.

Regulatory Coordinator for the Division of Water is Sarah Rickard, NYS Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-3500. Telephone: 518-4028216. E-mail: serickar@gw.dec.state.ny.us

This review was compiled, edited and submitted by: Ruth L. Earl, New York State Department of Environmental Conservation 625 Broadway, Albany, NY 12233-1016, Telephone 518-402-8000, e-mail: rlearl@gw.dec.state.ny.us

Department of Health

Title 10 NYCRR - Five Year Review

Pursuant to the State Administrative Procedure Act Section 207 and 202-d, the Department of Health invites public comment on the continuation or modification of the following rules. Public comment should be submitted to William R. Johnson, Office of Regulatory Reform, Corning Tower, Room 2415, Empire State Plaza, Albany, NY 12237.

Addition of new Subpart 7-5 Agricultural Fairgrounds

Statutory Authority:

Public Health Law Sections 225(5)(a) and 201(l) and (m).

Description of the regulation:

Prior to the addition of Subpart 7-5, Agricultural Fairgrounds were not regulated. In August of 1999, an outbreak of gastrointestinal illness was associated with an agricultural fairground's on-site water supply resulting in two deaths and illness in more than 1,100 fair attendees. Regulations were adopted in 2002, and in 2006 were amended through the consensus regulation process to incorporate the Subpart 7-3 campground regulations into the Agricultural Fairground regulations and to modify the campsite size requirements.

The regulation should continue without modification.

Amendment of Subdivision 86-2.10(k) - Change in Ownership of Nursing Facilities – Medicaid Rates

Statutory Authority:

Public Health Law, sections 2803(2), 2807(3) and 2808.

Description of the regulation:

Allows for the recalculation of nursing facility Medicaid reimbursement rates to be based upon an updated cost report once every ten years when transfers of ownership between a parent and a child occur.

The regulation should continue without modification.

Amendment of Subpart 86-6 - Hospice Residence Reimbursement

Statutory Authority:

Public Health Law, sections 4010(4) and 4012-a(4).

Chapter 532 of the Laws of 1995

Chapter 642 of the Laws of 1999

Chapter 496 of the Laws of 2000

Description of the regulation:

Establishes a rate of payment for room and board services provided by hospice residences to Medicaid-eligible patients electing hospice care, and residing in the hospice residence. The hospice residence will receive, in addition to the room and board rate, payment of the routine hospice rate for all other services provided.

The regulation should continue without modification.

Amendment of Sections 86-4.10, 405.3, 415.26, 444.23, 700.2, 751.6, 754.1, 754.2, 754.6 and 763.13 - Regulations Affecting Midwives

Statutory Authority:

The authority for the promulgation of this regulation is contained in Public Health Law (PHL) Sections 2803(2)(a)(i) and (v), 2803-b(1), and 3612(5). These provisions authorize the State Hospital Review and Planning Council (SHRPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner to effectuate the provisions of such laws, establish minimum standards for health care facilities including hospitals, nursing homes, diagnostic and treatment centers and certified home health agencies and to adopt and amend approved systems of uniform hospital accounting and reporting.

These amendments are further supported by Article 140 of the Education Law, amended by Chapter 327 of the Laws of 1992.

Description of the regulation:

This regulation amended several provisions of Title 10 of the New York Codes Rules and Regulations to be consistent with Education Law Article 140. Article 140 of the Education Law defined and established licensure and practice standards for the practice of midwifery.

This regulation is consistent with the substance and intent of Article 140 of the Education Law and should be continued.

Amendment of Parts 700, 717, 790, 791, 793 and 794 of Title 10

Statutory Authority:

Public Health Law, Section 4010(4).

Description of the regulation:

These regulations authorized the approval, construction and operation of hospice residences. The hospice residence program provides hospice access to individuals who may otherwise be denied such services due to the lack of an appropriate caregiver and/or safe environment. These patients are often transferred to more costly inpatient settings, such as hospitals or nursing homes.

This regulation should continue without modification.

Title 18 NYCRR - Five Year Review

Amendment of Sections 360-4.3 and 360-4.6 - Allocation Provisions used in Medicaid Eligibility

Statutory Authority:

Section 366 of the Social Services Law.

Description of the regulation:

The regulatory amendment to 360-4.3 defines income to be used in determining Medicaid eligibility.

The regulatory amendment to 360-4.6 defines the types and amounts of income and resources to be disregarded to determine the applicant's/recipient's net available income and resources. These revisions remain valid and should be retained without modification.

The regulatory amendment to 360-4.3 and 360-4.6 clarifies that in determining the amount of income to be deemed available to an SSI-related applicant/recipient from his or her legally responsible relative, income of the legally responsible relative is first allocated to meet the needs of certain non-SSI-related relatives residing in the household.

The revision continues to be valid and should be retained without modification.

Amendment of Parts 485, 486, 487, 488 and 490

Statutory Authority:

Social Services Law, Section 461-m.

Description of the regulation:

This regulation specifies the actions to be taken by the operator of an adult care facility (i.e., adult home, enriched housing program, and residence for adults) in the event of a resident death. Specifically, it requires the operator to report any such death to the Department within twenty-four hours of its occurrence, while likewise providing any such reports to the State Commission on Quality of Care for the Mentally Disabled within twenty-four hours if such death involves a resident who had at any time received services from a mental hygiene service provider.

This regulation should continue without modification.

Amendment of Part 505 - OASAS Consolidation and Detoxification/Chemical Dependency

Statutory Authority:

Mental Hygiene Law, Section 19.07.

Description of the regulation:

In December 2002, two separate billing structures for alcoholism and substance abuse services were consolidated into Chemical Dependent service category. This consolidation was consistent with the initiative taken in the early 1990's to combine both services into a single agency – and with the recognition that many recipients have both alcohol and substance abuse problems. Detox "consolidation" established three new "Medically Supervised Withdrawal" rate codes for providing such services in an outpatient or inpatient/residential setting (while retaining the existing inpatient DRGs for detoxification services). Offering such services in "less than acute care settings" was determined to be a clinically appropriate detoxification alternative for many patients.

This regulation should continue without modification.

Amendment of Section 505.7 - Medicaid Payment for Laboratory Services

Statutory Authority:

The authority for the amendment of this regulation is contained in Section 365-a(2) of the Social Services Law (SSL).

Description of the regulation:

This amendment of Section 505.7 of Title 18 allowed practitioners ordering/initiating services for Medicaid recipients to designate to personnel/staff the authority to complete laboratory test form(s). The regulations were further amended to allow acceptance of electronic laboratory test ordering or signatures from authorized practitioners. Additionally, this amendment allowed Medicaid to accept "standing orders" for laboratory tests, for certain specific medical conditions, that are initiated by authorized practitioners. This regulation should continue without modification.

Amendment of Section 515.9 and addition of new Part 520 – Monetary Penalties and Tax Intercepts to Determine Medicaid Fraud

Statutory Authority:

Public Health Law Section 206(17); Tax Law Section 171-f

Description of the regulation:

18 NYCRR Part 520 and Section 515.9 effectuate the statutory provisions that provide for an interception of a Medicaid provider's State refund to repay identified Medicaid overpayments.

Part 520 of Title 18 provides for the administrative mechanism allowing the New York Medicaid program, and local Social Services districts in appropriate circumstances, to obtain State tax refunds belonging to current or former medical assistance providers as a recovery of identified Medicaid overpayments. The mechanism provides for access to the State tax refunds only in cases where the determination of liability for the Medicaid overpayments has been

finally adjudicated through administrative and/or judicial review or where the time to contest the determination has passed.

This regulation provides a simplified tool for the State to offset tax refunds against monies due the State while providing for significant administrative safeguards for the affected provider.

The Section 515.9 amendment merely added the new Part 520 as an available mechanism for Medicaid overpayment recovery under Part 515.

This regulation should continue without modification.

Title 10 NYCRR - Ten Year Review

Amendment to Part 53 of Title 10 (NYS Drinking Water State Revolving Fund (DWSRF))

Statutory Authority:

Public Health Law, sections 1161 and 1160

Description of the regulation:

This part provides rules and procedures for the Department of Health to provide financial assistance to public water systems from the New York State Drinking Water State Revolving Fund. In order to obtain federal participation in the fund the State must provide assurances to the Environmental Protection Agency that it has the authority to establish and operate the DWSRF program in accordance with the provisions of the federal Safe Drinking Water Act. Before the State can receive a capitalization grant award, it must certify that the authority establishing the DWSRF program and the powers it confers are consistent with State law and that the State may legally bind itself to the terms of the capitalization grant agreement. These regulations provide a basis for the assurances and certification.

Amendment to Part 54 of Title 10 (Requirements for Self-defense Spray Devices)

Statutory Authority:

Penal Law, section 265.20(a)

Description of the regulation:

Chapter 354 of the Laws of 1996, amended the Penal Law to allow, with certain restrictions, the purchase, possession and use of self-defense spray devices. The amendments required the Department of Health, with the cooperation of the Division of Criminal Justice Services and the Superintendent of State Police, to develop standards and promulgate regulations regarding the type of self-defense spray device which may lawfully be purchased, possessed or used. This rule establishes requirements that pertain to the active ingredient in self-defense spray devices, the concentration of the active ingredient and the size of the device. This rule also requires that self-defense spray devices have safety features designed to prevent accidental releases, that the devices be sold in sealed, tamper-proof packages, and that the devices not be camouflaged. A specific warning label and a specific package insert also are required. In the absence of this rule there would be no requirements or restrictions with respect to active ingredients, concentrations of those ingredients, size, safety features, appearance and warning labels for self-defense spray devices in New York State. This rule is necessary to protect public health by minimizing the health risks from exposure to the substances contained in self-defense spray devices.

Amendment to Subpart 69-1 and addition of Subpart 69-6 of Title 10 (Comprehensive HIV Newborn Screening Program)

Statutory Authority:

Chapter 220 of the Laws of 1996 and Public Health Law section 2500-f.

Description of the regulation:

To ensure that newborns who are born exposed to HIV receive prompt and immediate care and treatment and their mothers receive counseling that can enhance, prolong and possibly prevent transmission of HIV from mother to baby.

In the memorandum accompanying the bill (A.4413-c, S-7725), the Legislature indicated its purpose "to ensure that newborns who are

born exposed to HIV receive prompt and immediate care and treatment that can enhance, prolong and possibly save their lives." The amendments of 10 NYCRR Part 69 help to accomplish that purpose by adding HIV infection to the list of conditions included in New York's newborn screening program. This measure placed the comprehensive newborn HIV testing program within the framework of a longstanding and successful public health initiative, the newborn screening program, which is a model for the nation. The newborn HIV testing program ensures communication of newborn HIV test results to all women giving birth in New York State hospitals and birthing centers. Therefore, mothers of newborns testing positive for HIV antibodies are able to make informed decisions regarding health care and social support for their infants and themselves. The newborn HIV testing program remains a "safety net" to identify HIV positive mothers and their newborns that have not been identified in prenatal, labor, delivery, or newborn nursery settings. These amendments also enable hospitals to report preliminary HIV test results on the newborn's blood, or with consent, the mother's blood to allow initiation of HIV therapy as early as possible.

The importance of the newborn screening program cannot be understated. From February 1997 and December 2005, approximately 7,300 HIV positive women have given birth in New York State. With information generated by the newborn HIV testing program, hospital and state staff have been able to follow HIV-exposed infants until they are connected to ongoing care.

Amendment to Subpart 69-4 of Title 10 (Early Intervention Program for Toddlers and Infants)

Statutory Authority:

Public Health Law, Article 25, Title II-A.

Description of the regulation:

Subpart 69-4 is needed to set forth the requirements upon all regulated parties, including Early Intervention Officials, primary referral sources, evaluators, service coordinators, service providers, and state agencies for implementation of the Early Intervention Program for Infants and Toddlers. Subpart 69-4 provide/defines relevant terms and sets forth all program requirements and procedures, including: eligibility and child find requirements, qualifications for service coordinators, provider approval standards, responsibilities of initial service coordinators and evaluators, standards for the provision of services, service model options, requirements for individualized family service plans, standards for monitoring of providers, local early intervention coordinating council requirements, reporting requirements, procedural safeguards, respite services, transportation services, transition planning requirements, reimbursement of administrative costs, and third party payments.

The following modifications to existing regulations are being considered. All proposed amendments will be developed with comment from the Early Intervention Coordinating Council.

1. Modify Sections 69-4.5, 69-4.9, 69-4.30, and adding a new section 69-4.31 to establish provider approval procedures, minimum qualifications for paraprofessionals performing applied behavioral analysis therapy; define and prohibit the use of aversives, and establish authority for reimbursement rates for this category of service.
2. Amend current program regulations, including those at Section 69-4.9, to provide for and clarify procedures for standards for service delivery, sanctioning and disqualification of providers under the Early Intervention Program.
3. Amend current program regulations at Section 69-4.5, to provide for additional procedures and qualification requirements for approval of service coordinators, evaluators, and service providers.
4. Amend current program regulations to provide for documentation, record-keeping, and record retention requirements for the Early Intervention Program.
5. Amend current program regulations at 69-4.3, regarding risk criteria for children requiring screening and tracking, to include improved

referral criteria for children at risk and to clarify the responsibilities of Early Intervention Officials for screening and tracking of such children.

