

REGULATORY AGENDA

Department of Agriculture and Markets

Pursuant to sub-division 1 of section 202-d of the State Administrative Procedure Act, notice is hereby provided of the following rules which the Department of Agriculture and Markets is considering proposing but for which a rulemaking proceeding has not been commenced. All section and Part references are to Title 1 of the New York Code of Rules and Regulations.

DIVISION OF MILK CONTROL AND DAIRY SERVICES

- Parts 2 & 3 Consider amending requirements for the production, processing and distribution of milk and milk products.
- Section 2.8 Consider amending the pasteurized milk and pasteurized cultured product standards to include a zero tolerance standard for pathogenic coliform.
- Part 17 Consider adoption of current federal standards of identity for milk and milk products.

Name of agency contact: Will Francis

Office Address: 10B Airline Drive, Albany, New York 12235

Telephone number: 518-457-1772

DIVISION OF ANIMAL INDUSTRY

- Part 45 Consider adoption of federal standards (UM & R) for avian influenza control except where state regulations are more stringent.
- Parts 53 & 62 Consider amending to allow certain livestock to enter the state without a certificate of veterinary inspection under specific conditions.
- Parts 53 & 62 Consider amending import requirements for cattle, deer, goats and llamas to delete bluetongue test requirements; delete anaplasmosis test requirements for all species except cattle; delete brucellosis and tuberculosis test requirements for goats; and adopt federal standards (UM & R) for testing of deer.
- Part 60 Consider adoption of federal standards (UM & R) for tuberculosis testing for cattle, bison, swine, goats, and deer.
- Part 61 Consider adoption of record keeping requirements for swine, cervid, camelid, goat, and sheep dealers and sanitation and record keeping requirements for poultry transporters.
- Part 63 Consider adoption of Pseudorabies and Brucellosis import testing requirements for feral or transitional swine.
- Part 68 Consider amending intrastate movement restrictions for captive cervids to provide the owners of herds of Chronic Wasting Disease (CWD) susceptible species with a one time option to move all of their CWD susceptible animals to a special purpose herd.

- Part 75 Consider adoption of requirements for participation in the Animal Population Control Program by veterinary practices, shelters, and dog and cat owners.
- Part 77.5 Consider amendments to standards of care for seized dogs to clarify the definition of a dog dealer.
- Section 351.12 Consider amending the animal health requirements for admission to fairs to delete the pullorum testing requirements for poultry.
- Name of agency contact: Dr. John Huntley
Office Address: 10B Airline Drive, Albany, New York 12235
Telephone number: 518-457-3502

BUREAU OF WEIGHTS AND MEASURES

- Part 221 Consider adopting national standards, based on "NIST Handbook 130," for commodity labeling and methods of sale for foods and consumer commodities under the Department's jurisdiction.
- Section 224.3 Consider adopting standards for alternative fuels produced from biological sources such as biodiesel, blend stock ethanol, and alternative fuels such as E85 and E75.
- Part 220 Consider adopting regulations to implement Chapter 665 of the Laws of 2006, relative to retail pricing accuracy.
- Name of agency contact: Ross Andersen
Office Address: 10B Airline Drive, Albany, New York 12235
Telephone number: 518-457-3146

DIVISION OF FOOD SAFETY AND INSPECTION

- Part 257 Consider adopting regulations to implement Chapter 554 of the Laws of 2006 relative to licensing requirements for persons manufacturing commercial feed.
- Part 271 Consider amending sanitation requirements for retail food stores to correspond with changes to the 2005 FDA Food Code.
- Part ____ Consider adopting regulations to implement Chapter 665 of the Laws of 2005, relative to the establishment of a food safety education certification program.
- Name of agency contact: Joseph Corby
Office Address: 10B Airline Drive, Albany, New York 12235
Telephone number: 518-457-4492

DIVISION OF PLANT INDUSTRY

- Section 95.3 Consider amending seed germination testing provisions to conform with Agriculture and Markets Law § 137.
- Section 95.9 Consider amending to add seeds of additional weeds and undesirable grasses to the list of noxious weed seeds.

- Section 96.12 Consider amending seed sampling procedures to conform with the Federal Seed Act.
- Part 131 Consider amending the Pine Shoot Beetle Quarantine to add Columbia, Orange and Ulster Counties.
- Part 139 Consider amending the Asian Long Horned Beetle quarantine area to include areas within 1.5 miles of any newly detected infested trees. (Currently, a rule on the subject is in effect on an emergency basis.)
- Part 141 Consider adopting regulations to establish a European wood wasp quarantine.
- Part 140 Consider adopting regulations to establish a plum pox virus quarantine.

Name of Agency Contact: Robert Mungari
Office Address: 10B Airline Drive, Albany, New York 12235
Telephone number: 518-457-2087

SOIL AND WATER CONSERVATION COMMITTEE

- Part 363 Consider adoption of performance standards to be applied in regard to state assistance payments to soil and water districts.

Name of Agency Contact: Ronald Kaplewicz
Office Address: 10B Airline Drive, Albany, New York 12235
Telephone number: 518-457-3738

Office of Children and Family Services

July 1, 2007 - December 31, 2007

REGULATORY PROPOSALS

Pursuant to subdivision 1 of section 202-d of the State Administrative Procedure Act (SAPA), notice is hereby provided of the following rules, which the Office of Children and Family Services (OCFS) is considering proposing but for which a rulemaking proceeding has not been commenced. The public is welcome to send written comments on the OCFS Regulatory Agenda to the contact person at the end of this list.

Below is a brief description of the regulations, by subject matter, that are under review by OCFS:

General Administrative Regulations

Amending the regulations regarding health screening for prospective and current employees having regular and substantial contact with children in programs licensed or supervised by OCFS.

Amending the regulations governing claiming for foster care, child protective and adoption services.

Bureau of Special Hearings

Amending the regulations governing the procedures used in hearings conducted by the Bureau of Special Hearings pursuant to Articles 2, 5, 6 and 7 of the Social Services Law.

Child Care Services

Amending the regulations governing the operation, licensing and registration of day care programs to make minor technical changes.

Amending the regulations requiring the pursuit of child support as a condition of receiving subsidized child care services.

Child Welfare Services

Child Protective Services

Amending the regulations regarding child protective investigations in relation to notice to law enforcement of certain reports of suspected child abuse or maltreatment and joint investigation by a child protective service with law enforcement or a multi-disciplinary team of certain reports of suspected child abuse or maltreatment.

Amending the regulations regarding mandatory training for child protective services caseworkers and supervisors.

Amending the regulations regarding to eliminate the requirement that notice that an unlawful alien is receiving child or adult protective services be provided to the federal Immigration and Naturalization Service or nearest consulate of the recipient's country.

Foster Care

Amending the regulations to permit Court Appointed Special Advocates to obtain foster care and preventive services records of a child under certain circumstances.

Amending the regulations to add provisions authorizing OCFS to impose fiscal penalties against voluntary child care agencies operating residential foster care programs for the failure to comply with licensing and operating standards.

Amending the regulations to revise the provisions governing reimbursement for and the purchase of child welfare services.

Amending the regulations to revise the standards for the provision of adolescent services.

Amending the regulations regarding foster family boarding homes to require safety plans for the safe evacuation of children and adults in the case of fire or other emergencies.

Amending the regulations regarding residential care for children in areas including behavior support, crisis prevention and intervention, privacy and searches, and unauthorized absences.

Amending the regulations regarding residential foster care programs concerning overnight supervision.

Amending the regulations regarding residential foster care programs to ban smoking by adolescents in such residences.

Amending the regulations regarding Supervised Independent Living Programs.

Amending the regulations to clarify health service standards for children in foster care.

Foster Care/Adoption

Amending the regulations to provide for expedited home studies regarding prospective foster and adoptive parents who are being considered as resources for foster children from out-of-state and from a different county within New York State; to increase the frequency of casework visits with foster children placed out-of-state; and to require authorized agencies to seek child protective services information from other states regarding a person applying for approval as an adoptive parent and any other person who resides with the applicant where such applicant or other person resided in the other state within five years of the application for approval.

Adoption

Amending the adoption subsidy regulations to exempt adoption subsidy payments made on behalf of a child who is later placed in foster care from child support enforcement collection when such an exemption is in the best interests of the child.

Amending the regulations to require the continuation of adoption facilitation activities while a foster child is in an Office of Mental Retardation and Developmental Disabilities (OMRDD) or Office of Mental Health (OMH) facility.

Amending the adoption subsidy regulations to address the issue of the ability to pay adoption subsidies to persons who are approved as adoptive parents without having been previously approved as foster parents.

Amending the regulations regarding discharge to adoption to expedite permanent placements for children.

Amending the regulations relating to post-adoption services.

Preventive Services

Amending the regulations regarding reimbursement for preventive services.

Detention Services

Amending the regulations regarding juvenile detention facilities to establish cost standards and reporting requirements for secure and non-secure detention programs.

Amending the regulations regarding juvenile detention facilities to provide for a methodology to assess the need for new juvenile detention capacity as a criterion for issuing operating certificates.

Amending the regulations regarding secure and non-secure juvenile detention facilities pertaining to the implementation of fiscal sanctions for non-compliance with juvenile detention regulations and the provision of administrative hearings to challenge enforcement actions taken by OCFS.

Juvenile Justice Residential Services

Amending the regulations to clarify the status of, and procedures necessary for, youth who are away without leave from a facility operated by OCFS.

Amending the regulations regarding resident rules to define more clearly prohibitions against gang-related behavior.

Amending the regulations governing Good Behavior Allowances for juvenile offenders.

Amending the regulations regarding disciplinary actions in OCFS-operated secure facilities to modify the penalty structure and time in which a resident may appeal his or her penalty.

Amending the regulations regarding confidentiality for youth in OCFS facilities.

Any written questions or comments concerning the items listed in this agenda should be directed to: Jacquelyn Greene, Esq., Assistant Deputy Counsel, Bureau of Legislation and Special Projects, Office of Children and Family Services, 52 Washington St., Rensselaer, NY 12144, (518) 473-9551, e-mail address: Jacquelyn.Greene@ocfs.state.ny.us

Education Department

June 2007

Pursuant to section 202-d of the State Administrative Procedure Act, the State Education Department presents its regulatory agenda for the remainder of calendar year 2007. All section and part references are to Title 8 of the New York Code of Rules and Regulations. The State Education Department reserves the right to add, delete or modify, without further notice, except as required by the State Administrative Procedure Act, any item or information presented herein as relating to the June 2007 Regulatory Agenda.

OFFICE OF ELEMENTARY, MIDDLE, SECONDARY AND CONTINUING EDUCATION

Amendment of Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to Distinguished Educators to define eligibility, establish selection process duties, and define "reasonable and necessary" expenses.

Amendment of Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to School Quality Review Teams and Joint School Intervention Teams to define "reasonable and necessary expenses."

Amendment of Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to the restructuring and reorganization of SURR schools.

Amendment of Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to District Improvement Plans.

Amendment of Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to superintendents' contracts.

Amendment of Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to the Excelsior Scholars Program and grants for summer institutes for math and science.

Amendment of Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to full-day kindergarten transition planning grants.

Amendment of Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to pupils with limited English proficiency.

Amendment of Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to maintenance of effort by the Big 4 city school districts.

Amendment of Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to conducting hearings and complaint procedures regarding charter schools.

Amendment of Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to student progress reports, school leadership and school progress report cards.

