

# REGULATORY AGENDA

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## Education Department

### JUNE 2009 REGULATORY AGENDA

Pursuant to section 202-d of the State Administrative Procedure Act, the State Education Department presents its regulatory agenda for the remainder of calendar year 2009. All section and part references are to Title 8 of the New York Code of Rules and Regulations. The State Education Department reserves the right to add, delete or modify, without further notice, except as required by the State Administrative Procedure Act, any item or information presented herein as relating to the June 2009 Regulatory Agenda.

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

Amendment of the Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to Distinguished Educators to define eligibility and establish selection process duties. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to the restructuring and reorganization of schools under registration review (SURRE). A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to District Improvement Plans. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to superintendents' contracts. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 and Chapter 57 of the Laws of 2008 relating to full-day kindergarten and pre-kindergarten transition planning grants. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to pupils with limited English proficiency. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to student progress reports, school leadership and school progress report cards. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations to conform provisions relating to Educationally Related Support Services Aid and Declassification Support Aid to the Laws of 2007. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

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

Department of Education. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations to implement Chapter 57 of the Laws of 2007 relating to teacher tenure, annual professional performance review under section 100.2(o) and the ability to use data to improve student performance. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of 91.2 of the Commissioner's Regulations to revise and update provisions on the employment of a school library media specialist. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2 of the Commissioner's Regulations, relating to credit make-up and independent studies. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2(p) of the Commissioner's Regulations to conform provisions related to the implementation of differentiated accountability pilot program as part of New York State's No Child Left Behind accountability workbook. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2.(p) of the Commissioner's Regulations to establish a graduation rate and targets to conform with regulations promulgated by the United States Department of Education in October 2008. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2(x), relating to the education of homeless children. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2 (gg) of the Commissioner's Regulations to revise and update provisions on Violent and Disruptive Incident Reporting (VADIR). A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of 100.7 of the Commissioner's Regulation to clarify eligibility to take the GED. Currently Job Corp residents and home schooled students are not referenced to their eligibility. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 110.6 of the Commissioner's Regulations relating to aidable summer school programs. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 119 of the Commissioner's regulations to add a section pertaining to residency determinations of students attending charter schools. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 119 of the Commissioner's regulations to add a section pertaining to procedures relating to complaints brought pursuant to Education Law section 2855. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 119.1(e) relating to financing of charter

schools. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 136 of the Commissioner's Regulations to implement Chapter 672 of the Laws of 2008, regarding nebulizers in school buildings. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 136.3 of the Commissioner's Regulations, relating to scoliosis screening. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 140 of the Commissioner's Regulations, relating to County Vocational Education and Extension Boards. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 144.11 of the Commissioner's Regulations, relating to early grade class size. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

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

Amendment of Subpart 151-1 of the Commissioner's Regulations, relating to Universal Pre-kindergarten aid, to implement Chapter 57 of the Laws of 2008. A regulatory flexibility for local government analysis and a rural area flexibility analysis may be required.

Amendment to Part 154 of the Commissioner's Regulations to require that the Comprehensive Plan be reviewed/updated every two years and submitted to the bilingual office when requested as part of a compliance review process of the Department. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 155.22 of the Commissioner's Regulations, relating to procedures for the allocation of the State limitation amount to issuers of Qualified School Construction Bonds pursuant to 26 USC section 54F. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 156 of the Commissioner's Regulations to conform to Chapter 181 of the Laws of 2007 ("P.J.'s Law"), by promulgating regulations requiring school bus drivers and attendants on a bus transporting children with disabilities to complete training, at least once a year, on the special needs of children with disabilities. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 156 of the Commissioner's Regulations, regarding transportation, to revise and update the regulations. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of 164.2 (2)(g) of the Commissioner's Regulations to align the regulation with the requirements of the National Reporting System (NRS) that was implemented in 1998. The NRS requires that final student information be submitted by October 31st following the July 31st closing of the school year. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations, relating to absentee ballots for boards of cooperative educational services (BOCES). A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations, relating to school district and BOCES name changes. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations, relating to school district financial management. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of the Commissioner's Regulations regarding BOCES installment purchase contracts and leases. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations, relating to certified athletic trainers. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations relating to persistently dangerous schools. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

*Information may be obtained, and written comments may be submitted, concerning the above proposed amendments by contacting: Johanna Duncan-Poitier, Senior Deputy Commissioner P-16, New York State Education Department, Office of Higher Education, 89 Washington Avenue, West Wing, Second Floor Mezzanine - EB, Albany, NY 12234, (518) 474-3862, p16education@mail.nysed.gov*

OFFICE OF HIGHER EDUCATION

Amendment of Part 30 of the Commissioner's Regulations to designate a tenure area for each of the several teacher certificate titles that did not exist prior to February 2, 2004. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 52 and Part 80 of the Commissioner's Regulations related to the requirements for teacher certification in special education. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 80 of the Commissioner's Regulations to establish requirements for a certificate in educational interpreting. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 80 of the Commissioner's Regulations to expand the scope of practice for holders of the School District Leader certificate and to establish a transitional certificate for School District Business Leaders. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 80 of the Commissioner's Regulations to add enhancements to the individual evaluation pathway for first teaching certificates.

Amendment of Part 83 of the Commissioner's Regulations relating to revocation of teachers' certificates for sex offenders pursuant to Chapter 296 of the Laws of 2008. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

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

Amendment of Commissioner's Regulations sections 80-3.6, 83.1, 83.3, 83.5 and 87.5 to change references to the "Executive Director of the Office of Teaching Initiatives" to "Assistant Commissioner, Office of Teaching Initiatives."

Amendment of section 80-1.2 of the Commissioner's Regulations to revise certification requirements to accommodate military personnel pursuant to the Patriot Act.

Amendment of Part 87 of the Commissioner's Regulations relating to oral arguments. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2 of the Commissioner's Regulations to identify elements of a performance evaluation system for school leaders. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative

*Information may be obtained, and written comments may be submitted, concerning the above-proposed amendments by contacting: Johanna Duncan-Poitier, Senior Deputy Commissioner P-16, New York State Education Department, Office of Higher Education and Office of the Professions, 89 Washington Avenue, West Wing, Second Floor Mezzanine - EB, Albany, NY 12234, (518) 474-3862, p16education@mail.nysed.gov*

## OFFICE OF THE PROFESSIONS

Amendment of section 3.57(b) of the Regents Rules, conferring the Doctor of Medicine degree, to eliminate the requirement of three years of licensed practice. A rural area flexibility analysis may be required.

Amendment of Part 17 of the Regents Rules to conform to the three member panel law. A rural area flexibility analysis may be required.

Amendment of Part 17 of the Regents Rules relating to the summary suspension procedure. A rural area flexibility analysis may be required.

Amendment of Part 18 of the Regents Rules relating to the provision of services to nurses with substance abuse problems. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 24 of the Regents Rules relating to the approval by the committee on the professions of three-year limited licenses in Dentistry, Dental Hygiene, Veterinary Medicine, Veterinary Technology, and Pharmacy. A rural area flexibility analysis may be required.

Amendment of Part 29 of the Regents Rules relating to the packaging and dispensing of certain pharmaceuticals. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 29 of the Regents Rules relating to the use of identification badges for certain professionals. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 29 of the Regents Rules relating to the reporting of convictions and disciplinary actions by licensed professionals. A rural area flexibility analysis may be required.

Amendment of Parts 52 and 77 of the Commissioner's Regulations relating to the educational standards necessary for licensure in Physical Therapy. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 59 of the Commissioner's Regulations relating to the use of ID cards in lieu of registration certificates. A rural area flexibility analysis may be required.

Amendment of Part 59 of the Commissioner's Regulations relating to English language proficiency. A rural area flexibility analysis may be required.

Amendment of Part 63 of the Commissioner's Regulations relating to continuing education for pharmacists. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 63 of the Commissioner's Regulations relating to examination requirements for pharmacists. A rural area flexibility analysis may be required.

Amendment of Part 64 of the Commissioner's Regulations relating to professional study for licensure as a nurse. A rural area flexibility analysis may be required.

