

# REGULATORY AGENDA

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## Education Department

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 2008. 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 2008 Regulatory Agenda.

### OFFICE OF ELEMENTARY, MIDDLE, SECONDARY AND CONTINUING EDUCATION

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

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

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

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

Amendment of the Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 and Chapter 57 of the Laws of 2008 relating to full-day kindergarten and pre-kindergarten transition planning grants.

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

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

Amendment of Part 100 of the Commissioner's Regulations to conform to Chapter 57 of the Laws of 2007, relating to implementation of an interim growth model, subject to the approval of the U.S. Department of Education.

Amendment of section 100.2(p) of the Commissioner's Regulations to conform provisions related to implementation of differentiated accountability pilot as part of New York State's No Child Left Behind accountability workbook, subject to U.S. Department of Education's approval of New York State's proposal for participation in the U.S. Secretary of Education's pilot program.

Amendment of section 100.2(gg) of the Commissioner's Regulations to revise and update provisions on Violent and Disruptive Incident Reporting (VADIR).

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

Amendment of section 135.4(c)(7)(i)(c)(2) and (3) of the Commissioner's Regulations relating to requirements for teacher coaches and non-teacher coaches.

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

Amendment of the Commissioner's Regulation to implement Chapter 57 of the Laws of 2007 relating to teacher tenure, annual professional performance review under section 100.2(o) and the ability to use data to improve student performance.

Amendment of the Commissioner's Regulations to conform to Chapter 181 of the Laws of 2007 ("P.J.'s Law"), by promulgating regulations requiring school bus drivers and attendants on a bus transporting children with disabilities to complete training, at least once a year, on the special needs of children with disabilities.

Amendment of Part 156 of the Commissioner's Regulations, regarding transportation, to revise and update the regulations.

Amendment of Part 136 of the Commissioner's Regulations to implement Chapter 672 of the Laws of 2008, regarding nebulizers in school buildings.

Amendment of section 136.3 of the Commissioner's Regulations, relating to scoliosis screening.

Amendment of section 144.11 of the Commissioner's Regulations, relating to early grade class size.

Amendment of Commissioner's Regulations, relating to absentee ballots for boards of cooperative educational services (BOCES).

Amendment of Commissioner's Regulations, relating to school district and BOCES name changes.

Amendment of Commissioner's Regulations, relating to school district financial management.

Amendment of Commissioner's Regulations regarding BOCES installment purchase contracts and leases.

Amendment of Commissioner's Regulations, relating to certified athletic trainers.

Amendment of Commissioner's Regulations relating to persistently dangerous schools.

Amendment of Subpart 151-1 of the Commissioner's Regulations to allow teachers employed by eligible agencies collaboration with a school district to provide prekindergarten services to be employed without a bachelor's degree in early childhood education or a related field, or a teaching license or certificate valid for services in the childhood grades pursuant to 8 NYCRR Part 80, so long as the teacher has a written plan to obtain certification valid for service in the early childhood grades within 5 years of commencement of employment.

Amendment of Subpart 151-1 of the Commissioner's Regulations, relating to Universal Pre-kindergarten aid, to implement Chapter 57 of the Laws of 2008.

Amendment of section 100.2(x), relating to the education of homeless children.

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

Education Department

Office of Higher Education

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Albany, New York 12234

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#### OFFICE OF HIGHER EDUCATION

Amendment of Part 30 of the Commissioner 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 52 and Part 80 of the Commissioner's Regulations related to the requirements for teacher certification in special education.

Amendment of Section 8 NYCRR 100.2(dd) and Part 80 of Commissioner's Regulations, relating to changes in district professional development plans to account for changes in regulations related to the certification of school leaders.

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 87 of the Commissioner's Regulations relating to oral arguments.

Amendment of Part 52, Part 57 and Part 80 of the Commissioner's Regulations to implement the statutory requirements of Chapter 143 of the Laws of 2006, related to required training for special education teachers and special education administrators in the needs of children with autism.

Amendment of Part 80 of the Commissioner's Regulations to establish requirements for a certificate in educational interpreting.

Amendment of Part 80 of the Commissioner's Regulations to expand the scope of practice for holders of the School District Leader certificate and to establish a transitional certificate for School District Business Leaders.

Amendment of Parts 80 of the Commissioner's Regulations to establish requirements for a transitional certificate in classroom teaching titles in a demonstrated shortage area.

Amendment of Part 80 of the Commissioner's Regulations, related to the renewal of initial certificates in the classroom teaching service and the educational leadership service.

Amendment of Part 52 and Part 80 of the Commissioner's Regulations, related to the requirements for teacher certification in Special Education.

Amendment of the Commissioner's Regulations to implement Chapter 41 of the Laws of 2007 regarding the Student Lending Accountability, Transparency and Enforcement Act (SLATE).

Amendment of section 150.4 of the Commissioner's Regulations to implement Education Law section 6401-a of the Education Law, as amended by Chapter 57 of the Laws of 2008, regarding high needs nursing.

Amendment of section 80-5.5 of the Commissioner's Regulations relating to the employment of retired persons by school districts, BOCES and county vocational education and extension boards.

Agency Representative

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

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Senior Deputy Commissioner P-16

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#### 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 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 29 of the Regents Rules relating to electronic recordkeeping.

Amendment of Part 29 of the Regents Rules relating to the use of identification badges for certain professionals.

Amendment of Part 29 of the Regents Rules relating to unprofessional conduct in the profession of Public Accountancy.

Amendment of Parts 52 and 77 of the Commissioner's Regulations relating to the educational standards necessary for licensure in Physical Therapy.

Amendment of Parts 52 of the Commissioner's Regulations relating to the educational standards necessary for licensure in Public Accountancy.

Amendment of Part 59 of the Commissioner's Regulations relating to the use of ID cards in lieu of registration certificates.

Amendment of Part 59 of the Commissioner's Regulations relating to the English language proficiency.

Amendment of Part 63 of the Commissioner's Regulations relating to continuing education for pharmacists.

Amendment of Part 63 of the Commissioner's Regulations relating to examination requirements for pharmacists.

Amendment to Part 64 of the Commissioner's Regulations relating to the orders required for administering immunizations.

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

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 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  
 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 to Part 177 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 to 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 to sections 200.4 and 200.5 of the Commissioner's Regulations relating to the use of mandatory forms for individualized education programs (IEPs), prior written notice (notice of recommendation) and meeting notice.