6. Amend current program regulations at 69-4.17, to state that the opposing party in a hearing or judicial challenge to an order or determination under title II-A of art.25 of PHL is required to pay a parent's attorney fee for which the parent is eligible under PHL Section 2549(7)(b) and to state that the parent should request an order for payment of an attorney fee from the hearing officer.

7. Amend current program regulations at 69-4.17, to provide a time limit upon a parent's ability to request a mediation consistent with the duration of the child's eligibility for the Early Intervention Program.

8. Amend current program regulations to clarify residency requirements for the Early Intervention Program, including a requirement that municipalities should provide early intervention services to children whose parents reside outside of the municipality but within New York State and that such municipalities should establish contracts or arrangements with the county in which the child resides for reimbursement of services.

9. Amend program regulations at Section 69-4.20, to clarify the responsibilities of Early Intervention Officials, service coordinators, and committees on preschool special education related to the transition of children from the Early Intervention Program to services under section 4410 of Education Law.

10. Amend current program regulations at 69-4.12, to add health and safety standards to the components included as part of monitoring site visits.

11. Amend regulations to include or clarify programmatic and reimbursement requirements for the program, including criteria for eligibility and ongoing eligibility and criteria for referral of children at risk for disability.

12. Make technical amendments to program regulations to conform with changes in federal regulations at 34 CFR Part 303; address typographical errors; and, address other state-level changes (e.g., amend references to "Department of Social Services" to Office of Children and Family Services); and changes related to transition procedures for children aging-out of the Early Intervention Program; procedures for IFSP amendments; collection of insurance information and social security numbers from parents for eligible children; establishment of standards for evaluators, service coordinators, and providers of early intervention services who meet Department standards; Department auditing procedures; and, fiscal management and claiming standards.

Amendment to Section 69-4.30 of Title 10 (Early Intervention Reimbursement)

Statutory Authority:

Public Health Law, sections 2540, 2550 and 2559-b.

Description of Regulation:

Based upon Chapter 428 of the Laws of 1992, the regulation established (17) regionally adjusted payment prices for early intervention services delivered to eligible children.

Addition of Subpart 69-7 (Medical Conditions Exempting Limits on Automobile Tinted Glass)

Statutory Authority:

Public Health Law, section 206(16).

Description of the regulation:

Prior to the regulation any person who requested higher levels of window tinting was required to provide a general statement from a physician indicating that it was medically necessary. Law enforcement officers have been shot, injured or otherwise threatened by persons in vehicles with heavy window tinting. The tinted windows also conceal illegal behavior from law enforcement officers. Therefore, the law enforcement community requested that the regulation clarify the types of diseases that would require such heavy tinting to limit the number

of vehicles on NYS highways with darkened windshields and reduce their risk of injury.

An addition to the regulation was promulgated in April 1997 to identify medical conditions that warrant higher tinted vehicle glass. DOH sought advice from experts, including the NYS Society of Dermatology and the NYS Ophthalmological Society. The Society of Dermatology identified the conditions in the revised regulation. These conditions are: porphyria, xeroderma pigmentosa, and severe drug photosensitivity.

The Ophthalmological Society stated that there were many ocular conditions that can change over time so that photosensitivity may be present as a symptom at some time during the illness/disease process, but not others. Ophthalmologists who the Society consulted were not able to identify chronic ocular conditions that would allow good enough vision to drive but nevertheless require heavy windshield tinting.

There are no costs associated with the regulation, nor are there any adverse impacts on small business, rural areas or the physician community. The NYS law enforcement community has cited benefits to their officers.

Amendment to Part 73 of Title 10 (Asbestos Safety Training Program Requirements)

Statutory Authority:

New York State Labor Law, section 905.

Description of the regulation:

These regulations implement the Department of Health responsibility for approving worker training programs in conjunction with the Department of Labor program for licensing contractors and certifying individual workers involved in the evaluation, management or removal of asbestos or building products containing asbestos. The purpose of the program is to ensure that asbestos workers receive training and have the skills and knowledge necessary to permit them to remove or contain asbestos using methods that will protect the public health as required by state and federal regulations. These efforts will eliminate or reduce asbestos related hazards or illnesses by encouraging proper training of persons employed to design, inspect, supervise or otherwise work in any capacity on asbestos projects. Changes in the regulation are necessary based on amendments made to 12 NYCRR Part 56 in 2005 by the Department of Labor. Part 56 addresses how asbestos abatement work is performed in New York State. These changes significantly impacted Part 73 requirements. As a result DOH must modify Part 73 to be consistent with Part 56.

Amendment to Sections 86-1.85 and 86-1.87 of Title 10 (Disproportionate Share Payments)

Statutory Authority:

Public Health Law sections 2807-c(16)(d) and (21) as amended by section 35 of Chapter 731 of the Laws of 1993; and further amended by sections 37-39 of Chapter 81 of the Laws of 1995.

Description of the regulation:

The rule implements the disproportionate share payment limitations that were enacted by The Omnibus Budget Reconciliation Act of 1993 (OBRA).

Amendment to Section 86-4.40 of Title 10 (Products of Ambulatory Surgery)

Statutory Authority:

Public Health Law sections 2803(2) and 2807(2)(e).

Description of the regulation:

The rule (1) adds a new Products of Ambulatory Surgery (PAS) category for the surgical implant of a drug that treats CMV retinitis in patients with AIDS; and (2) corrects the name of an existing PAS category.

Amendment to Section 405.3(b)(10) of Title 10 (Medical History and Physical Examination for Hospital Personnel)

Statutory Authority:

Public Health Law, section 2803(2).

Description of the regulation:

Under the prior regulation, before assuming duties, all hospital personnel had to undergo a physical examination and recorded medical history sufficient in scope to ensure that he/she was free from a health impairment which was of potential risk to patients or which might interfere with the performance of his/her duties. The only exception was that volunteers in areas that did not expose them to patients (such as a gift shop) were exempt from such exam and medical history requirement. Under the amended regulation, any personnel, including volunteers, could be exempted if their activities are such that a health impairment would not pose a risk to patients or interfere with the performance of their duties (such as employees in the boiler room). Instead, all such exempted personnel are required to participate in a less rigorous and less costly "health status assessment".

The purpose of this regulation was to protect patients from potentially harmful consequences related to a health impairment of hospital personnel. As amended, the regulation continues to do this while relieving hospitals of the cost and workload of unnecessary physical examinations and recorded medical histories, thus allowing hospitals to reallocate these resources to other areas.

In the five years since adoption of this change, Department of Health hospital surveillance staff have not detected any negative impact on the quality or safety of hospital care and services. Nor has the Department received any complaints or objections from the public. Amendments to Sections 405.19(d)(2)(ii), 405.19(d)(2)(iii) and 405.19(d)(3)(iii) of Part 405 of Title 10 NYCRR (ACLS and ATLS Training for Hospital Emergency Services Staff)

Statutory Authority:

Public Health Law, section 2803(2).

Description of the regulation:

The prior regulation required that all physician assistants (PAs) and nurse practitioners (NPs) in a hospital's emergency service have training in Advanced Cardiac Life Support (ACLS) and Advanced Trauma Life Support (ATLS). As revised, the regulation requires that emergency rooms have ACLS and ATLS capability sufficient to meet patient needs but does not require that each and every PA and NP have such training. The prior requirement that, in some cases, could require hospitals to retain ACLS and ATLS capability in excess of patient needs was deemed unnecessary and potentially wasteful.

In the five years since adoption of this change, Department of Health hospital surveillance staff have not detected any negative impact on quality or safety of hospital care or services. Nor has the Department received any complaints or objections from the public.

Amendments to Section 405.21 of Title 10 NYCRR (Footprinting of Newborns and Fingerprinting of Mothers)

Statutory Authority:

Public Health Law, section 2803(2).

Description of the regulation:

This amendment repealed the requirement for footprinting of newborns and fingerprinting of mothers. Regulations continue to require that hospitals ensure the immediate and continuous identification of newborns throughout the hospitalization period. The change merely removes the requirement that such identification be done by footprinting newborns and fingerprinting mothers.

Experts in childbirth advised the Department that footprinting and fingerprinting often were carried out by staff untrained in these activities and that a worthless smudge sometimes resulted. By requiring positive identification of the newborn without prescribing the means of attaining this identification, the revised regulations focus on the desired outcome rather than the process, and give hospitals flexibility in determining how best to achieve that outcome.

In the five years since adoption of this change, Department hospital surveillance staff have not detected any negative impact on the quality

or safety of hospital care and services. Nor has the Department received any complaints or objections from the public.

Amendment to Sections 405.21(c)(4) and 754.7(d)(5) of Title 10 (HIV Testing of Newborns)

Statutory Authority:

Public Health Law, sections 2803(2)(a)(v), 2500-f, 2781(6)(d).

Description of the regulation:

Chapter 220 of the Laws of 1996 amended the Public Health Law by adding a new section 2500-f, which requires the commissioner to promulgate regulations to establish and implement a comprehensive program for the testing of newborns for HIV and/or the presence of HIV antibodies. Chapter 220 also amended PHL Section 2781(6) by adding a new paragraph (d) that specifically excluded activities conducted pursuant to PHL section 2781.

To implement the commissioner's newborn HIV testing plan, portions of regulations (10NYCRR, 405.21(c)(4) and 754.7(d)(5)), which required hospitals and birthing centers to follow informed consent procedures, were repealed. The testing provisions of 10 NYCRR sections 405.21(c)(4) and 754.7(d)(5) were replaced by new amendments to 10 NYCRR Part 69, which reflect the statutory direction of PHL Section 2500-f.

Deletion of informed consent and counseling requirements to conform with section 2781.6(d) of the Public Health Law permitted flexible informed consent procedures to be carried out pursuant to amendments of Part 69.

In the memorandum accompanying the bill (A.4412-c, S-7725), the Legislature indicated its purpose "to ensure that newborns who are born exposed to HIV receive prompt and immediate care and treatment that can enhance, prolong and possibly save their lives." Repeal of portions of 10 NYCRR section 405.21(c)(4) and section 754.7(d)(5) have facilitated communication of newborn test results to all women giving birth in New York State hospitals and birthing centers. With that knowledge, mothers of newborns testing positive for HIV antibodies are able to make informed decisions regarding health care and social support for their infants and themselves.

From February 1997 and December 2005, approximately 7,300 HIV-exposed infants were born in New York State. By allowing health care professionals to provide the newborns' HIV test result directly to their mothers, this rule has allowed mothers to reduce the risk of HIV transmission that might occur through breastfeeding and has enabled them to seek appropriate care for their infants.

Amendment to Section 415.3(c)(2)(ii) of Title 10 (Nursing Home Residence Room Change)

Statutory Authority:

Public Health Law, section 2803(2).

Description of the regulation:

Both Federal and State regulations provide for notice to be given prior to a change in a resident's room. When the regulation was initially adopted in 1990, New York State allowed for a minimum of thirty days notice prior to a room change unless the resident agreed to an earlier change. The thirty days insured a waiting period prior to the move but required no additional action on the part of the facility to assist the resident. The amended regulation requiring facilities to make reasonable accommodation to a resident's needs and preferences was designed to eliminate the arbitrary 30 day waiting period and ensure that specific resident concerns are identified and addressed.

The regulatory changes mandated a process to be followed by the facility administration and staff for any change in a nursing home resident's room. The purpose of the mandated process is to ensure that a nursing home resident will receive prior notice of a room change, be provided with a meaningful opportunity to respond to the proposed room change, and have any concerns addressed and reasonably accommodated by the facility.

The concept of reasonable accommodation exists under the present regulations on both the State and Federal level. Under NYCRR

415.5(e) residents have the right to reasonable accommodation of needs and preferences. This would include taking into account the changing of a resident room and the timing of such a change.

Accompanying the regulation changes in 1997 were a set of guidelines developed by a work group consisting of nursing home industry representatives, consumer advocates, and representatives of the Department of Health and the State Office for Aging. These guidelines were part of DOHM 97-13 and distributed to all nursing homes in NYS. The guidelines provided instruction to nursing homes in order to facilitate compliance. The guidelines were not intended as a mandate but were seen as a recommended procedure for facilities to use. At the same time it was recognized that other measures exist and are utilized by facilities in room transfer that are acceptable and effective.

We are aware of no particular hardship experienced by either consumers or providers with regard to the regulation over the ten years that it has been in effect. We have frequent contact with nursing home advocacy groups and while they initially opposed to the elimination of the 30 day notification requirement, we are not aware of situations, at least from the advocates perspective, in which nursing homes have arbitrarily moved residents without preparation and notification. In analyzing data from ACO, the Federal database for deficiencies cited as a result of surveys, we note that for the last 5 year survey for all NYS nursing homes (655 on the Federal database) there were 14 deficiencies cited under F-tag 247 " receives notice before room or roommate change".