Amendment of Commissioner's Regulations to conform provisions relating to Educationally Related Support Services Aid and Declassification Support Aid to the Laws of 2007.

Amendment of Commissioner's Regulations to conform provisions relating to foundation formula aid for state aid to schools to the Laws of 2007.

Amendment of Commissioner's Regulations to extend the provision that sunsets January 31, 2008 to allow those who complete the External Diploma Program to be awarded a high school equivalency diploma.

Amendment of Commissioner's Regulations relating to the course requirements for teacher coaches and non-teacher coaches.

Amendment of Commissioner's Regulations relating to the duration of student competition in interscholastic athletics.

Amendment of section 100.3 of the Commissioner's Regulations relating to program requirements for prekindergarten and kindergarten.

Amendment of Part 117 of the Laws of 2007 relating to diagnostic screening.

Amendment of section 110.6 of the Commissioner's Regulations relating to aidable summer school programs.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above proposed amendments by contacting:

Johanna Duncan-Poitier

Senior Deputy Commissioner P-16

New York State Education Department

Office of Higher Education

89 Washington Avenue

West Wing, Second Floor Mezzanine - EB

Albany, New York 12234

(518) 474-3862

p16education@mail.nysed.gov

OFFICE OF HIGHER EDUCATION

Amendment of Part 27 of the Regents Rules relating to the economic eligibility criteria for non-public institutions of higher education and 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.

Amendment of Part 52 to provide for waivers of certain regulations in declared emergencies.

Amendment of Part 80 of the Commissioner's Regulations, to establish a three-year limit for applications for teacher certification to remain active.

Amendment of Part 52 and Part 80 related to the requirements for teacher certification in Special Education.

Amendment of Subpart 4-2 of Regents Rules, relating to a revised fee structure for Regents Accreditation of Teacher Education. (RATE).

Amendment of Part 80 of Commissioner's Regulations to correct errors, provide clarity, and make other minor technical adjustments.

Amendment of Part 30 of Commissioner's Regulations to designate a tenure area for each of the several teacher certificate titles that did not exist prior to February 2, 2004.

Amendment of Part 50 of the Commissioner's Regulations to clearly define and differentiate remedial and developmental coursework from credit-bearing college coursework.

Amendment of Part 52 of the Commissioner's Regulations to strengthen admissions policies to ensure prospective college students have accurate information on the college, job placement, and/or transfer opportunities necessary to make educated enrollment decisions.

Amendment of Part 52 of the Commissioner's Regulations related to requiring higher education institutions that accept students who do not have a high school diploma or a GED, demonstrate that before accepting these students, they successfully pass an Ability to Benefit (ATB) examination that is appropriate for college-level programs offered at the institution.

Amendment of section 100.2(dd) and Part 80 of the Commissioner's Regulations, relating to changes in the district professional development plan to account for changes in regulations related to the certification of school leaders.

Addition of section 150.4 of the Commissioner's Regulations relating to State aid for high needs nursing programs at certain independent colleges and universities.

Addition of section 145-2.15 of the Commissioner's Regulations relating to the independent administration of certain ability-to-benefit tests approved by the Board of Regents for purposes of eligibility for State aid awards and loans.

Amendment of the Commissioner's Regulations relating to eligibility for accelerated TAP awards.

Agency Representative
Information may be obtained, and written comments may be submitted, concerning the above-proposed amendments by contacting:
Johanna Duncan-Poitier
Senior Deputy Commissioner P-16
New York State Education Department
Office of Higher Education and Office of the Professions
89 Washington Avenue
West Wing, Second Floor Mezzanine - EB
Albany, New York 12234
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p16education@mail.nysed.gov

OFFICE OF THE PROFESSIONS

Amendment of section 3.57(b) of the Regents Rules, conferring the Doctor of Medicine degree, to eliminate the requirement of three years of licensed practice.

Amendment of Part 17 of the Regents Rules to conform to the new three member panel law.

Amendment of Part 17 of the Regents Rules relating to the summary suspension procedure.

Amendment of Part 18 of the Regents Rules relating to the provision of services to nurses with substance abuse problems.

Amendment of Part 24 of the Regents Rules relating to the application period for the restoration of professional licenses and the submission of materials in support of such applications.

Amendment of Part 24 of the Regents Rules relating to the waiver of citizenship requirement for licensure in veterinary medicine, dentistry, dental hygiene and pharmacy.

Amendment of Part 24 of the Regents Rules relating to the approval by the committee on the professions of three-year limited licenses in dentistry, dental hygiene, veterinary medicine, veterinary technology, and pharmacy.

Amendment of Part 29 of the Regents Rules relating to the packaging and dispensing of certain pharmaceuticals and electronic recordkeeping in pharmacies.

Amendment of Part 31 of the Regents Rules relating to the prohibition against illegal practice.

Amendment of Part 52 and Subparts 79-13, 79-14 and 79-15 of the Commissioner's Regulations relating to registered programs and education requirements for licensure in the clinical laboratory practitioner professions.

Amendment of Part 62 of the Commissioner's Regulations relating to admission to the examination in veterinary technology.

Amendment of Part 70 of the Commissioner's Regulations relating to experience requirements for licensure in Certified Public Accountancy and to competency requirements relating to the signing of financial statements.

Amendment of Part 74 of the Commissioner's Regulations relating to supervision, grandparenting, and admission to the licensing examination in social work.

Amendment of Part 75 of the Commissioner's Regulations relating to education and experience standards for speech-language pathology and audiology.

Amendment of Part 76 of the Commissioner's Regulations relating to the supervision of occupational therapy assistants.

Amendment of Part 79 of the Commissioner's Regulations relating to supervision, grandparenting and case narrative requirements in the Mental Health Professions.

Agency Representative:
Information may be obtained, and written comments may be submitted, concerning the above-proposed amendments by contacting:
Frank Muñoz
Associate Commissioner
New York State Education Department
Office of the Professions
89 Washington Avenue
West Wing, Second Floor - Education Building
Albany, NY 12234
(518) 486-1765

OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES

Amendment of sections 200.1-200.16 and Part 201 of the Commissioner's Regulations relating to definitions, board of education responsibilities, committees on special education, evaluations, criteria for the determination of learning disabilities, the development and implementation of the individualized education program (IEP), procedural due process, continuum of services, the provision of education services to preschool students with disabilities and discipline provisions as are required to conform to the federal regulations implementing the Individuals with Disabilities Education Act (IDEA) of 2004.

Amendment of section 100.2 of the Commissioner's Regulations relating to a definition and minimal requirements for a response-to-intervention program.

Amendment of sections 200.2(d) and 200.6(i), 200.7 and 200.16(c) of the Commissioner's Regulations relating to a school district placement of a student with a disability in an in-state or out-of-state private school.

Amendment of sections 200.2 and 200.16 of the Commissioner's Regulations relating to the role of school districts in providing special education services and programs to preschool children in accordance with Education Law section 4410(2).

Amendment of section 200.4 of the Commissioner's Regulations to revise the timelines for individual evaluations, IEP development and IEP implementation.

Amendment of sections 200.4 and 200.5 of the Commissioner's Regulations to mandate the format for prior written notice, CSE meeting notice and the IEP.

Amendment of section 200.5 of the Commissioner's Regulations relating to the impartial hearing process.

Amendment of section 200.6 of the Commissioner's Regulations relating to revise the minimum levels of services for resource room and

consultant teacher services and add a definition of an integrated co-teaching class for students with disabilities.

Amendment of section 200.7 of the Commissioner's Regulations relating to the approval process for private schools for reimbursement with public funds.

Amendment of section 200.9 of the Commissioner's Regulations relating to rate-setting and tuition rates for approved programs for students with disabilities.

Amendment of section 200.16 of the Commissioner's Regulations relating to the required time to complete the individual evaluation of a preschool student suspected of having a disability, provision of services for preschool students transitioning from early intervention programs and due process procedures for preschool students.

Amendment of Part 200 of the Commissioner's Regulations relating to the provision of special education services to students with disabilities parentally placed in nonpublic schools, including child find, evaluations, services, expenditure of federal funds and due process.

Amendment of Parts 246 and 247 of the Commissioner's Regulations relating to the vocational rehabilitation program operated pursuant to Title I of the Rehabilitation Act, as may be appropriate in order to conform to possible changes made when Congress reauthorizes that act this year.

Agency representative:

Information may be obtained, and written comments may be submitted, concerning the above-proposed amendments by contacting:

Rebecca 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

rcort@mail.nysed.gov

OFFICE OF CULTURAL EDUCATION

Amendment of Parts 185 and 188 of the Commissioner's Regulations relating to Local Government Records Management and State Agency Records Management to update and correct various requirements affecting the management of records, including revising technical language, removing outdated requirements, updating the list of State agencies paying annual fixed fees for records management services, authorizing local governments to dispose of paper original or micrographic copies of records having a retention period of ten years or more when those records are replaced by digitized images, and authorizing local governments to use locally-developed records retention and disposition schedules in lieu of or in conjunction with schedules issued by the Commissioner provided that the consent of the Commissioner for use of those locally-developed schedules is obtained.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above-proposed amendments by contacting:

Christine Ward

Assistant Commissioner for the State Archives

New York State Education Department

New York State Archives

Room 9C49

Cultural Education Center

Empire State Plaza

Albany, New York 12230

(518) 474-6926

Amendment of Part 90 of the Commissioner's Regulations relating to library and library system programs and services.

Amendment of section 90.12 of the Commissioner Regulations relating to State aid for public library construction.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above-proposed amendment by contacting:

Janet M. Welch

State Librarian and Assistant Commissioner for Libraries

New York State Education Department

Office of Cultural Education

Room 10C34

Albany, New York 12230

(518) 474-5930

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OFFICE OF MANAGEMENT SERVICES

Amendment of the Commissioner's Regulations pursuant to the Electronic Signatures in Global and National Commerce Act (P.L. 106-229) relating to performance standards to ensure accuracy, record integrity and accessibility of records that are required to be retained.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above-proposed amendment by contacting:

David Walsh

Chief Information Officer

New York State Education Department

Office of Management Services

89 Washington Avenue

Room 121 EB

Albany, New York 12234

(518) 486-1702

Amendment of the Commissioner's Regulations relating to school district payments to charter schools for educational costs, pursuant to section 102 of Part H of Chapter 83 of the Laws of 2002.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above-proposed amendment by contacting:

Burt Porter

Director of Education Finance

New York State Education Department

89 Washington Avenue

Room 139 EB

Albany, New York 12234

(518) 486-2422

Amendment of the Commissioner's Regulations to conform to Chapter 91 of the Laws of 2002 and Chapter 123 of the Laws of 2003, relating to New York City School District governance.

Amendment of Part 113 of the Commissioner's Regulations relating to the powers and duties of the New York City Board of Education in determining certain appeals.

Amendment of Parts 275 and 276 and section 100.2(y) of the Commissioner's Regulations relating to procedures for appeals to the Commissioner pursuant to Education Law section 310.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above-proposed amendments by contacting:

Kathy A. Ahearn

Counsel and Deputy Commissioner for Legal Affairs

New York State Education Department

89 Washington Avenue

Room 112 EB

Albany, New York 12234

(518) 474-6400

legal@mail.nysed.gov

OFFICE OF STATE REVIEW

Amendment of section 279.1 of the Commissioner's Regulations relating to cross reference to statutory provisions for state-level review of hearings for students with disabilities.