Amendment to section 200.7 of the Commissioner's Regulations relating to the approval process for private schools for reimbursement with public funds and the use of rewards and incentives by private schools and State-operated and State-supported schools.

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

Agency representative:

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

Rebecca Cort  
 Deputy Commissioner  
 Education Department  
 Office of Vocational and Educational Services for Individuals with Disabilities  
 One Commerce Plaza, Room 1606  
 Albany, New York 12234  
 (518) 474-2714

OFFICE OF CULTURAL EDUCATION

Amendments to Part 188 of the Commissioner's Regulations relating to State Agency Records Management to update and correct various requirements affecting the management of records, including revising technical language, updating the list of State agencies paying annual fixed fees for records management services and revising the annual fee for storage of records at the State Records Center.

Agency Representative:

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

Christine Ward  
 Assistant Commissioner for the State Archives  
 9A49 Cultural Education Center  
 Albany, New York 12230  
 (518) 473-7091  
 cward@mail.nysed.gov

Amendments to section 3.27 of the Regents Rules, relating to Chartering and Registration of Museums and Historical Societies with Collections, and section 3.30 relating to Incorporation and Registration of Historical Societies without Collections and Cultural Agencies, to

add "planetarium" to the definition of "museum," make clear that the requirement for larger institutions to be open to the public 1,000 hours a year applies to a museum or exhibit facility, add language that only institutions that have collecting as a stated purpose in their charter shall hold collections, add a reference to "board representation" in the requirements for geographically descriptive terms in a corporate name, and eliminate reference to "associations of teachers, students [and] graduates of educational institutions" from the definition of "cultural agency."

Agency representative:

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

Clifford A. Siegfried  
 Assistant Commissioner  
 Education Department  
 3023 Cultural Education Center  
 Albany, New York 12230  
 (518) 473-5812  
 csiegfri@mail.nysed.gov

Amendment of Section 92.1 of the Commissioner's Regulations to reflect various changes made in regard to borrowing from the State Library since the last time this section was amended in 1994, in particular to make permanent the pilot project under which New York State residents 18 years old and older may borrow circulating material directly from the State Library. Before the pilot project began in 2004, only State Legislators, Regents, Justices of the State Court system, State Government employees, resident physicians and attorneys and official historians of New York State local governments were allowed to borrow directly. Other New York State residents could borrow only by requesting loan of material through their local libraries.

Agency Representative:

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

Jeffrey W. Cannell  
 Deputy Commissioner of Cultural Education  
 Education Department  
 Office of Cultural Education  
 Room 10A33  
 Albany, NY 12230  
 (518) 474-5223  
 jcannell@mail.nysed.gov

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

Agency Representative:

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

Jeffrey W. Cannell  
 Deputy Commissioner of Cultural Education  
 Education Department  
 Office of Cultural Education  
 Room 10A33  
 Albany, NY 12230  
 (518) 474-5223  
 jcannell@mail.nysed.gov

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  
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  
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  
Education Department  
89 Washington Avenue  
Room 112 EB  
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legal@mail.nysed.gov

#### OFFICE OF STATE REVIEW

Amendment to section 279.1 relating to the incorporation and clarification of definitions and other provisions, as relevant to state-level review of hearings for students with disabilities, that are currently referenced in parts 275 and 276; deletion of references to parts 275 and 276; clarification of the jurisdiction of a state review officer; and clarification regarding the authority of a state review officer to review manifestation determinations.

Amendment to section 279.2 relating to timelines for serving and filing a Notice of Intention to Seek Review; clarification of purpose of Notice of Intention to Seek review; clarification of timeframe in which to serve upon another party and file a Notice of Intention to Seek review; and addition of a notice of certification requirement.

Amendment to section 279.4 relating to the initiation of a review and the timeliness of an appeal, clarify sufficiency of content and time in which to serve the petition for review and memorandum of law upon the opposing party; procedures for filing a petition for review with the Office of State Review; and add disclosure of whether a related action or proceeding is pending in another forum.

Amendment to section 279.5 relating to the service of an answer and supporting papers upon the opposing party and filing with the Office of State Review.

Amendment to section 279.6 relating to additional pleadings and new matters raised in an answer.

Amendment to section 279.7 relating to verification of pleadings.

Amendment to section 279.8 relating to the table of authorities, clarification of the requirement that pleadings be signed consistent with 22 NYCRR 130-1.1a(a); and submission of electronic copies of pleadings and memoranda of law.

Amendment to section 279.9 relating to content of record; certification of record and clarification that 279.9 (b) refers to complete record.

Amendment to section 279.10 relating to requests for extensions of time and length of extensions permitted; submission of additional evidence; clarification of effect of agreements to extend the time in which to initiate a review.

Amendment to section 279.11 relating to calculating date of mailing and type of mail.

Amendment to section 279.12 relating to parties receiving copies of state review officer decisions.

Amendment to section 279.13 relating to service of petition for review.

Addition of 279.15 relating to definitions of terms in 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 Road, 2nd Floor  
Albany New York 12203  
(518) 485-9373

## Department of Health

The following regulatory actions are under consideration for submission as a Notice of Proposed Rulemaking during the calendar year June 2008:

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

2.1 and 2.5 Communicable Diseases - Revise the list of reportable diseases in 10 NYCRR, section 2.1 to be consistent with those listed in section 2.5 (list of diseases for which physicians have a duty to submit specimens).

2.10(b) Communicable Diseases - Repeal the subdivision to make reporting for cases of chlamydia, gonorrhea and syphilis consistent with the reporting requirements for other communicable diseases or in Section 2.10, which require cases of syphilis, gonorrhea, chlamydia, lymphogranuloma venereum, and chancroid to be reported individually and by name.

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

2.19 Reporting Cases or Suspect Cases of Communicable Disease by Laboratories - Amend the regulations to require the 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 the regulation to extend the ban on the sale of all reptiles, rather than only turtles, to reflect current understanding of potential sources of disease. Revise the regulation to

include a requirement for pet shops to provide written warnings at the point of sale. Amend the regulation to specify that warnings must be posted at display sites where reptiles are not for sale but may be handled by the public.

5-1 Public Water Systems - Amend the regulation to incorporate applicable federal regulations to improve control of microbial pathogens (LT2ESWTR) while limiting risks associated with the formation of and exposure to disinfection byproducts (Stage 2 D/DBP); revise the provisions applicable to variances and exceptions; update provisions pertaining to control of lead and copper in public water supply systems; and update and clarify specific code references.