Amendment to Part 732 of Title 10 NYCRR (Workers' Compensation Preferred Provider Organizations)

Statutory Authority:

Article 10-A of the Workers' Compensation Law which authorizes the Commissioner to adopt regulations addressing certification and operating standards for Preferred Provider Organizations (PPOs) which provide medical care and services to workers' compensation claimants.

Description of the regulation:

Rising costs, quality of care and timeliness of services associated with medical treatment of occupational diseases and accidental injury arising out of and in the course of employment are a concern to employees and employers in this State.

Concepts of managed care have proven to be a cost effective method of providing appropriate high quality, comprehensive health care to enrollees in many settings. The enabling legislation and corresponding regulations permit these benefits to accrue to employers and claimants through the establishment of PPOs specifically designed to provide workers' compensation health care delivery. The regulations establish standards for certification to operate a PPO, as well as operating standards designed to ensure comprehensive and accessible care and services. These standards ensure comprehensive care to claimants provided on a cost effective basis for payors.

Under a preferred provider arrangement, an insurance carrier will contract with an employer for coverage of workers' compensation services for all its employees. It also contracts with a certified preferred provider organization for the provision of all medical and health related services covered under the workers' compensation program. The employee/claimant is provided with coordinated care and the law and regulations guarantees continuity of care, access to a second opinion, opt-out-provisions, quality assurance, utilization review, objective dispute resolution and other patient protections. Although freedom of choice in selecting a practitioner or a hospital is limited to providers participating in the PPO network, choice from among at least five accessible practitioners in each specialty (or an equivalent level of choice) and three accessible hospitals is mandated. In an emergency situation, a claimant is not limited to those three hospitals. PPOs generate cost savings for workers' compensation as well as improve coordination of care for claimants, commensurate with

the efficiencies and benefits inherent in managed medical care. Such cost savings has resulted in premium savings for employers, and improved coordination of care has led to better outcomes and a quicker return to work for claimants.

Amendment to Section 792.1(j) of Title 10 (Certificate of Approval for Hospice)

Statutory Authority:

Public Health Law, section 4004.

Description of the regulation:

This rule repealed the requirement for biennial renewal of certificates of approval (operating certificates) for hospices. Certificates now remain in effect until revised, limited, annulled, revoked or suspended by the Commissioner or until surrendered by the operator. It was implemented in 1997 as part of the Department's regulatory reform effort.

This regulation should continue without modification.

Title 18 NYCRR - Ten Year Review

Amendment to Section 360-3.2(f) of Title 18 (Organ Transplants for Undocumented Aliens)

Statutory Authority:

Social Services Law, sections 363(a)(2) and 365(a)(1) and (2) and Chapter 474 of the Laws of 1996.

Description of the regulation:

This regulation conforms the Department's regulation to the federal statute (42 U.S.C. Section 1396b(v)(2)(c)) which provides that Medicaid coverage of an emergency medical condition for undocumented aliens does not include care or services related to an organ transplant procedure.

The Medicaid Program paid approximately \$4 million for organ transplants for undocumented aliens during the period August 1993 through June 1996 and has returned approximately \$1.2 million in overpayments to the federal government as a result of the changes to the federal law which exempted such services from federal financial participation. The Department continues to project approximately \$1 million savings annually (\$500,000 State/\$500,000 local share since there is no federal match), based on Medicaid costs associated with inpatient and physician claims for organ transplants for undocumented aliens with emergency coverage. This regulation imposes no new costs on State or local governments. Regulated parties incur no additional costs as a result of this regulation change unless they voluntarily choose to provide organ transplant services to undocumented aliens without charge.

This regulation should continue without modification.

Amendment to Section 360-4.10(a) of Title 18 (Medical Assistance for Institutionalized Spouses)

Statutory Authority:

Social Services Law Section 366-c(2).

Description of the regulation:

Chapter 81 of the Laws of 1995 amended Section 366-c(2) of the Social Services Law to set the State minimum community spouse resource standard for Medicaid eligibility at \$74,820. Setting the State minimum community spouse resource standard at \$74,820 provides that the community spouse is permitted to retain resources in an amount equal to the greater of the following amounts: (1) \$74,820; (2) the spousal share up to \$87,000 (the January 1, 2001 federal maximum community spouse resource allowance which is subject to the same percentage increase as the increase in the Federal consumer price index); or (3) the amount established for the support of the community spouse pursuant to a fair hearing or court order.

This regulation continues to remain relevant, no additions or deletions are required.

Section 360-4.10(a) supports Chapter 81 of the Laws of 1995.

Amendment to Sections 505.14(f)(ii)(l), 505.14(f)(2)(ii)(m), 505.14(f)(2)(ii)(n), 505.14(g)(3)(xxiii), 505.14(g)(3)(xxiv) and 505.14(g)(3)

(xxv) of Title 18 NYCRR (Personal Care Services – Advance Directives)

Statutory Authority:

Social Services Law, sections 363(a)(2) and 365(a)(2)(e) and Chapter 474 of the Laws of 1996.

Description of the regulation:

Advance directives are written instructions, such as health care proxies, that are recognized under State law and relate to the provision of medical care to incapacitated individuals.

These regulatory amendments implemented the OBRA '90 Federal Patient Self Determination Act, which imposed Advance Directive requirements upon states and Medicaid providers. In 1995, the Department of Health promulgated regulations imposing advance directive requirements upon those providers that the Department either licenses or certifies.

Certain providers of Medicaid personal care services are not subject to the licensure/certification regulations imposed at 10 NYCRR 700. These providers include New York City home care agencies that are exempt from licensure requirements and social services district employees or individual providers under contract to the district for the provision of personal care services.

The regulations at 18 NYCRR 505.14 will continue to extend advance directive requirements to the three groups of Title XIX personal care services providers not licensed or certified by the Department of Health: exempt home care agencies, individual providers and social services districts that employ staff to directly provide personal care services. They also continue to assure the State's compliance with the Patient Self-Determination Act.

This regulation should continue without modification.

Amendment to Part 522 of Title 18 (Medicaid Billing for Pre-School Services)

Statutory Authority:

Section 177-a of Chapter 474 of the Laws of the 1996.

Description of the regulation:

Medicaid reimburses Medicaid Preschool Supportive Health Service Program (PSHSP) providers for providing Medicaid eligible children related services listed on a child's Individualized Education Program (IEP). They contract with the State Education Department (SED) approved preschool programs to provide these services. These programs may also be a Medicaid approved Article 28 provider. Payment from the county to the SED approved preschool is in the form of a monthly tuition rate for a half or full day program. Payment is encounter based when only the related service is provided.

This regulation allowed Article 28 Medicaid providers to bill Medicaid directly for IEP services given in a full or half day SED program if the provider applied to do so.

Although instructions have been given as to which Medicaid providers are to bill under what circumstances there has been confusion. This problem was recently pointed out in the State Comptroller's draft audit #2001-S-11. The Comptroller identified possible duplicate payments between these types of providers for physical, speech and occupational therapies.

Fourteen Article 28 providers took advantage of the above regulation and are billing Medicaid directly for related services listed on a preschool child's (IEP). We have been informed by SED that 6 of these providers will no longer bill for the IEP services as an Article 28.

The Article 28 providers chose to bill Medicaid directly for the IEP services because they were concerned that their SED tuition payment would not be adjusted equitably to reflect the change. Also, there was concern their overall reimbursement between education and Medicaid programs would be reduced.

This regulation change was the result of an initiative from Article 28 providers that participate in the SED preschool program.

No revisions should be made to this regulation.

Amendment to Section 540.6 of Title 18 NYCRR (Billing to Medical Assistance Program)

Statutory Authority:

Social Services Law, sections 20(3)(d), 34(3)(f) and 363(a)(2) and section 37 of Chapter 938 of the Laws of 1990.

Description of the regulation:

Section 540.6 of 18 NYCRR contains the requirements that a provider must follow when submitting a claim for payment for medical care, services or supplies which the provider has furnished under the Medicaid program. One of the requirements is that the provider must submit the claim to the Department or its fiscal agent within two years of the date on which the medical care, services or supplies were provided in order for the claim to be valid and enforceable. This regulation imposed an additional requirement for non-public providers. For such providers, the claim also would have to be payable within two years from the date of service. Some MA claims were paid more than two years after the service was provided. There are a variety of reasons why the Department is unable to pay a claim, which has been submitted by a provider within the two-year period. For example, the provider supplied incorrect or insufficient data on the claim form. Under the amendment, if a provider submitted a claim on the last day before the two year period expired, the Department would pay the claim only if it was payable when submitted. If a provider submitted a claim one day after the date of service which was not immediately payable for any reason, the provider would have sufficient time to correct any defect and submit the claim again within the two year period. Under the amendment, it is to the provider's advantage to submit claims as soon as possible after service is rendered so that there is ample time to correct any problems. The regulatory amendment also clarifies how the two-year limit will be calculated for a public provider (school district). A public provider is permitted to submit a claim to the Department or its fiscal agent if the claim was submitted within two years of the date the care, services or supplies were furnished. The regulatory amendment also gives the Department discretion to extend the two-year timeframe if the public provider made payments under a program other than the MA program.

The Department estimates that the savings for State fiscal year 2000-01 associated with this regulation are as follows (in millions of dollars):

Gross	Federal	State	Local
\$124	\$62	\$31	\$31

The Department determined this number by analyzing historical Medicaid Management Information System edit denials and valid resubmissions for claims which were over two years old.

Title 9 NYCRR - Ten Year Review

Amendments to Sections 9700.1(b), 9710.1(c), 9750.2(a), 9850.10(k) and 9850.13(a) of Subtitle KK of Title 9 (EPIC Fair Hearing)

Statutory Authority:

Executive Law Sections 547-d(5), 547-f(2).

Description of the regulation:

These amendments conform EPIC regulations to an amendment to EPIC legislation (Article 19-K, Executive Law), which transferred administrative responsibility for conducting fair hearings from the Department of Social Services to the Department of Health. The change in legislation was effective August 1, 1996.

Amendment to Sections 9800.7(e) of Subtitle KK of Title 9 (EPIC Provider Biennial Recertification)

Statutory Authority:

Executive Law Section 547-d(5).

Description of the regulation:

This regulation requires pharmacy providers to submit to EPIC a biennial recertification of their level of participant services and previous year's prescription volume, upon which their reimbursement

for covered prescriptions is based. Previously the regulation required an annual recertification. This amendment reduces paperwork and unnecessary administrative costs for pharmacies and EPIC.

Insurance Department

Pursuant to Section 207 of the State Administrative Procedure Act (SAPA), the Insurance Department must review after five years, and thereafter, at five-year intervals, rules that were adopted on or after January 1, 1997. The purpose of the review is to determine whether the rules should be continued as adopted or modified. The Department invites public comment on the continuation or modification of the following rules that were adopted in 2002.

- INS-46-01-00021-A (February 13, 2002) Amendment of Part 34 (Regulation 125) (Requirements for Business Established by an Agent or Broker in New York) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, and 2129; Laws of 1996, Chapter 556 and Laws of 2000, Chapter 505.

The only substantive changes made to this regulation were necessitated by statutory changes. Chapter 556 of the Laws of 1996 modified the requirements as to who may supervise the office of an insurance agent or broker. Chapter 505 of the Laws of 2000 created a new type of license, the life insurance broker license, which is referenced in subdivision (b) of section 34.2 of this amendment.

The Department currently intends to continue the rule without modification, while continually monitoring the regulation to ensure that the provisions remain consistent with related statutory and regulatory requirements.

- INS-47-01-00007-A (February 27, 2002) Adoption of Part 421 (Regulation 173) (Standards for Safeguarding Customer Information) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, and Article 24; Gramm-Leach-Bliley Act, sections 501, 505(b) and 507, codified as 15 U.S.C. 6801, 6805(b) and 6807.

This regulation established standards for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality, and integrity of customer information, pursuant to Sections 501, 505(b) and 507 of the Gramm-Leach-Bliley Act (hereinafter "GLBA").

Section 501(b) of the GLBA requires state insurance regulatory authorities to establish appropriate standards relative to administrative, technical and physical safeguards for customer records and information. Section 505(a) and (b) provide that state insurance regulatory authorities must implement and enforce the standards prescribed under section 501(b) by rule with respect to the financial institutions subject to their respective jurisdictions. Section 505(c) provides that the failure of a state insurance regulatory authority to adopt regulations to implement these standards would preclude such authority from overriding insurance customer protection regulations prescribed by a federal banking agency pursuant to section 45 (a) of the Federal Deposit Insurance Act. Section 507 provides, inter alia, that a state regulation may afford persons greater privacy protections than those provided by the GLBA.