Amendment of section 279.2 of the Commissioner's Regulations relating to timeline for serving and filing a Notice of Intention to Seek Review, and Petition for Review; clarification of purpose of Notice of Intention to Seek review; clarification that parent must be personally served by a petitioning district; and adding notice of certification requirement.

Amendment of section 279.3 of the Commissioner's Regulations pertaining to change of filing address and where copies of regulations may be obtained.

Amendment of section 279.4 of the Commissioner's Regulations relating to petition as the pleading that initiates review and determines timeliness of appeal; to clarify that personal service is required; and sufficiency of content.

Amendment of section 279.6 of the Commissioner's Regulations relating to new matters raised in answer.

Amendment of section 279.7 of the Commissioner's Regulations relating to failure to properly verify a pleading.

Amendment of section to 279.8 of the Commissioner's Regulations relating to length of answer that includes cross appeal, table of authorities, non-compliance with form requirements; and clarifying requirement that pleadings be signed consistent with 22 NYCRR 130-1.1a(a).

Amendment of 279.9 of the Commissioner's Regulations relating to content of record; electronic filing of record; certification of record and clarification that section 279.9(b) refers to complete record.

Amendment of section 279.10 of the Commissioner's Regulations pertaining to extensions of time to answer or reply; length of extensions permitted; additional evidence; and to update cross reference to 200.5.

Amendment of section 279.11 of the Commissioner's Regulations pertaining to calculating date of mailing and type of mail.

Amendment of section 279.12 of the Commissioner's Regulations relating to parties receiving copies of state review officer's decisions.

Amendment of section 279.13 of the Commissioner's Regulations relating to service of petition for review.

Addition of section 279.14 of the Commissioner's Regulations allowing OSR to return hearing records to LEA when a petition for review is withdrawn or not perfected.

Addition of section 279.15 of the Commissioner's Regulations relating to scope of jurisdiction.

Addition of section 279.16 of the Commissioner's Regulations relating to right to judicial review.

Addition of section 279.17 of the Commissioner's Regulations relating to dismissal of any petition or other pleading, or memorandum for failure to conform with the requirements of Part 279.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above-proposed amendments by contacting: Paul F. Kelly, Assistant Counsel and State Review Officer, Office of State Review, 80 Wolf Rd., 2nd Fl., Albany, NY 12203, (518) 485-9373

Department of Health

The following rules are under consideration for submission as a Notice of Proposed Rulemaking during the calendar year June 2007:

DESCRIPTION OF THE RULE SUBJECT MATTER Title 10 NYCRR (Health)

2.1 Reportable communicable disease – Addition of lymphogranuloma venereum and chancroid as reportable diseases.

2.1 and 2.5 Reportable Communicable Diseases - Addition of vibriosis, Vancomycin-intermediate resistant Staphylococcus aureus (VISA), Vancomycin-resistant Staphylococcus aureus (VRSA), Shiga toxin-producing Escherichia coli (STEC), transmissible spongiform encephalopathy (TSE), and varicella as reportable diseases.

2.14 Communicable Diseases - Rabies regulations will be updated to

be consistent with changes enacted to the Public Health Law in December 2002. The regulations will provide new definitions, and clarification of requirements for reporting, authorization of treatment, release of information, confinement and observation, exceptions to euthanasia and testing, and animal vaccinations.

2.19 Reporting Cases or Suspect Cases of Communicable Disease by Laboratories – Utilization of the Electronic Clinical Laboratory Reporting System (ECLRS) by laboratories to meet their public health reporting requirements for Communicable Disease reporting.

2.58 Communicable Diseases - Update regulation to extend to all reptiles rather than being limited to turtles, to reflect current understanding of potential sources of disease. Revise regulation to include a requirement for pet shops to provide written warnings at the point of sale. Amend to specify warnings posted at display sites where reptiles are not for sale but may be handled by the public.

5-1 Public Water Systems - Update provisions pertaining to control of lead and copper in public water supply systems. 6-1 Swimming Pools – Amend regulations for supervision and safety requirements.

7-1 Temporary Residences – Amend to remove campground specific requirements contained in 7-1.60, which are now contained in a separate Subpart 7-3. Amend and update fire safety requirements to reflect statewide applicability of the Uniform Fire Prevention and Building Code to new construction.

7-4 Mass Gatherings – Create new Subpart to include the provisions for mass gatherings currently included as part of Subpart 7-1. Revise various sections to better address crowd control, camping and installation and maintenance of services and facilities.

11 Qualifications of Public Health Personnel - This section of the Code provides job titles and minimum job qualifications for local health department personnel. The Code, last updated in 1979, will be updated to ensure that minimum qualifications for the positions of public health director, public health nurse, health educator, and environmental health titles are appropriate to meet the infrastructure needs of effective local public health systems.

14-1, 14-2, 14-4, 14-5 Food Protection – Modify requirements and create a more user-friendly document; exempt certain operators and rescind certain provisions, address legislative mandate regarding food worker training courses.

16 Ionizing Radiation - Add/amend requirements for standards for decommissioning, reporting, transportation, definitions and human research to be compatible with federal regulations and replace outdated requirements. Clarify the requirements for reporting of misadministrations. Revise reporting requirements to be consistent with NYPORTS. Update quality assurance requirements. Update equipment requirements for dental x-ray facilities. Includes basic quality control requirements for dental x-ray films, and requirements for computed tomography units used for maxillofacial and/or dental examinations. Consolidate Part 16 with Code Rule 38.

19 Limited Testing Site Directors - Establish qualifications for directors of clinical laboratories that limit their services to CLIA-designated waived tests and provider-performed microscopic procedures; establish qualifications for directors of clinical laboratories that limit forensic toxicology services to use of Department-waived initial testing methods; and revise qualifications for directors of comprehensive clinical laboratories to recognize professional boards accepted as qualifying under the federal Clinical Laboratory Improvement Amendments (CLIA).

22.7 Reportable levels of heavy metals in blood and urine – Amend to remove the threshold levels for reporting cadmium, mercury and arsenic. All laboratory tests for cadmium, mercury and arsenic will be submitted and will enable us to follow cases and assist in assessing interventions and education to reduce elevated exposures.

22.11 Reporting of pesticide poisoning – Amend to incorporate Poison Control Centers as a reporting entity to assist in identifying and

intervening in pesticide poisoning cases who do not go to an emergency department or a physician.

23.1 List of sexually transmitted diseases – Updated language and clarification on listing of sexually transmitted diseases and those that require provision of diagnosis and treatment free of charge by public health facilities covered under Section 23.2.

23.2 Treatment facilities – Updated language and clarification on the diagnosis and treatment of STDs by public health facilities.

23.3 STD reporting – Addition of lymphogranuloma venereum and chancroid.

34 HealthCare Practitioner Referrals and Laboratory Business Practices - Technical amendments to align with federal compensation arrangement exceptions.

44 State Aid for Approved Vector Surveillance and Control Programs - State aid regulations will be updated to be consistent with changes enacted to Public Health Law in January 2007. The regulations will provide new and updated definitions, add new vector borne diseases, and clarify eligible local health department activities for arthropod-borne disease surveillance, control and prevention.

46 Physically Handicapped Children's Program (PHCP)-Update and revise requirements related to the designation of approved specialty centers for providing care to children with physical disabilities and other chronic medical conditions under the Physically Handicapped Children's Program.

52 Tissue Banks and Nontransplant Anatomic Banks - Revise requirements for procurement of tissue from deceased donors, including setting restrictions on banks' ownership and business relationships with funeral directors and funeral firms, and limiting recovery of tissue to hospitals and appropriately licensed banks.

53 State Revolving Fund Scoring Criteria - Revise scoring criteria to promote projects intended to improve PWS security against terrorism/vandalism.

55-2 Environmental Laboratories - Technical revisions to ELAP standards to ensure consistency, where applicable, with national consensus standards promulgated by NELAP.

57 Rabies - Obsolete administrative requirements for dogs at large in rabies designated areas will be removed, and replaced with regulations to clarify administrative issues for reporting, cost responsibility, and reimbursement of rabies expenses.

58-1 Clinical Laboratories - Revise laboratory personnel requirements to align with licensure requirements under the NYS Education Department's Clinical Laboratory Technology Practice Act; consolidate existing requirements for clarity, codify QA, PT and other requirements to align with federal CLIA standards; establish standards for tracking and referral of critical agent and communicable disease specimens; establish standards for laboratory verification of technical and clinical validity of analytical methods; establish requirements and record keeping standards for laboratories that limit their services to CLIA-designated waived tests and provider-performed microscopic procedures; and establish standards for multiple-site permits.

58-2 Blood Banks - Technical amendments for collection, processing, testing, and storage of blood and blood components; labeling of blood specimens intended for pre-transfusion testing; and equipment calibration, temperature and record keeping requirements. Amend qualifications of cytopheresis collection site staff, and lower blood donor age to 16 years with parental/guardian consent.

58-4 Direct Access Testing - Establish record keeping and reporting standards for direct access testing, a business model for clinical laboratories authorized by PHL Article V.

59 Chemical Analyses Of Blood, Urine, Breath Or Saliva For Alcoholic Content - Technical amendments to provisions for breath alcohol testing to simplify enforcement of Vehicle and Traffic Law; codify list of approved ignition interlock devices and delete references to expired pilot program; and codify NHTSA model specifications for device certifica-

tion. 66-1.1 thru 66-1.10 and 66-2.1 through 66-2.9 - Update regulations to be consistent with changes enacted to the Public Health Law. The regulations will add pertussis, tetanus and pneumococcal disease to the list of required pre-school immunizations and also address the requirement that children receive a booster for varicella and tetanus, diphtheria and pertussis, by the time they enter sixth grade.

Various regulatory changes are also proposed to update immunization recommendations to reflect current recommendations. The proposed changes include the requirement of a second dose of varicella and mumps vaccine. Language will also be added to clarify medical exemptions and annual school immunization survey requirements, and change physician diagnosis standards for measles and mumps to reflect the rarity of these diseases.

67-1 Childhood Lead Poisoning Prevention - Clarify protocols for follow-up (case management) services for children ages 6 to 18 years; reduce the capillary blood lead level at which a result must be confirmed by venous test from 15 mcg/dL to 10 mcg/dL, to be consistent with CDC guidance; lower the blood lead level requiring environmental intervention and management from current level of 20 mcg/dL; incorporate requirements for physician use and reporting of point-of-care methods to analyze blood lead samples in the office to accommodate new technology.

67-2 Lead Poisoning Control – Revise and update regulation to be consistent with federal regulations and guidelines on environmental assessment and abate.

69-4 Early Intervention Program – Regulations need to be reviewed and updated to be consistent with changes to the Public Health Law. Conforming regulations will address new requirements 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; approval and periodic re-approval of evaluators, service coordinators, and providers of early intervention services who meet Department standards; Department auditing procedures; and, fiscal management and claiming standards.

69-4 Early Intervention Program - Establish standards for behavioral aides, approval of providers, and paraprofessional reimbursement rates for delivery of intensive behavioral intervention services to children with autism spectrum disorders.

69-4 Early Intervention Program – Amend regulations to include or clarify programmatic and reimbursement requirements for the program, including at a minimum the following: criteria for eligibility and ongoing eligibility; criteria and procedures for sanctioning and disqualification of evaluators, service coordinators, and providers of early intervention services; health and safety standards to be maintained by service providers; requirements for documentation of records and record retention; mediation and impartial hearing procedures; service taxonomy definitions; and, billing rules for early intervention services.