5-1 Public Water Systems - Amend the regulation to incorporate federal regulations to protect against microbial pathogens in drinking water from ground water sources.

5-6 Bottled and Bulk Water Standards - Amend the regulation to update and modify drinking water maximum contaminant levels.

7-1 Temporary Residences - Amend the regulation 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.

7-2 Children's Camp - 7-2 Children's Camp - Amend the regulations relating to Camp Aquatic Director and Camp Health Director qualifications; incorporate PHL requirements for screening of camp employees through the State Sex Offender Registry and for supplying parents with meningococcal meningitis information; and include reflective triangles as an acceptable alternative to flares.

7-4 Mass Gatherings - Create a 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.

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

16 Ionizing Radiation - Add or 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; and update quality assurance requirements and consolidate Part 16 with Code Rule 38.

16.112 Fingerprinting and criminal background check requirements - Add regulations on fingerprinting and FBI criminal background checks for individuals allowed unescorted access to certain quantities of radioactive materials. These new regulations address US Nuclear Regulatory Commission (NRC) requirements for security of radioactive materials at licensed facilities.

19 Clinical Laboratory Directors - Revise qualifications for directors of comprehensive clinical laboratories to recognize professional boards accepted as qualifying under the federal Clinical Laboratory Improvement Amendments (CLIA); and codify the definition of assistant director.

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

22.11 Reporting of pesticide poisoning - Amend the regulation 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 Sexually Transmitted Diseases - Amend the regulation to update the list of sexually transmitted diseases to change archaic terminology, to add Human Papilloma Virus and Hepatitis B Virus to the list; and to remove Genital Herpes Simplex from the list of conditions which require free treatment.

23.2 (d) Sexually Transmitted Diseases - Amend the regulation to modify the treatment requirements for Pelvic Inflammatory Disease to include permission for out-patient management through immediate referral.

23.2 (e) Sexually Transmitted Diseases - Amend the regulatory list of conditions which may be treated with a written prescription to include Yeast (Candida) Vaginitis, Bacterial Vaginosis, Pediculosis Pubis, and Scabies.

23.2(f) Sexually Transmitted Diseases - Add a new subsection providing for management and treatment of Genital Herpes Simplex and Human Papilloma Virus infection by either prescription or referral.

23.3 Sexually Transmitted Diseases - Amend the regulation to eliminate the section to be consistent with the reporting requirements of communicable diseases as written in Section 2.10, which requires cases of syphilis, gonorrhea, chlamydia, lymphogranuloma venereum, and chancroid to be reported individually and by name.

34 Health Care Practitioner Referrals and Laboratory Business Practices - Amend the regulation to align with federal compensation arrangement exceptions.

43-2 AIDS Drug Assistance Program - Amend the regulation to address the interrelated components of the HIV Uninsured Care Programs (ADAP, ADAP Plus, Home Care and ADAP Plus Insurance Continuation), tie income eligibility requirements to Federal Poverty Levels; and eliminate the inclusion of federally recognized retirement accounts as a viable resource for access to ongoing health care.

44 State Aid for Approved Vector Surveillance and Control Programs - Amend the regulations to update State aid provisions to be consistent with changes enacted to PHL 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.

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 security against terrorism/vandalism and to provide greater flexibility to the hardship eligibility criteria for disadvantaged public water systems.

55-2 Environmental Laboratories - Amend the standards to ensure consistency, where applicable, with national consensus standards promulgated by NELAC; to establish qualifications for technical directors of laboratories conducting critical agent testing using technologies other than conventional microbiologic methods; and to establish certification requirements for laboratories that conduct critical agent testing using autonomous detection systems deployed in the field.

57 Rabies - Amend the regulation to remove obsolete administrative requirements for dogs at large in rabies designated areas, add regulations to clarify administrative issues for reporting, cost responsibility, and reimbursement of rabies expenses.

58-1 Clinical Laboratories - Revise laboratory personnel requirements in light of licensure requirements under the NYS Education Department's Clinical Laboratory Technology Practice Act; consolidate existing requirements for clarity; codify quality systems, performance testing and other requirements as necessary to align with federal standards; redefine director to include sole qualification holder; establish standards for tracking and referral of critical agent and

communicable disease specimens; and establish standards for laboratory verification of technical and clinical validity of analytical methods.

58-2 Blood Banks - Revise transfusion personnel requirements to permit advanced life support emergency medical technicians, with additional training, to monitor transfusions during inter-facility transport and to initiate additional units ordered by a physician; amend technical language, standard operating procedure requirements, and requirements for visual inspection of plasma derivatives; modify requirements for release of autologous blood that tests positive for an infectious disease marker; and amend regulations to provide flexibility for emergency transfusions and collection of components by apheresis equipment using FDA-approved procedures.

58-4 Direct Access Testing - Amend the regulation to 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 - Revise 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 certification.

60-1.13 Vendor applicant enrollment criteria - Amend regulations to remove specific vendor minimum stock quantity requirements and replace with regulations designating the application process and current vendor application form as the source for identifying mandatory stock items and quantities. This will facilitate the timely implementation of new federal regulations and allow for the prompt modification of enforceable requirements reflecting policy changes dictated by changes in the marketplace, new information in nutrition science or new federal/state policies without the need to amend the regulations.

66-1.2 Statewide Immunization Registry - Finalize regulations for implementation of PHL 2168, which establishes a statewide immunization registry with mandatory reporting of all vaccinations given to anyone under the age of 19 years, describing the mechanisms that will allow health care providers to submit information to the registry, including the establishment of the necessary accounts and passwords, etc. The methods for accessing information about individuals already in the registry will also be described.

66-1.1 thru 66-1.10 and 66-2.1 through 66-2.9 Immunization - Update the regulations to be consistent with changes enacted to the PHL. 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, including 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 Lead Screening and Follow-up - Amend the regulations to clarify that follow-up case coordination services are required for all children age six to 18 years, and are not limited to children under the age of six. Amendments will also reduce the capillary blood lead level at which a result must be confirmed by venous test from 15 mcg/dL to 10 mcg/dL, which is consistent with CDC guidance and our forthcoming Guidelines for Follow-up of Children with Elevated Blood Lead Levels. Amendments will also lower the blood lead level requiring environmental intervention and management from 20 mcg/dL to 15 mcg/dL; update existing regulations to allow for blood lead testing through portable blood lead analyzers waived by the United States Food and Drug Administration pursuant to the Clinical

Laboratory Improvement Amendments of 1998 in physician's office laboratories and in limited laboratory settings; and require reporting of blood lead analysis conducted by health care providers in such settings.