Accordingly, the regulation established standards relative to administrative, technical and physical safeguards for customer records and information to: (1) insure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to or use of such records or information that would result in substantial harm or inconvenience to any customer. The regulation ensures that licensees will develop and implement information security programs that prevent the unwarranted disclosure of nonpublic personal customer information.

The Department currently intends to continue the rule without modification, while continually monitoring the regulation to ensure that the provisions remain consistent with related statutory and regulatory requirements.

- INS-52-01-00001-A (April 17, 2002) Amendment of Part 71 (Regulation 107) (Legal Defense Costs in Liability Policies) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 1113(a)(13) and (14), 3436, 5504 and Articles 23, 31, 34 and 55.

The purpose of this Part is to balance insurers' need to be able to anticipate the ultimate exposure on a policy with the policyholders' needs to obtain meaningful coverage for payment of damages in the event of a loss. Since traditional liability insurance provides for defense of a claim to be provided in addition to the policy limits, and as such, the cost of defense is essentially unlimited, the original limit requirements under Regulation 107 were set at levels that were considered adequate to account for both defense and loss payment considerations.

This amendment establishes categories of the types of risks or coverages that may be written on a defense within limits basis. Information provided to the Department indicated that for certain types of risks or coverages for which defense within limits was allowed, the minimum limit requirements were greater than the needs of some policyholders, for example small businesses with a limited number of employees. The premium for the minimum permissible limits was often such that, as a business decision, the employer declined to purchase the coverage. As a consequence, the financial position of the employer, if faced with a claim, may be placed at undue risk and injured parties may have no means of recovery for damages suffered. In addition, some small and regional insurers with relatively limited financial capacity had indicated reluctance to participate in this market at the previously required minimum limits.

This amendment reduced the minimum required limit of liability for employee benefit liability, fiduciary liability and employment practices liability. The Department currently intends to continue the rule without modification, while continually monitoring the regulation to ensure that the provisions remain consistent with related statutory and regulatory requirements.

INS-51-01-00001-A (State Register of April 17, 2002) Repeal of Parts 11 and 12 (Regulations 49 and 50) (Expense Allowance Limits and Training Allowances) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201 and 301.

These two Parts were promulgated pursuant to the old section 4228 of the Insurance Law, which was repealed by Chapter 616 of the Laws of 1997. The newly enacted section 4228, effective January 1, 1998, contained provisions relating to expense allowance limits and training allowances that conflict with the provisions of these regulations. This action repeals regulatory provisions that are no longer applicable by virtue of repeal of the authority for their promulgation.

INS-52-01-00002-A (State Register of May 1, 2002) Amendment of Parts 86 (Regulation 95) (Fraud Prevention) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 403, 409 and 4322; and Laws of 1998, Chapter 2.

Chapter 2 of the Laws of 1998 amended section 409 of the Insurance Law, relating to fraud prevention plans, to make it applicable to most entities licensed pursuant to Article 44 of the Public Health Law (Health Maintenance Organizations). Section 409 requires the superintendent to implement its provisions by promulgating a regulation, including those provisions requiring insurers to adopt and implement fraud prevention plans utilizing a special investigation unit (SIU). The superintendent determined that amendment of the regulation was necessary to ensure that these objectives were met, by requiring Health Maintenance Organizations to adopt and implement fraud prevention plans and to liberalize the requirements for SIU

investigators so that insurers would be better able to recruit qualified investigators.

In 2003, the Department adopted an amendment to sections 86.1 and 86.4 of the regulation (INS-22-03-00011-A, State Register of August 22, 2003, 2003) to delete obsolete language and name references and update the language in required warning statements regarding the commission of a fraudulent insurance act.

The Department currently intends to continue the rule without modification, while continually monitoring the regulation to ensure that the provisions remain consistent with related statutory and regulatory requirements.

INS-06-01-00005-A (State Register of May 22, 2002) Amendment of Part 361 (Regulation 146) (Pooling Mechanism for Individual and Small Group Health Insurance) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, 1109, 3201, 3216, 3217, 3221, 3231, 3232, 3233, 4235, 4304, 4305, 4317, 4318, 4321, 4322; and article 45; Laws of 1992, Chapter 501 and Laws of 1995, Chapter 504.

Chapter 501 of the Laws of 1992 established requirements for open enrollment, community rating and portability of individual and small group health coverage, and provided for a pooling mechanism for individual and small group insurance to ensure the stabilization of health insurance markets and premium rates. Chapter 504 of the Laws of 1995 provided for modification of pooling processes designed to share the risk of insurers and HMOs providing individual and small group health insurance coverage.

This amendment exercises the statutory authority and responsibility placed upon the Superintendent to implement and assure the ongoing operation of open enrollment and community rating, including mechanisms designed to ensure the stability of the individual and small group health insurance markets. Chapter 504 permitted the Superintendent, after January 1, 2000, to establish more than one type of mechanism for insurers and HMOs to share risks or prevent undue variation in claims costs. This amendment phased out (as of January 1, 2000) pooling based on demographics for individual and small group coverage, other than Medicare supplement insurance, and replaced them with modified specified medical condition pools. It continued a demographic pooling mechanism for Medicare supplement insurance.

The Department's June 2006 Regulatory Agenda (published in the State Register of June 28, 2006) noted the Department's intent to amend Regulation 146 to revise certain market stabilization mechanism requirements as required by Chapter 504 of the Laws of 1995.

INS-13-02-00004-A (State Register of June 19, 2002) Amendment of Part 52 (Regulation 62) (Minimum Standards For The Form, Content And Sale Of Health Insurance, Including Standards For Full And Fair Disclosure) of Title 11 NYCRR.

Statutory Authority: Federal Social Security Act (42 U.S.C. section 1395ss); Insurance Law, sections 201, 301, 3201, 3216-3218, 3221, 3231, 3232, 4235, 4237 and article 43.

The enactment of the Omnibus Budget Reconciliation Act of 1990 required the mandatory standardization and federal certification of policies of Medicare supplement insurance. As a result of this Act, states are required to amend their laws and regulations to conform to the federal standards for Medicare supplement insurance. The revisions contained in this amendment merely made technical corrections to New York's Medicare supplement regulation to ensure continued compliance with federal standards.

In 2004, the Department adopted an amendment to sections 52.17, 52.18 and 52.22 of the regulation (INS-32-04-00006-A, State Register of October 27, 2004) to adopt revised standards for the form, content and sale of policies and contracts as a result of changes to the Insurance Law enacted by Laws of 2002, Chapter 82.

In 2005, the Department adopted an amendment to section 52.22 of the regulation (INS-27-05-00005-A, State Register of September 7,

2005) to adopt revised minimum standards for the form, content and sale of Medicare supplement insurance as a result of changes to the federal minimum standards for Medicare supplement insurance enacted by the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Public Law 108-173).

The Department's June 2006 Regulatory Agenda (published in the State Register of June 28, 2006) noted the Department's intent to amend Regulation 62 to ensure that the provisions remain consistent with related statutory and regulatory requirements.

INS-25-02-00005-A (State Register of September 11, 2002) Amendment of Part 16 (Regulation 86) (Special Risk Insurance) of Title 11 NYCRR.

Statutory Authority: Federal Social Security Act (42 U.S.C. section 1395ss); Insurance Law, sections 201, 301, 307 and 308; and article 63.

This amendment updated the regulation to include the definitions of various risks and exposures that have previously been added to the Class Two Risk List of the Free Trade Zone by Public Notice. These risks and exposures had been added to the list since the last amendment to this regulation in 1998.

The Department currently intends to continue the rule without modification, while continually monitoring the regulation to ensure that the provisions remain consistent with related statutory and regulatory requirements.

INS-33-02-00002-A (State Register of October 23, 2002) Amendment of Part 68 (Regulation 83) (Charges For Professional Health Services) of Title 11 NYCRR.

Statutory Authority: Insurance Law, sections 201, 301, and article 51.

This amendment repeals those fee schedules that have been superseded by fee schedules established by the Workers' Compensation Board. However, treatments provided at the time that the superseded fee schedules were effective are still subject to those fee schedules. It also repeals provisions referencing outdated hospital fee schedules applicable to No-Fault. However, hospital treatments provided at the time those fee schedules were effective are still controlled by those fee schedules. The Public Health Law establishes the applicable schedules to be used by hospitals when billing for services provided to patients involved in automobile accidents. Finally, the amendment repealed health provider schedules created by the Department, which were outdated and were rarely, if ever, used and references the current health provider fee schedules established by this Department.

In 2004, the Department adopted an amendment to sections 52.17, 52.18 and 52.22 of the regulation (INS-12-04-00016-A, State Register of October 6, 2004) to adopt revised standards for charges for professional health care services, including adoption of the fee schedule set forth in the New York State Medicaid Management Information System Provider Manual for durable medical equipment, medical/surgical supplies, orthopedic footwear, and orthotic and prosthetic appliances.

The Department's June 2006 Regulatory Agenda (published in the State Register of June 28, 2006) noted the Department's intent to amend Regulation 83 to update the dental fee schedule.

In 2002 the Department also made numerous consensus amendments to Parts of 11 NYCRR to update regulations and statutory references contained therein to be consistent with the Insurance Law recodification and to eliminate numerous obsolete provisions.

Department of Labor

Pursuant to subdivision 2 of section 207 of the State Administrative Procedure Act (SAPA), notice is hereby provided of the following

rules adopted during calendar year 2002, which the Department of Labor is reviewing:

1. Amendment to Title 12 NYCRR Part 801
 - a. Description of Rule: Recordkeeping and reporting of occupational injuries and illnesses by public employers.
 - b. Statutory Authority: New York State Labor Law Section 27-a(9)
 - c. Need for Rule: Promulgated requirements for recordkeeping and reporting on public employee occupational injuries and illnesses that are "substantially identical" to those promulgated by the U.S. Department of Labor's Occupational Safety and Health Administration for private employers in the State.
2. Amendment to Title 12 NYCRR Part 32
 - a. Description of Rule: Amendment to regulations regarding ski tows and other passenger tramway safety standards.
 - b. Statutory Authority: Labor Law, sections 21(11) and 202-c.
 - c. Need for Rule: To incorporate the new industry standards relating to safety, accessibility and testing of equipment and to add a new subpart governing conveyors.

The public is invited to comment on the continuation or modification of these rules. The last day for submission of comments regarding the above-mentioned rules is February 17, 2007. To obtain information or submit written comments concerning this notice, contact Diane Wallace Wehner, Legal Assistant II, New York State Department of Labor, Building 12, State Office Campus, Counsel's Office, Room 509, Albany, New York 12240, diane.wehner@labor.state.ny.us, (518) 457-4380.

Office of Mental Health

I. Background:

Section 207 of the State Administrative Procedure Act (SAPA) requires that any rule adopted by a State agency after 1996 be reviewed after five years, and thereafter, at five year intervals. The purpose of the review is to establish whether or not the rule should be continued or modified.

In accordance with this statutory requirement, the New York State Office of Mental Health (OMH) hereby gives notice of the rules which were adopted by OMH during calendar year 2002. (Note: Rulemakings which resulted in repeal of a Part, emergency rulemakings and other rules which have expired are not subject to rule review.)

The public is invited to review and comment on the continuation or modification of any or all of the listed rules. Comments should be submitted in writing, no later than March 31, 2007, to: Dan Odell, Assistant Director, Bureau of Policy, Regulation and Legislation, Counsel's Office, NYS Office of Mental Health, 44 Holland Avenue, Albany, New York 12229.

E-mail address: dodell@omh.state.ny.us.

II. Rule Review:

1. #OMH-08-02-00005-A: State Register Publication Date August 28, 2002.

Purpose: To allow eligible assertive community treatment (ACT) programs to receive reimbursement under the Medical Assistance Program for the provision of services to clients.

Analysis of Need: Part 508, which was adopted by this rulemaking, establishes standards and methods for determining rates of payment made by government agencies pursuant to Title 11 of Article 5 of the Social Services Law for ACT services provided by ACT programs to active clients enrolled with a provider of services. ACT programs would not be able to bill Medicaid without this Part and without Medicaid revenue such programs would cease operation. Development of certain standards for ACT programs is required by Section 7.17 of

the Mental Hygiene Law (MHL), which was amended by Chapter 408 of the Laws of 1999, also known as "Kendra's Law", (see § MHL 7.17 (f)(3)). ACT programs remain a critical resource necessary for the provision of mental health outpatient services, across the State, as required under Kendra's Law.

Legal Base:

Sections 7.09(b) and 31.04(a) of the Mental Hygiene Law give the Commissioner the power and responsibility to plan, establish and evaluate programs and services for the benefit of the individuals with mental illness, and to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Sections 364 and 364-a of the Social Services Law give the Office of Mental Health 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.

Section 43.02(c)(ii) 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 Office of Mental Health 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 of payment for services.

2. #OMH-24-02-00003-A: State Register Publication Date September 11, 2002.