Amendment of Part 64 of the Commissioner's Regulations relating to the orders required for administering immunizations. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 70 of the Commissioner's Regulations relating to experience and examination requirements for licensure in Certified Public Accountancy and to competency requirements relating to the signing of financial statements. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 74 and Subparts 79-9 through 79-12 of the Commissioner's Regulations relating to experience requirements for licensure as a social worker or as a mental health practitioner. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 76 of the Commissioner's Regulations relating to the supervision of occupational therapy assistants. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 79 of the Commissioner's Regulations relating to supervision requirements in the Mental Health professions. A

regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Agency Representative:

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

## OFFICE OF VOCATIONAL AND EDUCATIONAL SERVICES FOR INDIVIDUALS WITH DISABILITIES

Amendment of sections 100.9 and 200.5 of the Commissioner's Regulations relating to high school individualized education program (IEP) diplomas. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 177 of the Commissioner's Regulations relating to the provision of special education services to students with disabilities who are parentally placed in private schools. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of sections 200.1 and 200.13 relating to students with autism. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.2 of the Commissioner's Regulations relating to special education space requirements plans. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.5 of the Commissioner's Regulations relating to timelines to request a due process hearing for parents seeking tuition reimbursement for a unilateral private school placement of a student with a disability and to repeal the requirement relating to parental consent for July/August special education services. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.6 of the Commissioner's Regulations relating to minimal level of service requirement for speech language services and school district placement of a student with a disability in an in-state or out-of-state private school. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of sections 200.7 and 200.20(a) of the Commissioner's Regulations relating to the program standards for private schools approved to serve students with disabilities. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.9 of the Commissioner's Regulations relating to rate-setting and tuition rates for approved programs for students with disabilities. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.16 of the Commissioner's Regulations relating to timeliness for individual evaluations and provision of services for preschool students with disabilities. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Parts 100 and 200 of the Commissioner's Regulations to make certain technical amendments, including corrections to cross citations, and as may be appropriate to conform to possible changes made to federal regulations this year. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to Part 246 of the Commissioner's Regulations, including standards for personnel and services for contractual vocational rehabilitation and supported employment services through community rehabilitation programs and other community providers, to conform with new contractual and quality assurance requirements. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to Parts 246 and 247 of the Commissioner's Regula-

tions relating to the vocational rehabilitation program operated pursuant to Title I of the Rehabilitation Act, as may be appropriate in order to conform to possible changes made if Congress reauthorizes that act this year. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency representative:

*Information may be obtained, and written comments may be submitted, concerning the above-proposed amendments by contacting:* Rebecca Cort, Deputy Commissioner, New York State Education Department, Office of Vocational and Educational Services for Individuals with Disabilities, One Commerce Plaza, Room 1606, Albany, NY 12234, (518) 474-2714

#### OFFICE OF CULTURAL EDUCATION

Amendments to section 3.27 relating to Chartering and Registration of Museums and Historical Societies with Collections, and section 3.30 relating to Incorporation and Registration of Historical Societies without Collections and Cultural Agencies, requires that each institution's mission statement and collection management policy contain terms acceptable to the Commissioner; specifies the circumstances under which items in a collection may be deaccessioned; requires that an institution disposing of an item make a "reasonable" effort to sell or transfer the item to another New York State museum, or to another public museum; requires an institution to publish a register of its collection; clarifies that deaccession proceeds may not be used for customary operating expenses or capital expenses; provides criteria under which an institution may designate a structure to be part of the collection and specifies the circumstances, if any, under which such institution may use deaccession proceeds to repair or conserve such structure; requires that the Commissioner or the Regents must provide specific authority to establish, open or close a museum; adds "planetarium" to the definition of "museum"; makes clear that the requirement for larger institutions to be open to the public 1,000 hours a year applies to a museum or exhibit facility; adds language that only institutions that have collecting as a stated purpose in their charter shall hold collections; adds a reference to "board representation" in the requirements for geographically descriptive terms in a corporate name; eliminates reference to "associations of teachers, students and graduates of educational institutions" from the definition of "cultural agency"; and adds additional definitions. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency representative:

*Information may be obtained, and written comments may be submitted, concerning the above-proposed amendments by contacting:* Clifford A. Siegfried, Assistant Commissioner, New York State Education Department, 3023 Cultural Education Center, Albany, NY 12230, (518) 473-5812, csiegfri@mail.nysed.gov

Amendment of Part 90 of the Commissioner's Regulations, relating to the library and library system programs and services. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative

*Information may be obtained, and written comments may be submitted, concerning the above-proposed amendments by contacting:* Bernard A. Margolis, State Librarian and Assistant Commissioner for Libraries, New York State Education Department, NY State Library, Room 10C34, Albany, NY 12230, (518) 474-5930, bmargolis@mail.nysed.gov

A proposed amendment to section 185.10 of the Commissioner's regulations relating to local government records management improvement fund grants, to establish criteria and procedures for the award of formula grants for records management improvement to county clerks and, in the city of New York, to the New York register or other officer or agency having custody of real property records and any officer or agency having custody of supreme court records. A regulatory flexibility analysis for local government may be required.

Agency Representative:

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

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

A proposed amendment to section 189.3 of the Commissioner's regulations relating to the Documentary Heritage program, to revise procedures for the award of grants and for the provision of field services. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

*Information may be obtained, and written comments may be submitted, concerning the above-proposed amendment by contacting:* Christine Ward, Assistant Commissioner for the State Archives, 9A49 Cultural Education Center, Albany, NY 12230, (518) 473-7091, cward@mail.nysed.gov

#### OFFICE OF MANAGEMENT SERVICES

A proposed amendment to section 119.1 of the Commissioner's regulations relating to school district payments to charter schools and procedures for requests for a State aid deduction upon nonpayment. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

*Information may be obtained, and written comments may be submitted, concerning the above-proposed amendment by contacting:* Burt Porter, Director of Education Finance, New York State Education Department, 89 Washington Avenue, Room 139 EB, Albany, NY 12234, (518) 486-2422

#### OFFICE OF STATE REVIEW

Amendment to section 279.1 of the Commissioner's Regulations, relating to the incorporation and clarification of definitions and other provisions, as relevant to state-level review of hearings for students with disabilities, that are currently referenced in Parts 275 and 276; deletion of references to parts 275 and 276; clarification of the jurisdiction of a state review officer; and clarification regarding the authority of a state review officer to review manifestation determinations. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.2 of the Commissioner's Regulations, relating to timelines for serving and filing a Notice of Intention to Seek Review; clarification of purpose of Notice of Intention to Seek review; clarification of timeframe in which to serve upon another party and file a Notice of Intention to Seek review; and addition of a notice of certification requirement. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.4 of the Commissioner's Regulations, relating to the initiation of a review and the timeliness of an appeal, clarify sufficiency of content and time in which to serve the petition for review and memorandum of law upon the opposing party; procedures for filing a petition for review with the Office of State Review; and add disclosure of whether a related action or proceeding is pending in another forum. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.5 of the Commissioner's Regulations, relating to the service of an answer and supporting papers upon the opposing party and filing with the Office of State Review. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.6 of the Commissioner's Regulations, relating to additional pleadings and new matters raised in an answer. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.7 of the Commissioner's Regulations, relating to verification of pleadings. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

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

A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.9 of the Commissioner's Regulations, relating to content of record; certification of record and clarification that 279.9 (b) refers to complete record. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.10 of the Commissioner's Regulations, relating to requests for extensions of time and length of extensions permitted; submission of additional evidence; clarification of effect of agreements to extend the time in which to initiate a review. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.11 of the Commissioner's Regulations, relating to calculating date of mailing and type of mail. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.12 of the Commissioner's Regulations, relating to parties receiving copies of state review officer decisions. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to section 279.13 of the Commissioner's Regulations, relating to service of petition for review. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Addition of 279.15 of the Commissioner's Regulations, relating to definitions of terms in Part 279. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

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

## Department of Environmental Conservation

The New York State Department of Environmental Conservation maintains an updated regulatory agenda on its website at <http://www.dec.ny.gov/regulations/36816.html>

## Department of Health

The following regulatory actions are under consideration for submission as a Notice of Proposed Rulemaking from June through December 2009:

### DESCRIPTION OF THE RULE SUBJECT MATTER

#### Title 10 NYCRR (Health)

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

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

2.14 Communicable Diseases - Update the rabies regulations to be consistent with changes enacted to the Public Health Law (PHL) in December 2002. The regulations will provide new definitions, clarification of requirements for reporting, exposure, vaccination, confinement and observation, quarantines, venues where public contact is encouraged or permitted, and animal capture.