67-2 Lead Poisoning Control - Amend the regulations to be consistent with federal regulations and guidelines on environmental assessment and abatement.

67-2 Lead Poisoning Control - Amend the regulations to be consistent with federal regulations and guidelines on environmental assessment and abatement.

67-3 Reporting of Blood Lead Levels - Amend the regulation to establish requirements for physician reporting of point-of-care methods to analyze blood lead samples in the physician's office to accommodate new technology. Additional revisions would clarify the timeliness of reporting blood lead levels of greater than 45 mcg/dL among children between 6 and 18 years of age.

67-4 Lead levels in children's jewelry - Add regulations to establish the maximum allowable quantity of lead and cadmium in children's jewelry that is manufactured, distributed or sold in New York State.

67-5 Lead and cadmium levels in children's consumer products - Add regulations to establish the maximum allowable quantity of lead and cadmium in products sold for children's use that are manufactured, distributed or sold in New York State.

69-4 Early Intervention Program - Amend regulations to be consistent with changes to the PHL. Conforming regulations will address new requirements related to transition procedures for children aging-out of the Early Intervention Program; procedures for individualized family service plan 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 - Add regulations to 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 the 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 the 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 - Amend the regulations 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).

72-1 Tanning Facilities - Amend the regulations to be consistent with changes to PHL Article 35-A regarding 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 the regulations 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.

74 Approval of Realty Subdivisions - Amend the regulations to revise or update standards for realty subdivision design and plan approval.

75A Wastewater Appendix Treatment Standards - Individual Household Systems - Amend the regulations to revise or update design standards to address clarification and new technology.

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

77 Funeral Establishments, Registrations, Funeral Directing, and Misconduct - Amend the regulations to 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.

77.3 Registered Residents - Amend the regulations regarding responsibilities of a sponsor.

80 Controlled Substances - Amend the regulations to authorize the use of ketamine hydrochloride and sodium pentobarbital in a schedule II formulation for euthanasia in an animal shelter; 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; and to require licensed distributors of controlled substances to submit information on controlled substances supplied to DEA registrants in New York. Amendments to the regulations will also provide practitioners with increased flexibility to prescribe controlled substances to treat chronic pain in conditions other than diseases and will also permit hospice patients to partial fill their controlled substance prescriptions for 60 days from the date of issue in order to better address their changing medication needs.

86-1 Hospital Outlier Payments - Update regulations related to the costs to charge ratio used in the calculation of the cost outlier payments to reflect 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 is used for 2008 inpatient hospital rates. Revise 2008 Service Intensity Weights, Trimpoints, and Average Lengths of Stay.

86-1 Language Assistance Translation Services - Add regulations to create a distribution methodology that allocates funding to qualifying hospitals to ensure and enhance access for Medicaid patients requiring language assistance.

86-1 Regional Poison Control Centers - File a consensus rule change to eliminate language that allows undistributed funds to roll forward into the subsequent year's distributions.

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

86-2 Behavioral Intervention Services - Add regulations to 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.

86-2 Dementia Pilot Demonstration Projects - Amend the regulations to allow funding for expenses associated with: administering and managing the Dementia Grants Program, planning and holding the Statewide Dementia Conference, conducting an evaluation of the Dementia Grants Program, and auditing contracts when the projects have been completed.

86-4 Ambulatory Care Data Collection (SPARCS) - Amend the regulations to 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) - Amend the regulations to 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.

86-4.9 Units of Service, Social Work Services in Article 28 Clinics - Amend the regulations to allow Medicaid to reimburse for the services of Licensed Master Social Workers and Licensed Clinical Social Workers to provide individual psychotherapy services in Federally Qualified Health Centers.

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

98-1.5 Application for a certificate of authority - Revise regulations 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 - Revise regulations to add a provision requiring managed care organizations (MCO) 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 - Amend the regulations to clarify that managed care organizations must maintain compliance with the requirements of PHL 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 Assurance of access to care - Amend the regulations to require that each member select a primary care provider from which the member receives all primary care services; to require that MCOs contracting with a medical group have a process whereby a new provider joining the group can receive payment for services rendered to enrollees until the credentialing process is completed for the new provider; to ensure an enrollee who is referred by an out-of-network provider to in-network services incurs no additional financial liability than they would normally incur had the services been referred by a participating provider; and to be consistent with changes to the PHL. Conforming regulations will address new requirements related to subdivision 5-c to Section 4406-c which imposes a "cooling of " period after the termination or non renewal of a contract between an Article 44 managed care organization and a hospital.

98-1.14 Enrollee services and grievance procedures - Amend the regulation 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 PHL Article 49.

98-1.21 Fraud and abuse prevention plans and special investigation units - Amend the regulations to delete an unworkable requirement for MCOs to develop procedures for detecting repetitive fraud across plans; to 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, to 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 - Revise regulations, making technical corrections to: 1) 98-1.2(oo), 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 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 the regulations to incorporate rules to protect the public water supplies of the Villages of Avon and Geneseo and the Town of Livonia.

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

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

400.18 Statewide Planning and Research Cooperative System (SPARCS) - Amend the regulations to comprehensively update the requirements and conform to changes in related state laws.

402 Criminal History Record Check Program - Amend the regulations to permit third-party entity to submit fingerprint information directly to the Department rather than requiring provider submission, and require providers to submit fingerprint checks within a specified timeframe from hire date for prospective employees subject to criminal history record check requirements.

405.3 Administration - Amend the regulations to add certain requirements for immunizations and TB testing for healthcare workers and to exempt telemedicine personnel from immunization requirements as a condition of employment.

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

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

405.10 Medical Records - Amend the regulations to 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.

405.20 Outpatient Services - Amend the regulations to review the possibility of cross referencing 752.2 for hospital based free standing emergency facilities.

405.22 Critical Care and Special Care Services - Update the regulations regarding the organ transplant center provisions and the cardiac services provisions; and provide specific minimum standards for pediatric intensive care units (ICUs) similar to adult ICUs, recognizing differences between adult and pediatric ICUs beyond just the size and weight of the patients.

415 Nurse Aide Registry - Amend the regulations to allow the Department to remove from the State's Nurse Aide Registry any individual found to have acquired nurse aide certification through fraudulent means.

415 Nurse Aide Training Program Licensure - Add regulations to authorize the Department of Health to license its nurse aide training program curriculum to only those entities with high quality training programs.

