RULE MAKING ACTIVITIES

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

AAM -the abbreviation to identify the adopting agency
01 -the *State Register* issue number
96 -the year
00001 -the Department of State number, assigned upon receipt of notice.
E -Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

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

Department of Audit and Control

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Repeal of Part 339 of Title 2 of the NYCRR

I.D. No. AAC-15-09-00002-P

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

Proposed Action: This is a consensus rule making to repeal Part 339 of Title 2 NYCRR.

Statutory authority: State Finance Law, section 8

Subject: Repeal of Part 339 of Title 2 of the NYCRR.

Purpose: To repeal Part 339 of Title 2 of the NYCRR relating to the Committee on Investor Responsibility of the NYSLRS.

Text of proposed rule: Repeal of Part 339, Title 2, NYCRR.

Text of proposed rule and any required statements and analyses may be obtained from: Jamie Elacqua - Legislative Counsel, Office of the State Comptroller, 110 State Street, Albany, New York 12236, (518) 473-4146, email: JElacqua@osc.state.ny.us

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

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

Consensus Rule Making Determination

The proposed regulatory activity repeals Part 339 of Title 2 of the NYCRR. Such Part contains regulations that established a committee on Investor Responsibility of the New York State and Local Retirement Systems. The proposed repeal of this part is based upon the recommendation outlined in the Pension Task Force report of March 2009. The Task Force performed a comprehensive, independent review and assessment of the operations, policies and practices of the Common Retirement Fund and recommended dissolution of the committee in order to provide a solid foundation for the continued operation of the Common Retirement Fund. The Task Force recommended the committee be disbanded and that Office of the State Comptroller staff, together with consultants and other experts, continue to advise the Comptroller on issues relating to corporate governance.

Office of Children and Family Services

EMERGENCY
RULE MAKING

Education Stability of Foster Children, Transition Planning and Relative Involvement in Foster Care Cases

I.D. No. CFS-15-09-00001-E
Filing No. 291
Filing Date: 2009-03-26
Effective Date: 2009-03-26

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

Action taken: Amendments to sections 421.24(c), 428.3(b), 428.5(c), 430.11(c) and 430.12 (c); renumbering of section 430.11(c)(2)(x) and addition of sections 428.3(b)(2)(v), 430.11(c)(2)(ix), (c)(4), 430.12(c)(4), (j) to Title 18 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The regulations must be filed on an emergency basis to prevent the loss of federal funding that supports the health, safety and welfare of the children in foster care, children receiving adoption assistance and families receiving child welfare services.

Subject: Education stability of foster children, transition planning and relative involvement in foster care cases.

Purpose: The regulations implement the federal Foster Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351).

Text of emergency rule: Paragraph (19) of subdivision (c) of section 421.24 is amended to read as follows:

(19) The social services official on *an annual* [a biennial] basis *in a written notification* must remind the adoptive parents of their obligation to support the adopted child and to notify the social services official if the adoptive parents are no longer providing any support or are no longer legally responsible for the support of the child. *Where the adopted child is school age under the laws of the state in which the child resides, such notification must include a requirement that the adoptive parents must certify that the adopted child is a full-time elementary or secondary student or has completed secondary education. For the purposes of this paragraph, an elementary or secondary school student means an adopted child who is: (i) enrolled, or in the process of enrolling, in a school which provides elementary or secondary education, in accordance with the laws where the school is located; (ii) instructed in elementary or secondary education*

at home, in accordance with the laws in which the adopted child's home is located; (iii) in an independent study elementary or secondary education program, in accordance with the laws in which the adopted child's education program is located, which is administered by the local school or school district; or (iv) incapable of attending school on a full-time basis due to the adopted child's medical condition, which incapacity is supported by annual information submitted by the adoptive parents as part of this certification.

Subparagraphs (iii) and (iv) of paragraph (2) of subdivision (b) of section 428.3 are amended and a new subparagraph (v) is added to read as follows:

(iii) educational and/or vocational training reports or evaluations indicating the educational goals and needs of each foster child, including school reports and Committee on Special Education evaluations and/or recommendations; [and]

(iv) if the child has been placed in foster care outside of the state, a report prepared every six months by a caseworker employed by either the authorized agency with case management and/or case planning responsibility for the child, the state in which the placement home or facility is located, or a private agency under contract with either the authorized agency or other state, documenting the caseworker's visit(s) with the child at his or her placement home or facility within the six-month period*; and*

(v) the child's transition plan prepared in accordance with the standards set forth in section 430.12(j) of this Part.

Paragraph (6) of subdivision (c) of section 428.5 is amended to read as follow:

(6) description of contacts with educational/vocational personnel on behalf of the child*, including, but not limited to, contacts made with school personnel in accordance with sections 430.11(c)(1)(i) and 430.12(c)(4) of this Part;*

Subparagraph (viii) of paragraph (10) of subdivision (c) of section 428.5 is amended to read as follows:

(viii) any information acquired about an absent or non-respondent parent that is in addition to information recorded pursuant to section 428.4(c)(1) of this Part, [and] the results of an investigation into the location of any relatives, including grandparents of a child subject to article 10 of the Family Court Act or section 384-a of the Social Services Law*, and the efforts to identify and provide notification to grandparents and other adult relatives in accordance with the requirements of section 430.11(c)(4) of this Part;*

Subparagraph (i) of paragraph (1) of subdivision (c) of section 430.11 is amended to read as follows:

(1)(i) Standard. Whenever possible, a child shall be placed in a foster care setting which permits the child to retain contact with the persons, groups and institutions with which the child was involved while living with his *or her* parents, or to which the child will be discharged. It shall be deemed inappropriate to place a child in a setting which conforms with this standard only if the child's service needs can only be met in another available setting at the same or lesser level of care. *The placement of the child into foster care must take into account the appropriateness of the child's existing educational setting and the proximity of such setting to the child's placement location. When is it in the best interests of the foster child to continue to be enrolled in the same school in which the child was enrolled when placed into foster care, the agency with case management, case planning or casework responsibility for the foster child must coordinate with applicable local school authorities to ensure that the child remains in such school. When it is not in the best interests of the foster child to continue to be enrolled in the same school in which the child was enrolled when placed into foster care, the agency with case management, case planning or casework responsibility for the foster child must coordinate with applicable local school authorities where the foster child is placed in order that the foster child is provided with immediate and appropriate enrollment in a new school; and the agency with case management, case planning or casework responsibility for the foster child must coordinate with applicable local school authorities where the foster child previously attended in order that all of the applicable school records of the child are provided to the new school.*

Subparagraph (viii) of paragraph (2) of subdivision (c) of section 430.11 is amended, subparagraph (ix) is renumbered as subparagraph (x) and a new subparagraph (ix) is added to read as follows:

(viii) if the child has been placed in a foster care placement a substantial distance from the home of the parents of the child or in a state different from the state in which the parent's home is located, the uniform case record must contain documentation why such placement is in the best interests of the child; [and]

(ix) *show in the uniform case record that efforts were made to keep the child in his or her current school, or where distance was a factor or the educational setting was inappropriate, that efforts were made to seek immediate enrollment in a new school and to arrange for timely transfer of school records; and*

(x) if the child has been placed in foster care outside of the state in which the home of the parents of the child is located, the uniform case record must contain a report prepared every six months by a caseworker employed by the authorized agency with case management and/or case planning responsibility over the child, the state in which the home is or facility is located, or a private agency under contract with either the authorized agency or other state documenting the caseworker's visit to the child's placement within the six-month period.

Paragraph (4) of subdivision (c) of section 430.11 is added to read as follows:

(4) Within 30 days after the removal of a child from the custody of the child's parent or parents, or earlier where directed by the court, or as required by section 384-a of the Social Services Law, the social services district must exercise due diligence in identifying all of the child's grandparents and other adult relatives, including adult relatives suggested by the child's parent or parents and, with the exception of grandparents and/or other identified relatives with a history of family or domestic violence. The social services district must provide the child's grandparents and other identified relatives with notification that the child has been or is being removed from the child's parents and which explains the options under which the grandparents or other relatives may provide care of the child, either through foster care or direct legal custody or guardianship, and any options that may be lost by the failure to respond to such notification in a timely manner. The identification and notification efforts made in accordance with the paragraph must be recorded in the child's uniform case record as required by section 428.5(c)(10)(viii) of this Part.

Paragraph (4) of subdivision (c) of section 430.12 is amended and renumbered paragraph (5) and a new paragraph (4) is added to read as follows:

(4) Education. (i) Standard. The social services district with care and custody or guardianship and custody of a foster child who has attained the minimum age for compulsory education under the Education Law is responsible for assuring that the foster child is a full-time elementary or secondary school student or has completed secondary education. For the purpose of this paragraph, an elementary or secondary school student means a child who is: (a) enrolled, or in the process of enrolling, in a school which provides elementary or secondary education, in accordance with the laws where the school is located; (b) instructed in elementary or secondary education at home, in accordance with the laws in which the foster child's home is located; (c) in an independent study elementary or secondary education program, in accordance with the laws in which the foster child's education program is located, which is administered by the local school or school district; or (d) incapable of attending school on a full-time basis due to the foster child's medical condition, which incapability is supported by regularly updated information in the child's uniform case record.

(ii) Documentation. The progress notes for each school age child in foster care must reflect either the education program in which the foster child is presently enrolled or is enrolling; or the date the foster child completed his or her compulsory education; or where the child is not capable of attending school on a full-time basis, what the medical condition is and why such condition prevents full-time attendance. The social services district must update the progress notes on an annual basis to reflect why such medical condition continues to prevent the foster child's full-time attendance in an education program. On an annual basis, by the first day of each October, the education module in CONNECTIONS must be updated with education information about each school age foster child in the form and manner as required by the Office.

(5) [(4] Discharge planning. (i) Standard. For any child *age* 18 or under who is discharged from foster care, the district [shall] *must* consider the need to provide preventive services to the child and his *or her* family subsequent to [his] *the child's* discharge.

(ii) Documentation. The uniform case record form to be completed upon discharge of the child [shall] *must* show either the recommended type of preventive services and the district's attempts to provide or arrange for these services, or the reasons why these services are deemed unnecessary.

Subdivision (j) of section 430.12 is added to read as follows:

(j) Transition plan Whenever a child will remain in foster care on or after the child's eighteenth birthday, the agency with case management, case planning or casework responsibility for the foster child must begin developing a transition plan with the child 180 days prior to the child's eighteenth birthday or 180 days prior to the child's scheduled discharge date where the child is consenting to remain in foster care after the child's eighteenth birthday. The transition plan must be completed 90 days prior to the scheduled discharge. Such plan must be personalized at the direction of the child. The transition plan must include specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment

services. The transition plan must be as detailed as the foster child may elect.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 23, 2009.

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

Regulatory Impact Statement

1. Statutory authority

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

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

2. Legislative objectives

The regulations implement standards required by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) that went into effect on October 7, 2008.

3. Needs and benefits

The regulations will reduce disruption experienced by a child when removed from he child's home and placed into foster care and will enhance continuity in the child's environment.

Regarding the relationship of the child with his or her relatives, the regulations require that within 30 days of the removal of a foster child from his or her home, the social services district must exercise due diligence in identifying and notifying relatives of the child, including all grandparents and other relatives identified by the child's parents, that the child was removed, the options available to relatives to become the child's foster parent or to otherwise care for the child and any options that may be lost by the failure of the relative to respond to such notification in a timely manner. The regulations take into consideration the safety of the child by excluding the need to notify any relative who has a history of family or domestic violence.

The regulations address the need to minimize disruption by requiring the social services district to assess the proximity of the foster care placement to the school the child attended before placement into foster care and the appropriateness of the child remaining in that school upon entry into foster care. Where it is not in the best interests of the child to attend such school, the regulations require the social services district to work with the appropriate local school officials to see that the child is immediately enrolled in a new school.

The regulations also support the preparation of the foster child to transition out of foster care. One of the fundamental needs of any child is his or her education. The regulations clarify that each foster child of school age must either be enrolled in an appropriate educational setting, unless the child is incapable of attending school, or has completed his or her secondary education. The regulations impose a similar requirement in regard to a child who is in receipt of an adoption subsidy and is of school age.

The regulations support the transition of older foster children out of foster care by requiring the authorized agency with case management responsibility to develop a transition plan for a foster child who is aging out of foster care. This plan must be developed to meet the needs of the particular foster child, with such child's input. Development of the transition plan must commence 180 days prior to the scheduled discharge date of the foster child, with the completion of the plan 90 days prior to the scheduled discharge. Such plan must address such basic post discharge issues as housing, health insurance, education, supports services and employment.

4. Costs

The regulatory amendments are required by the federal Fostering Connections to Success and Increasing Adoption Act of 2008. There is no fiscal impact associated with implementing the regulations because current OCFS regulations require social services districts to carry out similar functions as those prescribed in these regulations. With the exception of the regulatory amendment associated with the transition plan, the regulatory changes are federally mandated under Title IV-E of the Social Security Act. Currently, New York must demonstrate that it has implemented these requirements in order to have a compliant Title IV-E State Plan. This is a condition for continuing to receive federal funds for foster care, adoption assistance and the administration of these programs.

The regulatory change regarding the transition plan for children who are aging out of foster care is a federal mandate under Tile IV-B, Subpart 1 of the Social Security Act. In order to have a compliant Title IV-B State Plan and to continue to receive federal Child Welfare Services funding, New York State must demonstrate that it has implemented such standard.

There is no fiscal impact associated with the regulatory amendment to 18 NYCRR 421.19(c)(19). Currently, the New York City Administration for Children's Services notifies adoptive parents to verify that they are continuing to sup-port their adoptive children and continue to be legally responsible for the support of their adoptive children. Acceptable documentation includes proof of school attendance. Documentation provided by the adoptive parent can be maintained in the social services district in the adoption subsidy case file. The regulatory amendments do not require any modification to CONNECTIONS. The requirements associated with documenting information in the child's uniform case record progress notes can be supported by CONNECTIONS.

5. Local government mandates

The regulations require social services districts to carry out functions similar to those they already have been obligated by State statute and OCFS regulations to perform. Current OCFS regulation 18 NYCRR 430.11(c) requires the social services district placing a child into foster care, whenever possible, to place the child in a foster care setting that permits the child to retain contact with the persons, groups and institutions with which the child was involved while living with his or her parents. OCFS regulation 18 NYCRR 430.10(b) currently requires the social services district that is contemplating the placement of a child into foster care to attempt, prior to placement, to locate adequate alternative living arrangements with a relative or family friend which would enable the child to avoid placement into foster care. Section 1017 of the Family Court Act and section 384-a of the SSL currently provide that when a child is to be removed from his or her home, the social services district must identify and discuss with such relative, including grandparents, available options to function as the child's foster parent or to assume direct legal custody of the child. The social services district must also notify the relative that the child may be adopted by foster parents if attempts at reunification with the birth parent are not required or are unsuccessful.

Social services districts are obligated pursuant to section 409-e of the SSL and OCFS regulations 18 NYCRR Part 428 and 430.12 to develop for each foster child a family assessment and service plan that addresses the needs of the child, including those related to education and the preparation of the child for discharge from foster care. These standards also presently require that foster children over the age of 10 be invited to participate in such planning.

6. Paperwork

The regulations require the recording of the actions taken by the social services district or voluntary authorized agency with case management responsibility in meeting the standards referenced above. Such documentation will be recorded in New York State's statewide automated child welfare information system, CONNECTIONS.

7. Duplication

The regulations do not duplicate other state or federal requirements. The regulations build on related existing requirements.

8. Alternative approaches

Given the mandates imposed by the federal Foster Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) and the adverse financial consequences for non- compliance, there is no viable alternative to implementing the regulations.

9. Federal standards

Each of the regulatory amendments reflects requirements imposed by the federal Foster Connections to Success and Increasing Adoptions Act of 2008. The regulatory changes relating to relatives and education are federally mandated under Title IV-E of the Social Security Act. New York State must demonstrate that it has implemented such standards in order to have a compliant Title IV-E State Plan which is a condition for New York to continue to receive federal funding for foster care and adoption assistance. The regulatory change relating to the transition plan for aging out foster children is federally mandated under Title IV-B, Subpart 1 of the Social Security Act. New York must demonstrate that is has implemented such standard in order to have a compliant Title IV-B State Plan which is a condition for New York to continue to receive federal child welfare services funding.

10. Compliance schedule

Compliance with the regulations would take effect upon adoption.

Regulatory Flexibility Analysis

1. Effect on Small Businesses and Local Governments

Social service districts, the St. Regis Mohawk Tribe and voluntary authorized agencies that have contracts with social service districts to

provide foster care, will be affected by the regulations. There are 58 social service districts and approximately 160 voluntary authorized agencies.

2. Compliance Requirements

The regulations implement standards required by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L 110-351) that went into effect on October 7, 2008. Implementation of the regulations is necessary for the State of New York to maintain compliant Title IV-B and Title IV-E State Plans which are required for New York to continue to receive federal funding under Title IV-B and Title IV-E of the Social Security Act for foster care, adoption assistance, child welfare services and the administration of those programs.

The regulations require that within 30 days of the removal of a foster child from his or her home, the social services district must exercise due diligence in identifying and notifying relatives of the child, including all grandparents and other relatives identified by the child's parents, that the child was removed, the options available to the relatives to become the child's foster parent or to otherwise care for the child and any option that may be lost by the failure of the relatives to respond to such notification in a timely manner. Notification must be made earlier than 30 days of removal if directed by the court. Notification is not required in regard to relatives who have a history of family or domestic violence.

The regulations require the authorized agency with case management responsibility to develop a transition plan for a foster child who is aging out of foster care. Such plan must be personalized to the particular foster child and developed with the involvement of such child. Development of the transition plan must commence 180 days prior to the scheduled discharge date of the foster child, with the completion of the plan 90 days prior to the scheduled discharge. The transition plan must address housing, health insurance, education, local opportunities or mentors and continuing support services, and work force supports and employment services.

The regulations set forth standards social services districts must satisfy in relation to the educational stability of children when they are removed from their homes and placed into foster care. The regulations address the need to assess the proximity of foster care placements to the school the child attended at the time of removal and the appropriateness of the child remaining in that same school after entering foster care. Where the foster child can not remain in the same school, the agency with case management responsibility must coordinate with local school officials in order that the foster child will be provided with immediate and appropriate enrollment in a new school.

The regulations require that foster children of school age must either be enrolled in an appropriate educational setting, unless incapable of attending school or have completed secondary education. The regulations impose a similar requirement post discharge from foster care for a child who is school age and is in receipt of an adoption subsidy.

3. Professional Services

It is anticipated that the requirements imposed by the regulations will be implemented by existing case work staff.

4. Compliance Costs

The regulatory amendments are required by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008. There is no fiscal impact associated with implementing the regulations because current OCFS regulations require social services districts to carry out similar functions as those prescribed in these regulations. With the exception of the regulatory amendment associated with the transition plan, the regulatory changes are federally mandated under Title IV-E of the Social Security Act. Currently, New York must demonstrate that it has implemented these requirements in order to have a compliant Title IV-E State Plan. This is a condition for continuing to receive federal funds for foster care, adoption assistance and the administration of these programs.

The regulatory change regarding the transition plan for children who are aging out of foster care is a federal mandate under Title IV-B, Subpart 1 of the Social Security Act. In order to have a compliant Title IV-B State Plan and to continue to receive federal Child Welfare Services funding, New York State must demonstrate that it has implemented such standard.

There is no fiscal impact with the regulatory amendment to 18 NYCRR 421.24(c)(19). Currently, the New York City Administration for Children's Services notifies adoptive parents to verify that they are continuing to support their adopted children and continue to be legally responsible for the support of their adoptive children. Acceptable documentation includes proof of school attendance. Documentation provided by the adoptive parent can be maintained by the social services district in the adoption subsidy case file. The regulatory amendments do not require any modification to CONNECTIONS. The requirements associated with documenting information in the child's uniform case record progress notes can be supported by CONNECTIONS.

5. Economic and Technological Feasibility

The regulations require the recording of the actions taken to comply with the regulatory standards noted above. Such information will be recorded in New York State's statewide automated child welfare information system, CONNECTIONS.

6. Minimizing Adverse Impact

The standards set forth in the regulations reflect mandates imposed on the states by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008. Implementation is necessary for New York to continue to be eligible to receive federal funding for foster care, adoption assistance child welfare services and the administration thereof, as required by Title IV-B and title IV-E of the Social Security Act. The regulations do not go beyond the scope of the federal mandates. .

7. Small Business and Local Government Participation

By letter dated, December 5, 2008, OCFS informed the commissioner of each of the local department of social services in the State of New York of the amendments to OCFS regulations that are necessitated by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008. The letter included a brief summary of the new regulatory requirements. In addition, it informed local commissioners of the requirements enacted by the federal legislation that are already in effect in New York and that will not require any further regulatory amendments. OCFS advised the local commissioners that OCFS will provide any clarification received from the federal Department of Health and Human Services on these requirements. A copy of the OCFS regulations was provided along with a contact person if the local commissioners or their staff had any questions.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas

Social services districts, the St. Regis Mohawk Tribe and voluntary authorized agencies that have contracts with social services districts to provide foster care will be affected by the regulations. There are 44 social services districts and the St. Regis Mohawk Tribe that are in rural areas. Currently, there are also approximately 100 voluntary authorized agencies in rural areas of New York State.