Purpose: To increase the approved capacity of family based treatment program (FBTP) homes and respite homes licensed under Part 594 of Title 14 NYCRR.

Analysis of Need: This amendment revised §594.5(g) to allow an increase in maximum capacity, from one child to two children, for FBTP homes. Further it raised the maximum capacity for respite homes from two children to three children. FBTP home and respite home providers sought this rule change in order to better serve the children in this program and to receive additional compensation which would attract new providers. Prior to this amendment, added capacity could only be achieved by a lengthy waiver process. Having a second child in the in a FBTP home often provides a direct therapeutic benefit for both children. Younger children often benefit from having an older role model and older children benefit from having the opportunity to be that role model. Children who have poor socialization skills have an opportunity to practice skills with a second child in the home as those skills are being taught by the Professional Parent. There are also examples of older children, whose problems may include reclusiveness as a result of an attachment disorder, being drawn out by the opportunity to help nurture a younger child.

Legal Base: Mental Hygiene Law §7.09(b) grants the Commissioner the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

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

3. #OMH-24-02-00002-A: State Register Publication Date November 20, 2002.

Purpose: Amended §§ 588.13 and 592.5 of Title 14 NYCRR to establish compliance criteria for certain outpatient programs and comprehensive outpatient programs (COPS).

Analysis of Need: These amendments require that providers designated as COPS providers, as well as non-COPS providers, must demonstrate an appropriate level of compliance with the requirements for outpatient programs, under Part 587 of Title 14, in order to continue to receive COPS and non-COPS supplemental medical assistance. Programs which do not demonstrate an appropriate level of compliance shall have their supplemental medical assistance suspended until compliance is achieved. Programs are deemed to be at an appropriate level of compliance if they achieve an operating certificate of at least six months in duration upon renewal. The revisions provide an effective financial incentive to achieving compliance. This regulation is necessary in order for the Office to fulfill its responsibility to ensure that public funds are appropriately used and that care provided to persons with mental illness is of high quality and is cost effective.

Legal Base: Mental Hygiene Law §7.09(b) grants the Commissioner the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

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

#OMH-28-02-00020-A: State Register Publication Date: December 11, 2002.

Purpose: Adopts an amendment to Part 506 to establish reimbursement standards for supportive case management (SCM) and blended intensive case management (ICM)/SCM.

Analysis of Need: This rule was adopted to amend existing Part 506, which previously had established standards for reimbursement for Intensive Case Management (ICM) programs, to establish standards for the reimbursement of SCM and blended ICM/SCM services. ICM, SCM, and blended ICM/SCM programs would not be able to bill Medicaid without this Part and without Medicaid revenue such programs would cease operation. This flexible model provides for services to be provided and reimbursed in a way that best meets the needs of clients. OMH provides free software and technical assistance to providers to help them track contacts and calculate billing. The revision was in response to the needs of providers and clients for a flexible and responsive billing approach.

Legal Base: Mental Hygiene Law §7.09(b) grants the Commissioner the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

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

Section 43.02(c) (ii) 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.

Sections 364 and 364-a of the Social Services Law give the Office of Mental Health 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.

Office of Mental Retardation and Developmental Disabilities

The NYS Office of Mental Retardation and Developmental Disabilities (OMRDD) is submitting the following Regulatory Agenda in satisfaction of the requirements of the State Administrative Procedure Act (SAPA) section 207. The purpose of this agenda is to

identify and discuss OMRDD rule makings finalized during calendar years 1997 and 2002 which are subject to the cited SAPA section 207 five-year review of rules.

During calendar year 1997, OMRDD adopted nine rules. Five of these were proposed and adopted as minor rules and are, therefore, exempted from the review requirements by subdivision (5) of SAPA section 207. The remaining four rule makings finalized during 1997 were identified and described as follows at the time the respective Notices of Adoption were published in the State Register:

97-1. MRD-03-97-00003-A (State Register of 9/10/97). Amendments to 14 NYCRR sections 635-10.5 (HCBS Waiver Services), 671.7 (HCBS Waiver Community Residential Habilitation Services), 680.12 (Specialty Hospitals), 681.12 (Intermediate Care Facilities for persons with developmental disabilities), and 690.7 (Day Treatment Services for persons with developmental disabilities). These amendments establish trend factors to be applied (beginning January 1, 1997) within the context of the various rate/fee setting methodologies. Although specific trend factors are calculated annually, they are cumulative. They need to be maintained, without modification, to define how OMRDD establishes current rates/fees of reimbursement for the affected facilities or services.

97-2. MRD-15-97-00023-A (State Register of 7/25/97). Amendments to 14 NYCRR section 671.7. The purpose of these amendments was to establish a revised fee calculation add-on for voluntary agency operators of HCBS Waiver Community Residential Habilitation services. The add-on is still in effect and the amendments need to be maintained, without modification, in order to define how current fees of reimbursement are established.

97-3. MRD-28-97-00034-A (State Register of 9/24/97). Amendments to 14 NYCRR section 681.12 - Rate Setting and Financial Reporting for voluntary agency operated Intermediate Care Facilities for persons with developmental disabilities. The amendments revise the method of calculating reimbursement for ICF/DD facilities by adding a transportation component to the ICF/DD rate when a consumer's active treatment needs and individual program plan require a day service to which transportation is necessary. Because this component is still part of the ICF/DD rates, the regulation continues to be necessary and must be maintained without modification.

97-4. MRD-41-97-00006-A (State Register of 12/24/97). Amendments to 14 NYCRR section 671.7 - Reimbursement and fiscal reporting for voluntary agency operated providers of HCBS waiver community residential habilitation services. The purpose of these amendments was to provide a one percent trend factor for these operators of community residences, and to structure the fees of reimbursement for the affected fee periods so that the amendments would result in the equivalent of a one percent increase when annualized. The trend factor is cumulative and must be maintained, without modification, to define how current fees are set.

During calendar year 2002, OMRDD adopted ten rules. These ten rule makings were identified and described as follows at the time the respective notices were published in the State Register:

02-1. MRD-03-02-0005-A (State Register of 3/20/02). Rate setting and financial reporting in voluntary agency operated intermediate care facilities for persons with developmental disabilities (ICF/DD). The amendments institute an additional subsequent (i.e., not base) period in the rate cycle for under 31-bed ICF/DD facilities beginning Jan. 1, 2002 for Region II and III facilities and July 1, 2002 for Region I facilities. They need to be maintained, without modification, to preserve the progression of rate years within cycles of the ICF/DD rate setting methodology and define how OMRDD establishes current rates of reimbursement for ICF/DD facilities.

02-2. MRD-04-02-00001-A (State Register of 4/10/02). Rate/fee setting in voluntary agency operated individualized residential alternative (IRA) facilities and home and community-based (HCBS)

waiver services; HCBS waiver community residential habilitation services; specialty hospitals; intermediate care facilities for persons with developmental disabilities; and day treatment facilities serving persons with developmental disabilities. The amendments revise the methodologies used to calculate rates/fees of the referenced facilities or programs for the periods of Jan. 1, 2002 to Dec. 31, 2002 and July 1, 2002 to June 30, 2003 and establish trend factors to be applied within the context of the referenced reimbursement methodologies, effective January 1, 2002. Although specific trend factors are calculated annually, they are cumulative. They need to be maintained, without modification, to define how OMRDD establishes current rates/fees of reimbursement for the affected facilities or services.

02-3. MRD-04-02-00020-A (State Register of 12/31/02). Amendments of sections 681.11 and 681.14 of Title 14 NYCRR. Rate setting in voluntary agency operated intermediate care facilities for persons with developmental disabilities. The amendments allow for inclusion of day program services costs in the reimbursement rate of ICF/DD facilities. The amendments to section 681.11 were subsequently superseded by section 681.14 and all of section 681.11 was repealed. Current section 681.14 continues to allow for inclusion of day program services costs in the reimbursement rate of ICF/DD facilities and these amendments must therefore be maintained, without modification.

02-4. MRD-08-02-00006-A (State Register of 5/1/02). Rate/fee setting in voluntary agency operated individualized residential alternative (IRA) facilities and home and community based (HCBS) waiver services and intermediate care facilities for persons with developmental disabilities. The amendments implement payments to reflect adjustments to the trend factors to be applied within the context of the referenced reimbursement methodologies. Although specific trend factors are calculated annually, they are cumulative. They need to be maintained, without modification, to define how OMRDD establishes current rates/fees of reimbursement for the affected facilities or services.

02-5. MRD-09-02-00006-A (State Register of 11/27/02). Amendments to 14 NYCRR Parts 603 and 604 to revise public access to records pursuant to the Freedom of Information Law. The amendments make necessary technical corrections and revise standards to ensure consistency of OMRDD's regulations with State regulations implementing the Freedom of Information Law. The revisions continue to be necessary to ensure consistency of OMRDD's regulations with 14 NYCRR Part 1401, the regulations of the NYS Committee on Open Government responsible for oversight of implementation of the Freedom of Information Law, and will therefore be maintained without modification.

02-6. MRD-15-02-00012-A (State Register of 6/26/02). Amendments of sections 81.10, 635-4.4, 635-10.5, 635-99.1, 686.13 and 686.99 of Title 14 NYCRR to revise rate and fee setting for various developmental disabilities services provided under the auspices of OMRDD. The amendments revise the provisions governing the reimbursement of HCBS waiver residential habilitation services provided in individualized residential alternatives (IRAs) and make various other technical corrections, clarifications, or conforming amendments. These changes continue to be relevant and OMRDD intends to maintain them without modification.

02-7. MRD-29-02-00008-A (State Register of 9/25/02). Amendment of section 635-10.5 of Title 14 NYCRR to revise the price setting methodology governing the reimbursement of HCBS waiver residential habilitation services provided in individualized residential alternatives (IRAs). These amendments allow for the reimbursement of IRA residential habilitation services in the event that all residents of an IRA are relocated to an alternative site approved by OMRDD due to an emergency or for the health and safety of consumers. These regulatory provisions remain necessary and OMRDD intends to maintain the regulation without modification.

02-8. MRD-42-02-00005-A (State Register of 12/31/02). Amendment of section 635-10.5 of Title 14 NYCRR to revise the provisions determining the prices for HCBS waiver services provided in individualized residential alternatives (IRAs). These amendments institute an efficiency adjustment to be applied to the administration costs portion of the IRA price. The efficiency adjustment is carried forward into subsequent years and these price setting and reimbursement provisions remain necessary to describe how IRA prices were adjusted. OMRDD intends to maintain the regulation without modification.

02-9. MRD-43-02-00007-A (State Register of 12/24/02). Amendment of sections 681.11 and 690.7 of Title 14 NYCRR to revise rate and fee setting for voluntary agency operated day treatment programs and intermediate care facilities for persons with developmental disabilities (ICF/DD). The amendments revise the provisions governing the management of real property and capital indebtedness. Specifically, the amendments enable the use of a combination of a provider agency's lock box accounts for the purpose of retiring mortgage indebtedness on a single facility. These provisions continue to be relevant and necessary so that OMRDD intends to maintain them without modification.

02-10. MRD-44-02-00003-A (State Register of 12/31/02). Addition of section 681.14 to Title 14 NYCRR. Rate setting in voluntary agency operated intermediate care facilities for persons with developmental disabilities. The amendments establish calendar 1999 or 1999/2000 as a new base year, and calendar 2003 or 2003/2004 as a new base period for under 31 bed facilities, and revise cost category screens and regional values in the ICF/DD reimbursement methodology. The amendments constitute the basis of the current ICF/DD reimbursement methodology for under 31 bed facilities and need to be maintained, without modification, to define how OMRDD establishes current rates of reimbursement for ICF/DD facilities.

With the exception of the rule making discussed in item 02-5, the present mandated five-year reviews concern amendments which revise OMRDD's rate/fee setting methodologies. The legal basis for the adoption of these rules is in sections 13.07, 13.09 and 43.02 of the Mental Hygiene Law. In particular, section 43.02 of the Mental Hygiene Law sets forth OMRDD's responsibility for setting Medicaid rates for services in facilities licensed by OMRDD. As concerns item 02-5, the statutory authority for promulgating and maintaining regulations to implement the Freedom of Information Law can be found in Article 6 of the Public Officers Law and in the regulations of the Committee on Open Government found at 21 NYCRR Part 1401.

The public is invited to review and comment on OMRDD's proposed disposition regarding these 1997 and 2002 rule makings beginning January 3, 2007.

Department of Motor Vehicles

As required by Chapter 262 of the Laws of 1996, the following is a list of rules that were adopted by the Department of Motor Vehicles in calendar year 2002 which must be reviewed in calendar year 2007. Public comment on the continuation or modification of these rules is invited. Comments may be directed to: The Department of Motor Vehicles, Counsel's Office, 6 ESP, Room 526, Albany, NY 12228.