2.19 Reporting Cases or Suspect Cases of Communicable Disease by Laboratories - Amend the regulations to require the utilization of the Electronic Clinical Laboratory Reporting System (ECLRS) by laboratories to meet their public health reporting requirements for communicable disease reporting.

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

5-1 Public Water Systems - Amend the regulation to incorporate mandatory regulations (federal Groundwater Rule) to protect against microbial pathogens occurring in ground water sources.

5-4 Classification and Certification of Community and Nontransient Noncommunity Water System Operators - Amend the regulation to incorporate specific requirements for the approval of training courses for initial and renewal training. These courses are used for educational purposes to meet the current requirements to obtain and maintain a water operator's certification. In addition, minor content revisions will be made based upon stakeholder involvement.

6-1 Swimming Pools - Amend the regulation to revise the design standards regarding main drain covers and starting blocks. Update Aquatic Supervisory Skill requirements.

6-2 Bathing Beaches - Amend the regulation in response to changes in the Public Health Law, add requirements for automatic external defibrillator (AED) equipment and surf lifeguards at all regulated ocean surf beaches. Amend the regulation's applicability to include homeowners association operated surf beaches in Suffolk County and New York City as those required to comply with Subpart 6-2.

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

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

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

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

16 Ionizing Radiation - Add requirements for standards for decommissioning facilities licensed to use radioactive materials and amend the requirements for possession and use of radioactive materials to be consistent with federal regulations. Revise the reporting requirements for medical misadministrations of ionizing radiation to be consistent with NYPORTS reporting requirements. Consolidate Part 16 with Code Rule 38.

17 Mobile Home Parks - Update regulations and consider revisions to include a change to the applicability of the regulation so that the regulations would only apply where adopted by county health departments.

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

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

22.11 Reporting of pesticide poisoning - Amend the regulation to

incorporate Poison Control Centers as a reporting entity to assist in identifying and intervening in pesticide poisoning cases who do not go to an emergency department or a physician.

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

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

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

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

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

23.5 Sexually Transmissible Diseases - Create a new Section 23.5 to build a regulatory structure for the recently signed legislation allowing expedited partner therapy. This regulation will provide definitions of terms, create criteria for providers to determine when EPT should be used, protects providers from charges of unprofessional conduct when they employ EPT, and creates a mechanism to perform quality assurance activities to assess the efficiency of the EPT system.

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

40-2.10 Dental Health - Amend the regulation to broaden the family health dental health performance standard, in order to require county health departments provide access to dental health information to children and require local health departments to maintain a list of providers offering free or reduced care or participate in public insurance programs to families of children under the age of 21.

40-2.11 Dental Health - Amend the regulation to broaden the municipal health services plan requirements to include an education program on oral health for both children and adults.

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

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

46-1-46.11 State Aid for Physically Handicapped Children - Update the regulation concerning administration of the Physically Handicapped Children's Program, including but not limited to, medical conditions considered for eligibility under the program, reimbursement, and approval of specialty centers for those conditions associated with newborn screening. The regulations will also be updated to reflect current organizational responsibility for the program.

48 Palliative Care - Establish provisions that set forth the standards for Palliative Care Certified Medical Schools and Palliative Care Certified Residency Programs.

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

53 Drinking Water State Revolving Fund Scoring Criteria - Amend Drinking Water State Revolving Fund (DWSRF) regulations to insure funding provided by the federal American Recovery and Reinvestment Act of 2009 (ARRA) can be effectively and appropriately expended and distributed.

55-2 Environmental Laboratories - Technical revisions to ELAP standards; establish qualifications for technical directors of laboratories conducting critical agent testing using technologies other than conventional microbiologic methods; and to establish certification requirements for laboratories that conduct critical agent testing using autonomous detection systems deployed in the field.

57 Rabies - The section will be deleted in order to eliminate obsolete administrative requirements for dogs at large in rabies designated areas.

58-1 Clinical Laboratories - Revise laboratory personnel requirements; consolidate existing requirements for clarity; codify quality systems, performance testing and other requirements as necessary to align with federal CLIA standards; redefine director to include sole qualification holder; establish standards for tracking and referral of critical agent and communicable disease specimens; and establish standards for laboratory verification of technical and clinical validity of test methods.

58-2 Blood Banks - Amend the regulation to permit emergency medical technicians, with additional training, to administer transfusions during inter-facility transport; enhance donor and patient safeguards; update technical requirements; eliminate obsolete requirements; clarify regulatory intent; meet federal requirements as directed by the Centers for Medicare and Medicaid Services; provide regulated parties with greater flexibility in complying with regulations regarding emergency transfusions, qualifying donors over 75 and apheresis donors, and provide options for equivalent electronic records.

58-4 Direct Access Testing - Amend the regulation to establish record keeping and reporting standards for direct access testing, which is authorized by PHL Article V.

59 Chemical Analyses Of Blood, Urine, Breath Or Saliva For Alcoholic Content - Revise technical amendments to provisions for breath alcohol testing to simplify enforcement of Vehicle and Traffic Law; codify list of approved ignition interlock devices and delete references to expired pilot program; and codify the National Highway Traffic Safety Administration model specifications for device certification.

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

63.8(j) HIV/AIDS Testing, Reporting and Confidentiality of HIV-Related Information - Remove the restriction on retention for more than one year of contact information collected in the course of public health contact notification activities. Keeping information beyond one year would allow individuals to be located, learn of their exposure, receive HIV counseling and testing and, if infected, access care more quickly, thereby achieving better treatment outcomes.

63.8(m) HIV/AIDS Testing, Reporting and Confidentiality of HIV-Related Information - Remove barriers to disclosure of a source patient's HIV status when an occupationally exposed emergency responder or health care worker is HIV-infected.

63.10 HIV/AIDS Testing, Reporting and Confidentiality of HIV-Related Information - Amend Section 63.10's definition of "significant risk" in order for Section 63.10 to be consistent with proposed amendments of Section 63.8(m) and to recognize the issues raised by exposure of an HIV-infected person to an HIV-infected source patient. At present, Section 63.10 includes exposures of non-infected persons as a significant risk and fails to address exposures to an HIV infected source.

66-1.1 thru 66-1.10 and 66-2.1 through 66-2.9 Immunization - Update the regulations to be consistent with changes enacted to the PHL. The regulations will add pertussis, tetanus and pneumococcal disease to the list of required pre-school immunizations and also address the requirement that children receive a booster for varicella and tetanus, diphtheria and pertussis, by the time they enter sixth grade. Various regulatory changes are also proposed to update immunization recommendations to reflect current recommendations, including the requirement of a second dose of varicella and mumps vaccine. Language will also be added to clarify medical exemptions and annual school immunization survey requirements, and change physician diagnosis standards for measles and mumps to reflect the rarity of these diseases.

66-3 Immunization - Amend the regulations to add Subpart 66-3 to Title 10 to require all health care personnel employed or affiliated with a health care facility, document as a precondition of employment and annually, immunizations for influenza virus. The requirement is subject to the availability of an adequate supply of the necessary vaccine and exemptions for medical contraindications. In addition, parallel regulatory changes are proposed to Sections 405.3 (hospitals), 751.6 (diagnostic and treatment facilities), 763.13 and 766.11 (home health agencies and programs), and 793.5 (hospices) of Title 10. Any facility defined as a hospital or diagnostic and treatment centers pursuant to PHL Article 28, home care agency within PHL Article 36, or hospice within PHL Article 40 will be required to comply with the referenced requirements detailed in Subpart 66-3.

67-1 Lead Screening and Follow-up - Amend the regulations to reduce the capillary blood lead level at which a result must be confirmed by venous test from 15 mcg/dL to 10 mcg/dL; lower the blood lead level requiring environmental intervention and management from 20 mcg/dL to 15 mcg/dL; clarify that follow-up services are required for all children up to age 18 years; authorize appropriate blood lead testing by physician office laboratories and registrant laboratories, and require reporting of blood lead test results performed by these entities.

67-2 Lead Poisoning Control - Amend the regulations regarding environmental assessment and lead paint hazard control.

67-3 Reporting of Blood Lead Levels - Amend the regulation to expand the definition of permitted laboratories to include registrant laboratories consistent with recently amended public health law; require electronic reporting of blood lead test results by all permitted laboratories in accordance with recently amended public health law; and expand the current requirement for immediate reporting of critical blood lead values (> 45 mcg/dL) to include children up to age 18 years.