2. Reporting, recordkeeping and other compliance requirements; and professional services

The regulations implement standards required by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) that went into effect on October 7, 2008. Implementation of the regulations is necessary for the State of New York to maintain compliant Title IV-B and Title IV-E State Plans which are required for New York to continue to receive federal funding under Title IV-B and Title IV-E of the Social Security Act for foster care, adoption assistance, child welfare services and the administration of those programs.

The regulations require that within 30 days of the removal of a foster child from his or her home, the social services district must exercise due diligence in identifying and notifying relatives of the child, including all grandparents and other relatives identified by the child's parents, that the child was removed, the option available to the relative to become the child's foster parent or to otherwise care for the child and any options that may be lost by the failure of the relative to respond to such notification in a timely manner. Notification must be made earlier than 30 days of removal if directed by the court. Notification is not required in regard to relatives with a history of family or domestic violence.

The regulations require the authorized agency with case management responsibility to develop a transition plan for a foster child who is aging out of foster care. Such plan must be personalized to the particular foster child and developed with the involvement of such child. Development of the transition plan must commence 180 days prior to the scheduled discharge date of the foster child, with the completion of the plan 90 days prior to the scheduled discharge. The transition plan must address housing, health insurance, education, local opportunities for mentors and continuing support services and wok force supports and employment services.

The regulations set forth standards social services districts must satisfy in relation to the educational stability of children when they are removed from their homes and placed into foster care. The regulations address the need to assess the proximity of foster care placements to the school the child attended at the time of removal and the appropriateness of the child remaining in that school after entering foster care. Where the foster child can not remain in the same school, the agency with case management responsibility must coordinate with local school officials in order that the foster child be provided with immediate and appropriate enrollment in a new school.

The regulations require that foster children of school age must either be enrolled in an appropriate educational setting, unless incapable of attending school, or have completed secondary education. The proposed regulations would impose a similar requirement post discharge from foster care in regard to a school age child who is in receipt of an adoption subsidy.

3. Costs

Each of the regulatory amendments is required by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008. There is no fiscal impact associated with implementing the regulations because current OCFS regulations require social services districts to carry out similar functions as those prescribed in these amendments. With the exception of the regulatory amendment associated with the transition plan, the regulatory changes are federally mandated under Title IV-E of the Social Security Act. Currently, New York must demonstrate that is has implemented these requirements in order to have a compliant Title IV-E State Plan. This is a condition for continuing to receive federal funds for foster care, adoption assistance and the administration of these programs.

The regulatory change regarding the transition plan for children who are aging out of foster care is a federal mandate under Title IV-B, Subpart 1 of the Social Security Act. In order to have a compliant Title IV-B State Plan, and to continue to receive federal Child Welfare Services funding, New York State must demonstrate that it has implemented such standard.

There is no fiscal impact associated with the regulatory amendment to 18 NYCRR 421.24(c)(19). Currently, the New York City Administration for Children's Services notifies adoptive parents to verify that they are continuing to support their adoptive children and continue to be legally responsible for the support of their adoptive children. Acceptable documentation includes proof of school attendance. Documentation provided by the adoptive parent can be maintained by the social services district in the adoption subsidy case file. The regulatory amendments do not require any modification to CONNECTIONS. The requirements associated with documenting information in the child's uniform case record progress notes can be supported in CONNECTIONS.

4. Minimizing adverse impact

The regulations require the recording of the actions taken to comply with the regulatory standards noted above. Such information will be recorded in New York State's statewide automated child welfare information system, CONNECTIONS.

5. Rural area participation

By letter dated, December 5, 2008, OCFS informed the commissioner of each local department of social services in the State of New York of the amendments to OCFS regulations necessitated by the federal Fostering Connections to Success and Increasing Adoptions Act of 2008. The letter included a brief summary of the new regulatory requirements. In addition, it informed local commissioners of the requirements enacted by the federal legislation that are already in effect in New York and that will not require any further regulatory amendments. OCFS advised the local commissioners that OCFS will provide any clarification received from the federal Department of Health and Human Services on these requirements. A copy of the regulations was provided along with a contact person if the local commissioners or their staff had any questions.

Job Impact Statement

A full job impact statement has not been prepared for the regulations. The amendments will not result in the loss or creation of any jobs.

Department of Civil Service

NOTICE OF EXPIRATION

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

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-12-08-00006-P	March 19, 2008	March 19, 2009

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-15-09-00008-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Agriculture and Markets, by adding thereto the position of Horticultural Inspector 3 (Biotechnology) (1).

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-15-09-00009-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Parole," by adding thereto the position of øInformation Security Officer (1).

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

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

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-15-09-00010-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete a position from the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State University of New York under the subheading "SUNY at Albany," by deleting therefrom the position of Secretary 1 (German Language) (1).

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

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

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-09-00010-P, Issue of January 7, 2009.

Department of Health

EMERGENCY
RULE MAKING

Service Intensity Weights (SIW) and Average Lengths of Stay

I.D. No. HLT-53-08-00007-E
Filing No. 337
Filing Date: 2009-03-31
Effective Date: 2009-03-31

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

Action taken: Amendment of section 86-1.62 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-c(3)

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

Specific reasons underlying the finding of necessity: The Department finds that the immediate adoption of this amendment is necessary to make current regulations consistent with changes made to the service intensity weights for the diagnosis related group (DRG) classification system used by the Medicare prospective payment system (PPS). This is required by Section 2807-c(3) of the Public Health Law, which states, ''The Commissioner shall establish as a basis for case classification for case based rates of payment the same system of diagnosis-related groups for classification of hospital discharges as established for purposes of reimbursement of inpatient hospital service pursuant to Title XVIII of the Federal Social Security Act (Medicare) in effect on the first day of July in the year preceding the rate period.'' The current service intensity weights (SIWs) are updated to be consistent with the proposed DRG modifications.

Effective January 1, 2008, the SIWs were updated to reflect 2004 costs and statistics reported to the Department for a representative sample of hospitals. This update ensures a reflection of more current clinical practices, advances in technology, changes in patient resource consumption, and changes in hospital length of stay patterns.

The SIWs are an integral part of the hospital Medicaid and like payor inpatient rates. The amendments provide payors of inpatient hospital services with the new values used to determine the correct case based payment for each DRG for each hospital so hospital claims can be submitted and paid in a timely manner. Additionally, the Legislature sought to have the DRGs used in the hospital reimbursement methodology be consistent with those used in Medicare reimbursement and reflect medically appropriate, efficient and economic patterns of health use and services. The proposed regulatory update is required to implement the second year of the phase-in of the new service intensity weights. Such requirements warrant adoption of these amendments as soon as practicable.

Subject: Service Intensity Weights (SIW) and Average Lengths of Stay.

Purpose: Modifies the Service Intensity Weights (SIW) for DRGs.

Substance of emergency rule: The proposed amendments of section 86-1.62 of Title 10 (Health) NYCRR are intended to change the service intensity weights (SIWs) for the diagnosis related group (DRG) classification system for inpatient hospital services.

Effective January 1, 2008, the DRG classification system used in the hospital case payment system was updated to incorporate those changes made by Medicare for use in the prospective payment system, and additional changes to identify medically appropriate patterns of health resource use for services that are efficiently and economically provided. The SIWs were revised accordingly to reflect the costs of the redistributed cases.

In addition, the SIWs were updated to reflect 2004 costs and statistics reported to the Department for a representative sample of hospitals. This update ensures a reflection of more current clinical practices, advances in technology, changes in patient resource consumption, and changes in hospital length of stay patterns. The revised service intensity weights based on 2004 data are being phased-in over a three year period. The weights effective for the period January 1, 2008 through December 31, 2008, were based on 75% of the service intensity weights in effect as of December 31, 2007

based on 1992 data, and 25% of the service intensity weights based on 2004 data. The service intensity weights effective for the period January 1, 2009 through December 31, 2009, will be based on 33% of the service intensity weights in effect as of December 31, 2007 that are based on 1992 data, and 67% of the service intensity weights based on 2004 data. Effective January 1, 2010 and thereafter, the service intensity weights will be based on 2004 data. Effective January 1, 2009, the service intensity weights are being revised to reflect the phase-in described above.

General Summary for 86-1.62

The changes in the service intensity weights for the DRG classification system described above (Section 86-1.62 of Title 10 (Health) NYCRR) will enable providers to place patients in the most appropriate DRG and, therefore, they will receive adequate reimbursement for services provided. In the aggregate, these changes will have a budget-neutral impact on the reimbursement system.

The Department is statutorily required to update the grouper to be consistent with changes made to the DRG classification system used by the Medicare prospective payment system (PPS) and to modify existing and add new DRGs to more accurately reflect patterns of health resource use.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-53-08-00007-P. Issue of December 31, 2008. The emergency rule will expire May 29, 2009.

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

The authority for the subject regulations is contained in sections 2803(2), and 2807(3) and 2807(4) of the Public Health Law (PHL), which require the State Hospital Review and Planning Council (SHRPC), subject to the approval of the Commissioner, to adopt and amend rules and regulations for hospital reimbursement rates that are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities. PHL section 2807-c(3) authorizes the SHRPC to adopt rules subject to the Commissioner's approval, to adjust the service intensity weights (SIWs) for the diagnosis related groups (DRGs). Sections 34, 34-a and 34-b, of Part C of Chapter 58 of the Laws of 2007 authorizes the SHRPC and the Commissioner to update the cost and statistical base used to determine the SIWs to calendar year 2004 data and to provide for a phase-in of the new weights. PHL section 2807-c (4) authorizes the SHRPC to adopt rules, subject to the Commissioner's approval, for exceptions to case based payments for cost outliers.

Legislative Objectives:

The Legislature sought to have the DRGs used in the hospital reimbursement methodology be consistent with those used in Medicare reimbursement and reflect medically appropriate, efficient and economic patterns of health resource use and services.

Needs and Benefits:

The proposed amendments to sections 86-1.62 of Title 10 (Health) NYCRR are intended to make current regulations consistent with changes made to the service intensity weights (SIWs) for the diagnosis related group (DRG) classification system used by the Medicare prospective payment system (PPS). The SIWs are an integral part of the hospital Medicaid and like payor inpatient rates. The Department makes changes to the grouper used to assign inpatient cases to the appropriate DRG. As part of this process, the Department may make modifications, revisions and create new DRGs that reflect the current resources consumed by inpatients. After the grouper is modified, the SIWs must be recalculated to be consistent with the newly created and updated list of DRGs, and to incorporate the 2004 cost and statistical basis, thus creating new values for the SIWs in sections 86-1.62. Lastly, the amendment provides payors of inpatient hospital services with the new values used to determine the correct case base payment for each DRG so hospital claims can be submitted and paid in a timely manner. This amendment incorporates the second year of the phase-in of the new service intensity weights.

COSTS:

Costs to State Government:

The amendment to 86-1.62 revising the SIWs has been legislated as budget neutral; therefore there is no additional cost to the State as a result of these regulation changes.

Costs of Local Government:

No increase or decrease in costs to local governments is anticipated as a result of these amendments.

Costs to Private Regulated Parties:

In the aggregate, there will be no increases or decreases in hospital revenues as a result of these amendments. Changes to the DRG classification system will cause a realignment of cases among the DRGs. Those cases that require more intensive provision of care will realize an increase in the SIW (and reimbursement) for that DRG. The removal of such cases from the DRG to which they were previously assigned will decrease the SIW (and reimbursement) for that DRG. Therefore, revenues will shift among individual hospitals depending upon the diagnosis of and procedures performed on the patients they treat. The extent of the shift in revenues cannot be determined because it will depend upon future patient services.

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of these amendments.

Local Government Mandates:

This regulation affects the costs to counties and New York City for services provided to Medicaid beneficiaries as described above. It imposes no program, service, duty or other responsibility upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

There is no additional paperwork required of providers as a result of these amendments.

Duplication:

These regulations do not duplicate existing State and Federal regulations.

Alternatives:

Based upon suggestions/recommendations received from hospital industry representatives, the Department has included adjustments that provide more appropriate recognition of the costs related to current clinical practices, new medical technologies, changes in patient resource consumption, and changes in hospital length of stay patterns. Two alternatives were considered for the means of adjusting the revised SIWs to ensure budget neutrality. The first alternative was to apply a neutrality adjustment in the calculation of the SIWs. However, since the SIWs are formulated on non-Medicare costs and the budget neutrality provision in statute applies to Medicaid expenditures, this approach was rejected. Instead, budget neutrality for Medicaid expenditures will be achieved by applying an adjustment to the Medicaid hospital inpatient rates.

Federal Standards:

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

Compliance Schedule:

The proposed rule establishes rates of payment as of January 1, 2009; there is no period of time necessary for regulated parties to achieve compliance.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the Institutional Cost Report, seven hospitals were identified as employing fewer than 100 employees.

Compliance Requirements:

No new reporting, record keeping or other compliance requirements are being imposed as a result of these rules.

Professional Services:

No new or additional professional services are required in order to comply with the proposed amendments.

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are intended to make current regulations consistent with changes made to the service intensity weight for the DRG classification system used by the Medicare prospective payment system (PPS). The current SIWs are updated to be consistent with the proposed DRG modifications, and the cost and statistical base.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor will there be an annual cost of compliance. As a result of the amendment to 86-1.62 there will be no anticipated increases or decreases in hospitals' Medicaid revenues. However, revenues will shift among individual hospitals depending upon the diagnoses of and procedures performed on the patients they treat and the extent to which they would be classified into the modified diagnosis related groups.

Minimizing Adverse Impact:

The proposed amendments will be applied to all general hospitals. The Department of Health considered approaches specified in section 202-b(1) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given the reimbursement system mandated in statute.

Small Business and Local Government Participation:

Local governments and small businesses were given notice of these proposals by its inclusion in the agenda of the Fiscal Policy Committee of the State Hospital Review and Planning Council for its November 20, 2008 meeting. That agenda is mailed to general hospitals qualifying as small businesses, providers, members of the Fiscal Policy Committee, the New York State Legislature and representatives of the hospital associations, among others. The associations are member organizations that represent the interests and concerns of hospitals across New York State, including small businesses and local governments. This outreach resulted in the Department of Health receiving comments and suggestions related to additional changes that industry representatives recommended be implemented. Based on this feedback, the Department did make additional changes to the service intensity weights to incorporate several of these comments and suggestions.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene	Saratoga	

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

No new reporting, record keeping, or other compliance requirements are being imposed as a result of this proposal.

Professional Services:

No new additional professional services are required in order for providers in rural areas to comply with the proposed amendments.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor will there be an annual cost of compliance. As a result of the amendment to 86-1.62 there will be no increases or decreases in hospitals' revenues. Revenues will shift among individual hospitals depending upon the diagnoses of and approved procedures performed on the patients they treat.

Minimizing Adverse Impact:

The proposed amendments will be applied to all general hospitals. The Department of Health considered the approaches specified in section 202-bb (2) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given the reimbursement system mandated in statute.

Opportunity for Rural Area Participation:

Rural areas were given notice of this proposal by its inclusion in the agenda of the Fiscal Policy Committee of the State Hospital Review and Planning Council for its November 20, 2008 meeting. That agenda is mailed to members of the Fiscal Policy Committee, the New York State Legislature and representatives of the hospital associations, among others. The associations are member organizations, which represent the needs and concerns of providers across New York State, including rural areas. The amendment was described at meetings of the Fiscal Policy Committee prior to the filing of the notice of proposed rulemaking.

This outreach resulted in the Department of Health receiving comments and suggestions related to additional changes that industry representatives recommended be implemented. Based on this feedback, the Department did make additional changes to the service intensity weights to incorporate several of these comments and suggestions.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rules, that they will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulations revise the service intensity weights for the diagnosis related group (DRG) classification system for inpatient hospital services. The DRG classification system, which also has been in effect since 1988, is utilized to reimburse hospitals for inpatient services rendered to Medicaid beneficiaries. The proposed regulations have no implications for job opportunities.

EMERGENCY RULE MAKING

Ocean Surf Bathing Beaches and Automated External Defibrillators (AEDs)

I.D. No. HLT-15-09-00005-E

Filing No. 329

Filing Date: 2009-03-27

Effective Date: 2009-03-27

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

Action taken: Amendment of Subpart 6-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

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

Specific reasons underlying the finding of necessity: Chapter 500 of the Laws of 2008 was signed on September 4, 2008. This law requires amendments to the State Sanitary Code (SSC) to mandate automated external defibrillator (AED) equipment and at least one lifeguard trained in AED use, and for all HOA ocean surf beaches to be supervised by qualified surf lifeguards. The Public Health Law (PHL) amendments became effective January 2, 2009 and the chapter law mandates the Department of Health amend the SSC on or before the effective date to provide for implementation of the new requirements. Enacting this regulation as an emergency pending routine rulemaking will protect swimmers during the spring and early summer bathing seasons.

Requiring AED equipment and at least one lifeguard trained in the use of an AED at surf beaches during all hours of operation enable better emergency response for sudden cardiac arrest. Sudden cardiac arrest is one of the leading causes of death in the United States and the administration of a defibrillator within the first few minutes has been shown to be highly successful in preventing death. The presence of an AED and lifeguard trained in its use at a surf beach can decrease delays in AED administration, which was previously dependent on off-site Emergency Medical Services response.

The PHL specifies that the SSC must be amended to require all ocean surf beaches operated by a HOA to have qualified surf lifeguards on duty, including HOAs in Suffolk County and New York City (NYC), which are currently exempt from Subpart 6-2.

Although this PHL amendment only specifies that surf lifeguards be provided, the SSC is being changed to require all ocean surf beaches owned or operated by HOAs to comply with Subpart 6-2 in its entirety. Compliance with Subpart 6-2 of the SSC is essential to protect the public, protect lifeguards while performing their job duties, and to ensure consistency with requirements for operation for other surf beaches. Subpart 6-2 of the SSC requires rescue and first aid equipment, elevated lifeguard stands, and safety plans, and specifies the number and positioning of lifeguards. These requirements are necessary to ensure lifeguards are able to protect swimmers and not place their own safety at risk during rescue activities.

Subject: Ocean Surf Bathing Beaches and Automated External Defibrillators (AEDs).

Purpose: Mandate required ocean surf beaches to be supervised by a surf lifeguard trained in AED operation & provide & maintain onsite AED.

Text of emergency rule:

Subdivision (i) of Section 6 2.2 is added as follows:

(i) Public Access Defibrillation (PAD) program shall mean a program that complies with Section 3000-b of the Public Health Law, including the availability of an automated external defibrillator, the identification of an emergency health care provider, the development of a collaborative agreement and successful staff completion of training in the operation of an automated external defibrillator.

* * *

Paragraph (2) of Section 6-2.3(a) is amended as follows:

(2) those, excluding ocean beaches in Nassau County*, Suffolk County, and New York City,* that are owned and operated by a condominium (i.e., property subject to the Article 9-B of the Real Property Law, also known as the Condominium Act), a property commonly known as a cooperative, in which the property is owned or leased by a corporation, the stockholders of which are entitled, solely by reason of their ownership of stock in the corporation, and occupy apartments for dwelling purposes, provided an ''offering statement'' or ''prospectus'' has been filed with the Department of Law, or an incorporated or unincorporated property association, all of whose members own residential property in a fixed or defined geographical area with deeded rights to use, with similarly situated owners, a defined bathing beach, provided such bathing beach is used exclusively by members of the condominium, cooperative apartment project or corporation or association and their family and friends.

* * *

Subparagraph (i) is added to Section 6-2.17(a)(4) as follows:

(i) At ocean surf beaches, at least one Supervision Level I aquatic supervisory staff possessing a current certificate of training in the operation and use of an automated external defibrillator approved by a nationally-recognized organization or the state emergency medical services council shall be present at all hours of beach operation. Records of the training shall be maintained available for review during inspections.

* * *

Clause (a) is added to Section 6-2.17(b)(1)(ii) as follows:

(a) At ocean surf beaches, at least one automated external defibrillator shall be provided by the operator and maintained on-site. The beach operator shall implement a PAD program as defined in Section 6 2.2(i) of this Subpart and maintain the following records on-site for inspection:

- *A copy of the collaborative agreement between an emergency health care provider and the ocean surf beach operator;*
- *A copy of the notification to the regional emergency medical services council of the existence, location, and type of automated external defibrillator; and*
- *The records of automated external defibrillator maintenance and testing specified by the manufacturer's standards.*

* * *

Subdivision (c) of Section 6-2.17 is amended as follows:

(c) Safety plan. Operators of bathing beaches must develop, update and implement a written beach safety plan, consisting of: procedures for daily bather supervision, injury prevention, reacting to emergencies, injuries and other incidents, providing first-aid and summoning help. *At ocean surf beaches, the safety plan shall be developed in consultation with an individual having adequate ocean surf lifeguarding experience.* The safety plan shall be approved by the permit-issuing official and kept on file at the beach. Approval will be granted when all the components of this section are addressed so as to protect the health and safety of the bathers, and the plan sets forth procedures to insure compliance with this Subpart.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 24, 2009.