69-4 Early Intervention Program – Amend regulations to establish Department fees for processing and approving applications from agencies and individual practitioners who are seeking State approval or re-approval to participate as providers in the State the Early Intervention Program (evaluations, service coordination services, and general/therapeutic and support services).

69-4 Early Intervention Program – Amendments may be needed to conform current state regulations to final Federal regulations under the Individuals with Disabilities Education Improvement Act of 2004, when issued (a notice of proposed rulemaking was issued on May 9, 2007, by the U.S. Department of Education).

69-4 Early Intervention Services - Include a reimbursement methodology for paraprofessionals that deliver behavioral therapies to children with autism.

72-1 Tanning Facilities - Regulations to be consistent with previously and recently enacted changes to Public Health Law Article 35-A - Ultraviolet Tanning Devices. The regulations will provide definitions and requirements for permit, inspection and operation of tanning facilities.

73 Asbestos Safety Training Program Requirements – Amend to incorporate changes made by the New York State Department of Labor to Code Rule 56 and changes in the industry to reflect training practices. Appendix 75A Wastewater Treatment Standards - Individual Household Systems - revise/update design standards to address clarification and new technology.

Appendix 75C Individual Water Well Quality Standards - establish water quality reference standards for individual household wells.

77.3 Registered Residents - Responsibilities of sponsor.

Part 77 Funeral Establishments, Registrations, Funeral Directing, and Misconduct– Prohibit the recovery of tissue within a funeral establishment and not allow non-transplant anatomical banks to operate within such establishments or the requesting of consent for an anatomical donation by a funeral director or employees of a funeral firm.

80 Controlled Substances – Amend to authorize the use of ketamine hydrochloride and sodium pentobarbital in a schedule II formulation for euthanasia in an animal shelter. The regulations will also be amended to require pharmacies to submit information to the Department indicating method of payment for a controlled substance prescription and whether the prescription was dispensed as an original or as a refill. The regulations will also be amended to require licensed distributors of controlled substances to submit information on controlled substances supplied to DEA registrants.

86-1 Hospital Outlier Payments – Costs to Charge Ratio used in the calculation of the cost outlier payments will be updated to the actual rate year ratio to more accurately calculate these payments. This is based upon a Federal Office of the Inspector General Audit recommendation.

86-1 Hospital Reimbursement – Update the All Patient Diagnostic Related Groups (AP-DRGs) patient classification system that will be used for 2008 inpatient hospital rates. Revise 2008 Service Intensity Weights, Trimpoints and Average Length of Stay.

86-2 Updating Criteria for Determining Nursing Home Hospital-Based Status - Eliminate regulations referencing the designation of hospital-based nursing homes by the federal government since they no longer make that distinction.

86-2 Nursing Home Pay for Performance - Provide an enhanced rate adjustment for those nursing facilities that meet or exceed defined quality measures.

86-2 Behavioral Intervention Services - Establish a distinct Medicaid payment rate for nursing facilities that operate a discrete unit to care for individuals with neurobehavioral challenges (identified as behavioral intervention step-down units) that no longer require the intensity of the secure specialized behavioral units already in regulation.

86-4 Ambulatory Care Data Collection (SPARCS) - Authorize collection of medical record information for all patients in an ambulatory care setting.

86-4 Units of Service, Social Work Services in Article 28 Federally Qualified Health Centers (FQHCs) – Allow Medicaid threshold billings for individual clinical social worker psychotherapy services provided by licensed clinical social workers; clinical group psychotherapy services provided by a qualified clinician for groups of patients from two to eight in number; and, off-site services delivered to FQHC patients under limited circumstances. Threshold billing of all psychotherapy services for clinics, FQHC and non-FQHC will be limited to no more than 15% of a clinic's total annual visits.

89 Practice of X-ray Technology - Update obsolete language and establish certificate and standards for radiographers who inject contrast media.

98-1.5 Application for a certificate of authority - This section will be revised to require electronic submission of the MCO's provider network, consistent with the filing requirements in 98-1.16(j).

98-1.6 Issuance of the certificate of authority - The regulation will be revised to add a provision requiring MCOs to maintain a complete file on each request for health care services or benefits and associated appeals pursuant to Article 49 of the Public Health Law and federal law and regulations.

98-1.8 Continuance of a certificate of authority - To facilitate enforcement, amend the regulation to clarify that managed care organizations must maintain compliance with the requirements of Public Health Law Articles 44 and 49 and 10 NYCRR Part 98, including provisions related to initial application and certification standards, in order to maintain their certificate of authority.

98-1.13(d) Assurance of access to care - Amend this section to require that each member select a primary care provider from which the member receives all primary care services.

98-1.14 Enrollee services and grievance procedures - Amend this section to require MCOs to issue notice to enrollees upon approval, denial or failure to pay for a request for a covered benefit or referral when the determination is not subject to the provisions of Public Health Law Article 49.

98-1.21 Fraud and abuse prevention plans and special investigation units - Proposed changes will: delete an unworkable requirement for MCOs to develop procedures for detecting repetitive fraud across plans; expand and clarify requirements for a fraud and abuse awareness program to include a confidential toll free telephone number to report suspected cases of fraud and abuse; and, expand and clarify the required content of the fraud and abuse detection manual to include all available guidance on identification and referral of suspected cases of fraud and abuse.

98-1 Various Technical Amendments - Technical corrections will be made to the regulation to: 1) 98-1.2(o), clarify the definition of "transitional period" such that it extends for at least 90 days; 2) 98-1.9(b)(3), require MCOs to provide assurances of continuing compliance with Article 49 of the Public Health Law, in addition to Article 44 and Part 98; 3) 98-1.11(h), restore language that prohibits HMOs from discriminating in enrollments and services provision (this language was inadvertently deleted when the regulation was revised); 4) 98-1.11(k)(4), clarify that the MCO is responsible for monitoring contractors' fiscal stability; 5) 98-1.11(p), clarify that MCOs must comply with Article 49 of the Public Health Law, in addition to Article 44 and Part 98; and, 6) 98-1.13(c)(iii), correct a 2005 change which inadvertently limited provider contract assignments to within one year of promulgation of the rule.

98-2 External Appeals of Adverse Determinations – Amend the existing regulation to clarify that external appeal agents may not be held liable in damages for external appeal determinations unless such determinations were made in bad faith or involved gross negligence. A technical correction will be included to remove the definition of "designee" as ordered by the courts.

123 Conesus Lake Watershed Rules - Amend to incorporate regulations intended to protect the public water supplies of the Villages of Avon and Geneseo and the Town of Livonia.

132 Canandaigua Lake Watershed Rules - Amend to incorporate regulations intended to protect the public water supplies of the City of Canandaigua, Villages of Rushville, Palmyra and Newark, and the Town of Gorham.

400.12 Forms (criteria for level of care and Screen) (Pre-Admission Screening and Resident Review - PASRR) - Amend regulations to define Specialized Services; and revise PASRR Level I Screen form to delete the word "Strongly" from Question #8 and revise question #9 to require the community services identified as necessary to be specified by the

evaluator, and to require the evaluator to describe public, in addition to private, resources that might be available to pay for such services.

400.15 and 700.4 The Role of the Licensed Practical Nurse (LPN) in Intravenous Therapy Procedures – Update to be consistent with the LPN scope of practice.

402 Criminal History Record Check - Implementation of Chapter 769 of the Laws of 2005 as amended by Chapter 331 of the Laws of 2006 by requiring nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs to request criminal background checks of certain prospective employees.

405.3 Administration - Add certain requirements for immunizations for healthcare workers. Exempt telemedicine personnel from immunization requirements as a condition of employment.

405.3 (Hospitals), 415.26 (Nursing Homes), 751.6 (Treatment Center and Diagnostic Center Operations), 763.13 (Certified Home Health Agencies, Licensed Home Care Service Agencies, and AIDS Health Care Programs), 766.1 (Licensed Home Care Services Agencies), 793.5 (Hospice Operations) - Regulations for personnel in these facilities include the requirement for an annual tuberculosis assessment. Current regulations specify a "ppd (Mantoux) skin test for tuberculosis prior to employment or affiliation and no less than every year thereafter for negative findings. Positive findings shall require appropriate clinical follow-up but no repeat skin test. . ." These regulations will be updated to permit the use of FDA-approved blood assays for the detection of latent TB infection, as an alternative to the skin test.

405.7 Patients' Rights - Update the language assistance provisions regarding annual needs assessment to include the enhanced Medicaid appropriation for non-public New York City hospitals.

405.8 Incident Reporting - Update the Department's New York Patient Occurrence Reporting and Tracking System (NYPORTS) provisions for hospitals to reflect current practice.

405.9 – Admission/Discharge – Clarify that all donor and procurement responsibilities must be carried out before a dead body is removed from a hospital. Amend history and physical requirements for admitted patients in accordance with revised federal regulations.

405.10 – Medical Records – Allow verbal orders to be authenticated by not only the ordering practitioner, but also by other practitioners responsible for the care of the patient within 48 hours rather than "as soon as possible" consistent with new federal requirements.

405.11 Infection Control (Hospitals) – Regulations need to be reviewed and updated to incorporate the new requirements associated with PHL 2819, Hospital-Acquired Infection Reporting.

405.20 – Outpatient Services – Review possibility of cross referencing 752.2 for hospital based free standing emergency facilities.

405.22 – Critical Care and Special Care Services – Update the organ transplant center provisions.

415 Feeding Assistants in Nursing Homes - Permit the use of paid feeding assistants in New York State nursing facilities.

415 Neurobehavioral Step Down Unit - Establish new nursing home regulations for a specialized program for nursing home residents requiring less restrictive behavioral interventions than provided in a discrete neurobehavioral unit. A neurobehavioral step down unit shall mean a discrete unit with a planned combination of services with staffing, equipment and physical facilities designed to serve individuals whose behavior cannot be managed in a RHCF without presenting as an undue risk or threat to self or others, but whose behavior does not require the program and services of a discrete neurobehavioral unit.

600.8 Criteria for Determining the Operation of Diagnostic or Treatment Center Under Article 28 of the Public Health Law – Review -Appropriateness Review – Amend Trauma Designation Centers. Modify existing trauma designation standards and update provisions to conform to the 2005 Emergency Medical, Trauma Care and Disaster Preparedness Act.

-Determination of Public Need for Medical Facility Construction – Amend the liver and human heart transplantation services provisions.

710.1 Certificate of Need - Regulations to be updated to reduce CON review requirements, from full review to administrative review, and from administrative review to limited review or notification, for certain types of major medical equipment and certain categories of construction unrelated to clinical capacity. These changes will enable Article 28 providers to undertake needed changes more efficiently in an increasingly changing health care market.

711, 712, 713, 715 and 716 Medical Facility Construction - Revision of the Medical Facilities Construction Code.

732-1.1 and 732.2 Workers' Compensation Programs - Employer shall mean an employer covered by the Workers' Compensation Law who is self-insured or who contracts with either an insurer or the State Insurance Fund to arrange. By including the State Insurance Fund, the Department's regulations are now consistent with the March 12, 2007 statutory change to Article 10-A Section 351 of the Workers' Compensation Law. Change the numerical requirement of 5 physicians per specialty to 2 physicians per specialty. Consistent with March 12, 2007 statutory change to Article 10-A Section 354 of the Workers' Compensation Law. The Commissioner of Health has been delegated the authority to waive such numerical requirements. Consistent with March 12, 2007 statutory change to Article 10-A Section 354 of the Workers' Compensation Law. Change the numerical requirement of 3 hospitals to 2 hospitals for network adequacy. Consistent with March 12, 2007 statutory change to Article 10-A Section 354 of the Workers' Compensation Law.