415 and 1001 Respite Availability - Amend the regulations to increase the availability and promote the use of nursing home and assisted living settings for respite use (companion piece for Title 18 - adult care facilities).

600.8 Criteria for Determining the Operation of Diagnostic or Treatment Center Under Article 28 of the Public Health Law - Amend the regulations, if necessary, regarding center operations.

700.2 and 766.11 Personal Care Aide Training Programs - Amend the regulations to: define "personal care aide training program;" provide for 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 for application and reporting requirements; and other clarifying revisions and necessary amendments. NOTE: These proposed amendments will be developed and processed simultaneously with the proposed amendments to Title 18 505.14(e) to eliminate personal care aide training content.

708 Appropriateness Review - Revise regulations regarding the Trauma Center Designation Standards for consistency with the current practice of trauma care in New York State.

708 Appropriateness Review - Amend the regulations to provide standards for designating Percutaneous Coronary Intervention (PCI) capable hospitals that can meet the additional criteria needed to meet the emergency needs of patients with ST elevation myocardial infarctions (STEMIs) as measured on an EKG.

709 Determination of Public Need for Medical Facility Construction - Amend the regulations related to the liver and human heart transplantation services provisions.

710.1 Certificate of Need - Update the regulations to reduce CON review requirements for first-time purchases of Magnetic Resonance Imagers (MRIs) from full CON review to administrative CON review. Review for certain categories of construction unrelated to clinical capacity will also be changed from administrative CON review to a more limited prior review. Review for the relocation of an extension clinic within the same service area and involving no change in clinical capacity or scope of services and costing less than \$3 million will be changed from administrative CON review to prior limited review. These amendments 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 - Revise the regulations concerning the Medical Facilities Construction Code.

750-759 Treatment Center and Diagnostic Center Operation - Update the regulations addressing the Department's New York Patient Occurrence Reporting and Tracking System (NYPORTS) provisions for Diagnostic and Treatment Centers to reflect current practice. Amend the regulations to add certain immunization requirements for healthcare workers and to add to the list of accreditation organizations that free-standing or off-site hospital based ambulatory surgery centers may use for accreditation.

752-2 Up-Graded Diagnostic and Treatment Center Services - Revise the regulations, if necessary, which address freestanding emergency department classification.

757 Chronic Renal Dialysis Services - Revise the regulations to be consistent with new federal changes to 42 CFR regarding Medicare and Medicaid Programs; Conditions for Coverage for End-Stage Renal Disease Facilities.

763 and 766 Reporting Requirements for Licensed Home Care Services Agencies - Amend the regulations 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.

766 Licensed Home Care Services Agencies - Amend the regulations to update and modernize provisions to improve service delivery, training and surveillance activities.

767 Home Medical Equipment - Add regulations which include provisions for licensing and oversight of Home Medical Equipment providers, pursuant to newly enacted statute.

790 Hospices - Add regulations implementing changes in the federal Conditions of Participation.

800 Emergency Medical Services - General - Add regulations related to the use and application by members of the public of automatic external defibrillators; 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; and establish a new section on the mobilization and/or sharing of resources in the event of a declared disaster.

1000.1 Physician Profiling Definitions - Amend the regulations to define physician membership other than "board certification"; to provide definitions and requirements for physician information posted under the field "membership" on the physician profiling system; and to delete "The College of Family Physicians of Canada (CFPC)" from the current definition of "Board Certification".

1000.3 Malpractice Awards, Judgements, and Settlements - Amend the regulations to allow a physician to have 30 days within which to appeal the disclosure of the settlement information in the instance where physician has two or fewer settlements, and to 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 regulations to require that physicians notify the department at least annually if there are no changes in profile information.

#### Title 18 NYCRR (Social Services)

360-6.7 Managed Care - Repeal the regulations to modify and consolidate 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.

360-7.3(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 - Amend the regulations to eliminate the dual prior approval for certain services for Medicaid eligible children.

360-7.7 Payments of deductibles and coinsurance under title XVIII of the Social Security Act (Medicare) - Amend the regulations 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.

360-7.12 Co-Payments by Recipients - Revise the regulation to conform with recently enacted statutory changes to Medicaid co-payments that eliminate the pharmacy co-payment exemption for managed care recipients, and increase 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 - Repeal the regulations describing 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 Adult Homes, Enriched Housing Programs and Residences for Adults - Amend the regulations to consolidate and streamline 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. Amendments will provide clarification and consistency to residents, operators and the public with regards to adult care facilities.

486 Inspection Review Process for Adult Care Facilities - Revise the regulations 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 and 488 Respite Availability - Amend the regulations to increase the availability and promote the use of adult home and enriched housing program settings for respite use (companion piece for Title 10 - nursing homes and assisted living residences).

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

494 Retention Standards for Assisted Living Programs - Amend the regulations to allow individuals of such programs to "age-in-place", under certain conditions.

504.3(j) through (m) Medicaid Provider Responsibilities - Add three new sections 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 Personal Emergency Response Services - Amend the regulations to allow for annual authorizations and to delete the requirement that authorization of PERS be contingent upon a reduction/elimination of personal care aide/home health aide hours.

505 Consumer Directed Personal Assistance Program - Amend the regulations to establish discrete Consumer Directed Personal Assistance Program rules.

505.3 Pharmacy - Amend the regulations 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 - Amend 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 the 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 - Amend the regulations to 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 85.33 of Title 10 NYCRR Private Duty Nursing Services - Amend the regulations to replace and update the current language controlling the amount, duration, and scope for the provision of private duty nursing services under the Medicaid Program.

505.11 Payment for Physical and Occupational Therapy Assistants - Amend the regulations to allow physical therapist assistants and occupational therapy assistants to provide rehabilitative health care services to Medicaid recipients, as a billable service, under the supervision of a licensed physical therapist and occupational therapist, respectively; revised regulations will allow Medicaid recipients continued access to physical and occupational therapy services utilizing occupational therapy assistants and physical therapist assistants as qualified professionals.

505.16 Case Management - Amend the regulation to reflect a change in the frequency of program monitoring by the Office of Mental Health.

505.25 Personalized Recovery Oriented Services (PROS) - Amend the regulations to reflect 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 - Amend the regulations to eliminate 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 - Amend the regulations, in light of increasing interest in Medicaid reimbursement for services provided in dental vans used as private offices, to define a mobile setting and allow a mobile setting as a valid dental place of service, and to 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 - Amend the regulations to eliminate the Physically Handicapped Children's Program sole review role in the area of orthodontia; to remove the reference to panel orthodontists; and to update the qualifications for orthodontists and eligibility criteria for these services.