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Reg. Affairs Unit, Room 2438, ESP Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

The Public Health Council is authorized by Section 225 (4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC) subject to the approval of the Commissioner of Health. PHL Section 225 (5) (a) provides that the SSC may deal with any matter affecting the security of life and health of the people of the State of New York. In 2008, two amendments (Chapter 500 of the Laws of 2008) were made to PHL Section 225. The first added new Section 225 (5-c), requiring any public or private surf beach or swimming facility be supervised by a surf lifeguard and provide and maintain on-site automated external defibrillator (AED) equipment. Further, at least one lifeguard who has been trained in the operation and use of an AED must be present during all periods of required supervision. The second amendment added a new Section 225 (5-a) requiring surf lifeguards to supervise surf beaches used for swimming or bathing which are owned or operated by a homeowners association (HOA). HOA facilities, with the exception of those located in Nassau County, are currently exempt from Subpart 6 2 of the SSC. The PHL amendments became effective January 2, 2009 and the chapter law mandates the Department of Health amend the SSC to provide for implementation of the new requirements.

Legislative Objectives:

The legislative objective of Chapter 500 of the Laws of 2008 was to enhance the protection of public health and safety. The proposed amendments to the SSC, Subpart 6-2 Bathing Beaches will further this legislative objective and are required by statute.

Needs and Benefits:

Relating to AED Requirements:

The benefit of AED equipment and at least one lifeguard trained in the use of an AED at surf beaches during all hours of operation improves emergency response for sudden cardiac arrest. Sudden cardiac arrest is one of the leading causes of death in the United States and the administration of a defibrillator within the first few minutes has been shown to be highly successful in preventing death. The presence of an AED and of a lifeguard trained in its use at a surf beach will decrease delays in AED administration, which was previously dependent on a response from a generally off-site emergency medical services provider.

Related to Surf Lifeguard:

New PHL requirements specify that the SSC must be amended to require all ocean surf beaches operated by a HOA to have qualified surf lifeguards on duty, including HOAs in Suffolk County and New York City (NYC), which are currently exempt from Subpart 6-2. Although this PHL amendment only specifies that surf lifeguards be provided, the SSC is being changed to require all ocean surf beaches owned or operated by HOAs to comply with Subpart 6-2 in its entirety. Compliance with Subpart 6 2 of the SSC is essential to protect the public and protect lifeguards

while performing their job duties. Subpart 6 2 of the SSC requires rescue and first aid equipment, elevated lifeguard stands, and safety plans, and specifies the number and positioning of lifeguards. These requirements are necessary to ensure lifeguards are able to protect swimmers and not place their own safety at risk. A requirement for ocean surf beach safety plans to be developed in consultation with an individual with ocean surf beach lifeguarding experience is added to ensure staff who are knowledgeable in lifeguarding practices and emergency procedures have input in establishing the safety plan.

Costs to Regulated Parties:

The proposed amendments affect approximately 95 surf beach operations: 60 municipal, 6 HOA, 3 temporary residences, 25 beach clubs, and 1 community college, in NYC and Nassau and Suffolk Counties. Each of the 95 ocean surf beaches may incur costs associated with purchasing and maintaining AED equipment and establishing a Public Access Defibrillation (PAD) Program at the facility. Some may already have and maintain AEDs but the number, if any, is unknown. The cost of an AED device ranges from $1,100 to $3,000. There will be additional expenses related to maintenance and service of the AED. Periodic battery replacement is required (every 3 to 7 years, depending on the AED); replacement batteries average between $50 and $400. Some AED units have the option of using rechargeable batteries; costs range from $415 to $680 for batteries, including chargers. Replacement of pediatric or adult defibrillation pads is necessary after use, and unused pads must be replaced every 2-5 years depending on the unit. Pad replacement is estimated to be between $30 and $100 per set. Alternatively, AEDs can be leased for approximately $70 to $130 per month. Although the law only requires one AED per facility, some beaches may choose to provide more than one AED to facilitate a timely response.

In addition to the cost for purchasing an AED, surf beach operators must develop and implement a PAD program for their facility, which includes obtaining medical direction and program management. Costs for a PAD program, medical direction, and program management are estimated to be between $500 and $1500 a year. Municipalities that have physicians serving as health officers may have no additional expenses associated with medical direction. A single PAD program can be utilized for multiple beaches that have the same owner/operator, such as municipally operated beaches, the NYC Parks Department, and Nassau County Parks.

Training and certification in the use of the AED are incorporated in most cardiopulmonary resuscitation (CPR) certification programs and are not expected to add any additional expenses to beaches that are already supervised by lifeguards. CPR/AED training courses range from $75 to $110, but may be also included as part of lifeguard training courses. Lifeguards must renew their CPR/AED certification annually; re-certification courses range from $40 to $75.

There are two HOA ocean surf beaches in Suffolk County and one HOA ocean surf beach in NYC previously exempt that will now be regulated under Subpart 6-2. Although previously exempt from Subpart 6-2 of the SSC, the NYC HOA ocean surf beach has been regulated under Article 167 of the NYC Health Code and will have no additional expenses to comply with Subpart 6-2 of the SSC. Costs associated with Subpart 6-2 compliance for the two HOA surf beaches in Suffolk County are as follows:

Surf Lifeguard Training and Salary - Surf lifeguard training is estimated to cost between $200 and $500. Certifications are valid for up to three years from the date of issuance. CPR training courses range from $75 to $110; however, CPR training may be included in lifeguard training courses. Annual CPR re-certification is required, and is estimated to be between $40 and $75. Lifeguard salaries range from $11 to $21 dollars per hour. One of the HOA in Suffolk County is known to already supply lifeguards. One lifeguard must be provided for each 50 yards of beach open for swimming. At this time, the length of beach that is used for swimming is unknown; however, beach operators may restrict the area open for swimming to minimize expenses.

Initial Equipment Cost - The cost of equipment, including lifeguard chairs and rescue and first aid equipment, ranges from $1,470 to $3,970, for each required lifeguard. It is likely that beaches have some or all of the required equipment already.

Permit fee - There is an annual permit fee of $230 to operate a bathing beach in Suffolk County.

Drinking fountains and bathhouse facilities - No additional expense is anticipated for these facilities since beach use is restricted to residents, and their living quarters are expected fulfill these needs.

Costs to the Department of Health:

The cost for routine printing and distribution of the amended code will be the only cost to the State. There will be no cost to State Health Department District Offices as there are no ocean surf beaches within the jurisdiction of any District Office.

Costs to State and Local Government:

The proposed amendments affect approximately 95 beach operations in three local health department jurisdictions: 34 in Nassau County, 52 in Suffolk County, and 9 in NYC. The estimated burden to local health departments is minimal, as the inspection frequency would not change for NYC and Nassau County, and the number of permitted ocean surf beaches in Suffolk County would increase by 2 to a total of 52 regulated ocean surf beaches.

Paperwork/Reporting:

The proposed amendments require the beach operator to have available on-site records of AED program management and use, and copies of certifications in AED training for lifeguards. In addition, operators will need to amend their facility safety plan to reflect the deployment and use of AEDs, and must develop a PAD program. Initiation of the PAD program includes development of a collaborative agreement that is submitted to the appropriate Regional Emergency Medical Services Council (REMSCO). The PAD program specifies requirements for notifying REMSCO of the existence, location, and type of AED; and reporting every AED use.

The two HOA surf beaches in Suffolk County will have additional paperwork and record keeping associated with Subpart 6-2 compliance. Annually, each beach operator must apply for and obtain a permit to operate from the Suffolk County Department of Health. Daily logs indicating the number of bathers using the beach, number of lifeguards on duty, weather conditions, water clarity, and reported rescues, injuries, or illnesses must be maintained. In addition, owners/operators are required to report certain injury or illness incidents to the permit-issuing official within 24 hours, and must maintain records of lifeguard certifications and a written safety plan.

Local Government Mandates:

The proposed revisions impose a new responsibility of establishing a PAD program upon 60 municipalities that operate surf beaches. Local health department staff are responsible for enforcing the amendments to the bathing beach regulations as part of their existing program responsibilities.

Duplication:

This regulation does not duplicate any existing federal, state or local regulation.

Alternatives Considered:

Because the PHL amendment required that surf lifeguards be provided at all ocean surf beaches, but did not mandate compliance with Subpart 6-2 of the SSC in its entirety, one alternative considered was to limit the SSC modifications to only mandating that surf lifeguards be provided. This option was rejected to ensure that lifeguards are provided with the necessary safety equipment and safety plans to protect the public and themselves and to maintain consistency with requirements for operation for other surf beaches.

Federal Standards:

At this time, there are no Federal standards pertaining to AEDs or public safety (lifeguards, safety equipment, etc.) at surf beaches.

Compliance Schedule:

These regulations will be effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect of Rule:

There are 95 ocean surf bathing beaches in New York City (NYC) and Nassau and Suffolk Counties, all of which will be affected by the proposed rule that will require ocean surf beaches to provide and maintain automated external defibrillator (AED) equipment and a lifeguard trained in its use. Thirty-five (35) of these ocean surf beaches are considered small businesses, and include 25 beach clubs, 3 temporary residences (e.g., hotels and motels), 1 community college, and 6 homeowners associations (HOA). The remaining 60 ocean surf bathing beaches are owned and operated by municipalities.

Ninety-two (92) of the 95 ocean surf beaches are regulated under Subpart 6-2 Bathing Beaches of the State Sanitary Code (SSC), and 1 beach is regulated under Article 167 of the NYC Health Code. The proposed amendment that will require all HOA owned and operated ocean surf beaches to be permitted and regulated under Subpart 6-2 will affect the 2 HOA beaches (small businesses) in Suffolk County that are currently exempt from Subpart 6-2 regulations.

Compliance Requirements:

The proposed amendments require the beach operator to have available on-site records of AED program management and use, and copies of certifications in AED training for lifeguards. In addition, operators will need to amend their facility safety plan to reflect the deployment and use of AEDs, and must develop a PAD program. Initiation of the PAD program includes development of a collaborative agreement that is submitted to the appropriate Regional Emergency Medical Services Council (REMSCO). The PAD program specifies requirements for notifying REMSCO of the existence, location, and type of AED; and reporting every AED use.

The two HOA surf beaches in Suffolk County will have additional paperwork and record keeping associated with Subpart 6-2 compliance. Annually, each beach operator must apply for and obtain a permit to operate from the Suffolk County Department of Health. Daily logs indicating the number of bathers using the beach, number of lifeguards on duty, weather conditions, water clarity, and reported rescues, injuries, or illnesses must be maintained. In addition, owners/operators are required to report certain injury or illness incidents to the permit-issuing official within 24 hours, and must maintain records of lifeguard certifications and a written safety plan.

Other Affirmative Acts:

Chapter 500 of the Laws of 2008 was signed on September 4, 2008. This law requires amendments to the SSC to mandate beach operators implement a Public Access Defibrillation (PAD) program in compliance with Section 3000-b of the PHL, including the presence of AED equipment and a surf lifeguard trained in AED use. Additionally, the law requires SSC amendments mandating all HOA ocean surf beaches to be supervised by qualified surf lifeguards. The benefits of these changes are specified below.

Related to AED Requirements:

The benefit of AED equipment and at least one lifeguard trained in the use of an AED at surf beaches during all hours of operation improves emergency response for sudden cardiac arrest. Sudden cardiac arrest is one of the leading causes of death in the United States and the administration of a defibrillator within the first few minutes has been shown to be highly successful in preventing death. The presence of an AED and of a lifeguard trained in its use at a surf beach will decrease delays in AED administration, which was previously dependent on a response from a generally off-site emergency medical services provider.

Related to Surf Lifeguard:

New PHL requirements specify that the SSC must be amended to require all ocean surf beaches operated by a HOA to have qualified surf lifeguards on duty, including HOAs in Suffolk County and New York City (NYC), which are currently exempt from Subpart 6-2. Although this PHL amendment only specifies that surf lifeguards be provided, the SSC is being changed to require all ocean surf beaches owned or operated by HOAs to comply with Subpart 6-2 in its entirety. Compliance with Subpart 6 2 of the SSC is essential to protect the public, protect lifeguards while performing their job duties, and to ensure consistency with requirements for operation for other surf beaches. Subpart 6 2 of the SSC requires rescue and first aid equipment, elevated lifeguard stands, and safety plans, and specifies the number and positioning of lifeguards. These requirements are necessary to ensure lifeguards are able to protect swimmers and not place their own safety at risk. A requirement for ocean surf beach safety plans to be developed in consultation with an individual with ocean surf beach lifeguarding experience is added to ensure staff who are knowledgeable in lifeguarding practices and emergency procedures have input in establishing the safety plan.

Professional Services:

Facilities initiating PAD programs must identify a New York State licensed physician or New York State-based hospital knowledgeable and experienced in emergency cardiac care to serve as the Emergency Health Care Provider (EHCP). The EHCP participates in the collaborative agreement developed by the facility and EHCP.

Compliance Costs:

The proposed amendments affect approximately 95 surf beach operations: 60 municipal, 6 HOA, 3 temporary residences, 25 beach clubs, and 1 community college, in NYC and Nassau and Suffolk Counties. Each of the 95 ocean surf beaches may incur costs associated with purchasing and maintaining AED equipment and establishing a Public Access Defibrillation (PAD) Program at the facility. Some may already have and maintain AEDs but the number, if any, is unknown. The cost of an AED device ranges from $1,100 to $3,000. There will be additional expenses related to maintenance and service of the AED. Periodic battery replacement is required (every 3 to 7 years, depending on the AED); replacement batteries average between $50 and $400. Some AED units have the option of using rechargeable batteries; costs range from $415 to $680 for batteries, including chargers. Replacement of pediatric or adult defibrillation pads is necessary after use, and unused pads must be replaced every 2-5 years depending on the unit. Pad replacement is estimated to be between $30 and $100 per set. Alternatively, AEDs can be leased for approximately $70 to $130 per month. Although the law only requires one AED per facility, some beaches may choose to provide more than one AED to facilitate a timely response.

In addition to the cost for purchasing an AED, surf beach operators must develop and implement a PAD program for their facility, which includes obtaining medical direction and program management. Costs for a PAD program, medical direction, and program management are estimated to be between $500 and $1500 a year. Municipalities that have physicians serving as health officers may have no additional expenses associated with medical direction. A single PAD program can be utilized for multiple beaches that have the same owner/operator, such as municipally operated beaches, the NYC Parks Department, and Nassau County Parks.

Training and certification in the use of the AED are incorporated in most cardiopulmonary resuscitation (CPR) certification programs and are not expected to add any additional expenses to beaches that are already supervised by lifeguards. CPR/AED training courses range from $75 to $110, but may be also included as part of lifeguard training courses. Lifeguards must renew their CPR/AED certification annually; re-certification courses range from $40 to $75.

There are two HOA ocean surf beaches in Suffolk County and one HOA ocean surf beach in NYC previously exempt that will now be regulated under Subpart 6-2. Although previously exempt from Subpart 6-2 of the SSC, the NYC HOA ocean surf beach has been regulated under Article 167 of the NYC Health Code and will have no additional expenses to comply with Subpart 6-2 of the SSC. Costs associated with Subpart 6-2 compliance for the two HOA surf beaches in Suffolk County are as follows:

Surf Lifeguard Training and Salary - Surf lifeguard training is estimated to cost between $200 and $500. Certifications are valid for up to three years from the date of issuance. CPR training courses range from $75 to $110; however, CPR training may be included in lifeguard training courses. Annual CPR re-certification is required, and is estimated to be between $40 and $75. Lifeguard salaries range from $11 to $21 dollars per hour. One of the HOA in Suffolk County is known to already supply lifeguards. One lifeguard must be provided for each 50 yards of beach open for swimming. At this time, the length of beach that is used for swimming is unknown; however, beach operators may restrict the area open for swimming to minimize expenses.

Initial Equipment Cost - The cost of equipment, including lifeguard chairs and rescue and first aid equipment, ranges from $1,470 to $3,970, for each required lifeguard. It is likely that beaches have some or all of the required equipment already.

Permit fee - There is an annual permit fee of $230 to operate a bathing beach in Suffolk County.

Drinking fountains and bathhouse facilities - No additional expense is anticipated for these facilities since beach use is restricted to residents, and their living quarters are expected fulfill these needs.

Economic and Technological Feasibility:

The proposal is technologically feasible because it requires use of existing technology for AED equipment.

The proposal is believed to be economically feasible because it reflects only actual costs related to purchase and maintenance of the AED and related to surf lifeguard requirements necessary for compliance with the PHL. The cost difference between providing surf lifeguards at HOA surf beaches as required by the new PHL amendments and costs of requiring all HOA surf beaches to conform to all Subpart 6-2 is justified in order to protect the public and protect lifeguards while performing their job duties. Additionally, HOA beaches in Nassau County are already required by law to comply with SSC requirements.

Minimizing Adverse Impact:

The proposed amendments are largely dictated by PHL; therefore, the aforementioned costs associated with purchase of AED equipment, training, and PAD program development are necessary to follow this mandate. Training costs may be reduced by having lifeguards take a combined CPR/AED training course for their annual CPR re-certification. Municipalities or parks departments that have multiple beach facilities or use AEDs in other settings may be able to receive discounts by purchasing AED units and equipment in bulk. Municipalities that have physicians serving as health officers may have no additional expenses associated with an EHCP. In addition, a single EHCP/PAD program can be utilized for multiple beaches that have the same owner/operator, such as a municipality (e.g. the NYC Park Department, Nassau County).

Granting of variances to surf beaches which allows time for compliance may be considered as an option when related to equipment purchase, etc. Because the PHL amendment requires that surf lifeguards be provided at all ocean surf beaches, but did not mandate compliance with Subpart 6-2 of the SSC in its entirety, one alternative considered was to limit the SSC modifications to only mandating that surf lifeguards be provided. This option was rejected to ensure that lifeguards are provided with the necessary safety equipment and safety plans to protect the public and themselves and to maintain consistency with requirements for operation for other surf beaches.

Small Business Participation and Local Government Participation:

Some outreach has been conducted with lifeguarding staff at municipal facilities. The Department is in the process of conducting more extensive outreach to affected parties. However, Suffolk County Department of Health and NYC Department of Health and Mental Hygiene officials were contacted and support the proposed revisions to enforce Subpart 6 2 of the SSC in its entirety at HOAs.

Rural Area Flexibility Analysis

No Rural Area Flexibility Analysis is required pursuant to Section 202-bb of the State Administrative Procedure Act. The 95 ocean surf bathing beaches in New York State are located in Nassau and Suffolk Counties and New York City. These jurisdictions are not considered rural areas, as they do not meet the criteria for a rural area under Executive Law Section 481(7), which defines a rural area as either counties within the state having less than 200,000 population, or counties with 200,000 or greater population that contain towns with population densities of 150 persons or less per square mile.

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a (2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will have no substantial adverse impact on jobs and employment opportunities. The amendment may increase employment opportunities, as it now requires all ocean surf beaches owned or operated by a homeowners association in Suffolk County to provide surf lifeguards in accordance with Subpart 6-2 of the State Sanitary Code.

NOTICE OF ADOPTION

Initial Purchase of Magnetic Resonance Imagers (MRIs)

I.D. No. HLT-46-08-00002-A

Filing No. 338

Filing Date: 2009-03-31

Effective Date: 2009-04-15

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

Action taken: Amendment of section 710.1(c)(2) and (3) of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2802

Subject: Initial Purchase of Magnetic Resonance Imagers (MRIs).

Purpose: To substitute administrative CON review for full CON review of initial purchases of MRIs.

Text or summary was published in the November 12, 2008 issue of the Register, I.D. No. HLT-46-08-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Regulatory Affairs Unit, Room 2438, ESP, Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.state.ny.us

Assessment of Public Comment

The Department received comments from two organizations, the Greater New York Hospital Association (GNYHA) and Memorial Hospital for Cancer and Allied Diseases (MHCAD). The comments from both GNYHA and MHCAD were in support of the proposed rule.

The Department received no comments in opposition to the proposed rule.

NOTICE OF ADOPTION

Relocation of Extension Clinics

I.D. No. HLT-49-08-00003-A

Filing No. 339

Filing Date: 2009-03-31

Effective Date: 2009-04-15

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

Action taken: Amendment of section 710.1(c)(3) and (5) of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2802

Subject: Relocation of Extension Clinics.

Purpose: Substitute prior limited review for administrative CON review of relocations of extension clinics within the same service area.

Text or summary was published in the December 3, 2008 issue of the Register, I.D. No. HLT-49-08-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of House Counsel, Regulatory Affairs Unit, Room 2438, ESP, Tower Building, Albany, NY 12237, (518) 473-7488, email: regsqna@health.state.ny.us

Revised Regulatory Impact Statement

Statutory Authority

The authority for the proposed revision to 10 NYCRR Parts 710 is section 2803(2)(a) of the Public Health Law (PHL), which authorizes the State Hospital Review and Planning Council (SHRPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner of Health, to effectuate the provisions and purposes of Article 28 of the PHL with respect to hospitals, including but not limited to, requirements for construction projects subject to Certificate of Need (CON) review.

Legislative Objectives

Article 28 of the PHL seeks to ensure that hospitals and related services are of the highest quality, efficiently provided and properly utilized at a reasonable cost. Consistent with this legislative intent, the Department seeks to focus staff effort and other resources on the analysis of CON applications where considerations of public need, financial feasibility and quality of care are most pertinent. The Department has found that Article 28 construction projects involving relocation of extension clinics and having total project costs of $3 million or less rarely involve these larger and more fundamental CON concerns. Accordingly, the proposed amendment would remove this category of projects from CON review and subject them to only prior limited review.