750-759-Treatment Center and Diagnostic Center Operation - Update the Department's New York Patient Occurrence Reporting and Tracking System (NYPORTS) provisions for Diagnostic and Treatment Centers to reflect current practice. Add certain immunization requirements for healthcare workers.

752-2–Up-Graded Diagnostic and Treatment Center Services – Review with a view toward addressing freestanding emergency department classification.

767 Home Medical Equipment – Create new Part to include provisions for licensing and oversight of Home Medical Equipment providers, pursuant to newly enacted statute.

763 and 766- Reporting Requirements for Licensed Home Care Services Agencies — To implement recent statutory changes to PHL which require licensed home care services agencies to submit annual cost reports and comply with the annual administrative and general cost requirements applied to certified home health agencies.

790 Hospices – To implement changes in the federal Conditions of Participation

800 - Emergency Medical Services - General - Use and application by members of the public of automatic external defibrillators. Use and application of epinephrine auto-injectors in an emergency situation. Codify regulatory requirements for Advance Life support First Response Agencies. Codify regulatory requirements for Basic Life Support Providers. Make updates to EMS certification and training regulations. Establish a new section on the mobilization and/or sharing of resources in the event of a declared disaster.

1001-Assisted Living Residences – Create new Part to carry out the requirements of newly enacted statute requiring licensure of assisted living residences. Additionally provides standards and guidelines pertaining to new certificate classifications of enhanced and special needs assisted living. This rule just came back from the initial public comment.

1000.1 Physician Profiling Definitions – Modify this regulation to define physician membership other than "board certification". The amendments will provide definitions and requirements for physician information posted under the field "membership" on the physician profiling system.

1000.3 Malpractice Awards, Judgements, and Settlements – a physician has 30 days within which to appeal the disclosure of the settlement information in the instance where – physician has 2 or fewer settlements. The regulation would clarify the circumstances under which a physician may be granted an extension because of physical incapacitation, etc.

1000.5 Physician Profiling Updating Self-Reported Information – Add the requirement that physicians must notify the department at least annually if there are no changes in profile information.

Title 18 NYCRR (Social Services)

311.3(a) (2) District of Fiscal Responsibility for Medicaid - Revise the regulation to conform with pending court settlement/decision in Luberto v. Novello.

360 Medicaid Buy-In Program for Working People with Disabilities - Medicaid eligibility requirements for working people with disabilities.

360 Family Health Plus (FHP) program - Implements the FHP program.

360 LTC Eligibility Changes Required by the Deficit Reduction Act (DRA) of 2005 – The Medicaid eligibility regulations and transfer of assets provisions require amendment to reflect the provisions contained in the DRA and amended State statute.

360-1 through 360-4.6 Implementing Welfare Reform Act of 1997 – Conforms regulations with the Welfare Reform Act of 1997.

360-4.4 and 360-4.10 Resources and Annuities – Revise Section 360-4.4 to specify that resources include an individual's interest in an annuity. Revise Section 360-4.10 to provide that for the purpose of increasing a community spouse resource allowance to increase the community spouse's income to the minimum monthly maintenance needs allowance, the Department may adjust the community spouse resource allowance to the amount a person would have to invest in a single premium annuity to generate the needed income, attribute a rate of return based on a presumed available rate of interest, or other reasonable methodology.

360-4.6(a) (2) (xxv) Interest/Dividend Income Exclusion - Provides for the exclusion of most interest/dividend income for SSI-related individuals.

360-4.6 (a)(2)(xxvi) and 360-4.6 (b)(2)(x) Education-Related Income and Resource Exclusion - Provides for the disregard of gifts used for tuition, fees, or other necessary educational expenses as countable income, and, for nine months, as countable resources for SSI-related individuals.

360-4.6(b)(2)(v) and 360-4.6(b)(2)(ix) Resource Exclusion - Provides for a resource exclusion period of nine months for retroactive SSI and Social Security benefit payments, federal child tax credit payments, and federal earned income tax credit payments for SSI-related individuals.

360-5.5 Examination – The reference to 18 NYCRR 595.3(b) is inaccurate. The fiscal regulations were changed in 1988. This appears to have been an oversight at that time.

360-5.9(a) Trial Work Period - Revises the threshold amounts for counting a month toward a 9-month trial work period.

360-6.7 Managed Care – This section will be repealed and its provisions will be modified and consolidated with a new Part 360. The provisions describe the standards and processes by which managed care enrollees may disenroll from a managed care organization and will be revised to reflect Chapter 649 of the Laws of 1996 and Chapter 433 of the Laws of 1997.

360-7.2 Medicaid Program as Payment of Last Resort - Clarification of the definition of third party by adding the words "or entity".

360-7.3(c)(1) of Title 18 NYCRR and Part 85.13 of Title 10 NYCRR Use of Health, Hospital or Accident Insurance & Physically Handicapped Children's Program - Eliminates the dual prior approval for certain services for Medicaid eligible children.

360-7.7 Payment of Medicare Coinsurance - Amend the regulation to indicate that Medicaid will reimburse providers 20% of the Medicare Part B coinsurance for dually eligible Medicare/Medicaid recipients in instances where what Medicare pays exceeds the Medicaid fee.

360-7.7 Payments of deductibles and coinsurance under title XVIII of the Social Security Act (Medicare) - Language is needed to reinforce the policy that Medicaid prior approval is not necessary if the item or service is covered by Medicare. If Medicare denies payment based on lack of medical necessity, Medicaid prior approval and/or reimbursement will not be considered. Services that are statutorily excluded from Medicare payment but covered by Medicaid would be payable if medically necessary.

360-7.11 Revision to Medicaid Recoveries - Lowers the age for estate recoveries and includes the category of undue hardship as required by federal regulations.

360-7.12 Co-Payments by Recipients - Revises the regulation to conform with recently enacted statutory changes to Medicaid co-payments that eliminates the pharmacy co-payment exemption for managed care recipients, and increases the pharmacy co-payment \$.50 to \$1.00 for generic drugs, \$2.00 to \$3.00 for brand name drugs, and the annual cap from \$100 to \$200.

360-10 Medicaid Managed Care Program - Replace the existing regulations to conform to changes authorized by Chapter 165 of the Laws of 1991, Chapter 649 of the Laws of 1996 and Chapters 433 and 436 of the Laws of 1997. The proposed regulations will clarify provisions of law, provide clearer guidance regarding marketing and enrollment in the Medicaid managed care/Family Health Plus programs, add fair hearing rights and requirements specific to Medicaid managed care/Family Health Plus, require providers to accept payment from a managed care plan as payment in full and add provider prohibitions specific to the Medicaid managed care/Family Health Plus programs.

360-11 Medicaid Managed Care – This section describes the standards and processes by which special needs populations may obtain specialty care services with the Medicaid managed care program. It will be repealed because it was made obsolete by passage of Chapter 649 of the Laws of 1996 which authorized the development of Special Needs Plans (SNPs) for these populations.

485, 486, 487, 488 and 490 – Consolidating and streamlining provisions relating to adult homes, enriched housing programs and residences for adults, to reflect recent past legislative and regulatory initiatives and the changing environments of these types of facilities. Provide clarification and consistency to residents, operators and the public with regards to adult care facilities.

486 Inspection Review Process for Adult Care Facilities – To formalize the currently informal inspection review process, whereby operators can request an inspection review meeting after issuance of an inspection report but prior to the posting of the report on the Department's website.

487, 488 and 490 Temperature Standards for Adult Care Facilities - To implement the provisions of recently enacted statute with respect to an allowable temperature in all areas occupied by residents of adult homes, enriched housing programs and residences for adults.

487, 488 and 490 Standards for Food Service Staff in Adult Care Facilities – To address standards for those adult care facility personnel consistent with the level of food service which they perform, including training in the areas of sanitation in the food preparation and service areas, refrigeration and preservation, principles of a balanced meal, and ordering with an emphasis on fresh foods.

504.3(j) through (m) Medicaid Provider Responsibilities - Three new sections are added to Part 504.3(j) through (l) defining the responsibility of Medicaid enrolled providers to treat Medicaid patients during federal or State declared emergencies. A fourth section (m) is added to clarify that Title XVIII Medicare enrollment is required for all providers eligible to participate in Medicare as a condition of enrollment in the New York State Medicaid Program.

505.3 Pharmacy - Amends the regulation to identify Medicaid reimbursement associated with the reasonable administrative costs incurred by 340B covered entities or an authorized contract pharmacy when billing Medicaid at 340B prices.

505.3(b)(1) Drugs - Amends the regulation to eliminate the requirement for a prescription or fiscal order for the dispensing of over-the-counter emergency contraception for women 18 years or older.

505.5 Fiscal Orders-Change fiscal order requirements for medical surgical supplies to allow filling within 60 days rather than 14 days of the date written, in concurrence with current policy. Add fiscal order requirements for DME, orthotics, prosthetics and prescription footwear that the order must be filled within 180 days unless otherwise stated by the Department in concurrence with current policy. Specifically define the paper and electronic formats for fiscal orders which are acceptable.

505.5 Durable Medical Equipment-Define the procedures for pursuing Medicaid Waiver reimbursement for Assistive Technology (AT) devices that do not meet the definition of DME and, therefore not covered by the Medicaid State Plan, including those AT devices that would be covered under federal EPSDT statute. Also specify that exclusive utilization of HIPAA-compliant HCPCS codes and proper use of miscellaneous codes is required for prior approval and claims submission.

505.8 of Title 18 NYCRR and 83.33 of Title 10 NYCRR Medically Fragile Children - Based on legislation, language will be added to the Nursing Services regulations to authorize a fee enhancement for nursing services provided to medically fragile children (defined as clients up to age 21 who receive private duty nursing under Medicaid), for dates of service between January 1, 2007 and December 31, 2008 inclusive. Duplicate language in Title 10 will be deleted.

505.8 of Title 18 NYCRR and 85.33 of Title 10 NYCRR Private Duty Nursing Services - This will replace and update the current language controlling the amount, duration, and scope for the provision of private duty nursing services under the Medicaid Program.

505.14(e) Personal Care Assistant Training Programs Amend regulations to clarify approval expiration timeframes and the routine re-approval process; require the use of the Home Care Curriculum and Evaluations; provide a basis and process for withdrawal of approval; provide reporting requirements; and other clarifying revisions and update amendments as needed.

505.25 Personalized Recovery Oriented Services (PROS) - This is a technical amendment that reflects approved Title 14 OMH regulations for PROS, a comprehensive outpatient recovery oriented program for persons with severe and persistent mental illness.

505.31(d)(e)(1) of Title 18 NYCRR and Part 85.39 of Title 10 NYCRR Audiology, Hearing Aid Services and Products - Eliminates the designation of the Physically Handicapped Children's Program speech and hearing centers as only providers of hearing assessments to Medicaid eligible children.

506.2 and 506.6 Dental Vans-In light of increasing interest in Medicaid reimbursement for services provided in dental vans used as private offices, regulations will define a mobile setting and allow a mobile setting as a valid dental place of service, and specify what provider qualifications are necessary for use of dental vans.