533.6(b)(1)(ii) Radiology Fee Components and 533.6(f) - Amend the reimbursement methodology for the professional component of radiology services which currently is reimbursed at 40 percent of the

radiology fee. Payment for radiology services for physicians will be based on a percent of the Medicare fee for that service. Amend the regulations to delete the section pertaining to the Radiology Fee Schedule, which is obsolete. The procedures and reimbursement fees approved by the Commissioner are found in the Physician Manual.

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

**CONTACT PERSON:**

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## 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 first half of 2008. Many of these items were previously published in the January 2008 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, please contact the agency contact person identified in the item. For general inquiries about the Insurance Department's Regulatory Agenda, please contact:

Sam Wachtel  
Supervising Attorney  
Office of General Counsel  
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: Assistant Deputy Superintendent & Counsel, Office of General Counsel (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 producers. Agency Contact: Assistant Deputy Superintendent & Counsel, Office of General Counsel (212) 480-5286.

3. Summary description of proposal: Amendment of 11 NYCRR 20 (Brokers and Agents - General)(Regulation 29) to permit the use of out-of-state banks for producer premium accounts. Agency Contact: Paul Zuckerman, Assistant Deputy Superintendent & Counsel, Office of General Counsel (212) 480-5286.

4. Summary Description of Proposal: Adoption of a new part to 11 NYCRR to address certain business practices in the title insurance industry and supervision of title insurers authorized to write title insurance in this state. Agency Contact: D. Monica Marsh, Associate Attorney, Office of General Counsel (212) 480-5298.

5. Summary Description of Proposal: Adoption of a new part to 11 NYCRR to address corporate governance practices and endure that supervised entities are in compliance with New York Insurance Law regarding gifts, entertainment and related travel. Agency Contact: Phyllis Ann Linker, Director of Internal Audit (518) 474-4567.

6. Summary description of proposal: Amendment of 11 NYCRR 151 (Regulation 119) to implement Chapter 11 of the Laws of 2008, effective January 31, 2008, which established a new method for setting workers' compensation rates in New York. This legislation provides for a new, two-step process for establishing workers' compensation insurance rates. One component of the rate making process is the Superintendent's establishment, by regulation, of a loss cost multiplier (LCM). The amendment will also address other pertinent issues. Agency Contact: Sam Wachtel, Supervising Attorney, Office of General Counsel (212) 480-5269.

7. 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).

8. 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).

9. 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).

10. Summary description of proposal: Amendment of 11 NYCRR 65-1, 65-2, 65-3, 65-4 (Regulations Implementing the Comprehensive Motor Vehicle Insurance Repairs 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).

11. 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).

12. 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).

13. Summary description of proposal: Amendment of 11 NYCRR 390 (Service Contracts) (Regulation 155) that will require all registered service contract providers to: file with the Superintendent annual audited financial statements, inclusive of the volume of service contract business written in New York; and 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).

14. 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).

15. 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).

16. 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).

17. Summary of description of proposal: Amendment of 11 NYCRR 125 (Credit for Reinsurance from Unauthorized Insurers) (Regulation 20) to allow alternative credit for cessions to unauthorized reinsurers that maintain a minimum financial strength rating from the rating agencies. Agency Contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

18. Summary of description of proposal: Adoption of a new part to 11 NYCRR to require authorized property/casualty insurers to establish reserve funds for payment of losses that occur in New York arising out of natural catastrophes. Agency Contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

19. Summary of description of proposal: Amendment of 11 NYCRR 80-1 (Holding Companies) (Regulation 52) to increase property/casualty insurers' required threshold necessary to provide prior notice to the superintendent concerning related party transactions, to establish that the Annual Holding Company Registration Statements may be filed electronically, and to allow the superintendent to permit, at his discretion, alternatives to the audited financial statements when making filings pursuant to this Regulation. Agency Contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

20. Summary description of proposal: Adoption of a new part to 11 NYCRR to require workers compensation policies with high deductibles to have collateralization of the deductible amount selected by the policyholder and in a form acceptable to the Superintendent. Agency Contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

21. Summary description of proposal: Amendment of 11 NYCRR 68 (Charges for Professional Health Services) (Regulation 83) to adopt the fee schedule that will be implemented by the Workers' Compensation Board for health services rendered by licensed dentists. Agency Contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

22. Summary description of proposal: Amendment to 11 NYCRR

152 (Physicians and Surgeons Professional Insurance Merit Rating Plan) (Regulation No. 124) to permit credits for successful completion of additional risk management programs (supplementary risk management programs). Agency Contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

23. Summary description of proposal: Amendment to 11 NYCRR Part 262 (Legal Services Insurance) (Regulation No. 162) to permit legal service coverage for breach of contract. Agency Contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

24. Summary description of proposal: Amendment of 11 NYCRR 27 (Excess Line Placements Governing Standards) (Regulation 41) to increase the minimum capital and surplus requirements of excess line insurers. Agency Contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

25. Summary description of proposal: Amendment of 11 NYCRR 27 (Excess Line Placements Governing Standards) (Regulation 41) to revise the Export List. Agency Contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

26. Summary of description of proposal: Adoption of a new part to 11 NYCRR to provide rules and guidelines to assure full disclosure of all relevant information within advertisements which describe or solicit the purchase of property and casualty insurance coverage that are published, issued or distributed through various advertising media. Agency Contact: Buffy Cheung, Principal Insurance Examiner, Property Bureau (212-480-5587).

27. Summary description of proposal: Adoption of a new part to 11 NYCRR to set forth standards and procedures for the sale and purchase of life insurance and annuities to ensure that life insurance and annuities are suitable for the insurance needs and financial objectives of consumers, and to prohibit the sale of unsuitable life insurance and annuities to consumers. Agency Contact: Michael Maffei, Assistant Chief, Life Bureau (212-480-5023).

28. Summary description of proposal: Amendment to part 11 NYCRR136 (Standards for the management of the New York State Employees' Retirement System and the New York State and Local Police and Fire Retirement System, and the New York State Common Retirement Fund) (Regulation 85) to establish ethical standards, strengthen internal controls and governance, and enhance the operational transparency of the state employees' retirement systems. Agency Contact: Michael Maffei, Assistant Chief, Life Bureau (212-480-5023).

29. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish standards for the sale and servicing of insurance products to senior citizens. Agency Contact: Daniel Gumaer, Supervising Insurance Examiner, Life Bureau (212-480-5040)

30. 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).

31. 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).

32. Summary description of proposal: Repeal of 11 NYCRR 135 ("Reporting of Certain Financial Transactions and Reserve Liabilities by Public Employee Retirement Systems") (Regulation 67) to eliminate requirements relating to a previous annual statement form that no longer is in use. Agency Contact: Peter Kreuter, Assistant Chief Actuary, Life Bureau (212-480-5328).

33. 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).

34. 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).

35. Summary description of proposal: Amendment to 11 NYCRR 42 (Term Life Issuance and Renewal Restrictions; Nonforfeiture Values for Certain Life Insurance Policies) (Regulation 149) to provide requirements for life policies with intermediate endowment values. Agency Contact: Dennis Lauzon, Assistant Chief Actuary, Life Bureau (518-474-5462).

36. 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).

37. 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).

38. 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).

39. 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).

40. 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: W. Joseph Shanley III, Senior Insurance Attorney, Life Bureau (518-474-7668).

41. 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).

42. Summary description of proposal: Adoption of a new part to 11 NYCRR to declare certain sales practices occurring on military installations or involving military personnel as false, misleading, deceptive or unfair and/or violations of the Insurance Law.

Agency Contact: Peter Dumar, Associate Insurance Attorney, Life Bureau (518-474-4552).

43. 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).

44. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish standards for a principles-based valuation of variable annuity reserves. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau (518-474-5462).

45. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish standards for a principles-based valuation of reserves for certain life insurance products. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau (518-474-5462).

46. Summary description of proposal: Amendment to part 11 NYCRR 98 (Valuation of Life Insurance Reserves) (Regulation 147) to establish reserve standards for pre-need insurance and equity indexed life insurance. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau (518-474-5462).

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) 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 establishment 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, Supervising Insurance Examiner, Health Bureau (212-480-5246).

48. 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).

49. 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).

50. Summary description of proposal: Adoption of a new part to 11 NYCRR or amendment of existing parts of 11 NYCRR to: 1) establish standards so the internal appeal procedures of long term care insurers are stated in the form language of long term care insurance products; 2) establish requirements and standards for long term care insurers to notify the Insurance Department when the insurers make available for purchase a long term care insurance form in New York State or when the insurers discontinue selling a long term care insurance form in New

York State; 3) state by amendment an update on the annual rescission report due date and to state the requirements of federal law for annual long term care reports on claims denials and lapse/replacements and their due dates; 4) establish rules and targeted penalties regarding deceptive advertising and/or deceptive marketing practices targeting senior citizens; 5) establish targeted penalties regarding untimely payment of long term care insurance claims; 6) establish procedures regarding external appeals of long term care insurance claims. Agency Contact: Austin J. Rinella, Supervising Insurance Attorney, Health Bureau (518-474-4098).

51. 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: Thomas Fusco, Associate Insurance Attorney, Health Bureau (716-847-7618).

52. 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: Thomas Fusco, Associate Insurance Attorney, Health Bureau (716-847-7618).

53. 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: Thomas Fusco, Associate Insurance Attorney, Health Bureau (716-847-7618).

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 dental exclusion in health insurance policies. Agency Contact: Thomas Fusco, Associate Insurance Attorney, Health Bureau (716-847-7618).

55. 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 or Healthy New York contract. Agency Contact: Thomas Fusco, Associate Insurance Attorney, Health Bureau (716-847-7618).

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) 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: Thomas Fusco, Associate Insurance Attorney, Health Bureau (716-847-7618).

57. 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: Thomas Fusco, Associate Insurance Attorney, Health Bureau (716-847-7618).

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 set forth requirements of notices of termination under group health insurance policies. Thomas Fusco, Associate Insurance Attorney, Health Bureau (716-847-7618).

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 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: Thomas Fusco, Associate Insurance Attorney, Health Bureau (716-847-7618).

60. Summary description of proposal: Adoption of a new part to 11 NYCRR to provide for enhanced disclosure pursuant to sections 3217-a and 4324 of the Insurance Law. Agency Contact: Thomas Fusco, Associate Insurance Attorney, Health Bureau (716-847-7618).

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 prohibit insurers and HMOs from treating services provided by hospitals that are participating in the health plan's network as out-of-network based upon the participation status of the admitting physician. Agency Contact: Thomas Fusco, Associate Insurance Attorney, Health Bureau (716-847-7618).

62. 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).

63. 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).

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), 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).

65. Summary description of proposal: Adoption of a new part to 11 NYCRR to require every accident and health insurer and HMO to file annually 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: Lisette Johnson, Supervising Insurance Attorney, Health Bureau (518-474-4098).

66. 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/or adoption of a new part to 11 NYCRR to establish an appeals process for disability claims. Agency Contact: Lisette Johnson, Supervising Insurance Attorney, Health Bureau (518-474-4098).

67. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish standards for contracts between insurers and providers. Agency Contact: Lisette Johnson, Supervising Insurance Attorney, Health Bureau (518-474-4098).

68. 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 provide clarification to insurers and HMOs as to the requirements of the alternate procedure for submission of rate increases or decreases set forth in Insurance Law sections 3231(e)(2)(A) or 4308(g), and to provide further clarification as to calculating and reporting loss ratios and issuing dividends or credits when using the alternate filing procedure as required by Insurance Law sections 3231(e)(2)(B) or 4308(h). Agency Contact: Lara Quintiliani, Senior Insurance Attorney, Health Bureau (518-486-7815).

69. Summary description of proposal: Amendment of 11 NYCRR 350 (Continuing Care Retirement 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 Continuing Care Retirement Communities. Agency Contact: Gary Teitel, Supervising Attorney, Health Bureau (212-480-7709).

70. 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).

71. 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: Stephen Rings, Associate Insurance Attorney, Health Bureau (518-474-4899).

72. 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 amend section 52.70(e)(2) to conform with Insurance Law section 3234(b) and permit individual underwriting in determining a person's eligibility for coverage under a group disability policy. Agency Contact: Stephen Rings, Associate Insurance Attorney, Health Bureau (518-486-7815).

73. 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 (716-847-7618).

74. 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 (716-847-7618).

75. 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 (716-847-7618).

76. 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 (716-847-7618).

77. 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: Kalo Daisy Wong, Principal Insurance Examiner, Health Bureau (212-480-5062).

78. 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).