Current Requirements

10 NYCRR Part 710 sets forth criteria governing the types of medical facility construction projects that require CON review. These criteria relate to a variety of factors, including the nature of the service, type of equipment, change in physical plant, and increase in overall service capacity. The CON approval process governed by this section takes two forms: administrative review and full review. Both entail a determination of public need for the proposed service, as well as a review of the project's financial feasibility. Projects subject to administrative review may be approved by the Commissioner alone, while those subject to full review require prior examination by the State Hospital Review and Planning Council (SHRPC).

Section 710.1(c)(3) subjects the relocation of an extension clinic to administrative CON review. This applies regardless of the cost of the relocation (unless the cost exceeds the $10 million threshold for full review) and without respect to the distance from the current site of the extension clinic to the proposed new site. This requirement for administrative CON review also pertains even if the relocation involves no change in services or clinical capacity between the current site and the new location.

Needs and Benefits

From time to time, hospitals and diagnostic and treatment centers (D & TC) relocate extension clinics within their service areas. This often occurs as the providers seek to serve changing populations within their communities but also comes about because of matters related to building and physical plant, such as the expiration of a lease or the operator's need to convert the existing site to other uses. As more and more services are delivered on an ambulatory basis, the need for extension clinics and the periodic relocation of these community-oriented sites of service is only likely to grow. This trend will be given added impetus with the implementation of the recommendations of the Commission on Health Care Facilities in the Twenty-First Century (the Commission), many of which call for the reduction of beds and inpatient services in favor of community-oriented primary and ambulatory care.

In a rapidly changing health care system, the need to undergo administrative CON review for the simple relocation of a clinic, often involving a move of only a short distance, undermines the ability of providers to respond quickly to changing health care needs in their communities. It also often complicates situations where unforeseen circumstances require the quick vacating of an existing site (e.g., a sudden escalation in rental fees) and where the finalization of arrangements at a new site is contingent upon CON approval. The additional

time required for CON review may also temporarily jeopardize access to care by local residents.

The purpose of administrative CON review of the relocation of an extension clinic is to ensure that the operation of the clinic at the new site will continue to meet a public need for the services offered; that the costs of the relocation, including any associated construction, are financially feasible; and that the physical plant at the new site complies with applicable components of the medical facilities construction code. These are important considerations. However, the Department believes that the first of these criteria need not be examined for the relocation of a clinic, when the relocation involves no increase in services or capacity; and when the relocation is proposed to occur from a location in which a significant number of the clinic's current patients reside to another such area. In these instances, the use of the clinic by area residents attests to its need. And as long as the costs of the relocation do not exceed a $3 million CON administrative review threshold, the Department believes that review for financial feasibility is not required. The Department proposes instead that these types of relocations be subject only to limited review pertaining to architectural and engineering matters. The retention of an architectural and engineering review requirement for these transactions is necessary to ensure that the new clinic site complies with applicable life safety and construction codes.

COSTS

Costs to the Department of Health

The proposed amendment would impose no new costs on the Department and would actually result in savings by eliminating the additional staff time required to process administrative review CON applications compared to applications that are subject only to prior limited review.

Costs to Other State Agencies

There are no costs to other State agencies or offices of State government.

Costs to Local Government

There are no costs to local government.

Costs to Private Regulated Parties

Because the proposed amendment imposes no new burdensome requirements, duties or responsibilities on any entity subject to Article 28 of the PHL, there are no costs to private regulated parties. The amendment will, in fact, result in savings to regulated parties by eliminating the $1,250 CON application fee associated with those projects that will no longer be subject to administrative CON review.

Local Government Mandates

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

Paperwork

The proposed amendment imposes no new reporting requirements, forms or other paperwork. The amendment will actually reduce paperwork by removing the requirement for the filing of a CON application for affected projects.

Duplication

There are no relevant State or Federal rules which duplicate, overlap or conflict with the proposed amendment.

Alternatives

The Department considered requiring only a letter of notification, as provided for in section 710.1(c)(4), for the relocation of extension clinics within the same service area. However, the need to ensure that the site of the relocation complies with applicable medical facilities construction codes requires that these changes of clinic venue still be subject to some form of review. The proposed requirement for review under section 710.1(c)(5) serves this purpose.

Federal Standards

The proposed amendment does not exceed any minimum standards of the Federal government. There are no Federal rules currently addressing the CON process for the relocation of extension clinics.

Compliance Schedule

It is anticipated that the proposed amendment will be announced within one month of the effective date through the posting of an announcement on the Department of Health's Internet site.

The proposed amendment will be effective upon publication of a Notice of Adoption in the New York State Register. There is no schedule of compliance, since the proposed amendment only indicates how applications will be processed within the Department of Health.

Assessment of Public Comment

The Department received comments from three organizations, the Greater New York Hospital Association (GNYHA), the Healthcare Association of New York State (HANYS), and Family Planning Advocates of New York State (FPA). The comments from GNYHA and HANYS were in support of the proposed rule.

Family Planning Advocates also wrote in support of the proposed rule as written but urged that the Department next consider a more nuanced definition of service area that would reflect the differences in the circumstances of health care delivery in the varied regions of the State, particularly those of rural areas.

After the filing of the revised rule, the Department would be amenable to revisiting the rule for possible further revision as suggested by FPA.

The Department received no comments in opposition to the proposed rule.

Division of Housing and Community Renewal

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

The Regulations Govern Management and Supervision of Mitchell-Lama Housing Companies

I.D. No. HCR-15-09-00003-P

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

Proposed Action: Amendment of Parts 1700, 1725, 1727, 1728, 1729, 1730, 1731, 1732, and 1750; repeal of Parts 1710, 1711, 1712, 1713, 1740; and addition of Part 1760 to Title 9 NYCRR.

Statutory authority: Private Housing Finance Law, sections 32(3), 32-a(6) and 84(9)

Subject: The regulations govern management and supervision of Mitchell-Lama housing companies.

Purpose: Streamline and update the regulations to reflect contemporary management and supervision practices and current law.

Substance of proposed rule (Full text is posted at the following State website:www.nysdhcr.gov): The proposed amendments and new additions will alter the Mitchell-Lama Regulations in the following general manner:

I. PART 1700 - Scope and Definition

Part 1700 will be amended to:

(1) Add more definitive standards governing ''waivers'' of the regulations;

(2) Add a provision allowing DHCR to take equitable considerations into account when making its supervisory determinations;

(3) Allow modifications to eliminate duplicative supervisory functions by other governmental agencies, in accordance with a recent amendment to the Mitchell-Lama Law;

(4) Remove original construction and design standards and delete references to the regulations as a ''manual.''

II. PARTS 1710 through 1713 - Subchapter B: Design Standards and Procedures for Limited-Profit and Limited-Dividend Housing Projects.

Parts 1710, 1711, 1712, and 1713 will be repealed in their entirety.

III. PART 1725 - General Administration

Part 1725 will be amended to:

(1) Clarify regulations governing ''Identity of Interest'' (''IOI'') contracts;

(2) Prohibit a mutual housing company (cooperative) board member from voting on a managing agent's contract, for two years after the agent has employed a family member of that board member;

(3) Strengthen prohibitions on unauthorized payments to and from directors, including payments regarding all contracts entered into by the housing company.

IV. PART 1727 - Occupancy

Part 1727 will be amended to:

(1) Incorporate references to DHCR's computerized waiting list system, known as the Automated Waiting List (''AWL''), which enables improved screening and monitoring of applicants;

(2) Require applicants to be eligible at both time of application and admission to a development and require that at least one original, adult applicant be a member of the family at the time of admission;

(3) Reduce the occupancy preference given to internal transfers from 80% to 75% of admissions;

(4) Codify existing policy waiving DHCR pre-approval for new admissions in housing developments where there is less than a one-year waiting list and a history of housing company compliance;

(5) Add a new prohibition against warehousing apartments;

(6) Eliminate the need for DHCR pre-approval for the majority of commercial leases;

(7) Increase the partial income exception regarding the calculation of admission rent and surcharges for ''secondary wage earners.''

(8) Revise standards for determining permissible household size by removing references to gender, age, and marital status.

(9) Permit a housing company to (a) upon proper notice of termination and, if applicable, opportunity to cure, go directly to court to seek eviction of residents not entitled to occupancy, and (b) accept rent when a ''succession'' appeal is pending before the Division without waiving its objection to the tenant's possession.

V. PART 1728 - Budget and Fiscal

Part 1728 will be amended to:

(1) Reduce the time period for DHCR review of housing company budgets in connection with a rent increase application;

(2) Eliminate the need for full budget review where the rent increase requested by a housing company is less than the Consumer Price Index (CPI).

(3) Reduce the number of required bids for purchase contracts while ensuring that minority- and women-owned businesses are included in such bidding processes;

(4) Eliminate prior DHCR approval for contracts of less than $100,000;

(5) Forestall the requirement for DHCR approval of progress payments on contracts until 75% of the contract has been paid;

(6) Require purchases and contracts for occasional repairs and maintenance (plumbing, painting, etc.) which exceed $100,000/annum to be competitively bid, even if broken up into smaller contracts;

(7) Require that all IOI contracts obtain prior DHCR approval;

(8) Enable DHCR to impose more stringent supervision on any contract, or category of contract, upon a determination that such additional supervision is necessary;

(9) Allow for less stringent provisions in the case of contracts arising from preservation agreements or private mortgage refinancing;

VI. PART 1729 - Project Management

Part 1729 will be amended to:

(1) Remove the requirement that a managing agent be selected through competitive bidding when the selection is part of a housing company preservation plan;

(2) Allow managing agents to automatically renew their contracts upon housing company concurrence but without prior DHCR approval, when certain performance standards have been met;

(3) Consolidate existing remedies and add new remedies allowing DHCR to address recalcitrant management.

VII. PART 1730 - Insurance

Part 1730 will be amended to:

(1) Increase liability protection to reflect and adhere to current business practices;

(2) Reduce DHCR regulation of required insurance, thus enabling the housing companies to use their business judgment to purchase the appropriate amount of insurance.

VIII. PART 1731 - Fire Prevention and Safety

Part 1731 will be amended to:

(1) Reduce DHCR supervision of housing company fire prevention measures;

(2) Require housing companies to comply with all applicable fire safety standards.

IX. PART 1732 - Energy Conservation

Part 1732 will be amended to:

(1) Increase housing company discretion regarding the proper energy conservation measures to take while operating the developments.

X. PART 1740 - Chart of Accounts for Regulated Housing Companies

Part 1740 will be repealed in its entirety.

XI. PART 1750 - Dissolution

Part 1750 will be amended to:

(1) Address the effects of ''reconstitution'' by housing company;

(2) Require that a housing company give tenants immediate notice of any dissolution application;

(3) Require that a housing company submit a title search with any dissolution application.

XII. PART 1760 - Redevelopment and Refinance

Part 1760 will be added to:

(1) Codify procedures for housing companies to obtain DHCR approval for new financing;

(2) Enable a fast-track exception to obtaining DHCR's approval for refinancing when the new lender is a governmental source with its own loan underwriting criteria.

Text of proposed rule and any required statements and analyses may be obtained from: Gary R. Connor - General Counsel, New York State Division of Housing and Community Renewal, 25 Beaver Street -7th Floor, New York, New York 10004, (212) 480-6707, email: gconnor@nysdhcr.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY

Articles II and IV of the Private Housing Finance Law (''PHFL'') grant the Division of Housing and Community Renewal (''DHCR'') broad powers to achieve the PHFL's express objectives. For example, PHFL §§ 27 and 82 provide that nearly all aspects of the establishment, financing and operations of private housing companies organized under Article II or IV (''housing companies'') are subject to DHCR's consent and approval; PHFL § 32(5)(d) authorizes DHCR to investigate ''the affairs of a [housing] company,….any person, firm, corporation or other entity having a financial interest, … [in] any project undertaken by a [housing] company...'' and ''the dealings, transactions or relationships of such company with third persons…''.

PHFL §§ 32, 32-a, 84 and 84(a) provide DHCR with the discretionary authority to supervise activities and promulgate regulations under the PHFL. Specifically, PHFL §§ 32(3) and 84(9) authorize DHCR to ''[f]rom time to time, make, amend and repeal … rules and regulations for carrying into effect the provisions of [respectively, Article II and Article IV] ….''. PHFL § 84(2) permits DHCR to ''order all housing companies to do such acts as may be necessary to comply with….the rules and regulations adopted by [DHCR]…''.

PHFL §§ 32-a(1) and 32-a(6) authorize DHCR to promulgate regulations, specifically ''…relating to managing agents, including criteria for the eligibility for selection and the compensation of managing agents ….'' and ''…providing for recognition of duly constituted tenants' associations and cooperators' advisory councils….''.

Finally, PHFL §§ 31(7) and (7-a) allow DHCR to provide preferential access for housing accommodations to, respectively, qualified veterans of the Vietnam War and to all disabled veterans.

2. LEGISLATIVE OBJECTIVES

As expressly stated in PHFL § 11, the Private Housing Finance Law was enacted to ensure that there is an adequate supply of safe and sanitary dwelling accommodations for persons of low- and moderate-income, upon a legislative determination that private enterprise, by means of granting state financing and tax exemptions to housing companies regulated by law as to profits and rents, should be encouraged to invest in such companies. Significantly, such housing companies receive publicly-sponsored mortgage loans and/or local property tax abatements in exchange for government supervision. The terms and conditions regarding such subsidized financing are detailed in PHFL §§ 20, 22, 26 and 26-a.

Owners of rental housing companies are limited to a six percent annual return on their initial investment, as provided in PHFL § 28. Likewise, under PHFL § 31-a, the resale price of owner-occupied cooperative apartment is limited to the original purchase price (set with DHCR approval), a pro-rated share of the mortgage amortization and capital assessments paid, if any.

Moreover, pursuant to PHFL § 31, admission to all housing companies is limited by various formulas which compare family income with either rent or the area median income. Additionally, tenants in occupancy whose income subsequently exceeds the relevant formula must pay an additional rental or maintenance surcharge.

Also, PHFL § 32(7) authorizes DHCR, in addition to seeking such other remedies as may be available, to commence an action or proceeding in court, to enforce DHCR orders and to prevent violations of law or any other action which may be ''improvident or prejudicial to the interests of the public, or the lien holders, stockholders or tenants…'' of a housing company.

Accordingly, while consistent with DHCR's statutorily granted rule-

making authority and the purpose and objectives of Articles II and IV of the PHFL, the proposed rules;

a. update and streamline DHCR's regulations to make compliance less cumbersome and more feasible for both owners and residents, and

b. more effectively direct DHCR's resources to areas where its enforcement is necessary.

3. NEEDS AND BENEFITS

The regulations govern the management and supervision of Mitchell-Lama developments. DHCR conducts site visits, examines housing company books and records, and has oversight authority with respect to almost all housing company transactions. This oversight includes selection and monitoring of housing company management, contracts with vendors, bi-annual budgets, rent increases, tenant selection and commercial leasing. With respect to tenant selection, DHCR regulations require comprehensive waiting list procedures to assure a fair allocation of apartments.

There are significant issues facing the Mitchell-Lama housing portfolio. Twenty years after initial occupancy, a housing company has the right to ''dissolve'' and reconstitute as a private, for-profit entity, resulting in the end of DHCR supervision and the moderate-income restrictions of the PHFL. Market forces increasingly act as an incentive to seek higher profit margins, which in turn, encourages owners to exercise their right to dissolve and remove the property from the affordable housing rolls. Overly burdensome regulatory requirements can tip the scale in favor of dissolution.

For those housing companies that remain in the portfolio, a significant infusion of capital is often necessary to upgrade aging building systems. However, even for those housing companies that can obtain such capital, the regulations are often an impediment to a major redevelopment plan. A typical plan requires the project to participate in multiple funding programs that must be administered in tandem by multiple agencies. Each of these programs has its own regulatory requirements which may duplicate or conflict with the extensive and detailed requirements of the Mitchell-Lama program.

While at its inception the Mitchell-Lama portfolio was relatively homogenous and could be supervised in a uniform manner, over the years the developments have moved in different directions. Some projects are now efficiently run and need minimal supervision, while others require closer monitoring. For example, at some cooperative developments, shareholders have sought additional profit through ''under the table'' transfers to new residents, irrespective of the Mitchell-Lama income limitations and waiting list procedures. In other developments, cooperative and rental alike, there have been instances of self dealing by managing agents with respect to housing company contracts for services and capital work, which, while otherwise necessary for a project's efficient operation, requires significant monitoring to assure fair prices and the appropriate selection of vendors and contractors.

The regulations were first promulgated in 1965 and since then have not been subject to comprehensive review. Entitled ''Management Manual,'' they are filled with detail on the minutiae of property management, unrelated and irrelevant to actual regulatory requirements of the Mitchell-Lama program. DHCR has now undertaken such a review and determined that the regulations need to be revised and updated to accomplish the following:

- implement contemporary management and supervisory models, reflect DHCR's actual best practices, and conform to current statutory amendments and judicial decisions.
- remove provisions that impose unnecessary burdens on owners, thereby encouraging them to exercise their right to dissolve and leave the Mitchell-Lama program.
- reflect a firmer basis for focusing supervisory resources on developments and items where DHCR, based on its experience, has determined that supervision is most needed.
- avoid unnecessary and duplicative supervisory practices in order to accommodate modern preservation and redevelopment plans which involve multiple subsidy programs administered in tandem, thereby encouraging owners to undertake plans to preserve the stock of affordable housing.

Based on these findings, DHCR developed the proposed amendments in order to:

- eliminate unnecessary regulation,
- streamline procedures,
- reflect contemporary and best agency practices,
- reflect recent legislation and judicial decisions,
- strengthen DHCR's enforcement capability,
- lessen the regulatory burden on housing companies while focusing DHCR supervision on problem areas, and
- encourage preservation of the portfolio as affordable housing.

The amendments encourage preservation by, among other things, providing for expedited review of government loans and other sources of refinancing, eliminating competitive bidding for certain management contracts, and implementing the provisions of a recent statutory amendment intended to avoid duplication of DHCR's supervisory practices where a development is subject to regulation under other government programs. The amendments also reduce DHCR's direct involvement in management supervision, and consequently the owner's regulatory burden, by permitting automatic renewals of management contracts based on performance, raising the monetary threshold for prior DHCR approval of contracts, reducing requirements for DHCR approval of progress payments, largely dispensing with prior DHCR approval of commercial contracts, foregoing budget review in requests for moderate rent increases, and codifying DHCR's practice of waiving prior approval of move-ins for developments with short waiting lists.

In addition, the new regulations permit housing companies, upon proper notice of termination and, if applicable, opportunity to cure, to go directly to court to seek eviction of residents not entitled to occupancy and to accept rent when a ''succession'' appeal is pending before the Division without waiving its objection to the tenant's possession. Furthermore, the standards for determining appropriate household size are also revised by removing references to gender, age, and marital status.

Streamlining DHCR's supervisory practices will free up valuable agency resources to focus on those developments that need more attention. The amendments facilitate DHCR's efficient use of those resources by expressly authorizing the agency to adjust the degree of supervision of a development based on its circumstances, and by codifying the supervisory tools which the agency may employ, such as denying or reducing compensation, suspending or terminating the management contract, taking direct control of management responsibilities, and advising a municipality to revoke its real estate tax abatement. The amendments also clarify and refine the existing rules governing identity of interest, and provide for additional notice, disclosure, and other safeguards upon dissolution.

4. COSTS

The amended regulations do not impose any new program, service, duty, or responsibility upon any state agency or instrumentality thereof, local government or (with the exception of the regulated entities) business, and therefore impose no costs on those entities. For the regulated entities, implementation costs should be relatively minimal, especially when compared with the value of these properties. In fact, such costs are already a generally-accepted expense of owning and/or operating government-supervised, subsidized housing. Indeed, the streamlined policies and procedures implemented by the amendments should result in overall cost savings to the regulated parties and the agency. Significantly, tenants will not incur any costs through implementation of the proposed regulations.

5. LOCAL GOVERNMENT MANDATES

The proposed rule making will not impose any new program, service, duty or responsibility upon any level of local government.

6. PAPERWORK

The amendments will not increase the paperwork burden on either the regulated parties or the agency. In fact, they should decrease paperwork, due to the streamlined policies and procedures implemented by the amendments.

7. DUPLICATION

The amendments do not add any provisions that duplicate any known State or federal requirements except to the extent required by law where a development participates in other State or federal programs. One of the major purposes of the amendments is to institute supervisory practices which avoid such duplication since modern redevelopment transactions often combine multiple subsidy programs that must be administered in tandem.

8. ALTERNATIVES

The alternative to the proposed amendments was to forgo this review. However, this was considered inappropriate in view of the pressing need to streamline and modernize DHCR's supervisory practices by making them less duplicative and burdensome and more consistent with contemporary management models, DHCR's actual best practices and recent statutory amendments and judicial decisions.

9. FEDERAL STANDARDS

The proposed amendments do not exceed any known minimum federal standards.

10. COMPLIANCE SCHEDULE

It is not anticipated that regulated parties will require any significant additional time to comply with the proposed rules. DHCR has already engaged in extensive discussions with the regulated parties regarding the proposed amendments, and the amendments are in part the product of recommendations made by those parties. DHCR will continue to keep the regulated parties apprised of the contents of the amendments as finally adopted, and the manner in which they will be introduced and administered.