506.4 of Title 18 NYCRR and Part 85.45 of Title 10 NYCRR Orthodontic Care - Eliminates the Physically Handicapped Children's Program sole review role in the area of orthodontia; removes the reference to panel orthodontists; and updates the qualifications for orthodontists and eligibility criteria for these services.

540.6 Billing for Medical Assistance-Language is needed to specifically state that Medicare enrollment, whenever possible, is a requirement for participation in the Medicaid program.

CONTACT PERSON: William Johnson, Department of Health, Bureau of House Counsel, Office of Regulatory Affairs, Corning Tower, Rm. 2438, Empire State Plaza, Albany, NY 12237-0031, (518) 473-7488, fax: (518) 473-2019, e-mail: regsna@health.state.ny.us

Insurance Department

Pursuant to Section 202-d of the State Administrative Procedure Act (SAPA), the following Regulatory Agenda is a list of the regulatory additions and amendments to Title 11 of the NYCRR that the Insurance Department is presently considering proposing during the second half of 2007. Many of these items were previously published in the January 2007 Regulatory Agenda. Items that have been published in the State Register as "Proposed" actions are not included on the list. The Insurance Department's regulatory plans are subject to change, and the Department reserves the right to add to, delete from, or modify items on the Agenda without further notice.

This notice also is intended to provide small businesses, local governments and public and private interests in rural areas with the opportunity to participate in the rule making process, as provided for in Sections 202-b and 202-bb of SAPA.

For inquiries pertaining to a specific item, contact the agency contact person following the item. For general inquiries about the Insurance Department's Regulatory Agenda, contact:

Sam Wachtel
Supervising Attorney
Office of General Counsel
New York State Insurance Department
25 Beaver Street
New York, N.Y. 10004
Telephone Number: 212-480-5269

Copies of current regulations may be obtained from the Department's Public Affairs Bureau by writing to the New York City address above, or by calling 212-480-2283.

1. Summary description of proposal: Adoption of a new part to 11 NYCRR to set forth, in broad terms, the principles to which licensees are expected to adhere in conducting their business in New York. Agency Contact: Paul Zuckerman, Principal Attorney (212-480-5286).

2. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish requirements regarding disclosure of all sources and amounts of compensation received by licensed insurance brokers and certain agents. Agency Contact: Paul Zuckerman, Principal Attorney (212-480-5286).

3. Summary description of proposal: Adoption of a new part to 11 NYCRR to construe Insurance Law Section 204 in a reasonable manner that effectuates the statutory purposes behind the section while providing guidance to department personnel in distinguishing permissible from impermissible investments and activities. Agency Contact: Sapna Maloor, Assistant Attorney (212-480-4668).

4. Summary description of proposal: Amendment of 11 NYCRR 67 (Mandatory Underwriting Inspection Requirements for Private Passenger Automobiles) (Regulation 79) to include additional circumstances under which an insurer may voluntarily waive mandatory inspection of a motor vehicle for physical damage coverage, and to clarify that the use of digital photography and electronic access to inspection report data are permitted. Agency contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

5. Summary description of proposal: Amendment of 11 NYCRR 60-2 (Supplementary Uninsured/Underinsured Motorists Insurance) (Regulation 35-D) to revise all references in Sections 60-2.3 and 60-2.4 from "AAA/American Arbitration Association" to "designated organization." Agency contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

6. Summary description of proposal: Amendment of 11 NYCRR 301 (Purchasing Groups) (Regulation 134) to eliminate provisions referencing Affidavit Part B, which was originally required by 11 NYCRR 27 (Regulation 41) but has since been deleted from Regulation 41. Agency contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

7. Summary description of proposal: Amendment of 11 NYCRR 27 (Excess Line Placements Governing Standards) (Regulation 41) to establish procedures for the filing of required affidavits on a consolidated basis for "legitimate" group placements under 11 NYCRR 153 (Regulation 135) similar to those in place for Purchasing Groups under 11 NYCRR 301 (Regulation 134). Agency contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

8. Summary description of proposal: Amendment of 11 NYCRR 65-1, 65-2, 65-3, 65-4 (Regulations Implementing the Comprehensive Motor Vehicle Insurance Reparations Act) (Regulations 68-A, 68-B, 68-C & 68-D) to revise No-fault endorsements and requirements for insurer claim practices. Agency contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

9. Summary description of proposal: Amendment of 11 NYCRR 65-3 and 65-4 (Claims for Personal Injury Protection Benefits & Arbitration) (Regulations 68-C & 68-D), respectively, to adopt a new prescribed form that can be used only for the denial of health service benefits that do not involve any policy issues or statutory exclusions, and to amend rules related to both the manner in which the organization designated by the Superintendent administers the first party motor vehicle insurance arbitration programs and assesses the costs of these programs to the insurance industry. Agency contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

10. Summary description of proposal: Amendment of 11 NYCRR 68 (Charges for Professional Health Services) (Regulation 83) to adopt a fee schedule for health services rendered by licensed acupuncturists. Agency contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

11. Summary description of proposal: Amendment of 11 NYCRR 390 (Service Contracts) (Regulation 155) that will provide clarification of the requirements and conditions for appointment of a claims trustee, the minimum affirmations and attestations in the use of a "parental guarantee" of a subsidiary Service Contract Provider ("SCP"), and specifications for the determination that an SCP is deemed insolvent. Agency contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

12. Summary of description of proposal: Adoption of a new part to 11 NYCRR to provide clarification and rules regarding inland and ocean marine insurance. Agency contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

13. Summary description of proposal: Amendment of 11 NYCRR 216 (Unfair Claims Settlement Practices and Claim Cost Control Measures) (Regulation 64) to update the entire regulation to, inter alia, provide notice and time frame requirements for third party claims. Agency contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

14. Summary description of proposal: Adoption of a new 11 NYCRR 65-5 (Regulation 68-E) and amendment of 11 NYCRR 68 (Regulation 83) to implement Chapter 424 of the laws of 2005 and thus create a process by which a health provider's authority to seek reimbursement for the treatment of No-fault patients can be suspended or removed under certain circumstances. Agency contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

15. Summary description of proposal: Amendment of 11 NYCRR 27 (Excess Line Placements Governing Standards) (Regulation 41) to amend Section 27.14(f) and (i)(2) in order to implement the new alien trust funding standards. Agency contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

16. Summary description of proposal: Adoption of a new part to 11 NYCRR regarding standards for coverages, limitations and exclusions related to damages caused by mold and related remediation. Agency contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

17. Summary description of proposal: Amendment of 11 NYCRR 64-2 (Liability Insurance Covering All-Terrain Vehicles) (Regulation 35-C) to revise the reference to the correct No-Fault endorsement for ATV's as set forth in 11 NYCRR 65-1 (Regulations 68-A). Agency contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

18. Summary description of proposal: Amendment of 11 NYCRR 125 (Credit for Reinsurance from Unauthorized Insurers) (Regulation 20) to delete the 10% limitation in Part 125.4(e)(2)(viii). Agency contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

19. Summary description of proposal: Amendment to 11 NYCRR 51 (Replacement of Life Insurance Policies and Annuity Contracts) (Regulation 60) to allow for a preliminary disclosure statement that can be prepared without waiting twenty days for a response from the replaced insurer, and thus permit the application to be completed on the first visit. Agency Contact: Daniel Gumaer, Supervising Insurance Examiner, Life Bureau (212-480-5040).

20. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish standards and provide guidance for the valuation, maintenance and disposal of "other property" gifted to charitable annuity societies pursuant to Insurance Law Section 1110(a). Agency Contact: Ruth Gumaer, Supervising Insurance Examiner, Life Bureau (212-480-4763).

21. Summary description of proposal: Adoption of a new part to 11 NYCRR to adopt the NAIC Risk Based Capital standard for fraternal benefit societies. Agency Contact: Ruth Gumaer, Supervising Insurance Examiner, Life Bureau (212-480-4763).

22. Summary description of proposal: Repeal of 11 NYCRR 96 (Surplus Management Accounts) (Regulation 138) to eliminate inconsistent financial reporting standards that allow differing financial reports for identically situated insurers. Agency Contact: Peter Kreuter, Assistant Chief Actuary, Life Bureau (212-480-5328).

23. Summary description of proposal: Adoption of a new part 50 to 11 NYCRR (Agent Training Allowance Subsidies for Certain Life Insurance and Annuity Business) (Regulation 56) to adjust life insurance agents' training allowances set forth in Sections 4228(e)(3)(C) through (E). Agency Contact: James MacDonald, Supervising Actuary, Life Bureau (212-480-5331).

24. Summary description of proposal: Amendment to 11 NYCRR 100 (Recognition Of The 2001 CSO Mortality Table For Use In Determining Minimum Reserve Liabilities And Nonforfeiture Benefits) (Regulation 179) to include a split of the 2001 CSO Mortality Table to reflect preferred underwriting criteria. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau (518-474-5462).

25. Summary description of proposal: Amendment to 11 NYCRR 95 (Regulations Governing an Actuarial Opinion and Memorandum) (Regulation 126) to add guidance regarding sensitivity tests, disclosure items, and other requirements related to asset adequacy analysis. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau (518-474-5462).

26. Summary description of proposal: Amendment to 11 NYCRR 98 (Valuation of Life Insurance Reserves) (Regulation 147) to revise existing standards for universal life insurance products with secondary guarantees for life insurers in consideration of recently adopted and pending NAIC standards. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau (518-474-5462).

27. Summary description of proposal: Amendment to 11 NYCRR 97 (Market Value Separate Accounts Funding Guaranteed Benefits; Separate Account Operations and Reserve Requirements) (Regulation 128) to update the reserve standards for group separate account products with guaranteed benefits, and to establish reserve standards for individual separate account products with guaranteed benefits. Agency Contact: Michael Cebula, Assistant Chief Actuary, Life Bureau (518-474-6805).

28. Summary description of proposal: Amendment to 11 NYCRR 99 (Valuation of Annuity, Single Premium Life Insurance, Guaranteed Interest Contract and Other Deposit Reserves) (Regulation 151) to revise existing standards for variable annuities for life insurers so as to conform with recently adopted and pending NAIC standards. Agency Contact: Michael Cebula, Assistant Chief Actuary, Life Bureau (518-474-6805).

29. Summary description of proposal: Amendment to 11 NYCRR 42 (Term Life Renewal Restrictions; Cash Surrender Values for Certain Life Insurance Plans) (Regulation 149) to eliminate the age 80 renewal limitation and to substantially modify the nonforfeiture requirements for certain life insurance plans. Agency Contact: Dennis Lauzon, Assistant Chief Actuary, Life Bureau (518-474-5462).

30. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish minimum standards for non-guaranteed elements of life and annuity insurance policies and to establish minimum standards for written criteria set by the board of directors or a committee thereof for determining non-guaranteed elements. Agency Contact: Dennis Lauzon, Assistant Chief Actuary, Life Bureau (518-474-5462).

31. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish minimum standards for form, content and sale of life insurance, annuities and funding agreements, including standards for full and fair disclosure. Agency Contact: Dennis Lauzon, Assistant Chief Actuary, Life Bureau (518-474-5462).

32. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish standards for self-support requirements for life insurance, annuities and funding agreements issued on an individual or group basis. Agency Contact: Dennis Lauzon, Assistant Chief Actuary, Life Bureau (518-474-5462).

33. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish standards for corporate governance for risk management, including requirements for board of directors' oversight of business and exposure limits. Agency Contact: Dennis Lauzon, Assistant Chief Actuary, Life Bureau (518-474-5462).