69-4 Early Intervention Program - Regulations need to be reviewed and updated to be consistent with changes to the PHL. Conforming regulations will address new requirements related to transition procedures for children aging-out of the Early Intervention Program; procedures for individualized family service plan amendments; collection of insurance information and social security numbers from parents for eligible children; establishment of standards for evaluators, service coordinators, and providers of early intervention services; approval and periodic re-approval of evaluators, service coordinators, and providers of early intervention services who meet Department standards; Department auditing procedures; and, fiscal management and claiming standards.

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

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

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

69-8 Newborn Hearing Screening - Amend the regulation to establish hospital reporting of unduplicated, individual, identifiable data on infant hearing screenings to the Department upon request, in a format and frequency prescribed by the Commissioner.

72-1 Tanning Facilities - Amend the regulations to be consistent with previously and recently enacted changes to PHL Article 35-A regarding ultraviolet tanning devices. The regulations will provide definitions and requirements for permit, inspection and operation of tanning facilities.

72-2 Tattooing and Body Piercing - Amend the regulations to be consistent with Public Health Law Article 4-A, Regulation of Body Piercing and Tattooing. The regulations will provide definitions and requirements for permit, inspection, and operation of tattooing facilities and the licensing of tattoo artists.

73 Asbestos Safety Training Program Requirements - Amend the regulations to incorporate changes made by the New York State Department of Labor to Code Rule 56 and changes in the industry to reflect training practices.

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

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

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

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

80 Controlled Substances - Amend the regulations to allow pharmacies to maintain electronic records of controlled substance prescriptions and to allow a pharmacist to endorse those records with an electronic signature or equivalent when refilling a controlled substance prescription. Also amend regulations to allow pharmacists to reduce an oral prescription for a controlled substance to an electronic record and to endorse such electronic record with an electronic signature or equivalent when dispensing the prescription.

85.40 Prenatal Care Assistance Program (PCAP) - Section 85.40 addresses PCAP standards for provision of comprehensive prenatal care to low income women. Legislation has been introduced to establish a comprehensive prenatal care program under Medicaid. If enacted, most of this section will be repealed with appropriate additions to Medicaid requirements in Social Services regulations to reflect new comprehensive prenatal care. References to PCAP will be deleted from other Department regulations including Section 47-2.1 - Definitions, Part 85 - Medical Assistance Benefits, Section 47-2.5 Selection of contractors, Section 405.21 Perinatal services, Section 86-1.65 Pools and allowances, and Section 86-1.11- Computation of basic rate.

86-1 Disproportionate Share Payments - Amend regulations to establish a methodology for distributing disproportionate share payments to non-public high Medicaid hospitals that incurred losses as a result of the State budget.

86-1 Inpatient Hospital Reform - Amend regulations to establish a new methodology for distribution of payments to hospitals that incorporates a statewide base price, a more refined weighting system (APRs), and an updated computation for Graduation Medical Education. In addition, regulations will be added to update the methodology for distribution of payments to hospitals that are exempt from case payment, excluding psychiatric services.

86-1 Language Assistance Translation Services - Amend regula-

tions to create a distribution methodology that allocates funding to qualifying hospitals to ensure and enhance access for Medicaid patients requiring language assistance.

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

86-1.4 Uniform System of Accounting and Reporting - Amend the regulations to comprehensively update accounting and reporting for reimbursement purposes to conform with current wording and requirements.

86-2 Nursing Home Reform - Amend regulations to establish a regional pricing model for nursing homes.

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

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

86-2 Nursing Home Reimbursement - Amend the regulation to update the cost base year used to compute the nursing facility rates from 1983 to 2004.

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

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

94.2 Physician's Assistants - Amend the regulation to allow a Registered Physician's Assistant (RPA) to prescribe controlled substances, including Schedule II substances, for patient's under the care of the supervising physician in conformance with Public Health Law (PHL) Section 3703 (3).

98-1.5 Application for a Certificate of Authority - Revise regulations to require electronic submission of the MCO's provider network, consistent with the filing requirements in 98-1.16(j).

98-1.6 Issuance of the Certificate of Authority - Revise regulations to add a provision requiring managed care organizations (MCOs) to maintain a complete file on each request for health care services or benefits and associated appeals pursuant to Article 49 of the Public Health Law and federal law and regulations.

98-1.8 Continuance of a Certificate of Authority - Amend the regulations to clarify that managed care organizations must maintain compliance with the requirements of PHL Articles 44 and 49 and 10 NYCRR Part 98, including provisions related to initial application and certification standards, in order to maintain their certificate of authority.

98-1.13 Assurance of Access to Care - Amend the regulations to require that each member select a primary care provider from which the member receives all primary care services; to require that MCOs contracting with a medical group have a process whereby a new provider joining the group can receive payment for services rendered to enrollees until the credentialing process is completed for the new provider; to ensure an enrollee who is referred by an out-of-network provider to in-network services incurs no additional financial liability than they would normally incur had the services been referred by a participating provider; and to be consistent with changes to the PHL. Conforming regulations will address new requirements related to subdivision 5-c to Section 4406-c which imposes a "cooling off" period after the termination or non renewal of a contract between an Article 44 managed care organization and a hospital.

98-1.14 Enrollee Services and Grievance Procedures - Amend the regulation to require MCOs to issue notice to enrollees upon approval,

denial or failure to pay for a request for a covered benefit or referral when the determination is not subject to the provisions of PHL Article 49.

98-1.21 Fraud and Abuse Prevention Plans and Special Investigation Units - Amend the regulations to delete a requirement for MCOs to develop procedures for detecting repetitive fraud across plans; to expand and clarify requirements for a fraud and abuse awareness program to include a confidential toll free telephone number to report suspected cases of fraud and abuse; and, to expand and clarify the required content of the fraud and abuse detection manual to include all available guidance on identification and referral of suspected cases of fraud and abuse.

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

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

128 New York City Watershed Rules - Amend the regulations to incorporate regulations intended to protect NYC's Watersheds and preserve NYC's Filtration Avoidance Determination by providing various limitations on watershed activities and construction.

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

400.9, 405.9, 763.5, 766.2 Standardized Transfer Information - Amend the regulations to mandate standardized patient information that must be documented at points of transfer to and from nursing homes, hospitals, CHHAs, LHCSAs ALP, ALR, ACF and EH.

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

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

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

403 Home Care Worker Registry - Amend the regulations to add a new section to develop and maintain a home care services worker registry of home care services workers.

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

405.7 Patients' Rights - Amend the regulations to specify that patients have the right to treatment without discrimination regardless of age. Amend the requirements limiting the use of physical restraints to be consistent with federal guidelines.

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

405.9 Admission/Discharge - Revise regulations to clarify that all

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

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

405.11 Infection Control - Amend the regulations to conform to PHL Section 2819(2). The proposed regulation would define requirements for hospitals to report select hospital acquired infections using methods, definitions and protocols defined by the Department, ensures patient privacy in collection and release of data and creates standards for publication and release of the data reported.

405.12 Surgical Services - Amend the regulations to specify that a registered professional nurse qualified in operating room nursing shall be present as the circulating nurse in each separate operating room where surgery is being performed for the duration of the surgical procedure.

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

405.22 Critical Care and Special Care Services - Update the regulations regarding the organ transplant center provisions and the cardiac services provisions (may be moved to another section in Part 405); and provide specific minimum standards for pediatric intensive care units (ICUs) similar to adult ICUs, recognizing differences between adult and pediatric ICUs beyond just the size and weight of the patients.

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

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

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

415.41 Neurobehavioral Step Down Unit Program - Amend the regulations to provide a new level of appropriate behavioral intervention care in skilled nursing facilities facilitating individual transition to least restrictive settings. This 3-part regulatory package will include amendments and updates of Life Safety and Architectural Standards for Neurobehavioral and Neurobehavioral Step Down Units pursuant to section 713-2.5 of Title 10 NYCRR and a new subdivision (x) of section 86-2.10 establishing a separate and distinct payment rate for residents meeting the criteria for section 415.41.

600.2, 600.3, 610.3, 620.2, 620.3 Establishment of Hospitals - Amend the regulations to revise the criteria for review of the character and competence of proposed owners/operators of Article 28 facilities. This will include criteria relating to the establishment of dialysis facilities pursuant to PHL Section 2801(a)(15).

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

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

709 Cardiac Surgery and Cardiac Catheterization Laboratory Centers - Amend the regulations to update the need methodology for Cardiac Surgery and Cardiac Catheterization Laboratory Centers.