79. 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 procedures and requirements for filing of accident and health insurance policy forms and rate submissions, including electronic filing of such submissions. Agency Contact: Doris Kullman, Associate Insurance Attorney, Health Bureau (518-474-4899).

80. 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).

81. Summary Description of Proposal: Adoption of a new part to 11 NYCRR to establish requirements for evaluating, approving and regulating matters relating to premium rates, enrollee contracts and fiscal solvency of Managed Long Term Care Plans, including reserves, surplus and provider contracts to the extent such contracts relate to fiscal solvency matters concerning Managed Long Term Care Plans. Agency Contact: Jose Joseph, Associate Insurance Examiner, Health Bureau (212-480-3345).

82. Summary Description of Proposal: Amendment of 11 NYCRR 105 and 109 (Operating Expense Classification for Annual Statement Purposes / Allocation of Salaries and Other Expenses) (Regulation 30) to include Article 42 Accident and Health Insurers, Article 43 Corporations and health maintenance organizations. Agency Contact: Charles Lovejoy, Supervising Insurance Examiner, Health Bureau (212-480-5045).

83. Summary Description of Proposal: Amendment of 11 NYCRR 94 (Valuation of Individual and Group Accident and Health Insurance Reserves) (Regulation 56) to extend the requirements to Article 42

Accident and Health Insurers, Article 43 Corporations and health maintenance organizations and to clarify the minimum solvency requirements for Accident and Health Insurers. Agency Contact: Yvonne Rowser, Principal Insurance Examiner, Health Bureau (212-480-3883).

84. 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 prohibit the use of door-to-door sales for Medicare Supplemental policies. Agency Contact: Laura Dillon, Principal Examiner, Consumer Services Bureau (518-486-9105).

85. 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/or adoption of a new part to 11 NYCRR to establish an appeals process for long term care claims. Agency Contact: Laura Dillon, Principal Examiner, Consumer Services Bureau (518-486-9105).

86. 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).

87. Summary description of proposal: Amendment of 11 NYCRR to recognize Letters of Credit issued pursuant to International Chamber of Commerce Uniform Customs and Practice for Documentary Credits (ICC Publication No. 600) for various accounting purposes. Agency Contact: Jim Everett, Associate Counsel, Capital Markets Bureau (518-408-1593).

88. 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 Insurance Law. Agency Contact: Jody Wald, Captive Coordinator, Captive Insurance Group (212-480-2757).

89. 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: Merline Smith, Supervising Insurance Examiner, Disaster Preparedness and Response Bureau (518-408-3330).

## 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 the Child Performer Advisory Board to Prevent Eating Disorders, as established by Chapter 675 of the Laws of 2007; and to establish regulations regarding the hours and conditions of work necessary to safeguard the health, education, morals and general welfare of child performers, as required by Chapter 89 of the Laws of 2008.

3. Amend Title 12 NYCRR Part 45 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.

4. Add language to Title 12 NYCRR Part 60 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.

5. Amend Title 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.

6. Amend Title 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.

7. 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.

8. Add a new Part to Title 12 NYCRR to implement regulations required by Chapter 433 of the laws of 2007, requiring employers to provide safety ropes and system components to firefighters.

9. Add a new Section to 12 NYCRR to establish an Advisory Council to gather information and advice from interested parties in assisting the Commissioner in developing unemployment insurance policies and legislation.

10. Amend Title 12 NYCRR Section 472.2 to update and expand the list of records required to be maintained by employers for Unemployment Insurance reporting and audit purposes.

11. Amend Title 12 NYCRR Section 23-8.5, which sets forth special provisions for crane operators, to revise the procedures regarding the administration of the practical examination and the conduct of hearings regarding the suspension, revocation, refusal to renew, or denial of a crane operator's certificate of competence.

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

This regulatory agenda was prepared and submitted by Teresa Stoklosa, Legal Assistant II, New York State Department of Labor, Building 12, State Campus, Counsel's Office, Room 509, Albany, New York 12240, (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 2008. 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 Well-Being

Revise regulations for the distribution and assignment of child support collections to reflect the requirements of Chapter 57 of the Laws of 2008 and federal law.

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 Economic 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.

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

Amend Home Energy Assistance Program (HEAP) regulations to reflect current practices and the provisions of the federally accepted HEAP State Plan, including the expansion of HEAP eligibility required to implement the Food Stamp Standard Utility Allowance (SUA) maximization initiative.

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

Amend regulations governing assessments and work assignments for individuals who would benefit from enrollment in a work activity that includes instruction in adult basic education and preparation for attainment of a high school degree.

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 and education grant exclusions.

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 the Food, Conservation, and Energy Act of 2008 and to recent changes in the federal regulations.

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

Amend Food Stamp regulations to provide the budgeting methodologies for residents of treatment centers and group homes.

Revise regulation regarding the budgeting of households with both Public Assistance recipients and SSI recipients.

Amend regulations to give the Commissioner authority to exempt certain categories of recipients from finger imaging requirements.

Amend regulations to eliminate the requirement that an application supplement be completed by adults who want to receive Safety Net Assistance after reaching the sixty-month time limit on TANF-funded assistance.

Remove quarterly reporting as a district optional requirement for Public Assistance programs.

Amend regulations to address the economic needs of non-parent caregivers and the children for whom they care.

Amend regulations to provide that a child who was a member of an overpaid assistance unit cannot be held liable for an overpayment on that case when he or she is added to someone else's case, later establishes his or her own case, or becomes an adult and is no longer receiving assistance.

Update regulations to set forth the new calculation of shelter allowances for individuals and families receiving Public Assistance and residing in city, State or federally aided public housing.

Update provisions regarding persons who are permanently residing in the United States under the color of law (PRUCOL).

Amend regulations regarding the Emergency Shelter Allowance with respect to certain household members who are in receipt of SSI income.

#### Audit 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.

Amend regulations governing intentional program violations to make the State's requirements for a ten year disqualification from the

Food Stamp Program consistent with the federal requirements set forth in the Code of Federal Regulations.

#### 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.

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.

Revise fair hearings regulation to clarify a reference to the Office of Administrative Hearings.

Revise Food Stamp regulations concerning the special definition of the "head of the household."

It is not anticipated that a small business guide will need to be developed for the proposals set forth in this agenda.

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, (518) 474-9779, e-mail: Jeanine.Behuniak@OTDA.state.ny.us. The regulatory agenda may be accessed on OTDA's website at [www.otda.ny.us](http://www.otda.ny.us).