34. Summary description of proposal: Amendment to 11 NYCRR 50 (Separate Accounts and Separate Account Annuities) (Regulation 47) to establish revised standards for the operation of separate accounts, contract provisions and actuarial requirements to reflect statutory changes and recent innovations in product design and changes in contract administration of separate account and variable annuity products. Agency Contact: Ralph D. Spaulding, Supervising Insurance Attorney, Life Bureau (518-486-5258).

35. Summary description of proposal: Amendment of 11 NYCRR 54 (Variable Life Insurance) (Regulation 77) to provide for exceptional treatment of private placement variable life insurance, especially with respect to the deferral of payments for death benefits, surrender benefits and policy loans. Agency Contact: Ralph D. Spaulding, Supervising Insurance Attorney, Life Bureau (518-486-5258).

36. Summary description of proposal: Adoption of a new part to 11 NYCRR 48 (Key Person Company-Owned Life Insurance) (Regulation 180) to provide guidance to insurers in defining key persons for purpose of complying with Section 3205(a)(1)(B) and (d) of the Insurance Law. Agency Contact: Ralph D. Spaulding, Supervising Insurance Attorney, Life Bureau (518-486-5258).

37. Summary description of proposal: Amendment to 11 NYCRR 53 (Life and Annuity Disclosure and Sales Illustration) (Regulation 74) to set forth the information mandated by Section 3209 of the Insurance Law, including the standards governing the content, format and use of sales illustrations and other disclosure requirements for fixed and/or variable annuity products and funding agreements. Agency Contact: Peter Dumar, Associate Insurance Attorney, Life Bureau (518-474-4552).

38. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance,

Including Standards of Full and Fair Disclosure) (Regulation 62) and 11 NYCRR 360 (Open Enrollment and Community Rating of Individual and Small Group Health Insurance) (Regulation 145) to clarify the requirements for prior approval of forms and rates, including the establishing of rules for determining the rating methodology to be used for rating point-of-service products sold to large groups, and to clarify the application and effect of rolling rates and annual level subscriber rates. Agency Contact: Robert Solomon, Principal Insurance Examiner, Health Bureau (212-480-5246).

39. Summary description of proposal: Amendments of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62), 11 NYCRR 360 (Rules to Assure an Orderly Implementation and Ongoing Operation of Open Enrollment and Community Rating of Individual and Small Group Health Insurance) (Regulation 145), 11 NYCRR 361 (Establishment and Operation of Market Stabilization Mechanisms for Individual and Small Group Health Insurance and Medicare Supplement Insurance) (Regulation 146), 11 NYCRR 59 (Minimum Standards for Certificates Deemed to Have Been Delivered in New York) (Regulation 123), 11 NYCRR 39 (Minimum Standards for the New York State Partnership for Long-Term Care Program) (Regulation 144) and adoption of new Part to 11 NYCRR to: 1) establish minimum standards for such products as managed care, point of service arrangements, and other health insurance products, as ongoing changes occur in the health insurance field; 2) establish minimum standards and requirements for specified disease coverage; 3) update minimum standards for Partnership and non-Partnership long term care coverages; and 4) establish minimum standards and/or requirements for long term care insurance products as new long term care financing options are enacted. Agency Contact: Austin J. Rinella, Supervising Insurance Attorney, Health Bureau (518-474-4098).

40. Summary description of proposal: Amendment of 11 NYCRR 17 (Standard Health Insurance Claims Forms for the Services of Physicians, Dentists and Hospitals) (Regulation 88) to delete obsolete provisions. Agency Contact: Austin J. Rinella, Supervising Insurance Attorney, Health Bureau (518-474-4098).

41. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) and 11 NYCRR 360 (Rules to Assure an Orderly Implementation and Ongoing Operation of Open Enrollment and Community Rating of Individual and Small Group Health Insurance) (Regulation 145) to implement Chapter 557 of the Laws of 2002, which pertains to health insurance coverage for individual proprietors. Agency Contact: Deborah A. Kozemko, Supervising Insurance Attorney, Health Bureau (518-486-7815).

42. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for the Form Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) and 11 NYCRR 360 (Rules to Assure an Orderly Implementation and Ongoing Operation of Open Enrollment and Community Rating of Individual and Small Group Health Insurance) (Regulation 145) to set forth requirements regarding the payment of commissions, fees and other compensation to agents and brokers. Agency Contact: Deborah A. Kozemko, Supervising Insurance Attorney, Health Bureau (518-486-7815).

43. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for the Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to update the requirements for coordination of benefits (COB) among health insurance policies. Agency Contact: Deborah A. Kozemko, Supervising Insurance Attorney, Health Bureau (518-486-7815).

44. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance,

Including Standards of Full and Fair Disclosure) (Regulation 62) to clarify the dental exclusion in health insurance policies. Agency Contact: Deborah A. Kozemko, Supervising Insurance Attorney, Health Bureau (518-486-7815).

45. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to implement denial of coverage procedures in relation to restricting certain covered prescription drugs, procedures and supplies in the treatment of erectile dysfunction when prescribed for use by a person who is required to register as a sex offender and covered under a standardized individual enrollee direct payment contract. Agency Contact: Deborah A. Kozemko, Supervising Insurance Attorney, Health Bureau (518-486-7815).

46. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) and 11 NYCRR 360 (Rules to Assure an Orderly Implementation and Ongoing Operation of Open Enrollment and Community Rating of Individual and Small Group Health Insurance) (Regulation 145) to conform to the final regulations promulgated under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). Agency Contact: Deborah A. Kozemko, Supervising Insurance Attorney, Health Bureau (518-486-7815).

47. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to clarify coverage of emergency services under health insurance policies that provide coverage for inpatient hospital care. Agency Contact: Deborah A. Kozemko, Supervising Insurance Attorney, Health Bureau (518-486-7815).

48. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to set forth requirements of notices of termination under group health insurance policies. Agency Contact: Deborah A. Kozemko, Supervising Insurance Attorney, Health Bureau (518-486-7815).

49. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to require insurers to provide notice of the benefits required by Chapter 748 of the Laws of 2006 (Timothy's Law) to affected policyholders. Agency Contact: Deborah A. Kozemko, Supervising Insurance Attorney, Health Bureau (518-486-7815).

50. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to clarify to the requirements for the submission of rates under the alternate procedure set forth in Section 3231(e)(2)(A) or Section 4308(g) and to provide instructions and a format for calculating and reporting loss ratios and issuing dividends or credits as required in Section 3231(e)(2)(B) or Section 4308(h) in instances where the alternate filing procedure has been utilized. Agency Contact: Jill Phillips, Senior Insurance Attorney, Health Bureau (518-486-7815).

51. Summary description of proposal: Amendment of 11 NYCRR 361 (Establishment and Operation of Market Stabilization Mechanisms for Individual and Small Group Health Insurance and Medicare Supplement Insurance) (Regulation 146) to revise certain market stabilization mechanism requirements as required by Chapter 504 of the Laws of 1995. Agency Contact: Lisette Johnson, Supervising Insurance Attorney, Health Bureau (518-474-4098).

52. Summary description of proposal: Amendment of 11 NYCRR 410 (External Appeals of Adverse Determinations of Health Care Plans) (Regulation 166) to establish new and revised standards and procedures

for the external appeal process, and to clarify the requirements in existing law in relation to external appeal agents. Agency Contact: Lisette Johnson, Supervising Insurance Attorney, Health Bureau (518-474-4098).

53. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62), and 11 NYCRR 410 (External Appeals of Adverse Determinations of Health Care Plans) (Regulation 166), and adoption of a new part to 11 NYCRR to establish standards for coverage determinations and benefit determinations, including standards for utilization review. Agency Contact: Lisette Johnson, Supervising Insurance Attorney, Health Bureau (518-474-4098).

54. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, including Standards of Full and Fair Disclosure) (Regulation 62) to clarify the cosmetic surgery exclusion in health insurance policies. Agency Contact: Lisette Johnson, Supervising Insurance Attorney, Health Bureau (518-474-4098).

55. Summary description of proposal: Amendment of 11 NYCRR 350 (Life Care Communities) (Regulation 140) to modify and clarify the actuarial reserve calculation, solvency testing, distribution allowances, fee adequacy, allowable investments, and needed filing requirements, in view of marketplace expansion in both the number and types of Life Care Communities. Agency Contact: Gary Teitel, Supervising Actuary, Health Bureau (212-480-7709).

56. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to clarify extension of benefits and "no loss, no gain" requirements for individual, group and group remittance health insurance contracts. Agency Contact: Stephen Rings, Associate Insurance Attorney, Health Bureau (518-474-4899).

57. Summary description of proposal: Amendment of 11 NYCRR 362 (The Healthy New York Program and The Direct Payment Stop Loss Relief Program) (Regulation 171) to enable HMOs and insurers to offer a high deductible health plan under the Healthy New York Program to subscribers or small employers establishing a Health Savings Account. Agency Contact: Leigha Basini, Senior Insurance Attorney, Health Bureau (518-486-7815).

58. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to enable HMOs to offer a high deductible health plan to subscribers establishing a Health Savings Account. Agency Contact: Thomas Fusco, Associate Insurance Attorney, Health Bureau (716-847-7619).

59. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to clarify the permissible and prohibited limitations on prescription drug coverage written by Article 43 corporations, HMOs and commercial insurers. Agency Contact: Thomas Fusco, Associate Insurance Attorney, Health Bureau (716-847-7619).

60. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for the Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to establish requirements for insurance policies that use a usual and customary or reasonable form of reimbursement. Agency Contact: Thomas Fusco, Associate Insurance Attorney, Health Bureau (716-847-7619).

61. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to clarify coverage of newborn children under health insurance policies.

Agency Contact: Thomas Fusco, Associate Insurance Attorney, Health Bureau (716-847-7619).

62. Summary description of proposal: Amendment of 11 NYCRR 83 (Financial Statement Filings and Accounting Practices and Procedures) (Regulation No. 172) to develop standards and guidelines for real estate appraisals and accounting methodologies under which Insurance Law Article 43 corporations and Public Health Law Article 44 Health Maintenance Organizations may evaluate real estate in ordinary course of business. Agency Contact: David Doran, Principal Insurance Examiner, Health Bureau (212-480-5046).

63. Summary description of proposal: Adoption of a new part to 11 NYCRR to require every accident and health insurer and HMO to annually file with the superintendent or designated statistical agent a statistical report showing a classification schedule of its premiums, losses and related expenses, as well as a list of the 100 most frequently used current procedure terminology (CPT) codes on all kinds or types of accident and health insurance business subject to the Insurance Law, and such other information as the superintendent may deem necessary. Agency Contact: Jill Novak Smith, Senior Insurance Attorney, Health Bureau (518-486-7815).

64. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to adopt proposed changes to federal regulation relating to the modernization of Medicare supplement insurance. Agency Contact: Sarah L. Allen, Associate Insurance Attorney, Health Bureau (518-486-7815).

65. Summary description of proposal: Adoption of a new part to 11 NYCRR to prohibit discretionary clauses in accident and health contracts and policy forms and life insurance and annuity policy forms. Agency Contact: Sarah L. Allen, Associate Insurance Attorney, Health Bureau (518-486-7815).

66. Summary Description of proposal: Amendment of 11 NYCRR 28 (Professional Bail Bond Agents) (Regulation 42) to establish minimum recordkeeping requirements and identify prohibited charges in conjunction with (1) the issuance of a bail bond and (2) requiring collateral in order to secure the issuance of a bail bond. Agency Contact: John Chaskey, Supervising Examiner, Consumer Services Bureau (518-474-4556).