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

709.3 Residential Health Care Facility Beds - Revise the regulations concerning the need methodology for residential health care facility (nursing home) beds.

709.15 Lithotripters - Repeal of the need methodology for lithotripters.

709.13 Adult Day Health Care Program Needs Methodology - Amend the regulations to clarify the existing methodology for determining unmet need for adult day health care programs.

710.1 Approval of Medical Facility Construction - Amend the regulation to revise the cost thresholds for administrative Certificate of Need (CON) and full CON review; and for limited architectural review and prior review to reduce current review levels for MRI's and CT scanners operated by general hospitals to limited architectural review; and to repeal review requirements for lithotripters. Revise to correspond to proposed changes in 709.14; establish review processes for cardiac services.

710.5 Amendment of CON Applications - Amend the regulation to revise the cost thresholds for amendments to CON applications, for consistency with changes in cost thresholds in 710.1.

711, 712, 713, 715 and 716 Medical Facility Construction - Revise the regulations concerning the Medical Facilities Construction Code.

732 Worker's Compensation - Amend the regulation to reflect 2007 changes in the Worker's Compensation Law Sections 351 and 354 which allow the State Insurance Fund to contract with certified PPOs, by reducing network adequacy requirements, and by granting the Commissioner waiver authority if a plan cannot meet such requirements.

750-759 Treatment Center and Diagnostic Center Operation - Update the regulations addressing the Department's New York Patient Occurrence Reporting and Tracking System (NYPORTS) provisions for Diagnostic and Treatment Centers to reflect current practice. Amend the regulations to add certain immunization requirements for healthcare workers. Consistent with federal provisions, allow individuals qualified to administer anesthesia, and not just physicians, to evaluate patients for proper anesthesia recovery.

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

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

760 and 761 Home Health Services - Amend the regulations to update the current need methodology for establishment of certified home health agencies.

760.2 Establishment of Certified Home Health Agencies - Amend the regulation to revise the criteria for review of the character and competence of proposed owners/operators of CHHA's established under Article 36.

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

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

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

790.1, 790.2, 790.11 Establishment of Hospices - Amend the regulation to revise the criteria for review of the character and competence of proposed owners/operators of hospices established under Article 40.

800 Emergency Medical Services - General - Add regulations related to the use and application by members of the public of automatic external defibrillators; codify regulatory requirements for Advance Life support First Response Agencies; codify regulatory requirements for Basic Life Support Providers; make updates to EMS certification and training regulations; and establish a new section on the mobilization and/or sharing of resources in the event of a declared disaster.

900.2 Establishment of Life Care Communities - Amend the regulation to revise the criteria for review of the character and competence of proposed owners/operators of life care communities.

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

1000.3 Malpractice Awards, Judgements, and Settlements - Amend the regulations to allow a physician to have 30 days within which to appeal the disclosure of the settlement information in the instance where physician has two or fewer settlements, and to clarify the circumstances under which a physician may be granted an extension because of physical incapacitation, etc.

#### Title 18 NYCRR (Social Services)

360-3.7 Presumptive Eligibility - Amend the regulation to modify and to remove specific references to PCAP, and substitute references to comprehensive prenatal care services provided under Medicaid. This section describes the availability of presumptive eligibility for Medicaid services.

360-4 Financial Eligibility - Amend the regulations to update Medicaid Extended Coverage pursuant to potential statutory changes to Section 367-f of the Social Services Law which would increase the amount of income that NYS Partnership for Long Term Care participants are allowed to retain when accessing Medicaid Extended Coverage.

360-4.8 Determination of Financial Eligibility; Effect of Excess - Amend the regulation to modify and to remove specific references to PCAP, and substitute references to comprehensive prenatal care services provided under Medicaid. This section describes the availability of presumptive eligibility for Medicaid services.

360-6.7 Managed Care - Repeal the regulations to modify and consolidate with a new Part 360. The provisions describe the standards and processes by which managed care enrollees may disenroll from a managed care organization and will be revised to reflect Chapter 649 of the Laws of 1996 and Chapter 433 of the Laws of 1997.

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

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

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

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

360-11 Medicaid Managed Care - Repeal the regulations describing the standards and processes by which special needs populations may

obtain specialty care services with the Medicaid managed care program. It will be repealed because it was made obsolete by passage of Chapter 649 of the Laws of 1996 which authorized the development of Special Needs Plans (SNPs) for these populations.

485, 486, 487, 488 and 490 Adult Homes, Enriched Housing Programs and Residences for Adults - Amend the regulations to consolidate and streamline provisions relating to adult homes, enriched housing programs and residences for adults, to reflect recent past legislative and regulatory initiatives and the changing environments of these types of facilities. Amendments will provide clarification and consistency to residents, operators and the public with regards to adult care facilities.

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

487 and 488 Respite Availability - Amend the regulations to increase the availability and promote the use of adult home and enriched housing program settings for respite use (companion piece for Title 10 - nursing homes and assisted living residences).

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

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

505 Personal Emergency Response Services - Amend the regulations to allow for annual authorizations and to delete the requirement that authorization of PERS be contingent upon a reduction/elimination of personal care aide/home health aide hours.

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

505.3(b)(1) Drugs - Amend the regulation to eliminate the requirement for a prescription or fiscal order for the dispensing of over-the-counter emergency contraception for women 17 years or older.

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

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

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

505.9 Reserved Bed Day Payment - Amend the regulation to reduce bed reservation payments to nursing homes for resident hospitalization and to remove preapproval language.

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

505.23 Home Health Services - Consensus regulation to amend this

section to reflect statutory changes and/or court ordered mandates that have been implemented.

505.25 Personalized Recovery Oriented Services (PROS) - Amend the regulations to reflect approved Title 14 OMH regulations for PROS, a comprehensive outpatient recovery oriented program for persons with severe and persistent mental illness.

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

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

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

533.6(b)(1)ii Radiology - Repeal the entire regulation since the regulation is outdated and reimbursement to radiologists has changed as of January 2009. Physicians will no longer be paid 40% of the global fee. The reimbursement to physicians will be a percent of the Medicare rate.

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

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## Insurance Department

Pursuant to Section 202-d of the State Administrative Procedure Act (SAPA), the following Regulatory Agenda is a list of the regulatory additions and amendments to Title 11 of the NYCRR that the Insurance Department is presently considering proposing during the second half of 2009. Many of these items were previously published in the January 2009 Regulatory Agenda. Items that have been published in the State Register as "Proposed" actions are not included on the list. The Insurance Department's regulatory plans are subject to change and the Department reserves the right to add to, delete from, or modify items on the Agenda without further notice.

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

For inquiries pertaining to a specific item, please contact the agency contact person identified in the item. For general inquiries about the Insurance Department's Regulatory Agenda, please contact: Sam Wachtel, Supervising Attorney, Office of General Counsel, New York State Insurance Department, 25 Beaver Street, New York, N.Y. 10004, (212) 480-5269

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

1. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish requirements regarding disclosure of all sources and amounts of compensation received by licensed insurance producers. Agency Contact: Matthew Gaul, Special Counsel (212) 480-2305.

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

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

4. Summary description of proposal: Adoption of a new part to 11 NYCRR to incorporate and implement the "best practices" procedures for financial guaranty insurers set forth in Department Circular Letter 19 (2008). Agency Contact: Ann Logan, Associate Tax Counsel, Office of General Counsel (212) 480-6297.

5. Summary description of proposal: Amendment of 11 NYCRR 151 (Regulation 119) to implement Chapter 11 of the Laws of 2008, effective January 31, 2008, which established a new method for setting workers' compensation rates in New York. One component of the rate making process is the Superintendent's establishment, by regulation, of a loss cost multiplier (LCM). Agency Contact: Sam Wachtel, Supervising Attorney, Office of General Counsel (212) 480-5269.

6. Summary description of proposal: Amendment of 11 NYCRR 136 (Standards for the management of the New York State Employees' Retirement System and the New York State and Local Police and Fire Retirement System, and the New York State Common Retirement Fund) (Regulation 85) to ban the use of placement agents by investment advisors engaged by the New York State Common Retirement Fund. Agency Contact: Michael Campanelli, Supervising Attorney, Office of General Counsel (212) 480-5290.