Regulatory Flexibility Analysis

1. EFFECT OF RULE

To the extent that each housing company subject to Division of Hous-

ing and Community Renewal (DHCR) supervision is considered a small business, the amended regulations are expected to have no burdensome impact on such small businesses. On the contrary, one of the main purposes of the amendments is to streamline and update the management and supervisory practices reflected in the regulations, so that the net effect will be to reduce the overall regulatory burden upon all owners. The amendments would be likely to have the same effect, if any, on local governments.

2. COMPLIANCE REQUIREMENTS

The proposed amendments would not require the regulated parties or local governments to perform any additional recordkeeping, reporting, or other acts. The overwhelming effect of the amendments will be to significantly reduce the owners' obligations under DHCR's oversight. The amendments will moderate DHCR's direct involvement in management supervision by such measures as permitting automatic renewals of management contracts based on performance, raising the monetary threshold for prior DHCR approval of contracts, reducing requirements for prior DHCR approval of progress payments, largely dispensing with prior DHCR approval of commercial contracts, foregoing budget review in requests for moderate rent increases, and codifying DHCR's practice of waiving prior approval of move-ins for developments with short waiting lists.

The streamlining of DHCR's supervisory practices will free up valuable agency resources to focus on those developments that need more attention. The amendments facilitate DHCR's efficient use of those resources by expressly authorizing the agency to adjust the degree of supervision of management based on the circumstances, and codifying the supervisory tools which the agency may employ, such as denying or reducing compensation, suspending or terminating a management contract, taking direct control of management responsibilities, and advising a municipality to revoke its real estate tax abatement. The amendments also clarify and refine the existing rules governing identity of interest, and provide for additional notice, disclosure, and other safeguards upon dissolution.

When the extent of supervision is tailored to the needs of a particular project, it is likely that some owners will experience increased regulatory attention. However, while the amendments will certainly facilitate this result, they do not require it. Rather, the proposed regulations articulate the various measures which DHCR may employ with respect to a particular development, as the circumstances warrant. Moreover, the codified supervisory measures are all within DHCR's general supervisory authority and could be applied by DHCR as a matter of discretion, even in the absence of the amendments.

3. PROFESSIONAL SERVICES

The proposed amendments do not require small businesses to obtain any new or additional professional services. Since inception, each Housing Company has retained counsel, agents, contractors and other professionals to implement the statutory and regulatory requirements of the Private Housing Finance Law.

4. COMPLIANCE COSTS

There is no indication that this action will impose any significant, initial costs upon small businesses or local governments. It is expected that the annual cost of compliance with the new rules will be no different than the cost of compliance with existing rules.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Compliance is not anticipated to require any unusual, new or burdensome technological applications.

6. MINIMIZING ADVERSE IMPACT

These proposed amendments do not impair the rights of small business owners, and they have no adverse economic impact on such parties or any local government. Consequently, it was not necessary to consider the approaches suggested in SAPA section 202-b(1).

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

DHCR sought and received input from a statewide task force of attorneys representing owners and tenants, as well as from others representing housing providers. DHCR officials also described the proposed amendments and solicited feedback during various professional conferences convened prior to the commencement of the SAPA process.

Recently, DHCR circulated a ''management bureau memorandum'' explaining the proposed regulations to, and soliciting comment from, all Mitchell-Lama housing companies. In addition, drafts of the regulations have been placed on the Division's web site.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

Approximately 20 housing developments for families or senior citizens are located in rural counties in New York State. All are federally-assisted developments. It is not anticipated that the new regulations will impose any significant, additional reporting, recordkeeping, or other compliance requirements on public or private entities located in any rural area pursuant to Subdivision 10 of SAPA Section 102. On the contrary, one of the main purposes of the amendments is to streamline and update the management and supervisory practices reflected in the regulations, so that the net effect will be to reduce the overall regulatory burden upon owners.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS:

It is not anticipated that any additional professional services will be needed for housing companies located in rural counties to comply with these regulations as each housing company already has professionals who are retained to assure compliance with DHCR regulations.

3. COSTS:

It is not anticipated that these regulations will cause a significant variation in costs for the housing companies located in rural counties.

4. MINIMIZING ADVERSE IMPACT:

No adverse impact upon the housing companies is anticipated.

5. RURAL AREA PARTICIPATION:

DHCR sought and received input from a statewide task force of attorneys representing owners and tenants, as well as from others representing housing providers. DHCR officials also described the proposed amendments and solicited feedback during various professional conferences convened prior to the commencement of the SAPA process.

Recently, DHCR has circulated a ''management bureau memorandum'' explaining the proposed regulations to, and soliciting comment from, all Mitchell-Lama housing companies, including those located in rural areas. In addition, drafts of the regulations have been placed on the Division's web site.

Job Impact Statement

The amended regulations are intended to streamline and update the regulations governing agency oversight of housing companies to reflect contemporary best management and supervisory practices and current statutory and case law. It is apparent from the text of the rules that the regulations will have no adverse impact on jobs or employment opportunities.

Long Island Power Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Service Classification No. 13, Negotiated Contracts

I.D. No. LPA-15-09-00020-P

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

Proposed Action: The Long Island Power Authority ("Authority") is considering a proposal to modify Service Classification No. 13, Negotiated Contracts.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: Service Classification No. 13, negotiated Contracts.

Purpose: To modify Service Classification No. 13.

Public hearing(s) will be held at: 10:00 a.m., June 9, 2009 at H. Lee Dennison Bldg., Hauppauge, NY; 2:00 p.m., June 9, 2009 at Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY.

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

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

Substance of proposed rule: The Long Island Power Authority ("Authority") is considering a proposal to modify Service Classification No. 13, Negotiated Contracts. The proposed modifications would allow the Authority to negotiate contracts with the Metropolitan Transportation Authority for traction service to the Long Island Rail Road and to negotiate contracts with specific customers in order to provide for the resale of low cost power from the New York Power Authority. The Authority may approve, modify, or reject, in whole or part, the proposal.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, New York 11553, (516) 222-7700, email: amccabe@lipower.org

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

AMI Pilot Service

I.D. No. LPA-15-09-00021-P

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

Proposed Action: The Long Island Power Authority ("Authority") is considering a proposal to add a new Service Classification No. 16, Advanced Metering Initiative (AMI) Pilot Service.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: AMI Pilot Service.

Purpose: To establish an AMI Pilot Service classification.

Public hearing(s) will be held at: 10:00 a.m., June 9, 2009 at H. Lee Dennison Bldg., Hauppauge, NY; 2:00 p.m., June 9, 2009 at Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY.

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

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

Substance of proposed rule: The Long Island Power Authority ("Authority") is considering a proposal to add a new Service Classification No. 16, Advanced Metering Initiative (AMI) Pilot Service, add a new Statement of Advanced Metering Initiative Pilot and add tariff language to allow eligible customers to transfer between their current classification and the new Service Classification No. 16. The AMI Pilot Service will help LIPA to understand how AMI systems can interact with time-differentiated rates for residential and non-residential customers in certain geographical areas, and assess customers' interest in and response to time-differentiated structures. The Authority may approve, modify, or reject, in whole or part, the proposal.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, New York 11553, (516) 222-7700, email: amccabe@lipower.org

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Access to Records

I.D. No. LPA-15-09-00018-P

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

Proposed Action: This is a consensus rule making to amend Part 10050 of Title 21 NYCRR.

Statutory authority: Public Officers Law, sections 87 and 89

Subject: Public Access to Records.

Purpose: To conform the LIPA's regulations to non-discretionary statutory provisions in sections 87 and 89 of the Public Officers Law.

Text of proposed rule: 10050.1 Availability of public records.

(a) The public records of the Long Island Power Authority shall be available in accordance with this Part for inspection and copying upon written or oral request, reasonably describing the record or records sought, during the times provided in this Part at the authority's main office at [200 Garden City Plaza, Garden City]*333 Earle Ovington Blvd., Suite 403, Uniondale*, New York, 11553[0].

10050.2 Procedures regarding access to public records.

(a) A request for inspection or copying of a public record of the authority shall be made to the records access officer of the authority [orally or] in writing, and shall contain sufficient information to identify the particular record sought, including, if possible, information regarding the date, subject matter or other information describing the record sought. Any request shall be made either:

(1) in person, Monday through Friday, during regular business hours at the authority's main office at *333 Earle Ovington Blvd., Suite 403, Uniondale* [200 Garden City Plaza], Garden City, N.Y., 11553[0]; or

(3) by electronic mail by sending the request to the authority at FOIL@lipower.org, or via the form provided at the Freedom of Information Law link on the authority's web site at www.lipower.org.

(b) The [deputy] general counsel is designated the records access officer. The records access officer shall coordinate responses to requests for public access to records. Designation of a records access officer shall not be construed to prohibit officials who have in the past been authorized to make records or information available from continuing to do so.

(d)(1) Upon receipt of a written request for a record reasonably described, the records access officer shall promptly determine whether or not the record requested is available for public inspection and copying under the provisions of article 6 of the New York Public Officers Law and will, within five (5) business days of the receipt of such request, either:

(i) deny such request in writing; *or*

(iii) [ask for a clarification of the request; or] furnish a written acknowledgment of the receipt of such request and a statement of the approximate date when such request will be granted or denied, including, where appropriate, a statement that access to the record will be determined in accordance with the procedure prescribed in section 89(5) of the New York Public Officers Law regarding trade secrets.

(2) [If access to records is neither granted nor denied within ten (10) business days after the date of acknowledgment of receipt of request, the request may be construed as a denial of. access that may be appealed.]*When a request will be granted in whole or in part, if circumstances prevent disclosure to the person requesting the records within 20 business days after the date of the acknowledgment of the receipt of the request, a written explanation of the inability to grant the request within 20 business days shall be provided, together with a date certain within a reasonable period, depending on the circumstances, when the request will be granted in whole or in part. If access to the records is neither granted nor denied within a reasonable time after the date of acknowledgment of receipt of a request, or if the agency fails to conform to the provisions of section 89(3) of the Public Officers Law, such failure may be construed as a denial of access that may be appealed.*

(e) The authority shall grant access to records consistent with the public interest. However, the authority may deny access to records or any portion thereof if:

(8) [the record contains computer access codes.]*disclosure, would jeopardize an agency's capacity to guarantee the security of its information technology assets, such assets encompassing both electronic information systems and infrastructures.*

10050.3 Trade secrets*, confidential commercial information or critical infrastructure information.*

(b) Records or portions of records constituting trade secrets shall be so designated by the authority and shall be filed or maintained in secure facilities of the authority to which access is limited. Records or portions of records constituting trade secrets shall be held in the custody of the records access officer and shall be available for inspection and study by the *authority's* trustees[,] *and* [executive director, President of Shoreham Project, general counsel, executive director] *officers*, or their respective designees.

(c) A person acting pursuant to law or regulation who [, on or after January 1, 1982,] submits any record to the authority *and who requests trade secret or confidential commercial status for information contained therein, and any person or entity who submits, or otherwise makes available, records to the authority and requests trade secret, confidential commercial status critical infrastructure status for information contained therein,* may, at the time of submission, request that the authority, in accordance with the provisions of section 89(5) of the New York Public Officers Law, designate such record or any portion thereof as a trade secret *or as containing confidential commercial or critical infrastructure information therein,* and except such information from public disclosure under section 87(2)(d) of such law. Any such request shall identify in writing the record or part thereof alleged to be a trade secret *or as containing confidential commercial or critical infrastructure information* and state

the reasons why, pursuant to subdivision (d) of this section, such record or portion thereof should be excepted from public disclosure. Within 15 business days of receipt of a written request for an exception, the authority will either grant or deny such request in writing.

A person requesting trade secret *or confidential commercial* status for information submitted to the authority shall identify the reasons why the information should be considered a trade secret *or confidential commercial information*.

(e) *A person or entity submitting, or otherwise making available, critical infrastructure information to the authority shall in accordance with section 89(5)(1-a), identify in writing the reason(s) why such information should be excepted from disclosure. The authority will determine any request for exception from disclosure in accordance with section 89(5) of the Public Officers Law*.

10050.4 Fees.

(b) Records required to be made available for public inspection will be photocopied by the authority if practicable and the person requesting a copy will be charged a fee of 25 cents per page for copies not exceeding 9'' x 14'', or the actual cost of reproducing [such records] *any other record in accordance with the provisions of paragraph (c) of section 87(1)(c) of the Public Officers Law, except when a different fee is otherwise prescribed by statute*[if larger copies are required]. If it is not practicable for the authority to photocopy any such record, it will be copied commercially and the person requesting the copy will be charged a fee equal to the cost of such commercial reproduction.

(e) In determining the actual cost of reproducing a record, the authority will include only:

i. an amount equal to the hourly salary attributed to the lowest paid authority employee who has the necessary skill required to prepare a copy of the requested record;

ii. the actual cost of the storage devices or media provided to the person making the request in complying with such request;

iii. the actual cost to the authority of engaging an outside professional service to prepare a copy of a record, but only when an authority 's information technology equipment is inadequate to prepare a copy, if such service is used to prepare the copy; and

iv. preparing a copy shall not include search time or administrative costs, and no fee shall be charged unless at least two hours of authority employee time is needed to prepare a copy of the record requested. A person requesting a record shall be informed of the estimated cost of preparing a copy of the record if more than two hours of an authority employee's time is needed, or if an outside professional service would be retained to prepare a copy of the record.

10050.5 Appeals.

(b) The following person shall hear appeals from denials of access to records, under Section 89(4)(a) of the Public Officers Law: [Executive Director]*Vice President-Operations*, Long Island Power Authority, [200 Garden City Plaza, Garden City] *333 Earle Ovington Blvd., Suite 403, Uniondale*, New York 11553[0].

Text of proposed rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, New York 11553, (516) 222-7700, email: amccabe@lipower.org

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

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

Consensus Rule Making Determination

Section 87 of Article 6 of the Public Officers Law (POL) provides that each agency shall promulgate rules and regulations in conformity with the Freedom of Information Law and applicable rules and regulations promulgated by the Committee on Open Government pertaining to the availability of records and procedures to be followed. In accordance therewith, Part 10050 of Title 21 of the New York Compilation of Codes, Rules and Regulations (NYCRR) was adopted to, among other things, prescribe the Authority's procedures upon receipt of a request for records. However, since modifications were last made to the Authority's rules and regulations, there have been additional revisions to the POL, including in 2003, section 89 (5)(1-a) of the POL which was amended to address handling of agency records containing critical infrastructure. The POL was later amended by Chapter 22 of the Laws of 2005, which amended subdivisions (3) and (4) of section 89 to revise the procedures agencies must follow in regard to written record requests, and again amended by Chapter 223 of the Laws of 2008, which included the addition of a new section 87(1)(c) in connection with fees for electronic information.

In light of the changes imposed by the revisions to the POL in 2003, 2005 and 2008, the proposed resolution amends Part 10050 of the NYCRR to provide that where the Department furnishes a written acknowledgement of the receipt of a request for records and a statement of the approximate date when such request will be granted or denied, such date shall be reasonable under the circumstances of the request. In addition, where a determination is made to grant a request in whole or in part, or where circumstances prevent disclosure to the person requesting the record or records within twenty business days from the date of the acknowledgement of the receipt of the request, the records access officer shall provide a written statement as to the reason for the inability to grant the request within twenty business days and a date certain within a reasonable period, depending on the circumstances, when the request will be granted.

To be consistent with these statutory amendments, the Authority has proposed this rule change as well as correct outdated information. The proposed rule also amend the authority's rules and regulations to clarify the process for the submission and treatment of confidential commercial information or critical infrastructure information in accordance with POL, section 87(2) and 89(5). In addition, the proposed rule provides for the submission of Freedom of Information Law requests to the Authority via email and clarifies, consistent with the Freedom of Information Law, that requests for access to records must be in writing pursuant to POL, section 89(3). As the amendment conforms current regulations to non-discretionary statutory provisions contained in the Freedom of Information Law, no person is likely to object to the adoption of the rule as written. The other changes are minor and technical in nature. Therefore, under Chapter 210 of the Laws of 1998, the proposed rule is advanced as a consensus rule pursuant to section 202(1)(b)(i) of the State Administrative Procedure Act.

Job Impact Statement

As the rule simply modifies Part 10050 of Title 21 of the New York Compilation of Codes, Rules and Regulations to revise the regulations governing public access to records maintained by the Long Island Power Authority, the rule will have no impact on jobs or employment possibilities as set forth in section 201-a(2)(a) of the State Administrative Procedure Act (SAPA). Therefore, a Job Impact Statement is not required by section 201-a of such Act.

Office of Mental Health

EMERGENCY RULE MAKING

Comprehensive Outpatient Programs

I.D. No. OMH-15-09-00007-E

Filing No. 331

Filing Date: 2009-03-30

Effective Date: 2009-03-30

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

Action taken: Amendment of Part 592 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.04, 43.02; and Social Services Law, sections 364 and 364-a

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

Specific reasons underlying the finding of necessity: The amendments are a result of the enacted State Budget and the Financial Management Plan.

Subject: Comprehensive Outpatient Programs.

Purpose: To adjust the Medicaid reimbursement associated with certain outpatient programs regulated by OMH.

Text of emergency rule: 1. Subdivision (b) of Section 592.5 of Title 14 NYCRR is amended to read as follows:

(b) If the local governmental unit shall not have designated such providers of service or entered into agreements ensuring that comprehensive outpatient mental health services shall be available within the county, the Commissioner of Mental Health may directly designate providers of services as comprehensive outpatient providers pursuant to this Part.

(1) Any provider of service designated by the [commissioner] *Commissioner* shall meet the requirements of this Part. Any comprehensive outpatient program which fails at any time to meet the requirements set forth in [paragraph] *paragraphs* [(a)](1), (2) or (3) *of subdivision (a)* of this section shall have its supplemental medical assistance payments suspended until such time as the program substantially meets such requirements, as determined by the [commissioner]

Commissioner. For purposes of this subdivision, a program which has failed to receive a renewed operating certificate of at least six months duration [as set forth in section 588.13(g)(4) of this Title] may be deemed to have met such requirement if it has submitted a plan of corrective action that has been approved by the [commissioner] *Commissioner* or his/her designee; has been visited to verify implementation of such plan; and has been issued an operating certificate of at least six months in duration.

(2) Prior to designating such providers, the [commissioner] *Commissioner* shall notify the local governmental unit of his*/her* intention to directly designate comprehensive outpatient programs within such county and shall provide the local governmental unit with an opportunity to respond.

2. Subdivisions (c), (d), (e), and (k) are amended and a new subdivision (l) is added to section 592.8 of Title 14 NYCRR as follows:

(c) The supplemental rate, for providers with at least one Level I comprehensive outpatient program, shall be calculated as follows:

(1) For outpatient mental health programs *other than clinics* which are designated Level I providers pursuant to this Part, grants received for the local fiscal year ended in 2001 for upstate and Long Island based providers, and for the local fiscal year ended in 2001 for New York City based providers, *as well as grants received for subsequent fiscal years which have been identified for inclusion by the Office of Mental Health* shall be added, if applicable, to the annualized eligible deficit approved in the calculation of the previous supplemental rate. *Effective January 1, 2009, the amount of the grant funding utilized in calculation of the rate supplement was reduced as follows:*

(i) if the rate supplement effective immediately prior to January 1, 2009 was less than $100 per visit, no reduction to the grant funding used in the rate calculation will be made;

(ii) if the rate supplement immediately prior to January 1, 2009 was greater than or equal to $100 but less than $250, a reduction of 3 percent shall be made to the grant funding used in the rate calculation, provided, however, that the resultant rate calculated effective January 1, 2009 in accordance with paragraph (3) of this subdivision shall not result in a rate lower than the highest rate for the providers described in subparagraph (i) of this paragraph;

(iii) if the rate supplement immediately prior to January 1, 2009 was greater than or equal to $250 but less than $300, a reduction of 5 percent shall be made to the grant funding used in the rate calculation, provided, however, that the resultant rate calculated effective January 1, 2009 in accordance with paragraph (3) of this subdivision shall not result in a rate lower than the highest rate for the providers described in subparagraph (ii) of this paragraph;

(iv) if the rate supplement immediately prior to January 1, 2009 was greater than or equal to $300, a reduction shall be made to the grant funding used in the rate calculation that is the greater of 10 percent of the grant funding or an amount necessary to reduce the rate supplement to $300, provided, however, that the resultant rate calculated effective January 1, 2009 in accordance with paragraph (3) of this subdivision shall not result in a rate lower than the highest rate for the providers described in subparagraph (iii) of this paragraph;

(2) For clinic treatment programs which are designated Level I programs pursuant to this Part, grants received for the local fiscal year ended in 2001 for upstate and Long Island based providers, and for the local fiscal year ended in 2001 for New York City based providers, as well as grants received for subsequent fiscal years which have been identified for inclusion by the Office of Mental Health shall be added, if applicable, to the annualized eligible deficit approved in the calculation of the previous supplemental rate. Effective January 1, 2009, the amount of the grant funding utilized in calculation of the rate supplement was reduced as follows:

(i) if the rate supplement effective immediately prior to January 1, 2009 was less than $100 per visit, no reduction to the grant funding used in the rate calculation will be made;

(ii) if the rate supplement immediately prior to January 1, 2009 was greater than or equal to $100 but less than $250, a reduction of 3 percent shall be made to the grant funding used in the rate calculation, provided, however, that the resultant rate calculated effective January 1, 2009 in accordance with paragraph (3) of this subdivision shall not result in a rate lower than the highest rate for the providers described in subparagraph (i) of this paragraph;

(iii) if the rate supplement immediately prior to January 1, 2009 was greater than or equal to $250 but less than $300, a reduction of 5 percent shall be made to the grant funding used in the rate calculation, provided, however, that the resultant rate calculated effective January 1, 2009 in accordance with paragraph (3) of this subdivision shall not result in a rate lower than the highest rate for the providers described in subparagraph (ii) of this paragraph;

(iv) if the rate supplement immediately prior to January 1, 2009 was greater than or equal to $300, a reduction shall be made to the grant funding used in the rate calculation that is the greater of 10 percent of the grant funding or an amount necessary to reduce the rate supplement to $300, provided, however, that the resultant rate calculated effective January 1, 2009 in accordance with paragraph (3) of this subdivision shall not result in a rate lower than the highest rate for the providers described in subparagraph (iii) of this paragraph.