67. Summary Description of proposal: Amendment of 11 NYCRR 216 (Unfair Claims Settlement Practices and Claim Cost Control Measures) (Regulation 64) to require health insurers to add a standardized paragraph to all "Explanation of Benefits" forms advising insureds that they may file a complaint with the Insurance Department for investigation when any element of a health insurance claim is rejected, and to clarify the applicability of the regulation to accident and health insurance written pursuant to the provisions of 1113 (a) (3) and the provisions of article 43 of the Insurance Law. Agency Contact: Laura Dillon, Associate Examiner, Consumer Services Bureau (518-486-9105).

68. Summary Description of proposal: Adoption of a new subpart to 11 NYCRR to describe how Coordination of Benefits (COB) claims are to be handled and to set forth the time frames in which the health plans and providers must submit the necessary information. Agency Contact: Laura Dillon, Associate Examiner, Consumer Services Bureau (518-486-9105).

69. Summary Description of proposal: Amendment of 11 NYCRR 215 (Advertisements of Accident and Health Insurance) (Regulation 34) to require accident and health insurers providing long term care insurance as defined in 11 NYCRR 52.12 to submit to the superintendent a copy of any advertisement for long term care insurance intended for use in this State. Agency Contact: Janet Davignon, Associate Examiner, Consumer Services Bureau (518-474-5154).

70. Summary Description of proposal: Adoption of a new part to 11 NYCRR to provide that cancellation notices subject to 3425 of the Insurance Law should include the date and hour of cancellation, the date

of the notice, and, for nonpayment of premium cancellations, a statement informing the consumer that cancellation will not take place if the consumer makes timely payment of the premium. Agency Contact: John Capuano, Associate Examiner, Consumer Services Bureau (518-486-9107).

71. Summary description of proposal: Amendment of 11 NYCRR to set forth standards for banks, trust companies and security broker/dealers qualified to act as custodians for insurance company assets. Agency Contact: Jim Everett, Associate Counsel, Capital Markets Bureau (518-408-1593).

72. Summary description of proposal: Adoption of a new part to 11 NYCRR to clarify certain statutory provisions as they apply to captive insurance companies licensed in the State of New York pursuant to Article 70 of the New York Insurance Law. Agency Contact: Jody Wald, Captive Coordinator, Captive Insurance Group (212-480-2757).

73. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish requirements regarding the submission of disaster preparedness related data, questionnaires and plans from property/casualty, life and health insurers. Agency Contact: Vincent Mazzarella, Associate Insurance Examiner, Disaster Preparedness and Response Bureau (212-480-5339).

Department of Labor

Pursuant to subdivision 1 of Section 202-d of the State Administrative Procedure Act, as amended by Chapter 635 of the Laws of 1995, notice is hereby provided of the following rules that the Department of Labor is considering proposing, but for which a rulemaking proceeding has not been commenced.

1. Amend Title 12 NYCRR Part 800 to incorporate by reference into New York Occupational Safety and Health standards those safety and health standards adopted by the United States Department of Labor Occupational Safety and Health Administration.

2. Add language to Title 12 NYCRR, Chapter II, Subchapter E, regarding hours and conditions of work and other provisions of the Child Performer Education and Trust Act.

3. Add language to Title 12 NYCRR pursuant to Chapter 721 of the Laws of 2004 which requires that rules and regulations be promulgated to detail what information must be included in written statements provided by licensed employment agencies to certain applicants for employment and their employers.

4. Add a new Part to Title 12 NYCRR to implement regulations required by Chapter 82 of the Laws of 2006, requiring public employers to develop and implement programs to evaluate potential risks of workplace violence that exist within their workplaces and to implement a workplace violence prevention program. Employers with at least twenty (20) full time permanent employees must put their plan in writing.

5. Amend Part 45 of Title 12 NYCRR to implement regulations required by Chapter 368 of the Laws of 2006 requiring the Commissioner, in consultation with the Amusement Safety Advisory Board, to establish rules and regulations providing standards for the design, manufacture, testing, inspection, quality assurance and terminology of amusement devices. The rules and regulations will be consistent with the national standards for amusement devices, as established by the American Society of Testing and Materials.

6. Add language to Part 60 of Title 12 NYCRR pursuant to Section 33 of Chapter 6 of the Laws of 2007, directing the Commissioner of Labor to develop a safety and loss prevention program that allows employers to voluntarily implement a safety incentive program, a drug and alcohol prevention program, or a return to work program in order to be eligible for a credit in their workers' compensation premiums. The Commissioner will also establish rules for the certification of safety and loss management specialists who will monitor all such incentive programs.

7. Amend 12 NYCRR Section 480.1 to make the rule consistent with the provisions in current minimum wage orders with regard to calculating the reasonable value of meals provided to an employee in establishing an employee's rate of pay.

8. Amend 12 NYCRR Section 481.1 to extend the deadline by which applications for dissolution of joint accounts for unemployment insurance tax purposes may be filed.

9. Repeal Section 470.2 of 12 NYCRR, regarding the date on which wages are deemed paid, to eliminate the inconsistency between this section and amendments to Section 516 of the Labor Law enacted in 1999.

To obtain information or submit written comments regarding this regulatory agenda, contact Maria L. Colavito, Esq., Counsel, Department of Labor, Bldg. 12, State Office Campus, Counsel's Office, Rm. 508, Albany, NY 12240, e-mail: Maria.Colavito@labor.state.ny.us, (518) 457-4380.

Office of Temporary and Disability Assistance

Pursuant to section 202-d of the State Administrative Procedure Act (SAPA), the Office of Temporary and Disability Assistance (OTDA) is required to publish a regulatory agenda for those regulations that it is considering for publication in the *State Register*. Set forth below is an agenda for the second half of 2007. Section 202-d of SAPA does not preclude OTDA from proposing for adoption a regulation that is not described in the agenda, nor does it require OTDA to propose for adoption a regulation that is described in the agenda.

Child Support

Reviseregulations for the distribution and assignment of child support collections resulting from the Federal Deficit Reduction Act of 2005.

Revise case closing criteria for child support cases.

Amend references to child support standards chart to reflect annual change in the federal poverty income guidelines amount and the self-support reserve.

Amend tax refund offset regulation to reflect changes resulting from the Federal Deficit Reduction Act of 2005.

Establish guidelines for the local child support enforcement units to follow in determining whether and under what circumstances a passport, which has been revoked, denied or suspended by the US Department of State due to non-payment of child support, may be released.

Revise desk review procedures addressing the accounting and disbursement of child support for certain current and former recipients of Public Assistance.

Amend procedures concerning the financial investigation of a putative father to facilitate the establishment of a child support order.

Revise regulation pertaining to federal incentive payments.

Revise regulation to address annual service fee for never assistance cases.

Employment and Transitional Supports

Clarify provisions concerning the submission of a social security number as a condition of eligibility for Public Assistance.

Extend the deeming of an alien sponsor's income and resources to federally funded Safety Net Assistance.

Provide consistency between the Family Assistance program and the Safety Net Assistance program concerning the treatment of loans, income and resources.

Simplify the Public Assistance budgeting methodology for certain three generation households.

Provide local districts the opportunity to request waivers of face-to-face recertification interviews for Public Assistance recipients.

Amend regulations to add timeliness provisions for reporting changes in income for Public Assistance.

Revise regulations relating to methods of providing Home Energy Assistance Program (HEAP) payments to allow payments to be issued by both the State and the local social services districts.

Revise HEAP regulations to reflect current policy including incorporation of oil buying component rules.

Revise assessment regulations to make the requirements for exempt individuals in households without dependent children consistent with those for exempt individuals in households with dependent children.

Amend employment program provisions for notices of conciliation and notices of discontinuance or reduction to implement plain language requirements.

Establish additional guidelines regarding work activity definitions and work documentation and verification procedures to make them consistent with standards required by federal regulations implementing the Deficit Reduction Act of 2005.

Implement changes to participation rate regulations to conform to amendments to the Social Services Law which require social services districts to expand the countable work activities available to Safety Net Assistance participants without children to include community service programs, the provision of child care services to an individual participating in community service and time limited vocational education training, job search and job readiness assistance.

Clarify how participation rates are calculated based on federal reporting requirements and clarify the calculation of two distinct Safety Net Assistance work participation rates.

Correct a technical error in regulation related to good cause for failing to comply with work requirements.

Identify cases that may be excluded from participation rates pursuant to federal Temporary Assistance for Needy Families (TANF) regulations.

Repeal provisions which permit foster care parents and individuals who are caring for a disabled household member to be deemed as community service participants as required by federal regulations implementing the Deficit Reduction Act of 2005.

Authorize shift of certain cases to non-TANF Family Assistance or to non-MOE (non-Maintenance of Effort) Safety Net Assistance to facilitate implementation of changes made by the Deficit Reduction Act of 2005.

Revise Food Stamp employment and training regulations to conform to federal regulations.

Update the determination of Food Stamp eligibility regulations to include Supplemental Security Income (SSI) live-alone New York State Nutrition Improvement Program provisions, education grant exclusions, and implementation of the Group Home Standardized Benefit program.

Delete Food Stamp monthly reporting/retrospective budgeting references and add provisions for change reporting.

Delete provisions relating to Food Assistance Program.

Conform regulations concerning in-office interviews for Food Stamp applicants to federal requirements.

Clarify the policy regarding claims establishment and the collection process for Food Stamp overpayments.

Generally update Food Stamp regulations to conform to recent changes in the federal regulations.

Amend regulations to accommodate the anticipated statewide implementation of the Working Families Food Stamp Initiative.

Program Support and Quality Improvement

Allow the matching of finger images with the Division of Criminal Justice Services to identify clients who are fugitive felons, parole/probation violators and clients who are incarcerated.

Reimbursement and Claims

Amend maintenance assistance sections to reflect new program categories under Welfare Reform.

Add a section on fiscal penalties/sanctions that may be applied to social services districts resulting from Welfare Reform requirements.

Replace administrative cost cap section with new material regarding the Flexible Fund for Family Services (FFFS) and the Local Administration Fund (LAF).

Amend employment section to reflect new program categories under Welfare Reform.

Amend regulations concerning reimbursement claiming to reflect current Federal and State requirements and current State and local district practices.

Technical Amendments

Implement provisions of Chapter 22 of the Laws of 2005 concerning the time to respond to requests for records under the Freedom of Information Law. Implement provisions of Chapter 182 of the Laws of 2006 concerning requesting and obtaining records by means of electronic mail.

Change regulatory references from "Temporary Assistance" to "Public Assistance."

Revise the regulations concerning eligibility for Public Assistance to reflect current terminology and policy.

Update references to the employment program from 12 NYCRR Part 1300 to 18 NYCRR Part 385.

Amend regulations concerning Veterans Assistance to reflect statutory requirements and current terminology.

Revise HEAP regulation containing an undesignated paragraph.

Any questions concerning the items listed in this agenda can be referred to Jeanine Stander Behuniak, Office of Temporary and Disability Assistance, 40 North Pearl Street 16C, Albany, New York 12243. Telephone: (518) 474-9779. E-mail: Jeanine.Behuniak@OTDA.state.ny.us. The regulatory agenda may be accessed on the Office of Temporary and Disability Assistance's website at www.otda.state.ny.us.