7. Summary description of proposal: Amendment of 11 NYCRR 89 (Audited Financial Statements) (Regulation 118) to improve the Department's surveillance of the financial condition of insurers by requiring an annual audit of financial statements by independent certified public accountants, and the filing of audit reports and other related documents. Agency Contact: Joseph Fritsch, Director of Insurance Accounting Policy (212) 480-2299.

8. Summary description of proposal: Amendment of 11 NYCRR 16 (Special Risk Insurance) (Regulation 86) to conform the regulation to 11 NYCRR 27 by adding risks that are on the excess line "export" list to the Class 2 Special Risk category of Regulation 86. Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

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

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

11. Summary description of proposal: Amendment of 11 NYCRR 65-1, 65-2, 65-3, 65-4 (Regulations Implementing the Comprehensive Motor Vehicle Insurance Repairs Act) (Regulations 68-A, 68-B, 68-C & 68-D) to revise No-fault endorsements and requirements for insurer claim practices and to amend rules related to both the manner in which the organization designated by the Superintendent administers the first party motor vehicle insurance arbitration programs and assesses the costs of these programs to the insurance industry. Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

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

13. Summary description of proposal: Amendment of 11 NYCRR 68 (Charges for Professional Health Services) (Regulation 83) to adopt a fee schedule for health services rendered by licensed acupuncturists.

Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

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

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

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

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

18. Summary description of proposal: Amendment of 11 NYCRR 152 (Physicians and Surgeons Professional Insurance Merit Rating Plan) (Regulation No. 124) to permit credits for successful completion of additional risk management programs (supplementary risk management programs). Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

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

20. Summary description of proposal: Adoption of a new 11 NYCRR 163 (Flexible Rating for Nonbusiness Automobile Insurance Policies) (Regulation No. 153) to implement Chapter 136 of the Laws of 2008, which created a flex-rating system that replaces the prior approval system with a blend of prior approval and competitive rating. Agency Contact: Buffy Cheung, Supervising Insurance Examiner, Property Bureau (212) 480-5587.

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

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

23. Summary description of proposal: Amendments of 11 NYCRR 136 (Standards for the Management of the New York City and New York State Retirement Systems) (Regulation 85) to establish high ethical standards, strengthen internal controls and governance, and enhance the operational transparency of the city and state retirement systems. Agency Contact: Michael Maffei, Assistant Chief, Life Bureau (212) 480-5023.

24. Summary description of proposal: Adoption of a new part to 11

NYCRR to adopt minimum surplus and disclosure requirements for fraternal benefit societies. Agency Contact: Ruth Gumaer, Supervising Insurance Examiner, Life Bureau (212) 480-4763.

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

26. Summary description of proposal: Amendment of 11 NYCRR 95 (Regulations Governing an Actuarial Opinion and Memorandum) (Regulation 126) to add guidance regarding sensitivity tests, disclosure items, and other requirements related to asset adequacy analysis and to revise aspects of existing standards in consideration of adopted NAIC standards. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau (518) 474-7929.

27. Summary description of proposal: Amendment of 11 NYCRR 99 (Valuation of Annuity, Single Premium Life Insurance, Guaranteed Interest Contract and Other Deposit Reserves) (Regulation 151) to revise existing standards for variable annuities for life insurers so as to conform with recently adopted and pending NAIC standards. Agency Contact: Michael Cebula, Deputy Chief Actuary, Life Bureau (518) 474-7929.

28. Summary description of proposal: Amendment of 11 NYCRR 42 (Term Life Issuance and Renewal Restrictions; Nonforfeiture Values for Certain Life Insurance Policies) (Regulation 149) to provide requirements for life policies with intermediate endowment values. Agency Contact: Thomas Hartman, Principal Actuary, Life Bureau (518) 486-2126.

29. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish minimum standards for non-guaranteed elements of life and annuity insurance policies and to establish minimum standards for written criteria set by the board of directors or a committee thereof for determining non-guaranteed elements. Agency Contact: Dennis Lauzon, Assistant Chief Actuary, Life Bureau (518) 474-7929.

30. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish minimum standards for form, content and sale of life insurance, annuities and funding agreements, including standards for full and fair disclosure. Agency Contact: Dennis Lauzon, Assistant Chief Actuary, Life Bureau (518) 474-7929.

31. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish standards for self-support requirements for life insurance, annuities and funding agreements issued on an individual or group basis. Agency Contact: Dennis Lauzon, Assistant Chief Actuary, Life Bureau (518) 474-7929.

32. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish standards for corporate governance for risk management, including requirements for board of directors' oversight of business and exposure limits. Agency Contact: Dennis Lauzon, Assistant Chief Actuary, Life Bureau (518) 474-7929.

33. Summary description of proposal: Amendment of 11 NYCRR 54 (Variable Life Insurance) (Regulation 77) to provide for exceptional treatment of private placement variable life insurance, especially with respect to the deferral of payments for death benefits, surrender benefits and policy loans. Agency Contact: W. Joseph Shanley III, Senior Insurance Attorney, Life Bureau (518) 474-7668.

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

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

36. Summary description of proposal: Adoption of a new part to NYCRR to establish minimum standards for reserve and nonforfeiture values for pre-need insurance. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau (518) 474-7929.

37. Summary description of proposal: Amendment of 11 NYCRR 98 (Valuation of Life Insurance Reserves) (Regulation 147) to revise existing standards for term life insurance and universal life insurance products with secondary guarantees for life insurers in consideration of possible changes to NAIC standards, and to establish reserve standards for equity indexed life insurance. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau (518) 474-7929.

38. Summary description of proposal: Amendment of 11 NYCRR 100 (Recognition Of The 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits and Recognition and Application of Preferred Mortality Tables for Use in Determining Minimum Reserve Liabilities) (Regulation 179) to adopt potential new mortality tables. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau (518) 474-7929.

39. Summary description of proposal: Amendment of 11 NYCRR 97 (Market Value Separate Accounts Funding Guaranteed Benefits; Separate Account Operations and Reserve Requirements) (Regulation 128) to update the reserve standards for group separate account products with guaranteed benefits, and to establish reserve standards for individual separate account products with guaranteed benefits. Agency Contact: Michael Cebula, Deputy Chief Actuary, Life Bureau (518) 474-7929.

40. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) and 11 NYCRR 360 (Open Enrollment and Community Rating of Individual and Small Group Health Insurance) (Regulation 145) to clarify the requirements for prior approval of forms and rates, including the establishment of rules for determining the rating methodology to be used for rating point-of-service products sold to large groups, and to clarify the application and effect of rolling rates and annual level subscriber rates. Agency Contact: Robert Solomon, Supervising Insurance Examiner, Health Bureau (212) 480-5246.

41. Summary description of proposal: Amendments of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62), 11 NYCRR 39 (Minimum Standards for the New York State Partnership for Long-Term Care Program) (Regulation 144) and adoption of a new Part to 11 NYCRR to: 1) update minimum standards for Partnership and non-Partnership long term care coverages; and 2) establish minimum standards and/or requirements for long term care insurance products as new long term care financing options are enacted. Agency Contact: Austin J. Rinella, Supervising Insurance Attorney, Health Bureau (518) 486-7815.

42. Summary description of proposal: Adoption of a new part to 11 NYCRR or amendment of existing parts of 11 NYCRR to: 1) establish standards so the internal appeal procedures of long term care insurers are stated in the form language of long term care insurance products; 2) establish requirements and standards for long term care insurers to notify the Insurance Department when the insurers make available for purchase a long term care insurance form in New York State or when the insurers discontinue selling a long term care insurance form in New York State; 3) state by amendment an update on the annual rescission report due date and to state the requirements of federal law for annual long term care reports on claims denials and lapse/replacements and their due dates; 4) establish rules and targeted penalties regarding deceptive advertising and/or deceptive marketing practices targeting senior citizens; 5) establish targeted penalties regarding untimely payment of long term care insurance claims; 6) establish procedures regarding external appeals of long term care insurance claims. Agency Contact: Austin J. Rinella, Supervising Insurance Attorney, Health Bureau (518) 486-7815.

43. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for the Form, Content, and Sale of Health Insurance, Including Standards of Full and Fair Disclosure)(Regulation 62) to: 1) establish criteria to require long term care insurers to blend

the experience of closed blocks of long term care insurance with the experience of open blocks of long term care insurance to lessen or avoid premium rate spirals on closed blocks of long term care insurance; 2) require notification and acknowledgement at the point of sale of potential rate increases for long term care insurance; 3) expand the large group long term care insurance market by requiring group long term care insurers to: offer long term care coverage during a limited "open enrollment" period for certain large groups, offer spousal coverage under certain circumstances, and offer long term care insurance coverage at retirement. Agency Contact: Colleen M. Rumsey, Associate Insurance Attorney, Health Bureau (518) 486-7815.

44. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for the Form Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) and 11 NYCRR 360 (Rules to Assure an Orderly Implementation and Ongoing Operation of Open Enrollment and Community Rating of Individual and Small Group Health Insurance) (Regulation 145) to set forth requirements regarding the payment of commissions, fees and other compensation to agents and brokers. Agency Contact: Jeffrey Pohl, Associate Insurance Attorney, Health Bureau (518) 473-7470.

45. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to clarify the dental exclusion in health insurance policies. Agency Contact: Abby Nash, Senior Insurance Attorney, Health Bureau (518) 473-7470.

46. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) and 11 NYCRR 360 (Rules to Assure an Orderly Implementation and Ongoing Operation of Open Enrollment and Community Rating of Individual and Small Group Health Insurance) (Regulation 145) to conform to the final regulations promulgated under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). Agency Contact: Jeffrey Pohl, Associate Insurance Attorney, Health Bureau (518) 473-7470.

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

48. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to establish minimum standards for prescription drug coverage written by Article 43 corporations, HMOs and commercial insurers. Agency Contact: Thomas Fusco, Supervising Insurance Attorney, Health Bureau (716) 847-7618.

49. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for the Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to establish requirements for insurance policies that use a usual and customary or reasonable form of reimbursement. Agency Contact: Thomas Fusco, Supervising Insurance Attorney, Health Bureau (716) 847-7618.

50. Summary description of proposal: Adoption of a new part to 11 NYCRR to provide for enhanced disclosure pursuant to sections 3217-a and 4324 of the Insurance Law. Agency Contact: Lisette Johnson, Assistant Chief, Health Bureau (518) 486-7815.

51. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62), and 11 NYCRR 410 (External Appeals of Adverse Determinations of Health Care Plans) (Regulation 166), and adoption of a new part to 11 NYCRR to: (1) establish standards for coverage determinations and benefit determinations, including standards for utilization review, internal appeals and grievances, with conformance to federal

requirements; (2) establish new and revised standards and procedures for the external appeal process; and (3) implement the requirements of Chapter 451 of the Laws of 2007 regarding the cooling-off period for hospital contract terminations, pre-authorization requirements, and external appeals of out-of-network denials. Agency Contact: Lisette Johnson, Assistant Chief, Health Bureau (518) 486-7815.

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

53. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) and/or adoption of a new part to 11 NYCRR to establish an appeals process for disability claims. Agency Contact: Lisette Johnson, Assistant Chief, Health Bureau (518) 486-7815.

54. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish requirements for contracts between insurers and providers and to establish network adequacy requirements for EPO and PPO products. Agency Contact: Lisette Johnson, Assistant Chief, Health Bureau (518) 486-7815.

55. Summary description of proposal: Adoption of a new part to 11 NYCRR to standardize the forms and claims processes used by insurers and HMOs. Agency Contact: Lisette Johnson, Assistant Chief, Health Bureau (518) 486-7815.

56. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to clarify to insurers and HMOs the requirements of the alternate procedure for submission of rate increases or decreases set forth in Insurance Law sections 3231(e)(2)(A) or 4308(g), and to provide further clarification as to calculating and reporting loss ratios and issuing dividends or credits when using the alternate filing procedure as required by Insurance Law sections 3231(e)(2)(B) or 4308(h). Agency Contact: Lisette Johnson, Assistant Chief, Health Bureau (518) 486-7815.

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

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

59. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to amend section 52.70(e)(2) to conform with Insurance Law section 3234(b) and permit individual underwriting in determining a person's eligibility for coverage under a group disability policy. Agency Contact: Stephen Rings, Associate Insurance Attorney, Health Bureau (518) 486-7815.

60. Summary description of proposal: Amendment of 11 NYCRR 83 (Financial Statement Filings and Accounting Practices and Procedures) (Regulation No. 172) to develop standards and guidelines for real estate appraisals and accounting methodologies under which Insurance Law Article 43 corporations and Public Health Law Article 44 Health Maintenance Organizations may evaluate real estate in ordinary course of business. Agency Contact: Kalo Daisy Wong, Principal Insurance Examiner, Health Bureau (212) 480-5062.

61. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62), 11 NYCRR 215 (Advertisements of Accident and Health Insurance) (Regulation 34), 11 NYCRR 360 (Open Enrollment and Community Rating of Individual and Small Group Health Insurance) (Regulation 145), 11 NYCRR 361 (Establishment and Operation of Market Stabilization Mechanisms for Individual and Small Group Health Insurance and Medicare Supplement Insurance) (Regulation 146), and the addition of a new Part to 11 NYCRR to adopt changes to federal regulation relating to the modernization of Medicare supplement insurance. Agency Contact: Sarah L. Allen, Associate Insurance Attorney, Health Bureau (518-486-7815).

62. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for the Form, Content, and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to prohibit cold call sales of Medicare supplement insurance, including door-to-door solicitation, direct in-person contact, and direct telephone calls without the prospective applicant initiating the contact. Agency Contact: Sarah L. Allen, Associate Insurance Attorney, Health Bureau (518) 486-7815.

63. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, including Standards of Full and Fair Disclosure) (Regulation 62) to clarify the procedures and requirements for filing of accident and health insurance policy forms and rate submissions, including electronic filing of such submissions. Agency Contact: Doris Kullman, Supervising Insurance Attorney, Health Bureau (518) 486-7815.

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

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

66. Summary Description of Proposal: Amendment of 11 NYCRR 94 (Valuation of Individual and Group Accident and Health Insurance Reserves) (Regulation 56) to extend the requirements to Article 42 accident and health insurers, Article 43 corporations and health maintenance organizations, and to clarify the minimum solvency requirements for accident and health insurers. Agency Contact: Yvonne Rowser, Principal Insurance Examiner, Health Bureau (212) 480-3883.

67. Summary description of proposal: Amendment of 11 NYCRR 362 (The Healthy New York Program and the Direct Payment Stop Loss Relief Program) (Regulation 171) to adjust the plan year deductible for the Healthy NY high deductible health plan to comply with the federal minimums for a high deductible health plan, and to adjust the benefits. Agency Contact: Leigha Basini, Associate Insurance Attorney, Health Bureau (518) 486-7815.

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

69. Summary Description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to prohibit the use of door-to-door sales for Medicare Supplemental policies. Agency Contact: Laura Dillon, Principal Examiner, Consumer Services Bureau (518) 486-9105.

70. Summary Description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) and/or adoption of a new part to 11 NYCRR to establish an appeals process for long term care claims. Agency Contact: Laura Dillon, Principal Examiner, Consumer Services Bureau (518) 486-9105.

71. Summary Description of proposal: Adoption of a new part to 11 NYCRR to provide that cancellation notices subject to section 3425 of the Insurance Law should include the date and hour of cancellation, the date of the notice, and, for nonpayment of premium cancellations, a statement informing the consumer that cancellation will not take place if the consumer makes timely payment of the premium. Agency Contact: John Capuano, Associate Examiner, Consumer Services Bureau (518) 486-9107.

72. Summary of description of proposal: Adoption of a new part to 11 NYCRR to provide rules and guidelines to assure full disclosure of all relevant information within advertisements which describe or solicit the purchase of property and casualty insurance coverage that are published, issued or distributed through various advertising media. Agency Contact: Barry Bistreich, Principal Insurance Examiner, Consumer Services Bureau (212) 480-4693.

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

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

75. Summary description of proposal: Amendment of 11 NYCRR 86.6 (Fraud Prevention Plans and Special Investigations Unit) (Regulation 95) to establish a requirement that any amendment to a fraud prevention plan that the Frauds Bureau has previously approved must be submitted to the Frauds Bureau within thirty days of its implementation. Agency Contact: Edward Ferrity, Insurance Frauds Bureau Counsel, (212) 480-5683.

76. Summary description of proposal: Adoption of a new part to 11 NYCRR to establish requirements regarding the submission of disaster preparedness related data, questionnaires and plans from property/casualty, life and health insurers. Agency Contact: Merline Smith, Supervising Insurance Examiner, Disaster Preparedness and Response Bureau (518) 408-3330.