MTV-40-02-00005 Part 5 Periodic Vision Requirements

Analysis of the need for the rule: Prior to the adoption of this regulation, DMV's visual acuity test for license applicants, conducted outside of a DMV office, could only be administered by a physician, optometrist, ophthalmologist, optician or a registered nurse. This regulation added physician assistant to those permitted to perform the eye exam. This rule is still beneficial, for customers as a convenience, and for DMV, which encourages motorists to renew their licenses on-line or by mail.

Legal basis for rule: Vehicle and Traffic Law sections 215(a), 502(4)(a)(i) and 502(6).

MTV-43-02-00003 Part 34 Termination of Liability Insurance

Analysis of the need for the rule: This regulation was necessary for the efficient and accurate reporting of the cancellation of for-hire insurance. When DMV required that all for-hire registrations expired on February 28, insurance companies were not required to report cancellations of insurance because a registration would not be renewed if proof of insurance could not be produced. In 2002, when the Department staggered for-hire registration periods, insurance and registration periods were no longer coterminous. Thus, we promulgated this regulation requiring insurers to report the cancellation of for-hire insurance to DMV, which in turn notifies the insured that his or her registration will be revoked if insurance is not obtained. Since this staggered registration procedure is still in effect, this regulation remains necessary.

Legal basis for rule: Vehicle and Traffic Law sections 215(a) and 370(1)(b).

MTV-28-02-00010 Part 46 School Bus Stop Arm

Chapter 430 of the Laws of 2001 provided that all school buses manufactured on or after January 1, 2002 must be equipped with a rear stop arm on the driver's side of the bus. This regulation was promulgated to establish school bus stop arm standards. Since the statutory requirement is still in effect, this regulation remains necessary.

Legal basis for rule: Vehicle and Traffic Law sections 215(a) and 375(21-c).

MTV-43-02-00002 Part 46 Reflective Markings on School Buses

Analysis of the need for the rule: Chapter 425 of the Laws of 2001 provided that school buses transporting 10 or more passengers must be equipped with reflective markings. This regulation was promulgated to reflect this statutory mandate. Since the statute is still in effect, the regulation remains necessary.

Legal basis for rule: Vehicle and Traffic Law sections 215(a) and 375(21-h)

MTV-31-02-00009 Part 58 Rear View Mirrors and Real Object Detection Devices

Analysis of the need for the rule: Chapter 83 of the Laws of 2001 required that certain trucks be equipped with rear object detection devices. This regulation sets forth standards for cross view mirrors, rear video systems and other rear object detection devices. Since the statute is still in effect, the regulation remains necessary.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a) and 375(10-e).

MTV-22-02-00008 Part 59 Reflective Tape on In-Line Skates

Analysis of the need for the rule: Chapter 18 of the Laws of 2000 required the Commissioner to establish standards for reflective material on in-line skates. This regulation sets forth standards that were developed in consultation with the International Inline Skating Association. Since the statute is still in effect, these regulations remain necessary.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a) and 1239.

MTV-41-02-00010 Part 102 Low Speed Vehicles

Analysis of the need for the rule: Chapter 585 of the Laws of 2001 authorized the use of low speed vehicles (LSVs) on certain highways and required the Commissioner to promulgate regulations regarding such vehicles. This regulation sets forth equipment standards for LSVs, provides that they must comply with odometer tampering requirements and provides that dealers must disclose information to customers about the operation of LSVs and hazards related thereto. Since LSVs are still sold and operated in New York State, this regulation remains necessary.

Legal basis for the rule: Vehicle and Traffic Law sections 121-f, 215(a), 2262 and 2270.

MTV-16-02-00004 Part 131 Point System and Cell Phones

Analysis of the need for the rule: The Department assigns points for various violations of the Vehicle and Traffic Law and similar local laws. The accumulation of 11 or more points within 18 months triggers a suspension of the driver's license. Points, however, are not assessed for violations involving registration, insurance, inspection, parking and vehicle equipment. To the extent that certain instances of cell phone usage may result in erratic or unsafe driving, the conviction for Vehicle and Traffic Law section 1225-c (cell phone violation) is generally accompanied by other Vehicle and Traffic Law violations which will, in and of themselves, result in the assessment of points. Thus, the Department exempted cell phone violations from the point system. Since the cell phone law is still in effect, the need for this exemption remains valid.

Legal basis for the rule: Vehicle and Traffic Law sections 215(a) and 510(3)(I).

MTV-12-02-00003 Part 136 Licensing After Revocation Action

Analysis of the need for the rule: A person whose license is revoked must apply to DMV for re-licensure pursuant to the criteria set forth in Part 136. The Department assigns negative units for violations of the Vehicle and Traffic Law and the Penal Law, and if an applicant has 25 or more such units, his or her application will be denied. In 1983, the Department amended Part 136 to provide that crimes involving homicide or criminally negligent homicide arising out of the use of a motor vehicle shall be assessed negative units. The Department failed to include crimes involving assault arising out of the use of a motor vehicle. This regulation included such crimes in the negative unit scheme and remains a valid tool in the application evaluation process.

Legal basis for the rule: Vehicle and Traffic Law section 215(a), 510(5) and 510(6)(a).

Office of Real Property Services

The following rule adoptions by the State Board of Real Property Services during 2002 will be reviewed during 2007 pursuant to SAPA section 207 to determine whether they should remain in effect as adopted or should be modified. Each is contained in Title 9 of the NYCRR. All rules will be subject of a review by the Office of Real Property Services during 2006 prior to their submission to the State Board of Real Property Services for formal action.

Part 186 – State Equalization Program – Complaints filed by municipalities against tentative State equalization rates– RPS-08-02-00009, effective May 8, 2002. Statutory basis - Real Property Tax Law (RPTL), sections 202(1)(l), 1202, 1204, 1206, 1208 and 1210.

Part 189 – Tax Maps – Tax maps for use in real property tax administration – RPS-26-02-00013, effective December 11, 2002. Statutory basis – RPTL, sections 202(1)(l) and 503(1)(b).

Part 201 – Payment of Maintenance Aid – Payment of State Maintenance Aid to assessing units– RPS – 08-02-00008, effective May 8, 2002. Statutory basis – RPTL sections 202(1)(l) and 1573.

To obtain information or submit written comments regarding this review, contact James J. O'Keefe, Associate Attorney, New York State Office of Real Property Services, 16 Sheridan Avenue, Albany, 12210-2714, (518) 474-8821. Comments should be submitted by April 30, 2007.

Department of State

REVIEW OF RULES ADOPTED BY THE DEPARTMENT OF STATE IN CALENDAR YEAR 2002 REQUIRED TO BE REVIEWED IN CALENDAR YEAR 2007 AND FURTHER REVIEW OF RULES ADOPTED BY THE

**DEPARTMENT OF STATE IN CALENDAR YEAR 1997
REQUIRED TO BE RE-REVIEWED IN CALENDAR
YEAR 2007**

As required by section 207 of the State Administrative Procedure Act (SAPA), the following is a list of rules which were adopted by the Department of State in calendar year 2002 which must be reviewed in calendar year 2007. Pursuant to SAPA section 207(5), the list does not include rules which were adopted as consensus rules, or rules which have been repealed. Public comment on the continuation or modification of these rules is invited and will be accepted until March 1, 2007. Comments may be directed to: Nathan A. Hamm, Office of Counsel, Department of State, 41 State Street, Albany, New York 12231.

(1) DOS-27-01-00016 Standards for the Construction and Maintenance of Buildings and Structures and Protection from the Hazard of Fire

Repealed Parts 600 - 1260 of Title 9 NYCRR and added Parts 1220 - 1226 to Title 19 NYCRR

Analysis of the need for the rule: The rule adopted a new Uniform Fire Prevention and Building Code. The rule was necessary to keep New York State competitive with the rest of the nation in matters involving building construction while at the same time providing an adequate level of safety to New York State residents. It was also necessary to enable New York State to keep pace with evolving technology concerning fire prevention and building construction and to have a fire prevention and building code which is consistent with nationally accepted model codes. The rule created an enhanced economic atmosphere in which building construction was encouraged.

This rule is presently in the process of being revised. Comments on the modification of this rule are invited.

Legal basis for the rule: Executive Law, sections 377 and 378

(2) DOS-27-01-00017 Efficient Utilization of Energy Expended in the Construction, Use, and Occupancy of Buildings

Repealed Parts 7810 - 7816 of Title 9 NYCRR and added Part 1240 to Title 19 NYCRR

Analysis of the need for the rule: Article 11 of the Energy Law requires that a State Energy Conservation Construction Code be adopted to protect the health, safety, and security of the people of the State of New York and to ensure a continuing supply of energy for future generations. This rule mandates that economically reasonable energy conservation techniques be used in the design and construction of all new public and private buildings in New York State.

This rule is presently in the process of being revised. Comments on the modification of this rule are invited.

Legal basis for the rule: Energy Law, sections 11-103 and 11-104

(3) DOS-31-02-00008 Educational Qualifications for Security or Fire Alarm System Installers

Amended section 196.8(b) of Title 19 NYCRR

Analysis of the need for the rule: Section 69-o(1)(b) of the General Business Law (GBL) requires an applicant for an alarm installer's license to provide evidence of education related to alarm installation which is satisfactory to the Secretary of State. Accordingly, the Secretary of State must prescribe by rule the minimum education necessary to meet this requirement. Section 69-n(5) of the GBL gives the Secretary of State the authority to adopt, amend, or repeal such rules.

The rule updated previously existing curriculum to conform with revisions that had been made to relevant standards and codes. These revisions improved the quality of instruction offered to students studying to become alarm installers and helps to insure that applicants are educationally qualified with regard to current industry practices.

Legal basis for the rule: General Business Law, section 69-n(5)

As further required by section 207 of SAPA, the following is a list of rules which were adopted by the Department of State in calendar

year 1997 which must be re-reviewed in calendar year 2007. Pursuant to SAPA section 207(5), the list does not include rules which were adopted as consensus rules, or rules which have been repealed. Public comment on the continuation or modification of these rules is invited and will be accepted until March 1, 2007. Comments may be directed to: Nathan A. Hamm, Office of Counsel, Department of State, 41 State Street, Albany, New York 12231.

(1) DOS-49-96-00008 Fees for Services Rendered

Amended section 144.1 of Title 19 NYCRR

Analysis of the need for the rule: The rule is needed because Chapter 309 of the Laws of 1996 required the Secretary of State to determine the type and amount of all fees to be collected by the Department of State and other filing offices pursuant to the provisions of the Uniform Commercial Code and Article 10-A of the Lien Law. Fees set by the Department of State had already been set by section 144.1 of Title 19 of the NYCRR, and this regulation set fees for other filing offices.

Legal basis for the rule: Executive Law, section 96-a; Lien Law, section 243; and Uniform Commercial Code, sections 9-403, 9-404, 9-405, 9-406, and 9-407, as amended by Chapter 309 of the Laws of 1996, sections 245, 246, 247, 248, 249, 250, and 251

(2) DOS-01-97-00012 Community Service Block Grant Advisory Council

Added a new Part 701 to Title 19 NYCRR

Analysis of the need for the rule: The rule is needed because Chapter 884 of the Laws of 1982 directed the Governor to require each executive agency administering a Community Services Block Grant Program to establish a Community Service Block Grant Advisory Council. Article 6-D of the Executive Law places the responsibility for administering the Community Services Block Grant Program in the Department of State. This rule recognized the existing Community Service Block Grant Advisory Council, and provided for membership in the Council to be a number certain of 20.

Legal basis for the rule: Executive Law, sections 159-g and 91, and Chapter 884 of the Laws of 1982

(3) DOS-30-97-00056 Maintaining Abandoned Cemeteries

Added a new Part 202 to Title 19 NYCRR

Analysis of the need for the rule: The rule is needed because General Municipal Law Section 165 requires that the Division of Cemeteries of the Department of State (DOS) promulgate regulations which describe how DOS will provide technical assistance to a municipal corporation wishing to establish voluntary maintenance and cleanup programs at abandoned cemeteries for which the municipality has the primary responsibility to provide care. This rule fulfilled that responsibility.

Legal basis for the rule: General Municipal Law, section 165

Department of Taxation and Finance

Pursuant to section 207 of the State Administrative Procedure Act (SAPA) the Department of Taxation and Finance must review all rules, with certain exceptions, adopted on or after January 1, 1997, after five years, and, thereafter, at five year intervals. In 2007, the Department must review rules that were adopted during 2002 and 1997 to determine whether these rules should be retained as written or modified. Accordingly, the Department intends to review the following rules during 2007, and invites written comments on the continuation or modification of these rules in order to assist the Department in the required review. We will consider comments that are received by February 20, 2007.