(3) The sum of grants received by the provider, as recalculated under paragraph (1) *or (2)* of this subdivision *as applicable*, shall be divided by the projected number of annual visits to the provider's designated programs. The projected number of annual visits shall be calculated as follows:

(i) *For outpatient programs other than clinic treatment programs, the* [The] combined total of outpatient mental health program visits reimbursed by medical assistance for each provider shall be calculated by using the average number of visits provided in the most recent three fiscal years multiplied by 90.9 percent. These visits shall include all visits reimbursed by Medicaid, including visits partially reimbursed by Medicare. Providers, who in the three most recent fiscal years earned less than the full Medicaid supplemental rate on visits partially reimbursed by Medicare, shall have the projected number of annual visits adjusted to reflect the lower supplemental revenue earned on Medicare/Medicaid dually eligible visits. The calculation of the Medicare/Medicaid adjusted visits shall be based on the percentage of Medicaid supplemental payments earned on Medicare/Medicaid dually eligible visits provided during the three most recent fiscal years and the number of dually eligible visits provided in the three most recent fiscal years. The Medicare/Medicaid adjusted visits are calculated by multiplying the projected annual volume of dually eligible visits by the average percentage of Medicaid supplemental revenue earned on these visits during the three most recent fiscal years.

(ii) For clinic treatment programs, the combined total of outpatient mental health program visits reimbursed by medical assistance for each provider shall be calculated by using the average number of visits provided in the most recent three fiscal years multiplied by 90.9 percent, for rates effective prior to July 1, 2008. For rates effective July 1, 2008 and January 1, 2009, the higher of the number of paid visits from calendar year 2007 or the average number of paid visits provided in the calendar years 2005 – 2007, multiplied by 90.9 percent, shall be used. These visits shall include all visits reimbursed by Medicaid, including visits partially reimbursed by Medicare, and those for which payment has been made or approved by a Medicaid managed care organization. Providers, who in the three most recent fiscal years earned less than the full Medicaid supplemental rate on visits partially reimbursed by Medicare, shall have the projected number of annual visits adjusted to reflect the lower supplemental revenue earned on Medicare/Medicaid dually eligible visits. The calculation of the Medicare/Medicaid adjusted visits shall be based on the percentage of Medicaid supplemental payments earned on Medicare/Medicaid dually eligible visits provided during the three most recent fiscal years and the number of dually eligible visits provided in the three most recent fiscal years. The Medicare/Medicaid adjusted visits are calculated by multiplying the projected annual volume of dually eligible visits by the average percentage of Medicaid supplemental revenue earned on these visits during the three most recent fiscal years.

(iii) Rates calculated pursuant to [subparagraph] *subparagraphs* (i) *or (ii)* of this paragraph are subject to appeal by the local governmental unit, or by the provider with the approval of the local governmental unit. Appeals pursuant to this paragraph shall be made within [one year] *120 days* after receipt of initial notification of the most recent supplemental reimbursement rate calculation. However, under no circumstances may the recalculated rate be higher than the rate cap set forth in paragraph [(3)] *(4)* of this subdivision.

[(3)]*(4)* The supplemental rate for a provider operating a licensed outpatient mental health program shall be the lesser of the rate calculated in paragraph [(2)] *(3)* of this subdivision or a rate cap as established by the Commissioner of Mental Health and approved by the Director of the Division of the Budget. *Effective January 1, 2009, the rate cap that shall be used in the calculation of the supplemental rate shall be $300.00 per visit.*

(d) *Excess supplemental payments shall be recouped as follows:*

(1) For outpatient programs other than clinic treatment programs, in [In] order to recoup supplemental payments for those visits in excess of 110 percent of the number of visits used to calculate the supplemental rate for a Level I provider, the Office of Mental Health may adjust the supplemental rates for the period in which the excess visits occurred. Such adjustments shall be made no more frequently than quarterly during the year. *The Office of Mental Health may recover such funds by requesting that the Department of Health withhold such funds from future Medicaid payments to the provider.*

(2) For clinic treatment programs, in order to recoup supplemental payments for those visits provided prior to July 1, 2008 in excess of 110 percent of the number of visits used to calculate the supplemental rate for a Level I program, the Office of Mental Health may adjust the supplemental rates for the period in which the excess visits occurred. Such adjustments shall be made no more frequently than quarterly during the year. The Office of Mental Health may recover such funds by requesting that the Department of Health withhold such funds from future Medicaid payments to the provider. For services provided July 1, 2008, and thereafter, the Office of Mental Health will no longer recover supplemental payments in excess of 110 percent of the number of visits used to calculate the supplemental rate of a Level I provider.

(e) [The following visit categories] *Collateral and group collateral visits for all clinic and continuing day treatment programs licensed pursuant to Part 587 of the Title* shall not be eligible for Medicaid supplemental rate, and shall be excluded from the Medicaid visit volume used to calculate rate adjustments for designated programs operated by general hospitals[:

(1) collateral and home visits for day treatment and continuing treatment programs licensed pursuant to Part 585 of this Title;

(2) collateral and group collateral visits for clinic programs licensed pursuant to Part 585 of this Title; and

(3) collateral and group collateral visits for all clinic and continuing day treatment programs licensed pursuant to Part 587 of this Title].

(k) *When a clinic treatment provider opens a new clinic program location, the supplemental rate shall be re-calculated to include the volume of Medicaid visits projected for the location in the provider's approved Application for Prior Approval Review. The funding used in calculation of the supplemental rate shall be increased by the amount calculated by multiplying the increased volume of Medicaid visits from the approved Application for Prior Approval Review by the Level II COPS supplement for the applicable program/region.*

(l) Each general hospital, as defined by article 28 of the Public Health Law, which is operated by the New York City Health and Hospitals Corporation, which received a grant pursuant to section 41.47 of the Mental Hygiene Law for the local fiscal year ending in 1989, shall be designated as a Level I comprehensive outpatient program for all outpatient programs licensed pursuant to Part 587 of this Title. For purposes of calculating supplemental Medicaid rates pursuant to this Part, all such programs in the New York City Health and Hospitals Corporation are combined for a uniform supplemental Medical Assistance program rate.

3. Subdivision (b) is amended and a new subdivision (c) is added to section 592.10 of Title 14 NYCRR as follows:

(b) In order to recoup supplemental payments for those visits in excess of the number of visits used to calculate the supplemental rate under this section, the Office of Mental Health may adjust the supplemental rates for the period in which the excess visits occurred. Such adjustments shall be made no more frequently than quarterly during the year. *Effective with all services rendered July 1, 2008 and thereafter, no such recoupment of supplemental payments to clinic treatment programs shall be made.*

(c) Any program eligible to receive supplemental medical assistance reimbursement as a Level II Comprehensive Outpatient Program which fails at any time to meet the requirements set forth in this section shall have its supplemental medical assistance payments suspended until such time as the program substantially meets such requirements, as determined by the Commissioner. For purposes of this subdivision, a program which has failed to receive a renewed operating certificate of at least six months duration may be deemed to have met such requirement if it has submitted a plan of corrective action that has been approved by the Commissioner or his/her designee; has been visited to verify implementation of such plan; and has been issued an operating certificate of at least six months in duration.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 27, 2009.

Text of rule and any required statements and analyses may be obtained from: Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: cocbjdd@omh.state.ny.us

Regulatory Impact Statement

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

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

Subdivision (a) of Section 43.02 of the Mental Hygiene Law grants the Commissioner the power to set rates for facilities licensed under Article 31 of the Mental Hygiene Law.

Sections 364 and 364-a of the Social Services Law give the Office of Mental Health responsibility for establishing and maintaining standards for care and services eligible for Medicaid reimbursement in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

Chapter 54 of the Laws of 2008 provides adjusted funding appropriations in support of amendments to Part 592. (Section 1, State Agencies, Office of Mental Health, lines 18-29 on page 393, lines 46-50 on page 403, and lines 1-7 on page 404.)

2. Legislative Objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. The amendments to Part 592 adjust the Medicaid reimbursement associated with certain outpatient treatment programs regulated by the Office of Mental Health (OMH) consistent with the enacted 2008-2009 state budget. These changes will be targeted in such a way as to provide general fiscal relief to providers most in need, as well as improve the quality and availability of services, all while recognizing the serious fiscal condition of the State. They will also equalize reimbursement fees for clinic treatment within geographic areas, as approved by the Division of Budget.

3. Needs and Benefits: The enacted state budget for State Fiscal Year 2008-2009 provided for an approximately $5 million increase for clinic treatment programs in State share of Medicaid ($10 million gross Medicaid funds) through adjustments to the Medicaid fee supplements calculated in accordance with Part 592. This funding would have had a full annual value of $10 million in State share of Medicaid ($20 million in gross Medicaid funds) but was adjusted to reduce the highest rate supplements. This resulted in an increase of $4.39 million State share of Medicaid funds, with a full annual value of $7.54 million State share of Medicaid funds ($15.07 million in gross Medicaid funds).

Clinic treatment programs provide outpatient treatment designed to reduce symptoms, improve functioning and provide ongoing support to adults and children admitted to the program with a diagnosis of a designated mental illness. This rulemaking includes provisions to increase certain programs to a minimum payment level and removes the requirement to recover monies generated by paid visits in excess of 110 percent of the visits used to calculate the rate supplement effective July 1, 2008.

As a result of other actions proposed in the Financial Management Plan, there will be reductions made to the highest rate supplements. Providers with current rate supplements above $300 will have the funding used in the supplement calculation reduced by 10 percent; providers with rate supplements of $250-$300 will have the funding used in the supplement calculation reduced by 5 percent; and providers with rate supplements of $100-$250 will have the funding used in the supplement calculation reduced by 3 percent. OMH's intent in these proposals is to begin to move the reimbursement for mental health clinic services toward a more uniform reimbursement system, by raising the reimbursement amounts for the lowest paid providers and lowering the reimbursement amounts for the providers with the highest rates.

4. Costs:

a) Costs to regulated parties: The reduction of funding used in the calculation of the rate supplements will impact approximately one third or 102 of the approximately 317 providers currently receiving such a supplement. The impact of these reductions totals $4.93 million in gross Medicaid funds for the providers impacted by the reductions.

b) Costs to State and Local government and the agency: Medicaid services typically involve both a State and County share in matching the Federal portion. The annual State share of these outpatient initiatives is $7.54 million, with no impact to local governments, after netting the increase to provide general fiscal relief to providers most in need, with reductions to those providers with the highest rate supplements. The increase is being implemented after the local share Medicaid cap is already in place. (The local share Medicaid cap was an initiative included in the enacted State budget for 2005-2006, under which the state pays for increases in the local share of Medicaid after January 1, 2006.) The proposed changes to increase certain programs to a minimum payment level and remove the requirement to recover monies generated by paid visits in excess of 110 percent of the visits used to calculate the rate supplement were implemented effective July 1, 2008. The proposed changes to reduce the funding used in the calculation of the rate supplements for the providers with the highest supplement rates was effective January 1, 2009.

5. Local Government Mandates: These regulatory amendments will not involve or result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not substantially increase the paperwork requirements of affected providers.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: The application of the increased funding for certain outpatient programs consistent with the 2008-2009 enacted State budget resulted in increases for certain clinic treatment programs, and allows clinic treatment programs to retain additional Medicaid rate supplement payments, should they increase the number of services they provide. The determination of the methodology to implement the supplement changes and the decision to allow clinic treatment programs to retain additional Medicaid rate supplement payments were made in consultation with the New York State Division of Budget, to be consistent with the enacted State budget. This allows for the continued strengthening and expansion of the ambulatory mental health system and supports a movement away from more expensive modalities of treatment. However, to address the serious fiscal condition of New York State, the Special Session of the Legislature included reductions in rate payments. The only alternative to this rulemaking would have been inaction, which would have resulted in the agency not being in compliance with the enacted State budget and amendments made as a result of the Legislative Special Session. Therefore that alternative was not considered.

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

10. Compliance Schedule: This rulemaking will be effective upon adoption.

Regulatory Flexibility Analysis

The emergency rulemaking will adjust the Medicaid reimbursement associated with certain outpatient treatment programs regulated by the Office of Mental Health. These changes are consistent with the 2008-09 enacted State budget. The changes are targeted in such a way as to provide general fiscal relief to providers most in need and improve the quality and availability of services, all while recognizing the serious fiscal condition of the State. The amendments equalize reimbursement fees for clinic treatment within geographic areas, as approved by the Division of Budget, and allow for movement toward establishing a more uniform reimbursement system by raising the reimbursements amounts for the lowest paid providers and lowering the reimbursement amounts for providers with the highest rates. There will be no adverse economic impact on small businesses or local governments, therefore, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the emergency rulemaking, which serves to adjust Medicaid reimbursement associated with certain outpatient treatment providers, will not impose any adverse economic impact on rural areas. These changes are consistent with the 2008-09 enacted State budget. The changes are targeted in such a way as to provide general fiscal relief to providers most in need and improve the quality and availability of services, all while recognizing the serious fiscal condition of the State. The amendments equalize reimbursement fees for clinic treatment within geographic areas, as approved by the Division of Budget, and allow for movement toward establishing a more uniform reimbursement system by raising the reimbursements amounts for the lowest paid providers and lowering the reimbursement amounts for providers with the highest rates.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the emergency regulation adjusts the Medicaid reimbursement associated with certain outpatient treatment programs regulated by the Office of Mental Health. These changes are consistent with the 2008-09 enacted State budget. There will be no adverse impact on jobs and employment opportunities.

EMERGENCY RULE MAKING

Medical Assistance Payment for Outpatient Programs

I.D. No. OMH-15-09-00011-E
Filing No. 336
Filing Date: 2009-03-31
Effective Date: 2009-03-31

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

Action taken: Amendment of Part 588 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.04, 43.02; and Social Services Law, sections 364, 364-a

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

Specific reasons underlying the finding of necessity: The amendments are a result of the serious fiscal condition of New York State, the Financial Management Plan of the enacted 2008-09 State Budget and the August Special Economic Session of the Legislature.

Subject: Medical Assistance Payment for Outpatient Programs.

Purpose: Effect a modest rate reduction in reimbursement for continuing day treatment programs and modify current methodology.

Substance of emergency rule: This rule will amend the provisions of 14 NYCRR Part 588, Medical Assistance Payment for Outpatient Programs that pertain to the reimbursement of continuing day treatment programs. This emergency regulation effectuates a reduction in the fees paid to continuing day treatment programs for services provided on or after January 1, 2009 and before April 1, 2009, and implements a change in the reimbursement methodology for services provided on or after April 1, 2009.

Overview

This emergency regulation uses a two-step process to adjust the current methodology for reimbursing continuing day treatment programs for persons with serious mental illness. The first step consists of implementing a reduction in the fees paid to continuing day treatment programs for services provided on or after January 1, 2009 and before April 1, 2009. The second step consists of modifying the reimbursement methodology from one based upon hours of attendance in program to one utilizing a modified threshold approach for services provided on or after April 1, 2009.

Requirements

The first phase of the rulemaking effectuates a modest rate reduction for services provided on or after January 1, 2009, but continues the current reimbursement methodology, in which the amount of reimbursement for a given visit is based upon the number of hours of an individual's attendance, until April 1, 2009 to allow providers sufficient time to implement the systems changes necessary to operate under the new reimbursement methodology. Under the second phase of the rulemaking, for services provided on or after April 1, 2009, providers will be reimbursed using a modified threshold fee. Under a threshold fee, a provider receives a fee when an individual receives a reimbursable service, regardless of the duration of the visit. The regulation establishes a methodology in which there are two threshold fees-a half-day fee and a full-day fee. A half-day fee will be paid when an individual attends the program for at least 2 hours and receives at least one reimbursable service. A full-day fee will be paid when an individual attends the program for at least 4 hours and receives at least three reimbursable services.

Current regulations call for a different fee to be paid to providers based upon the number of hours of attendance, up to five hours, so long as at least one reimbursable service is provided during the visit. On average, individuals receive between two and three services during a five-hour visit. This regulation ensures that individuals will receive at least this level of service across all providers.

The emergency regulation also continues the current pass-through methodology for reimbursing the capital costs of continuing day treatment programs operated by general hospitals, which allows for an add-on to the individual provider's fee based upon the capital costs incurred by the provider. The regulation also specifies that outpatient mental health services provided by general hospitals are not considered specialty services within the meaning of the Public Health Law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 28, 2009.

Text of rule and any required statements and analyses may be obtained from: Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, 8th Floor, Albany, NY 12229, (518) 474-1331, email: cocbjdd@omh.state.ny.us

Regulatory Impact Statement

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

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

Subdivision (a) of Section 43.02 of the Mental Hygiene Law grants the Commissioner the power to set rates for facilities licensed under Article 31 of the Mental Hygiene Law.

Sections 364 and 364-a of the Social Services Law give the Office of Mental Health responsibility for establishing and maintaining standards for care and services eligible for Medicaid reimbursement in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

2. Legislative objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs. The amendments to Part 588 are consistent with the goals and objectives of the Medicaid program to ensure that individuals with serious mental illness receive effective services to address their illness and that providers receive adequate reimbursement to pay for such care.

3. Needs and benefits: This emergency regulation modifies the current methodology for reimbursing continuing day treatment programs for persons with serious mental illness from one based upon hours of attendance in program to one utilizing a modified threshold approach. These amendments are also needed to effect savings in the operation of the Medicaid program.

The first phase of the regulation effectuated a modest rate reduction for services provided on or after January 1, 2009, but continued the current reimbursement methodology until April 1, 2009, to allow providers sufficient time to implement the systems changes necessary to operate under the new reimbursement methodology. Under the second phase of the regulation, for services provided on or after April 1, 2009, providers will be reimbursed using a modified threshold fee.

Under a threshold fee, a provider receives a fee when an individual receives a reimbursable service, regardless of the duration of the visit. This emergency regulation establishes a methodology in which there are two threshold fees-a half-day fee and a full-day fee. A half-day fee will be paid when an individual attends the program for at least 2 hours, and receives at least one reimbursable service. A full-day fee will be paid when an individual attends the program for at least 4 hours, and receives at least three reimbursable services.

Current regulations call for a different fee to be paid to providers based upon the number of hours of attendance, up to five hours, so long as at least one reimbursable service is provided during the visit. On average, individuals receive between two and three services during a five-hour visit. This emergency regulation ensures that individuals will receive at least this level of service across all providers.

The emergency regulation also continues the current methodology for reimbursing the capital costs of continuing day treatment programs operated by general hospitals, and specifies that outpatient mental health services provided by general hospitals are not considered specialty services within the meaning of the Public Health Law.

4. Costs:

a) Costs to regulated parties: The reduction of Medicaid payments will impact all non-State operated continuing day treatment programs (approximately 150 programs) and approximately six mental health day treatment programs. The impact of these reductions totals approximately $23 million in gross Medicaid funds for the providers impacted by the reductions.

b) Costs to State and Local government and the agency: The state share of these outpatient initiatives is $11.5 million, with no impact to local governments. The decrease is being implemented after the local share Medicaid cap is already in place. (The local share Medicaid cap was an initiative included in the enacted State budget for 2005-2006, under which the state pays for increases in the local share of Medicaid after January 1, 2006.). The changes to reduce the reimbursement to these programs were effective January 1, 2009.

5. Local government mandates: These regulatory amendments will not involve or result in any additional imposition of duties or responsibilities upon county, city, town, village, school, or fire districts.

6. Paperwork: This rule should not substantially increase the paperwork requirements of affected providers.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: To address the serious fiscal condition of New York State, the Financial Management Plan of the enacted 2008-09 State Budget, along with the August Special Economic Session of the Legislature, included reductions in rates of payments for the impacted programs. Further, the Office of Mental Health has proposed changes to the reimbursement methodology from hourly fees to half day/full day reimbursement, with a minimum number of services required for each reimbursement category. This simplifies the billing structure, while ensuring that individuals receive at least a standard level of services across providers. The reduction in payment rates was required by the 2008-09 State Budget. It is subject to change based upon the provisions of the 2009-10 State Budget. Consideration was given to not changing to a half day/full day reimbursement methodology, but the proposed methodology was determined to be preferable to the existing methodology due to the fact that it is less confusing, and more amenable to the establishment of a uniform standard for services.