1. 20 NYCRR Subparts 5-9, 20-4, 32-2 and section 106.8 (Empire Zone Wage Tax Credit) Filed January 25, 2002; published February 13, 2002; effective February 13, 2002. Need: This rule eliminated obsolete and statutory material and areas of

- Franchise Tax on Banking Corporations, Franchise Taxes on Insurance Corporations and New York State Personal Income Tax regulations, relating to the Empire Zone (EZ) Wage Tax Credit, that parallel provisions in the Business Corporation Franchise Tax regulations. In addition, the rule contained amendments to reflect existing Department policy with respect to the EZ Wage Tax Credit. Legal Basis: Tax Law, sections 171, subd. First; 697(a); and 1096(a).
(TAF-49-01-00002-A)
2. 20 NYCRR Parts 70, 74, 79, 80, and 82 (Cigarette Tax) Filed March 12, 2002; published March 27, 2002; effective April 3, 2002, except for the amendment to section 79.2 which was effective March 12, 2002 (emergency adoption). Filed May 14, 2002; published May 29, 2002; effective May 29, 2002 (permanent adoption). Need: This rule reflected the statutory increase in the rate of New York State cigarette excise tax that was effective on April 3, 2002; provided for commissions allowable to cigarette tax agents based on the face value of cigarette tax stamps as of April 3, 2002; effectuated the floor tax on cigarettes and unaffixed stamps in inventory as of the close of business on April 2, 2002; and more realistically reflected the basic cost of cigarettes in the cigarette marketing standards illustrations. (It is noted that portions of the subject regulations were subsequently amended based on Chapter 93 of the Laws of 2002, affecting the New York City rates of tax. [TAF-37-02-00005-A]) Legal Basis: Tax Law sections 171, subd. First; 475 (not subdivided); and L. 2002, ch. 1.
(TAF-13-02-00010-A)
 3. 20 NYCRR Sections 527.4(b), (c), and 527.5(b)(3) (Clothing Alterations) Filed June 17, 2002; published July 3, 2002; effective September 1, 2002. Need: This rule provided that reasonable charges for alterations to all items of clothing are treated as tailoring, a service that is specifically excluded from New York State and local sales and compensating use taxes. Prior to these amendments, the exclusion from tax depended upon who altered the clothing (e.g., an independent tailor or the clothing retailer) and whether the clothing itself was new, used, taxable, or exempt from tax. The amendments also made technical corrections to the subject sections of the regulations. Legal Basis: Tax Law sections 171, subd. First; 1142(1) and (8); and 1250 (not subdivided).
(TAF-13-02-00008-A)
 4. 20 NYCRR Sections 89.1 and 89.3 (Tobacco Products Tax) Filed June 17, 2002; published July 3, 2002; effective July 2, 2002, except for the addition of section 89.3 which was effective June 17, 2002 (emergency adoption). Filed August 26, 2002; published September 11, 2002; effective September 11, 2002 (permanent adoption). Need: This rule reflected the statutory increase in the rate of tobacco products excise tax that was effective July 2, 2002, and effectuated the floor tax on tobacco products in inventory as of the close of business on July 1, 2002. Legal Basis: Tax Law sections 171, subd. First; 471-b; 471-c; 472; 473-a; and 475 (not subdivided); and L. 2002, ch. 85.
(TAF-27-02-00006-A)
 5. 20 NYCRR Parts 74, 80, and 82 (Increased Rate of New York City Excise Tax on Cigarettes) Filed June 28, 2002; published July 17, 2002; effective July 2, 2002, except for the amendment to section 74.2 which was effective June 28, 2002 (emergency adopt). Filed September 17, 2002; published October 2, 2002; effective September 17, 2002 (emergency re-adopt). Filed October 29, 2002; published November 13, 2002; effective November 13, 2002 (permanent adopt). Need: This rule reflected the statutory increase in the rate of New York City excise tax on cigarettes that was effective on June 30, 2002, ensured that the commissions paid by New York State to licensed cigarette agents were preserved notwithstanding the New York City tax rate increase and more realistically reflected the basic cost of cigarettes in the cigarette marketing standards illustrations. Legal Basis: Tax Law sections 171, subd. First; and 475 (not subdivided); and L. 2002, ch. 93 and New York City Local Law 10, enacted June 30, 2002.
(TAF-37-02-00005-A)
 6. 20 NYCRR Part 151 (Group Nonresident Income Tax Returns) Filed January 9, 1997; published January 29, 1997, effective January 29, 1997. Need: This rule expanded the privilege of filing group nonresident income tax returns to more partnerships; clarified the Department's policy allowing certain limited liability partnerships and limited liability companies to file group returns; and allowed nonresident athletes the election to be included on a group individual nonresident income tax return. These amendments made it easier for members of these groups to file their personal income tax returns. These provisions were amended in 1998 to further expand the privilege of filing group returns to other groups and make other beneficial changes. This rule was previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2, 2002. As a result of that review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on November 6, 2002. Legal Basis: Tax Law, sections 171, subd. First; 697(a); 651; 658(a) and 658(c).
(TAF-45-96-00002-A)
 7. 20 NYCRR Part 6 (CT-4 Filing Rules) Filed March 5, 1997; published March 26, 1997, effective March 26, 1997. Need: This rule eliminated certain restrictions on who may file Form CT-4, General Business Corporation Franchise Tax Return (short form), thereby increasing the number of taxpayers eligible to file the short form. This rule was previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2, 2002. As a result of that review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on July 24, 2002. Legal Basis: Tax Law, sections 171, subd. First; 211.1; and 1096(a).
(TAF-02-97-00001-A)
 8. 20 NYCRR Section 528.7 (Farmers' Exempt Purchases) Filed May 14, 1997; published June 4, 1997; effective September 1, 1997. Need: This rule provided that personal protective equipment purchased by farmers for use directly and predominantly in farm production and construction materials that become integral component parts of the foundations of farm silos are exempt from New York State and local sales and compensating use taxes. The amendments also made technical corrections to section 528.7. The amendments were previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2, 2002. As a result of that review, substantial changes to section 528.7 of the regulations were adopted based on statutory changes in 1999 and 2000, which significantly broadened the subject exemptions from tax. (See TAF-10-04-00025-A; filed April 29, 2004; published May 19, 2004, effective May 19, 2004.) However, certain technical corrections that were made in 1997 were continued without modification, specifically the cross-reference added to section 528.7(c) and the clarifying amendments made to section 528.7(c)(1)(iii). Therefore, only these technical corrections remain from the 1997 rule and are subject to review in 2007. Legal Basis: Tax Law sections 171, subd. First; 1115(a)(6); 1142(1); and 1250 (not subdivided).
(TAF-12-97-00014-A)

9. 20 NYCRR Section 533.3 (Filing of Sales and Use Tax Returns). Filed June 25, 1997; published July 16, 1997, effective July 16, 1997. Need: This rule allowed vendors with ranges of annual sales and use tax liabilities of \$250 to \$3,000 to file annual, rather than quarterly, sales and use tax returns. This rule also made technical corrections to sections 533.3 and 561.13 of the Sales and Use Taxes Regulations. This rule was previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2, 2002. As a result of that review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on August 21, 2002. Legal Basis: Tax Law, sections 171, subd. First; 1136(a), (b), and (c); 1142(1); 1250 (not subdivided); and 1251(c). (TAF-18-97-00008-A).
10. 20 NYCRR Part 2390 (Power of Attorney) and Section 4000.2(b) (Bureau of Conciliation and Mediation Services, Procedural Rules) Filed August 6, 1997; published August 27, 1997; effective August 27, 1997. Need: Part 2390 provides practical requirements as to where a power of attorney is required by the Division of Taxation, and as to the form and content of a power of attorney. Section 4000.2(b) was amended to reflect that an agent who is enrolled to practice before the Internal Revenue Service may act as a representative in a conciliation conference proceeding. This rule was previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2, 2002. As a result of that review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on June 19, 2002. Legal Basis: Tax Law sections 171, subd. First; and 170.3-a(d). (TAF-22-97-00001-A)
11. 20 NYCRR Part 2391 (Service of Process) Filed October 16, 1997; published November 5, 1997, effective November 5, 1997. Need: This rule added new provisions to provide information to any person commencing an action or proceeding involving the Commissioner or Department (except the Division of Tax Appeals or the Tax Appeals Tribunal) by setting forth the procedure for service of process on the Commissioner or Department. The rule was previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2, 2002. As a result of that review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on June 19, 2002. Legal Basis: Tax Law, section 171, subd. First; Civil Practice Law and Rules, section 307. (TAF-34-97-00003-A).
12. 20 NYCRR Article 1 (Elimination of Unnecessary Provisions of Art. 1 of the Personal Income Tax Regulations (entitled "General")) Filed October 16, 1997; published November 5, 1997, effective November 5, 1997. Need: This rule repealed certain provisions that were unnecessary because the provisions repeated statutory material which did not require additional interpretation by regulation. Approximately 30 pages of unnecessary regulations were eliminated while retaining and recodifying necessary provisions. This rule was previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2, 2002. As a result of that review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on October 16, 2002. Legal Basis: Tax Law, sections 171, subd. First; 697(a); 601 (e); and 606(b) and (e). (TAF-34-97-00004-A)
13. 20 NYCRR Parts 5, 20, 32, 106 (Repeal of Parallel Credit Provisions) Filed November 21, 1997; published December 10, 1997, effective December 10, 1997. Need: This rule reduced regulatory language on tax credits previously paralleled within Corporation Tax, Bank Tax, Insurance Tax, and Personal Income Tax regulations. Additionally, there were amendments which updated the rule to reflect legislative changes in the Empire Zone Investment Tax Credit, the Empire Zone Capital Credit and the Special Mortgage Recording Tax Credit. This rule was previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2, 2002. As a result of that review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on February 26, 2003. Legal Basis: Tax Law, sections 171, subd. First; 191; 210 (20) (a), (b), (c) and (d); 210 (12-B) (d); 606 (j); 683 (c) (9); 697 (a); 1096 (a); 1456 (d); and 1511 (h). (TAF-38-97-00004-A)
14. 20 NYCRR Parts 6, 8 and 21 (Repeal of the 30 day Rule) Filed December 23, 1997; published January 7, 1998, effective January 7, 1998. Need: This rule eliminated the requirement, and thereby the burden, that business and banking corporations request permission to file combined reports, or to change the composition of a combined group, within 30 days of the close of the taxable year. This rule was previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2, 2002. As a result of that review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on July 24, 2002. Legal Basis: Tax Law, sections 171, subd. First; 211.4; and 1096(a). (TAF-44-97-00001-A)
15. 20 NYCRR Part 2400 (Action for Failure to Release a Lien) Filed December 23, 1997; published January 7, 1998; effective January 1, 1998 (emergency adoption). Filed February 25, 1998; effective January 1, 1998 and applicable to damages arising on or after January 1, 1998 (permanent adoption). Need: This rule implemented provisions of Chapter 577 of the Laws of 1997 and provides taxpayers with guidance on administrative review of a "notice of failure to release a lien". The rule also provides for the type of bond or other security which is acceptable to effectuate a release of lien. This rule was previously reviewed as part of the Department's 2002 Rule Review published in the State Register on January 2, 2002. As a result of that review of the 1997 rule, a Rule Review notice indicating that it would be continued without modification was published in the State Register on July 10, 2002. Legal Basis: Tax Law, sections 171, subd. First; and 3032(a) and (d), and section 56(j) of Chapter 577 of the Laws of 1997. (TAF-01-98-00007-EP)

Any questions concerning the items listed in this rule review, or comments regarding the continuation of the rules being reviewed should be referred to: John W. Bartlett, Technical Services Division, Department of Taxation and Finance, W.A. Harriman Campus, Building 9, Room 161, Albany, New York 12227. Telephone: (518) 457-2254, Email address: tax_regulations@tax.state.ny.us.
Dated: December 12, 2006

Office of Temporary and Disability Assistance

Pursuant to section 207 of the State Administrative Procedure Act (SAPA), the Office of Temporary and Disability Assistance (OTDA) must review at five-year intervals those regulations that were adopted on or after January 1, 1997. The purpose of the review is to determine

whether the regulations should be retained as written or modified. On January 4, 2006, OTDA published in the State Register a list of regulations that OTDA adopted in 2002. That list is set forth below.

1. Section 350.4 (a) and (b) – describes the circumstances when a person who is no longer eligible for family assistance because of the durational limits must apply for safety net assistance in order to be eligible for such assistance. Filed March 22, 2002; effective April 10, 2002. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), 131(1) and 355(3). Those sections authorize OTDA to promulgate regulations concerning the administration of the State's public assistance programs.

2. Section 352.7(o) – describes the circumstances under which a social services district may remove a public assistance recipient to another state or country. Filed June 14, 2002; effective July 3, 2002. Legal basis: Social Services Law sections 23(3)(d), 34(3)(f) and 121. Those sections authorize OTDA to promulgate regulations concerning the removal of a public assistance recipient to another state or country.

3. Part 393 – conforms the regulations concerning the home energy assistance program (HEAP) with current policies and procedures of OTDA. Filed August 19, 2002; effective September 4, 2002. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f) and 97. Those sections authorize OTDA to promulgate regulations concerning HEAP.

4. Part 373 – implements federal regulations concerning operation of the refugee cash assistance program and the refugee medical assistance program. Filed September 24, 2002; effective October 9, 2002. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), 358(3) and 358(4). Those sections authorize OTDA to promulgate regulations concerning refugee cash assistance and refugee medical assistance.

5. Section 351.2 – implements federal requirements concerning the establishment of domestic violence service plans and review of domestic violence waivers. Filed September 30, 2002; effective October 16, 2002. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), 131-u and 349-a. Those sections authorize OTDA to promulgate regulations concerning procedures to insure the protection of victims of domestic violence.

6. Section 352.31(b) – deletes an obsolete regulation concerning the use of income tax forms to verify the amount of contributions that are made to a public assistance applicant or recipient. Filed October 1, 2002; effective October 16, 2002. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), 131(1) and 355(3). Those sections authorize OTDA to promulgate regulations concerning the provision of public assistance.

7. Section 351.24 – permits social services districts to require public assistance recipients to report changes in income or household circumstances on something other than a quarterly basis. Filed October 8, 2002; effective October 23, 2002. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), 131(1), 131-t and 355(3). Those sections authorize OTDA to promulgate regulations concerning periodic reporting requirements.

8. Section 347.25 – implements a stipulation that requires OTDA to publish regulations on the conduct of desk reviews. The desk reviews involve an examination of public assistance and child support enforcement case records that will result in a written determination to the requestor of how the collections were distributed. Filed December 5, 2002; effective December 24, 2002. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f) and 111-a. Those sections authorize OTDA to promulgate regulations concerning child support.

During the comment period, OTDA received one letter, dated February 20, 2006, in response to the above list. That letter recommended revisions to section 393.3(b) which would separate subdivision (b) into numerous paragraphs, subparagraphs and clauses. The letter also asserted that section 393.4(c) was difficult to cite due

to an undesignated paragraph and that section 393.4(d)(1)(ix) was difficult to read and understand because too many concepts were set forth in subparagraph (ix). In addition, the letter provided comments regarding Part 393 that were not related to the amendments which were effective on September 4, 2002.

Upon review, OTDA determined that section 393.3(b) succinctly and accurately sets forth OTDA's policy. The addition of numerous paragraphs, subparagraphs and clauses to subdivision (b) would make this provision difficult to understand. OTDA also determined that section 393.4(d)(1)(ix) is clear and comprehensible as written. The length of 393.4(d)(1)(ix) is largely attributable to the fact that numerous resources are exempt when determining eligibility for emergency HEAP. It is noted that a copy of the letter dated February 20, 2006 was provided to OTDA's Division of Employment and Transitional Supports so that the suggestions which were not related to the amendments which were effective on September 4, 2002 could be reviewed.

OTDA is considering modifications to section 351.24 and a technical amendment to section 393.4(c) and may publish notices of proposed rule making in the future. OTDA has determined that at this time no additional modifications need to be made to the regulations set forth above.

The following list represents those regulations that were adopted by OTDA in 2003 and in 1997 and are subject to the provisions of section 207 of SAPA. These regulations must be reviewed to determine whether they should be retained as written or modified. OTDA invites written comments on the continuation or modification of these regulations in order to assist in the required review. We will consider only those comments that are received by February 20, 2006.

a. Section 352.17(e) – establishes a reasonable administrative processing period in which a social services official is required to adjust a public assistance grant or calculate the amount of any overpayment of a public assistance grant as a result of new or increased earnings. Filed February 25, 2003; effective March 12, 2003. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), 131(1), 131-a and 355(3). Those sections authorize OTDA to establish regulations to carry out its powers and duties, and they require OTDA to provide public assistance to needy persons who are determined to be eligible in accordance with the statutory standards of need.

b. Section 352.23(b) – establishes resource exemption levels for vehicles owned by public assistance recipients and authorizes social services districts to exempt as a resource any funds deposited in a bank account by such recipients if the account does not exceed a certain level and if the funds are used to purchase a first or used vehicle to enable the recipients to seek, obtain or maintain employment. Filed February 25, 2003; effective March 12, 2003. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), 131(1), 131-n and 355(3). Social Services Law section 131-n sets forth the resources that are to be exempt and disregarded in calculating the amount of benefits of any household under any public assistance program, and that section authorizes OTDA to promulgate regulations it deems necessary to prevent the improper establishment and use of accounts for the purchase of first or replacement vehicles.

c. Sections 369.1, 372.2 and 372.4 – conform the emergency assistance to families (EAF) regulations to Federal laws and regulations, eliminate the potential for Federal penalties for incorrect use of funds in the EAF program, and remove unnecessary and restrictive limits on the amount of EAF that can be provided to repair an EAF recipient's home. Filed February 25, 2003; effective March 12, 2003. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), 350-j, 355(3), and 410-u; Social Security Act sections 404(a)(2), 408(a)(1)(A) and 409(a)(1)(A) and (B). The Social Services Law sections require OTDA to promulgate regulations necessary for the carrying out of the provisions of the EAF program.

d. Sections 350.3(a), 387.1(e)(1), and 387.5(j) and (k) – limit the use of an authorized representative to persons who are unable to file an application for public assistance or food stamps. Filed May 19, 2003; effective June 4, 2003. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), 95, 131(1), and 355(3). Title 7, part 273, section 2, subdivision (n) of the Code of Federal Regulations. The Social Services Law sections authorize OTDA to administer the Federal food stamp program in this State.

e. Sections 352.22(e)(1) and 352.22(e)(2) – clarify the regulations concerning the treatment of trust funds and the eligibility for public assistance. The amendments revised the regulations concerning the treatment of trust assets for purposes of determining whether such assets can be used to provide for the basic maintenance needs of the trust beneficiary when such beneficiary is in receipt of or applies for public assistance. Filed July 28, 2003; effective August 13, 2003. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), 131(1), 131-n and 355(3). Those sections authorize OTDA to establish regulations defining income and resources.

f. Part 358 – makes technical changes that were primarily needed to conform the regulations concerning fair hearings to the Welfare Reform Act of 1997. The changes, in part, reflect the following: the creation of OTDA and the Office of Children and Family Services (OCFS); the responsibility of the Department of Health for the Medical Assistance program; the responsibility of the Department of Labor for the public assistance employment programs (subsequently repealed); the responsibility of OCFS for certain services programs; and the responsibility of the Office of Administrative Hearings within OTDA to conduct hearings on behalf of such agencies. The addition of section 358-5.9(e) concerns the issuance of subpoenas in fair hearings. Filed August 19, 2003; effective September 3, 2003. Legal basis: Chapter 436 of the Laws of 1997, constituting the Welfare Reform Act of 1997. Social Services Law sections 20(3)(d), 22(8), and 34(3)(f). These sections of the Social Services Law require OTDA to establish regulations for the administration of public assistance and care within the State and to promulgate regulations as may be necessary to implement the fair hearing provisions. Note: Numerous sections of Part 358 have been subsequently amended.

g. Sections 387.14(a)(5)(i)(a)(1)-(3), 387.14(a)(5)(i)(b) and 387.14(a)(5)(ii)(c) – extend categorical eligibility for food stamps to recipients of safety net assistance. Filed August 19, 2003; effective September 3, 2003. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), and 95. Those sections authorize OTDA to administer the Federal food stamp program in this State.

h. Sections 358-2.28, 358-2.29, 358-3.1(f), 387.7(a) and (g), 387.14(g)(1)(ii) and 387.17 – implement Federal requirements concerning the food stamp application and certification processing requirements. Filed August 26, 2003; effective September 10, 2003. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), and 95. Title 7, part 273, sections 2, 10 and 12 of the Code of Federal Regulations. The Social Services Law sections authorize OTDA to administer the Federal food stamp program in this State. Note: Section 358-3.1 has been subsequently amended.

i. Sections 358-3.3(e)(3), 387.14(a)(5)(ii)(b) and 387.17 – establish new requirements for reporting information to social services districts concerning eligibility for food stamps. Filed August 26, 2003; effective September 10, 2003. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), and 95. Title 7, part 273, sections 10 and 12 of the Code of Federal Regulations. The Social Services Law sections authorize OTDA to administer the Federal food stamp program in this State.

j. Section 387.17(a) – extends from twelve months to twenty-four months the food stamp certification period for households in which all adult members are elderly or disabled. Filed August 26, 2003; effective September 10, 2003. Legal basis: Social Services Law sections

20(3)(d), 34(3)(f), and 95. Title 7, part 273, section 10, subdivision (f) of the Code of Federal Regulations. The Social Services Law sections authorize OTDA to administer the Federal food stamp program in this State.

k. Section 352.20(c) – allows for the percentage earned income disregard to be provided to all safety net assistance cases that would be eligible for family assistance except for the imposition of the 60-month State limit on the receipt of family assistance. Filed September 9, 2003; effective September 24, 2003. Social Services Law sections 20(3)(d), 34(3)(f), 131-a(1), 131-a(8)(a)(iii), 158, 349 and 355(3). Those sections authorize OTDA to establish regulations for the administration of public assistance and care within the State.

l. Part 352 and section 381.3(c) – provide a shelter allowance that reflects the cost of acceptable quality housing; provide for a supplement to ensure that family units facing special circumstances may be kept together in a home-type setting; maintain strong incentives to work; insure fairness and equity in the provision of public benefits; and simplify grant administration. Filed July 22, 2003; effective November 1, 2003. Legal basis: Social Services Law sections 20(3)(d), 34(3)(f), 131(1), 131-a(2), 158, 349 and 355(3). Those sections authorize OTDA to establish regulations for the administration of public assistance and care within the State and to include within the standard of need an amount for shelter. Note: Sections 352.3 and 352.30 have been subsequently amended.

m. Part 491 – eases the burden on social services districts and other operators of shelters for adults in relation to the operation of such shelters. Filed March 7, 1997; effective March 26, 1997. The regulatory amendments, among other things, expand the options for granting waivers of non-statutory requirements of Parts 485, 486 and 491 of 18 NYCRR relating to shelters for adults; eliminate the maximum capacity for shelters for adults; increase the time period during which a shelter for adults can be operated above the certified capacity and repeal environmental standards that are duplicative of local codes or other State requirements. Legal basis: Sections 20(3)(d), 34(3)(f), 460 and 461 of the Social Services Law. Those sections authorize OTDA to promulgate regulations concerning shelters for adults.

n. Section 350.3(c) – requires that an interview with an applicant for public assistance be scheduled within seven rather than five working days after an application is submitted. Filed March 27, 1997; effective April 16, 1997. The regulatory amendment will assist social services districts in the effective and efficient administration of public assistance programs by providing additional time for districts to schedule interviews with public assistance applicants. Legal basis: Section 17, 20(3)(d), 34(3)(f), 158(a) and 355(3) of the Social Services Law. Those sections authorize OTDA to promulgate regulations concerning the operation of the State's public assistance programs.

o. Parts 900 and 1000 – provide administrative flexibility to, and reduce the administrative burden on, social services districts and homeless shelter providers by consolidating and modifying existing requirements for family shelters and shelters for pregnant women. Filed August 22, 1997; effective September 10, 1997. Legal basis: Sections 20(3)(d), 34(3)(f) and 153 of the Social Services Law and Chapter 562 of the Laws of 1953 and Chapter 53 of the Laws of 1992. Those sections and Chapter Laws authorize OTDA to promulgate regulations concerning reimbursement to social services districts concerning care provided to persons in shelters and homeless persons. Note: Sections of Part 900 have been subsequently amended.

p. Sections 358-3.7 and 358-4.2 – set forth standards for making documents available to appellants in fair hearings. Filed October 29, 1997; effective November 19, 1997. The regulatory amendments relieve social services districts from costly mandates by conforming Office regulations to federal requirements regarding the provision of copies of documents from the case file by social services districts to

appellants at fair hearings. Legal basis: Sections 20(3)(d), 34(3)(f) and 22(8) of the Social Services Law. Those sections authorize OTDA to promulgate regulations concerning the conduct of fair hearings. Note: Section 358-4.2 has been subsequently amended.

q. Section 347.10 – reflects the 1996 self-support reserve and child support standard chart. Filed May 9, 1997; effective May 28, 1997. The regulatory amendment will ensure that the social services districts and the family courts are advised of the correct amount of the 1996 self-support reserve when calculating the basic child support obligation for parties in child support proceedings. This is consistent with federal requirements that States implement child support standards that are used in the calculation of child support obligations and that the standards take into account the non-custodial parent's income. Legal basis: Sections 20(3)(d), 34(3)(f), 111-a and 111-i of the Social Services Law. Those sections authorize OTDA to promulgate regulations concerning child support standards.

Note: Section 347.10 has been subsequently amended.

Any comments should be submitted to: Jeanine Stander Behuniak, Associate Counsel, Office of Temporary and Disability Assistance, 40 N. Pearl St., 16th Fl., Albany, NY 12243, (518) 474-9779