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

10. Compliance schedule: This rulemaking is effective upon adoption.

Regulatory Flexibility Analysis

The emergency rulemaking adjusts the Medicaid reimbursement for continuing day treatment programs consistent with the 2008-09 State budget. Medicaid services typically involve both a state and county share in matching the federal portion. The state share of these outpatient initiatives is $11.5 million, with no impact to local governments. The decrease is being implemented after the local share Medicaid cap is already in place. Further, the rule also modifies the current reimbursement methodology, but in order to give providers sufficient time to implement the system changes necessary to operate under the new reimbursement methodology, that restructuring was delayed until April 1, 2009. For these reasons, a regulatory flexibility analysis is not submitted with this emergency rulemaking.

Rural Area Flexibility Analysis
The emergency rulemaking adjusts the Medicaid reimbursement for continuing day treatment programs consistent with the 2008-09 State budget. Medicaid services typically involve both a state and county share in matching the federal portion. The state share of these outpatient initiatives is $11.5 million, with no impact to local governments. The decrease is being implemented after the local share Medicaid cap is already in place. A Rural Area Flexibility Analysis is not submitted with this notice because the emergency rule will not impose any adverse economic impact on rural areas.

Job Impact Statement
A Job Impact Statement is not submitted with this notice because the emergency rule adjusts the Medicaid reimbursement for continuing day treatment programs consistent with the 2008-09 State budget and modifies the current reimbursement methodology. The restructuring was delayed until April 1, 2009, in order to give providers sufficient time to implement the system changes necessary to operate under the new reimbursement methodology. There will be no adverse impact on jobs and employment opportunities as a result of this rulemaking.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY RULE MAKING

Trend Factors for 2009

I.D. No. MRD-03-09-00004-E
Filing No. 340
Filing Date: 2009-03-31
Effective Date: 2009-03-31

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

Action taken: Amendment of sections 81.10, 635-10.5, 671.7, 680.12, 681.14 and 690.7 of Title 14 NYCRR.

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

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

Specific reasons underlying the finding of necessity: Emergency regulations are necessary to continue to reimburse providers and maintain the stability of the current service system, which ensures that individuals have access to necessary supports and services. The rapidly changing and deteriorating economy prevents the State from being able to determine an appropriate trend factor for the above programs at this time. This does not allow for proposal and promulgation of these amendments within the regular SAPA procedural time frames. The amendments continue the various reimbursement methodologies used to establish rates/fees for the above services, thereby maintaining current funding levels for these services and the stability of OMRDD's service system, which in turn ensures that New Yorkers with developmental disabilities continue to have access to necessary supports and services.

Subject: Trend Factors for 2009.

Purpose: To continue the methodologies used to calculate rates/fees for rate/fee periods beginning 1/1/09.

Text of emergency rule: o Paragraph 81.10(b)(4) - Add new subparagraph (v):

(v) 0.00 percent for the 2009 fee period.

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

(xxvii) 0.00 percent to trend 2008-2009 costs to 2009-2010.

Note: Rest of paragraph is renumbered accordingly.

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

(xxvii) 0.00 percent to trend calendar 2008 costs to calendar year 2009.

Note: Rest of paragraph is renumbered accordingly.

o Clause 671.7(a)(1)(vi)(a) - Add new subclause (17):

(17) For calendar year 2009:

NYC and Nassau, Rockland,
Suffolk, and Westchester Counties $ 31.97 per day
Rest of State $ 30.97 per day

Note: Rest of clause remains unchanged.

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

(15) 0.00 percent from January 1, 2009 through December 31, 2009.

o Clause 671.7(a)(1)(xvi)(b) - Add new subclause (15):

(15) 0.00 percent from July 1, 2009 through June 30, 2010.

o Paragraph 680.12(d)(3) - Add new subparagraph (xxii):

(xxii) 0.00 percent for 2009.

o Add new subclause 681.14(c)(3)(ii)(b)(9):

(9) If a facility is subject to an expanded desk audit per subclause (2) of this clause, but the desk audit has not been completed by January 1, 2009 or July 1, 2009, OMRDD shall continue the rate established according to the first sentence of subclause (3) of this clause and, if applicable, further trended to 2009 or 2009-2010 dollars until OMRDD completes the expanded desk audit. Upon OMRDD's completion of the expanded desk audit, for the base period and subsequent periods beginning January 1, 2003 or July 1, 2003, the methodology described in this section will apply.

o Subparagraphs 681.14(h)(1)(xviii)-(xix) are amended and a new subparagraph (xx) is added as follows:

(xviii) 2.97 percent for 2006-2007 to 2007-2008; [and]

(xix) 3.52 percent for 2007-2008 to 2008-2009 [.] *; and*

(xx) 0.00 percent for 2008-2009 to 2009-2010.

o Subparagraphs 681.14(h)(2)(xviii)-(xix) are amended and a new subparagraph (xx) is added as follows:

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

(xix) From February 1, 2008 to December 31, 2008, facilities will be reimbursed operating costs that result in a full annual trend factor of 3.52 percent for the 2008 rate period. On January 1, 2009, the trend factor for the previous rate period shall be deemed to be the 3.52 percent full annual trend [.] *; and*

(xx) 0.00 percent for 2008 to 2009.

o Subparagraphs 681.14(h)(3)(xxvi)-(xvii) are amended and subparagraph (xxviii) is added as follows:

(xxvi) 2.97 percent for 2006-2007 to 2007-2008; [and]

(xxvii) 3.52 percent for 2007-2008 to 2008-2009 [.] *; and*

(xxviii) 0.00 percent for 2008-2009 to 2009-2010.

o Subparagraphs 681.14(h)(4)(xxvi)-(xxvii) are amended and subparagraph (xxviii) is added as follows:

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

(xxvii) From February 1, 2008 to December 31, 2008, facilities will be reimbursed operating costs that result in a full annual trend factor of 3.52 percent for the 2008 rate period. On January 1, 2009, the trend factor for the previous rate period shall be deemed to be the 3.52 percent full annual trend [.] *; and*

(xxviii) 0.00 percent for 2008 to 2009.

o Subparagraph 690.7(d)(6)(iii) is amended by adding new clause (*g*) to read as follows:

(g) From April 1, 2009 to March 31, 2010 the trend factor shall be 0.00 percent for all facilities.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. MRD-03-09-00004-EP, Issue of January 21, 2009. The emergency rule will expire May 29, 2009.

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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OMRDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory authority:

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

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

2. Legislative objectives: These amendments further the legislative objectives embodied in sections 13.09(b) and 43.02 of the Mental Hygiene Law. The promulgation of these amendments concerns methodologies for rates or fees for voluntary agency providers of the following services:

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

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

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

d. Specialty Hospitals (amendments to section 680.12).

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

f. Day treatment facilities serving people with developmental disabilities (amendments to section 690.7).

3. Needs and benefits: OMRDD has historically increased operating revenues to providers on an annual basis through the implementation of trend factors. Their purpose has been to ensure that provider reimbursement stays abreast of inflation and to provide resources that enable providers to attract and appropriately compensate staff. The foremost goal to sustain operations was complemented by an eagerness to develop and expand programs. For the last nine years, relatively robust economies have dictated annual trend factors ranging from 2.97 percent to 6.69 percent with an average of 4.84 percent. Once applied, the trend factors accumulated and compounded.

The current economic landscape is vastly different from those that gave impetus to the previous trend factors. The recessionary nature and high unemployment that define the current economy suggest that inflation may be in check and that staff recruitment and retention achieved through additional monetary stimulus may not be required. The tentative economy suggests a conservative and limited approach to expansion with an aim to conserve resources and to promote efficiency and economy. In this vein, OMRDD will not, at this time, be implementing a positive trend factor for 2009 and 2009/2010. OMRDD views the economy as having slowed sufficiently so that existing reimbursement levels should be adequate.

The rapidly changing and deteriorating economy prevents the State from being able to determine an appropriate trend factor for the above programs at this time. This does not allow for proposal and promulgation of these amendments within the regular SAPA procedural time frames. The amendments continue the various reimbursement methodologies used to establish rates/fees for the above services, thereby maintaining current funding levels for these services and the stability of OMRDD's service system, which in turn ensures that New Yorkers with developmental disabilities continue to have access to necessary supports and services.

4. Costs:

a. Costs to the Agency and to the State and its local governments. Since the amendments establish trend factors of zero percent, there are no costs associated with the emergency amendments. They only continue the various reimbursement methodologies used to establish rates/fees for the referenced developmental disabilities facilities and services, thereby maintaining current funding levels.

There are no additional costs to local governments resulting from the emergency amendments.

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

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs associated with implementation and continued compliance with the rule. The emergency amendments are necessary to continue funding of the affected facilities at levels of reimbursement that are currently in effect.

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

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

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

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

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

10. Compliance schedule: The emergency rule is effective March 31, 2009. OMRDD has previously filed the rule as a Notice of Emergency Adoption and Proposed Rule Making that was published in the State Register January 21, 2009. These amendments do not impose any new requirements with which regulated parties are expected to comply.

Regulatory Flexibility Analysis

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

Programs certified by OMRDD as integrated residential communities (amendments to section 81.10). As of December 2008, there were only two such programs authorized by OMRDD to operate as integrated residential communities. They serve approximately 105 persons.

Individualized Residential Alternative (IRA) facilities, and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5). New York State currently funds IRA facilities and all authorized HCBS Waiver residential habilitation, day habilitation, supported employment, respite and prevocational services for the approximately 63,920 persons receiving such services as of December 2008.

Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7). As of December 2008, OMRDD funds voluntary operated community residence facilities which serve approximately 400 persons.

Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD), (amendments to section 681.14). As of December 2008, there were approximately 5,530 people served in ICF/DD facilities in New York State.

Day Treatment Facilities for Persons with Developmental Disabilities, (amendments to section 690.7). As of December 2008, there were approximately 2,260 people served in Day Treatment facilities in New York State.

While most of the above services are provided by voluntary agen-

cies which employ more than 100 people overall, many of the facilities operated by these agencies at discrete sites (e.g. IRAs or Day Habilitation programs) employ fewer than 100 employees at each site, and each site (if viewed independently) would therefore be classified as a small business. Some smaller agencies which employ fewer than 100 employees overall would themselves be classified as small businesses.

There is only one Specialty Hospital (amendments to section 680.12) which serves approximately 50 people, certified to operate in New York State. It employs more than 100 persons and would therefore not be considered a small business as contemplated under the State Administrative Procedure Act (SAPA).

The emergency amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that these amendments will continue to provide appropriate funding for small business providers of developmental disabilities services.

Since the amendments do not increase funding of the referenced services or programs, they will not result in any costs to local governments.

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

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

4. Compliance costs: There are no additional compliance costs to small business regulated parties or local governments associated with the implementation of, and continued compliance with, these amendments. OMRDD has considered the desirability of a small business regulation guide to assist provider agencies with this rule, as provided for by new section 102-a of the State Administrative Procedure Act. However, since the emergency rule requires no compliance effort on the part of the regulated service providers (most of which could be considered as small businesses under SAPA), OMRDD does not, at this time, contemplate the development of any such small business regulation guide.

5. Economic and technological feasibility: The emergency amendments are concerned with rate/fee setting in the affected facilities or services. The amendments do not impose on regulated parties the use of any technological processes.

6. Minimizing adverse impact: The purpose of these emergency amendments is to continue to reimburse providers of the referenced services at current levels. The trend factor provisions do not increase or decrease funding of small business providers of services.

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

7. Small business and local government participation: OMRDD has discussed the proposal for 0% trend factors with the provider associations. In addition, the proposal was a part of the 2009-10 Executive Budget which has been widely disseminated among local governments and the provider community.

Rural Area Flexibility Analysis

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

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial impact on jobs and/or employment opportunities. This finding is based on the fact that the amendments are concerned with the reimbursement methodologies which OMRDD uses in determining the appropriate reimbursement of the affected developmental disabilities services or facilities. The amendments continue to reimburse the various facilities or services at current levels of reimbursements for the rate/fee periods beginning January 1, 2009. As discussed in the Regulatory Impact Statement, the amendments are not expected to have any adverse impacts on jobs or employment opportunities in New York State.

Department of Motor Vehicles

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Posters on School Buses

I.D. No. MTV-15-09-00012-P

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

Proposed Action: This is a consensus rule making to amend section 56.11 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 375(21-h)

Subject: Posters on school buses.

Purpose: Repeal provision authorizing DMV to approve signs on school buses.

Text of proposed rule: Pursuant to the authority contained in Sections 215(a) and 375(21-h) the Vehicle and Traffic Law, the Commissioner of Motor Vehicles hereby amends the Regulations of the Commissioner of Motor Vehicles as follows:

Section 56.11 is REPEALED.

Text of proposed rule and any required statements and analyses may be obtained from: Carrie L. Stone, Department of Motor Vehicles, Counsel's Office, Room 526, 6 Empire State Plaza, Albany, NY 12228, (518) 474-0871.

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

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

This action was not under consideration at the time this agency's regulatory agenda was submitted.

Consensus Rule Making Determination

Section 56.11 of the Commissioner's regulations is repealed to conform to Chapter 415 of the Laws of 1999.

Chapter 415 created a new Vehicle and Traffic Law section 375(21-h), which provides that:

21-h. It shall be unlawful for any motor vehicle having a seating capacity of more than seven passengers, and used primarily to transport pupils or pupils and teachers to and from school to be mounted with, or have placed or installed thereon any sign, placard or other display except as provided by law. Provided, however, that the provisions of this subdivision shall not apply to such motor vehicles operating in a city with a population of one million or more.

The sponsor's Memorandum in Support explained that:

A recent DMV regulation permits signs, no larger than 12 square feet, promoting a highway safety theme on the side of a school bus. The sign must be approved by the Commissioner of the Department of Motor Vehicles and the Governor's Traffic Safety Committee. Sponsors can be identified on the sign. The ''yellow school bus'' is a well-recognized symbol of safety and is familiar to all school-aged children and adults. Any signage on a school bus could distract the vision of the child or adults from recognition of the school bus regardless of the purpose. This bill does not include the New York City School District.

Thus, the sponsor intended to effectively repeal section 56.11, which allowed DMV to approve signs on school buses on a case by case basis. The New York City school district, however, is exempt from this prohibition and, according to a plain reading of the statute, does not require the Commissioner's approval of any signs or placards. This consensus proposal merely eliminates a rule rendered obsolete by a subsequent legislative enactment.

Job Impact Statement

A Job Impact Statement is not submitted with this proposed rule because it will have no adverse impact on job development in New York State.

Committee on Open Government

NOTICE OF ADOPTION

Fees for Copies of Records, Subject Matter List Updates, Update Committee on Open Government's Address

I.D. No. COG-04-09-00010-A

Filing No. 334

Filing Date: 2009-03-30

Effective Date: 2009-04-15

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

Action taken: Repeal section 1401.8, addition of new section 1401.8, and amendment of sections 1401.6 and 1401.7 of Title 21 NYCRR.

Statutory authority: Public Officers Law, section 89(1)(b)(iii); L. 2008, ch. 223; L. 2008, ch. 499

Subject: Fees for copies of records, subject matter list updates, update Committee on Open Government's address.

Purpose: To conform with recent statutory amendments.

Text or summary was published in the January 28, 2009 issue of the Register, I.D. No. COG-04-09-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Janet Mercer, NYS Department of State Committee on Open Government, One Commerce Plaza, 99 Washington Avenue, Suite 650, Albany, NY 12231, (518) 474-2518, email: janet.mercer@dos.state.ny.us

Assessment of Public Comment

We received one comment from the Hudson River Park Trust, which requested clarification of the definition of "lowest paid employee" referenced in the rule. The term "lowest paid employee" originated in the statute, and the Committee on Open Government did not intend to clarify such term in this rule. In the future, the Committee on Open Government may determine to define the term in an additional rule.

Power Authority of the State of New York

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Rates for the Sale of Power and Energy

I.D. No. PAS-15-09-00019-P

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

Proposed Action: Update the service tariffs (HC-1, TN-1, NP-1, 37, and 8) applicable to the Power Authority's Niagara Relicensing, Niagara Frontier Transportation Authority, and Metropolitan Transportation Authority customers.

Statutory authority: Public Authorities Law, section 1005(13); and L. 1987, ch. 32

Subject: Rates for the sale of power and energy.

Purpose: Update service tariffs to streamline them/include additional required information.

Substance of proposed rule:

POWER AUTHORITY OF THE STATE OF NEW YORK
NOTICE OF PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Pursuant to the New York Public Authorities Law, Section 1005(13) and Chapter 32 of the Laws of New York of 1987, the Power Authority of the State of New York (the ''Authority'') proposes to amend the Authority's current production service tariffs applicable to its Niagara Relicensing, Niagara Frontier Transportation Authority and Metropolitan Transportation Authority customers.

The Authority proposes to reformat the service tariffs for easier reading and improved organization, include certain standard provisions now applicable to all of the Authority's service tariffs and add abbreviations and terms.

Written comments on the proposed tariffs will be accepted through Monday, June 1, 2009, at the address below. For further information, contact:

POWER AUTHORITY OF THE STATE OF NEW YORK
Karen Delince, Corporate Secretary
123 Main Street, 15M
White Plains, New York 10601
(914) 390-8085
(914) 681-6949 (fax)
secretarys.office@nypa.gov

Text of proposed rule and any required statements and analyses may be obtained from: Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street, 15-M, White Plains, New York 10601, (914) 390-8085, email: secretarys.office@nypa.gov

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

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Intercarrier Agreement to Interconnect Telephone Networks for the Provisioning of Local Exchange Service

I.D. No. PSC-15-09-00013-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a modification filed by Windstream (f/k/a Alltel New York, Inc.) and Verizon Wireless to revise the interconnection agreement effective on October 3, 2005.

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

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

Purpose: To amend the Windstream (f/k/a Alltel New York, Inc.) and Verizon Wireless interconnection agreement.

Substance of proposed rule: The Commission approved an Interconnection Agreement between Windstream New York, Inc. (f/k/a Alltel New York, Inc.) and Verizon Wireless in October 2005. The companies subsequently have jointly filed amendments to clarify reciprocal compensation for authorized services. The Commission is considering these changes.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(05-C-0811SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Interconnection of the Networks between Frontier and Finger Lakes Technologies for Local Exchange Service and Exchange Access

I.D. No. PSC-15-09-00014-P

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

Proposed Action: The PSC is considering whether to approve or reject a proposal filed by Frontier Telephone of Rochester, Inc. for approval of an Interconnection Agreement with Finger Lakes Technologies Group, Inc. executed on January 9, 2009.

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

Subject: Interconnection of the networks between Frontier and Finger Lakes Technologies for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Frontier and Finger Lakes Technologies.

Substance of proposed rule: Frontier Telephone of Rochester, Inc. and Finger Lakes Technologies Group, Inc. have reached a negotiated agreement whereby Frontier Telephone of Rochester, Inc. and Finger Lakes Technologies Group, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their network lasting until January 9, 2010, or as extended.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(09-00209SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Approval of a Letter Petition Filed by Forever Wild Water Company to Charge an $800 Tapping Fee to Hook Up a New Customer

I.D. No. PSC-15-09-00015-P

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

Proposed Action: The Public Service Commission is considering whether to approve a letter petition filed by Forever Wild Water Company requesting approval to charge an $800 tapping fee to hook up a new customer.

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 8, 89-c(1) and (10)

Subject: Approval of a letter petition filed by Forever Wild Water Company to charge an $800 tapping fee to hook up a new customer.

Purpose: To consider an $800 tapping fee to hook up a new customer for Forever Wild Water Company.

Substance of proposed rule: On October 8, 2008, Forever Wild Water Company (Forever Wild) filed a letter petition requesting approval to charge an $800 tapping fee to hook up a new customer. The tapping fee would cover the total cost of parts and labor to provide a new water tap, the portion of the service to the property line and the curb box and stop. Forever Wild provides unmetered water service to approximately 373 flat rate customers (344 are year-round and 29 are seasonal), located in the Towns of Jay and Wilmington, Essex County. The Commission may approve or reject, in whole or in part, or modify Forever Wild's proposal.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(08-W-0556SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Interconnection of the Networks between Verizon and Cooperative Communications for Local Exchange Service and Exchange Access

I.D. No. PSC-15-09-00016-P

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

Proposed Action: The PSC is considering whether to approve or reject a proposal filed by Verizon New York Inc. for approval of an Interconnection Agreement with Cooperative Communications, Inc. executed on February 25, 2009.

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

Subject: Interconnection of the networks between Verizon and Cooperative Communications for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Verizon and Cooperative Communications.

Substance of proposed rule: Verizon New York Inc. and Cooperative Communications, Inc. have reached a negotiated agreement whereby Verizon New York Inc. and Cooperative Communications, Inc. will interconnect their networks at mutually agreed upon points of interconnection to provide Telephone Exchange Services and Exchange Access to their respective customers. The Agreement establishes obligations, terms and conditions under which the parties will interconnect their network lasting until February 24, 2011, or as extended.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann_ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn_brilling@dps.state.ny.us

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(09-00264SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Interconnection of the Networks between Citizens and Northland Networks for Local Exchange Service and Exchange Access

I.D. No. PSC-15-09-00017-P

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

Proposed Action: The Public Service Commission is considering whether to approve or reject, in whole or in part, a proposal filed by Citizens Telecommunications for approval of a Mutual Traffic Exchange Agreement with Northland Networks executed on February 9, 2009.

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

Subject: Interconnection of the networks between Citizens and Northland Networks for local exchange service and exchange access.

Purpose: To review the terms and conditions of the negotiated agreement between Citizens and Northland Networks.

Substance of proposed rule: Citizens Telecommunications Company of New York, Inc. and Northland Networks have reached a negotiated agreement whereby Citizens Telecommunications Company of New York, Inc. and Northland Networks will interconnect their networks at mutually agreed upon points of interconnection to exchange local traffic.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.state.ny.us/f96dir.htm. For questions, contact: Leann Ayer, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: leann__ayer@dps.state.ny.us

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: jaclyn__brilling@dps.state.ny.us

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(09-00335SP1)

Office of Real Property Services

NOTICE OF ADOPTION

Residential Assessment Ratios

I.D. No. RPS-52-08-00007-A
Filing No. 335
Filing Date: 2009-03-31
Effective Date: 2009-04-15

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

Action taken: Repeal of sections 191-3.1(d) and 191-3.2 of Title 9 NYCRR.

Statutory authority: Real Property Tax Law, section 202(1)(l)

Subject: Residential Assessment Ratios.

Purpose: To repeal sections 191-3.1(d) and 191-3.2 of Title 9 NYCRR, which have become obsolete.

Text or summary was published in the December 24, 2008 issue of the Register, I.D. No. RPS-52-08-00007-P.

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

Revised rule making(s) were previously published in the State Register on December 24, 2008.

Text of rule and any required statements and analyses may be obtained from: Hung Kay Lo, Senior Attorney, New York State Office of Real Property Services, 16 Sheridan Ave., Albany, New York 12210-2714, (518) 474-8821, email: internet.legal@orps.state.ny.us

Assessment of Public Comment
The agency received no public comment.

State University of New York

NOTICE OF WITHDRAWAL

Proposed Amendments to the Traffic and Parking Regulations at the State University of New York College at Delhi

I.D. No. SUN-12-09-00002-W

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

Action taken: Notice of proposed rule making, I.D. No. SUN-12-09-00002-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on March 25, 2009.

Subject: Proposed amendments to the traffic and parking regulations at the State University of New York College at Delhi.

Reason(s) for withdrawal of the proposed rule: Incorrect text attached to proposal.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Proposed Amendments to the Traffic and Parking Regulations at the State University of New York College at Delhi

I.D. No. SUN-15-09-00004-P

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

Proposed Action: Amendment of Part 574 of Title 8 NYCRR.

Statutory authority: Education Law, section 360(1)

Subject: Proposed amendments to the traffic and parking regulations at the State University of New York College at Delhi.

Purpose: To make certain technical changes and amend existing regulations to fee schedules.

Text of proposed rule: Section 574.5 is amended to read as follows:

§ 574.5 Penalties for violations.

(a) Any person who violates any applicable section of the Vehicle and Traffic Law shall be guilty of a misdemeanor or traffic infraction and shall be punished as provided in the Vehicle and Traffic Law. Such laws shall be enforced in any court having jurisdiction. A complaint regarding any violation of such laws shall be processed in accordance with the requirements of applicable law.

(b) Any person who violates regulations or rules approved by the college council shall be subject to a fine, revocation of campus registration, or other penalty provided after a hearing conducted by a hearing officer designated by the chief administrative officer.

(c) Such fine for each violation shall be [$25] *$30* for the first and *$40 for* each subsequent violation. In addition, for each violation of regulations or rules related to handicapped parking areas, the fine shall be [$50] *$150* for the first and each subsequent violation.

(d) Upon receipt of six campus traffic or parking violations during an academic year, a campus motor vehicle registration may be revoked for the balance of the academic year.

(e) Any vehicle parked on campus in violation of this Part may be towed away and stored at the expense of the owner of the vehicle.

Section 574.6 is amended to read as follows:

§ 574.6 Notice and processing of charges.

(a) A complaint regarding any violation of a campus rule approved by the college council shall be in writing reciting the time and place of the violation and the title, number, or substance of the applicable rule.

(1) The complaint must be subscribed by the officer witnessing the violation and shall be served upon the violator or attached to the vehicle involved.

(2) The complaint shall also indicate the amount of the fine imposed for the violation, and advise that if the person charged does not dispute the violation, such fine shall be paid as designated by the college administration within five calendar days. Fines not collected within the designated time may be deducted from the salary or wages of an offending officer or employee of the college or college-related organization. Grades and transcripts may be withheld until all fines are paid in the event fines are not collected within the designated time from an offending student of the college.

(3) The notice shall recite that [a hearing] *an appeal* may be requested within [72 hours] *five working days* after service of the charges by appearing in person at the [offices of the campus public safety director] *SUNY Delhi University Police Office*.

(4) Should the alleged violator fail to [appear at the time fixed for the hearing or should no hearing be requested within the prescribed time] *file an appeal within the prescribed time frame*, the complaint is proved and shall warrant such action *or penalty* as may [then] be *deemed* appropriate.

(b) The director of campus public safety shall serve as a hearing officer to hear complaints for violation of campus traffic and parking regulations enforceable on campus. The hearing officer shall not be bound by the rules of evidence, but may hear or receive any testimony or evidence directly relevant and material to the issues presented.

(c) At the conclusion of a hearing or not later than five days thereafter, the hearing officer shall file a decision and report in such location as may be designated by the [chief administrative officer] *vice president for student life*. A notice of the decision shall be promptly transmitted to the violator. The report shall include:

(1) the name and address of the defendant;

(2) the time and place when the complaint was issued;

(3) the campus rule violated;

(4) a concise statement of the facts established on the hearing based upon the testimony or other evidence offered;

(5) the time and place of the hearing;

(6) the names of all witnesses;

(7) each adjournment stating upon whose application and to what time and place it was made; and

(8) the decision (guilty or not guilty) of the hearing officer.

(d) In the event that the decision of the hearing officer is that the alleged violator is guilty, the violator may appeal the decision within 72 hours after notification of the decision by filing a written appeal with the vice president for [administration] *student life* of the college. Within 72 hours after receipt of the appeal, the vice president for [administration] *student life* will transmit the appeal to a hearings appeal board for appropriate action. The decision of the hearings appeal board shall be final and shall be promptly transmitted to the appellant.

(e) The hearings appeal board shall consist of three members of the college community appointed by the president of the college.

Section 574.7(d) is amended to read as follows:

§ 574.7 Traffic controls.

(d) The following intersections are designated at STOP intersections:

Intersection of	With stop sign on	Entrance(s) from
(1) NYS Route 10	south campus entrance	west
(2) Main campus roadway	south exit from parking lot I	west
(3) Main campus roadway	north exit from parking lot I	west
(4) Main campus roadway	roadway west of Bldg. #32	west
(5) Main campus roadway	roadway from service area between Bldgs. #32 and #8	west
(6) Roadway from service area between Bldgs. #32 and #8	exit from parking lot H	north
(7) Main campus roadway	south exit from parking lot E	east
(8) Main campus roadway	roadway from Bldg. #6	west
(9) Main campus roadway	roadway from Bldgs. #5 and #28	west
(10) Main campus roadway	north exit from parking lot E	east
(11) Main campus roadway	roadway southwest of Bldg. #16	west
(12) Main campus roadway	main campus roadway from northwest (back roadway)	northwest
(13) Main campus roadway	roadway from parking lot G	southeast
(14) Main campus roadway	exit from parking lot A	west
(15) Main campus roadway	exit from parking lot D	north
(16) Main campus roadway	exit from parking lot B	north
(17) Main campus roadway	roadway from Bldg. #9 and parking lot J	east
(18) Main campus roadway	roadway from service area between Bldgs. #8 and #32	east
(19) NYS Route 10	north (main) campus entrance	west
(20) Back River Road [FN*]	automotive service yard	west
(21) Back River Road [FN*]	farm service roadway	west
(22) Main campus roadway	south exit from parking lot K	east
(23) Main campus roadway	north exit from parking lot K	east
(24) Main campus roadway	exit from Murphy service area	east
(25) Main campus roadway	*exit from Field House parking area*	*east*

FN* Back River Road is a Town of Delhi roadway at the intersections indicated.

Text of proposed rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, System Administration, State University Plaza, S325, Albany, NY 12246, (518) 443-5400, email: Lisa.Campo@SUNY.edu

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

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

Regulatory Impact Statement

1. Statutory authority: Education Law § 360(1) authorizes the State University Trustees to make rules and regulations relating to parking, vehicular and pedestrian traffic and safety on the State-operated campuses of the State University of New York.

2. Legislative objectives: The present measure makes technical amendments to the parking and traffic regulations applicable to the State University of New York College at Delhi and also will increase allowable fines for violation of parking regulations.

3. Needs and benefits: Parking fine thresholds applicable to violation of campus parking regulations have not been changed for a number of years. In the meantime, many municipalities have increased parking fines for violation of local parking ordinances, particularly for violation of handicapped parking rules. The increase proposed here will allow SUNY Delhi to have their fines increased to levels comparable to local municipal rules, thus strengthening incentives to avoid violation of campus parking rules.

4. Costs: Individuals who violate the parking rules will experience higher fines.

5. Local government mandates: None.

6. Paperwork: None.

7. Duplication: None.

8. Alternatives: There are no viable alternatives.

9. Federal standards: There are no related Federal standards.

10. Compliance schedule: SUNY Delhi will notify those affected as soon as the rule is effective. Compliance should be immediate.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because this proposal does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small busi-

nesses and local governments. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College at Delhi.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because this proposal will not impose any adverse economic impact on rural areas or impose any reporting, record keeping or other compliance requirements on public or private entities in rural areas. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College at Delhi.

Job Impact Statement

No job impact statement is submitted with this notice because this proposal does not impose any adverse economic impact on existing jobs or employment opportunities. The proposal addresses internal parking and traffic regulations on the campus of the State University of New York College at Delhi.

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Home Energy Assistance Program

I.D. No. TDA-16-08-00002-A

Filing No. 341

Filing Date: 2009-03-31

Effective Date: 2009-04-15

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

Action taken: Amendment of section 393.4(c) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34, 97 and 131(1)

Subject: Home Energy Assistance Program.

Purpose: To relocate an undesignated paragraph concerning regular Home Energy Assistance Program benefits to a more appropriate location within the same regulatory section.

Text of final rule: Subdivision (c) of section 393.4 is amended to read as follows:

(c) ''Regular HEAP benefit.'' *For purposes of the annual HEAP State Plan, eligibility for the regular HEAP benefit must be determined annually and must be based on the household's circumstances (income, household size, energy type, etc.) for the entire calendar month in which the household has filed its application. In order to be eligible for a regular HEAP benefit, a household must pay for heat directly or make undesignated energy payments for heat in the form of rent and not reside in an ineligible living situation as provided in paragraph (3) of this subdivision. If heat is not included in the applicant's rent, a vendor relationship must be established for the applicant household. The vendor relationship must be documented by a current fuel/utility bill or contact with the fuel/utility company. While the applicant is not required to be the customer of record for regular HEAP, direct responsibility for payment of the bill must be established if the applicant or member of the applicant household is not the customer of record. The term ''customer of record'' means a person or persons who have an account, in their name, with a home energy vendor. The term ''home energy vendor'' means an individual or entity engaged in the business of selling electricity, natural gas, oil, propane, kerosene, coal, wood, or any other fuel used for residential heating. Once determined eligible, a household will receive a regular HEAP benefit for such program year in an amount to be set by the Office of Temporary and Disability Assistance (the office). The office must annually establish a payment matrix which will enable the office to meet the requirements of 42 USC section 8624(b)(5) and (8) and which sets payment levels with consideration to the availability of Federal funds and utilizes various factors including, but not limited to, income and fuel costs.* Except as provided in paragraph (3) of this subdivision, the following households shall be eligible to receive a regular HEAP benefit, if and to the extent that an allocation of Federal funds is available to the district in which the household resides.

The undesignated paragraph following subparagraph (ix) of paragraph (5) of subdivision (c) of section 393.4 is repealed.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 393.4(c)(5)(ix).

Text of rule and any required statements and analyses may be obtained from: Jeanine Stander Behuniak, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street 16C, Albany, New York 12243-0001, (518) 474-9779, email: Jeanine.Behuniak@OTDA.state.ny.us

Revised Job Impact Statement

A revised job impact statement has not been prepared for the revised regulatory amendment. It is evident from the technical nature of the revision that the jobs of the workers applying the regulation impacted by the revised amendment would not be affected in any real way. After the Notice of Proposed Rule Making (I.D. No. TDA-16-08-00002-P) for this rule was published on April 16, 2008, a separate amendment (I.D. No. TDA-28-08-00002-A) was made to 18 NYCRR § 393.4, which, in part, affected the numbering of the paragraphs in subdivision (c) of that section. Consequently, the undesignated paragraph that the Office of Temporary and Disability Assistance is repealing pursuant to this rule is now located following 18 NYCRR § 393.4(c)(5)(ix), and is no longer located after 18 NYCRR § 393.4(c)(4)(ix). A nonsubstantive change to the text of this rule provides the necessary clarification. Thus, neither this nonsubstantive change nor the amendment generally, which merely is relocating an undesignated paragraph to a new location in the same subdivision, will have any impact on jobs and employment opportunities in the State.

Assessment of Public Comment

During the public comment period for the proposed rule to relocate an undesignated paragraph in 18 NYCRR § 393.4(c), the Office of Temporary and Disability Assistance received one comment in support of the consensus rule. The comment noted that the proposed rule would be a ''stylistic improvement'' and would ''facilitate citation'' of the regulatory text.

The Office of Temporary and Disability Assistance maintains that the consensus rule will be beneficial and will facilitate citation to the presently undesignated paragraph.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Public Assistance Budgeting

I.D. No. TDA-15-09-00006-P

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

Proposed Action: This is a consensus rule making to repeal section 352.2(b), add new section 352.2(b), amend sections 352.3(l), 352.30(a), (f) and 352.31(a)(2) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34, 131(1) and 131-a

Subject: Public Assistance Budgeting.

Purpose: Update regulations regarding the treatment of public assistance budgets when the family unit includes a member who is a recipient of Supplemental Security Income.

Text of proposed rule: Subdivision (b) of section 352.2 is repealed and a new subdivision (b) is added as follows:

(b) For the purposes of such monthly grants and allowances to households under Family Assistance and non-cash Safety Net Assistance (federally participating), Emergency Assistance to Needy Families with children, and Safety Net Assistance non-federally participating when the household would be eligible for the federal categories except that it has exhausted the 60 month time limit for the receipt of cash assistance, children and adults residing with an SSI beneficiary must be considered a separate household from the SSI beneficiary with whom they live.

Subdivision (l) of section 352.3 is amended to read as follows:

(l) Shelter allowances in excess of the standards. A shelter supplement plan under paragraph (a) (3) of this section may include provisions for treatment of SSI family members that differ from the requirements of section 352.2(b) of this Part, [but such provisions shall not be more restrictive] *but only with respect to the shelter supplement and only if approved by the Office*.

Subdivision (a) of section 352.30 is amended to read as follows:

(a) For budgetary purposes, the number of persons in the public as-

sistance household are those persons who the applicant, recipient or a representative indicates wish to receive public assistance and who reside together in the same dwelling unit. The applicant or recipient must include his or her minor dependent children in the application. When a minor dependent child is named as an applicant for public assistance, his or her natural or adoptive parents and blood-related or adoptive brothers and sisters (who are also minor dependent children) must also apply for public assistance and have their income and resources applied toward the public assistance household if they reside in the same dwelling unit as the applying minor dependent child. A person required to be added to the public assistance household is deemed to be included in the application already on file as of the date the person joins the household, either by birth, adoption, or by moving into the dwelling unit of the existing public assistance household. For the purposes of this subdivision, a minor dependent child is a child who is under 18 years of age. [Subject to section 352.2(b) of this Part, parents] *Parents* and siblings who are SSI recipients, stepbrothers and stepsisters, ineligible sponsored aliens, aliens who fail to meet the citizenship and alienage requirements in section 349.3(a) of this Title, individuals ineligible due to the lump sum provision of section 352.29(h) of this Part, or children who are receiving adoption subsidies which are exempt under section 352.22(p) of this Part are not required to apply in accordance with this subdivision. The public assistance household may also include persons who are temporarily absent from such household, such as children or minors attending school away from home whose full needs are not otherwise met.

Subdivision (f) of section 352.30 is amended to read as follows:

(f) When an applicant for or recipient of public assistance refuses to cooperate in applying for or accepting SSI benefits for himself or herself or for a member of the public assistance household, the [pro rata] needs of such individual shall be eliminated from the grant, and the needs of the family shall be determined based on the remaining persons in the grant. If, however, such individual is physically or emotionally unable to complete the SSI application process, the local department of social services shall provide any services which are necessary to insure that the individual is assisted in making the SSI application. In such instance, that individual shall not be denied public assistance and care.

Paragraph (2) of subdivision (a) of section 352.31 is amended to read as follows:

(2) All available and unrestricted income of a legally responsible relative in the home and/ or a relative required to be in the public assistance household pursuant to section 352.30 of this Part must be applied against his/her own needs and the needs of the other persons in the public assistance household. [The income of an SSI recipient who is a member of a family unit shall be applied only against his or her pro rata share of the needs.] In determining eligibility and degree of need, if one of the relatives referenced in this paragraph is sanctioned under Part 347, 349, 352, 369*,* [or] 370 *or 385* of this Title [or 12 NYCRR Part 1300], all of that person's income, minus any appropriate disregards under section 352.19 or 352.20 of this Part, must be applied against the needs of the public assistance household.

Text of proposed rule and any required statements and analyses may be obtained from: Jeanine Stander Behuniak, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, New York 12243-0001, (518) 474-9779, email: Jeanine.Behuniak@OTDA.state.ny.us

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

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

Consensus Rule Making Determination

The Office of Temporary and Disability Assistance (OTDA) is proposing a rule to amend 18 NYCRR Part 352 which governs the standards of assistance for public assistance programs. The specific sections subject to amendment specify the treatment of a public assistance family when the family unit includes a member who is a recipient of Supplemental Security Income (SSI). The proposed changes remove the regulatory support for the policy that was overturned in the *Doe* vs. *Doar* litigation. The OTDA and the social services districts have not been following that overturned policy, and OTDA has determined that no person is likely to object to the adoption of the proposed rule as written.

The proposed rule conforms to the decision in the *Doe* vs. *Doar* litigation which challenged OTDA's policy of providing public assistance based on a reduced standard of need when a member of the family unit was an SSI recipient. The proposed subdivision (b) of section 352.2 specifies that the public assistance filing unit members and the SSI recipient family member(s) are separate households for the purpose of the determination of grants and allowances, unless otherwise specified.

Subdivision (l) of section 352.3 is amended to conform the regulation to the policy regarding the treatment of the family in receipt of a shelter supplement under paragraphs (2) and (3) of subdivision (a) of section 352.3.

Subdivision (a) of section 352.30 is amended to remove the now unnecessary qualifying reference to subdivision (b) of section 352.2.

Subdivision (f) of section 352.30 corrects the penalty for refusal to cooperate with the requirements to apply for or accept SSI when a member of the filing unit refuses to comply with this requirement on behalf of himself or herself or a member of the filing unit.

Lastly, paragraph (2) of subdivision (a) of section 352.31 removes the reference to the treatment of the income of the recipient of SSI who is a member of a family unit because that reference is specific to the overturned policy. The proposed change also updates the reference from 12 NYCRR Part 1300, which was repealed, to 18 NYCRR Part 385.

Since the proposed amendments remove regulatory support for an overturned policy which is no longer followed by either OTDA or the social services districts, OTDA has determined that no person is likely to object to the adoption of the proposed rule as written.

Job Impact Statement

A Job Impact Statement has not been prepared for the proposed regulatory amendments. It is evident from the subject matter of the amendments that the jobs of the workers applying the regulations impacted by the proposed amendments will not be affected in any real way. The proposed amendments remove regulatory support for an overturned policy which is no longer followed by either OTDA or the social services districts. Thus the changes will not have any impact on jobs and employment opportunities in the State.

Triborough Bridge and Tunnel Authority

NOTICE OF ADOPTION

To Establish a New Crossing Charge Schedule for Use of Bridges and Tunnels Adopted by Triborough Bridge and Tunnel Authority

I.D. No. TBA-05-09-00002-A
Filing No. 330
Filing Date: 2009-03-27
Effective Date: 2009-03-27

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

Action taken: Repeal of section 1021.1 and addition of new section 1021.1 to Title 21 NYCRR.

Statutory authority: Public Authorities Law, section 553(5)

Subject: To establish a new crossing charge schedule for use of bridges and tunnels adopted by Triborough Bridge and Tunnel Authority.

Purpose: To raise additional revenue.

Text of final rule: See Appendix in the back of this issue.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 1021.1(A) hdg, fn, (B) hdg and fn.

Text of rule and any required statements and analyses may be obtained from: Joyce Mulvaney, Director of Public Affairs, Triborough Bridge and Tunnel Authority, 2 Broadway, 22nd Floor, New York, NY 10004, (646) 252-7416, email: jmulvaney@mtabt.org

Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Job Impact Statement

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment

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