## Department of Labor

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

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

2. Add language to Title 12 NYCRR, Chapter II, Subchapter E, regarding the Child Performer Advisory Board to Prevent Eating Disorders, as established by Chapter 675 of the Laws of 2007; and to establish regulations regarding the hours and conditions of work necessary to safeguard the health, education, morals and general welfare of child performers, as required by Chapter 89 of the Laws of 2008.

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

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

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

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

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

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

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

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

11. Amend Title 12 NYCRR Part 32 "Ski Tows and Other Passenger Tramways" to remain consistent with national consensus standards as recommended to the Commissioner by the Passenger Tramway Advisory Council as provided for in Labor Law Article 2, Section 12-c(4).

12. Amend Title 12 NYCRR Part 39 "Possession, Handling, Storage and Transportation of Explosives to provide for additional security measures for storage sites.

13. Amend title 12 NYCRR Part 601 to promulgate permanent changes to the Apprentice Training Process to better clarify who can be a sponsor, what their role is, and the consequences of failing in that role.

14. Amend Title 12 NYCRR Part 601 to promulgate permanent changes to the Apprentice Training process to conform Part 601 to new federal Apprentice Training Regulations found at 29 CFR 29.

15. Amend Title 12 NYCRR Part 700 to implement regulations required by 20 CFR 603 regarding public access to Unemployment Insurance Records.

16. Amend Title 12 NYCRR Part 701 to revise the procedures for adjudicatory proceedings held by the Commissioner of Labor in those situations where no specific rule or regulation is applicable to the subject matter of the hearing. This Part does not apply to orders, determinations or rulings within the jurisdiction of the Industrial Board of Appeals, the Unemployment Insurance Appeal Board or any other board within the Department of Labor.

17. Amend Title 12 NYCRR to address the procedures for granting, renewing and revoking the occupational licenses listed in Article 28-D of the General Business Law. This includes crane operators, blasters and laser operators.

18. Amend Title 12 NYCRR Section 470.4 to give the Commissioner discretion in waiving interest and penalties on benefit overpayments in accordance with section 18 of the State Finance Law.

19. Amend Title 12 NYCRR Section 472.4 to remove the requirement that an employer who plans to shut down his business on a temporary, seasonal or permanent basis, and who wishes to be relieved of the request reporting requirements specified in subdivision 2 of section 575 of the Unemployment Insurance Law, provide notice prior to the date on which he seeks to be so relieved and report for the week in which such shutdown occurs, and for the 52 preceding weeks, separately for each week.

20. Repeal Title 12 NYCRR Section 480.10 to remove specific monetary provisions related to tips for "pinboys."

21. Amend Title 12 NYCRR Part 482 to clarify the procedures and expand the criteria for reviewing applications for career and related training.

22. Amend Title 12 NYCRR Section 472.8 relating to claims for unemployment insurance, to correct terminology and to remove references to in-person reporting.

23. Amend Title 12 NYCRR Section 472.5 to reflect the proper terminology, processes, and contact points for obtaining employees social security account numbers or individual taxpayer identification numbers.

24. Amend Title 12 NYCRR Sections 137 and 138 regarding minimum wage/meal allowances to bring the regulations into compliance with Article 19 of the Minimum Wage Act.

25. Amend Title 12 NYCRR Section 56 to clarify fire/life safety regulatory requirements at asbestos projects within New York State. This revision will also incorporate Asbestos Successor Law definitions and minor clarifications.

26. Amend Title 12 NYCRR to add a new part 177 relating to mandatory overtime, staffing plans, and on-call responsibilities for nurses.

27. Amend Title 12 NYCRR Part 59 "Workplace Safety and Loss Prevention Program" to meet the requirements pursuant to Section 33 of Chapter 6 of the Laws of 2007, directing the Commissioner of Labor to develop a safety and loss prevention program that requires employers to implement a safety and loss prevention program on a compulsorily basis to avoid a surcharge in their workers' compensation premiums and to update rules for the certification of safety and loss management consultants who will evaluate such programs.

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

## Office of Medicaid Inspector General

Updated Regulatory Agendas may be found at the website of the Office of the Medicaid Inspector General at <http://www.omig.state.ny.us>.

## Office of Real Property Services

An updated regulatory agenda for the New York State Office of Real Property Services is available at <http://www.orps.state.ny.us/>.

## Department of State

The Department of State maintains a continuously updated regulatory agenda on its website. The address of this website is: [www.dos.state.ny.us](http://www.dos.state.ny.us)

## Office of Temporary and Disability Assistance

Pursuant to section 202-d of the State Administrative Procedure Act (SAPA), the Office of Temporary and Disability Assistance (OTDA) is required to publish a regulatory agenda for those regulations that it is considering for publication in the State Register. Set forth below is an agenda for the second half of 2009. Section 202-d of SAPA does not preclude OTDA from proposing for adoption a regulation that is not described in the agenda, nor does it require OTDA to propose for adoption a regulation that is described in the agenda.

### Child Well-Being

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

Amend location definition and procedures concerning the financial investigation of a putative father to facilitate the establishment of a child support order.\*

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

Revise regulations for the distribution and assignment of child support collections to reflect the requirements of Chapter 57 of the Laws of 2008 and federal law and to conform with the Personal Responsibility Work Opportunity Reconciliation Act's elimination of excess current support.\*

Revise regulation pertaining to federal incentive payments.\*

Address annual service fee for never assistance cases and revise legal services section.\*

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

Establish regulations for establishing and enforcing medical support obligations.\*

### Employment and Economic Supports

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

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

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

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

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

Amend Home Energy Assistance Program (HEAP) regulations to reflect current practices and the provisions of the federally accepted HEAP State Plan.\*

Amend regulations to meet the requirements of Chapter 57 of the Laws of 2009 to establish three new schedules for the standard of monthly need for determining eligibility for all categories of public assistance that become effective July 1, 2009, July 1, 2010 and July 1, 2011 consecutively.

Amend regulations to meet the requirements of Chapter 53 of the Laws of 2009 to authorize social services districts to provide shelter allowance supplements at local option to all Public Assistance households in order to prevent eviction and address homelessness.\*

Update provisions regarding fair hearing requests for HEAP benefits.\*

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

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

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

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

Revise regulations for employment to comply with final federal regulations.\*

Revise Food Stamp employment and training regulations to conform with federal regulations.\*

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

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

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

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

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

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

Amend regulations which govern Emergency Shelter Allowances to reflect Chapter 53 of the Laws of 2008.\*

Amend regulations to define the social services districts' responsibility to provide temporary housing to sex offenders and to consider certain factors when making a determination about the appropriateness of a temporary housing placement.\*

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

Delete the regulatory provisions relating to the Learnfare program.

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

Update the determination of Food Stamp eligibility regulations to include Supplemental Security Income (SSI) live-alone New York State Nutrition Improvement Program provisions and education grant exclusions.\*

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

Delete provisions relating to Food Assistance Program.

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

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

Generally update Food Stamp regulations to conform to the Food, Conservation, and Energy Act of 2008 and to recent changes in the federal regulations.\*

Amend regulations to accommodate the Statewide implementation of the Working Families Food Stamp Initiative.\*

Amend regulations to reflect expanded categorical eligibility for the Food Stamp program.\*

Amend Food Stamp reporting requirements for elderly and disabled persons.\*

Update regulations for transitional food stamp benefits.\*

Audit and Quality Improvement

Amend regulations governing intentional program violations to make the State's requirements for a ten year disqualification from the Food Stamp program consistent with the federal requirements set forth in the Code of Federal Regulations.\*

Reimbursement and Claims

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

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

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

Remove administrative cost cap section as this process is no longer in existence.\*

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

Technical Amendments

Update regulations concerning public access to records under the Freedom of Information Law to reflect statutory amendments.\*

Revise fair hearings regulation to clarify the distinction between the standard of proof required at the hearing and the standard required for judicial review.\*

Amend fair hearing regulations to add provisions concerning a telephone hearings process.\*

Amend the definition of the fair hearing record as it pertains to decisions without a hearing.\*

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

\* The asterisks identify rules for which a regulatory flexibility analysis or a rural area flexibility analysis may be required.

Any questions or comments concerning the items listed in this agenda can be referred to Jeanine Stander Behuniak, Office of Temporary and Disability Assistance, 40 N. Pearl St. 16C, Albany, NY 12243, (518) 474-9779, e-mail: Jeanine.Behuniak@OTDA.state.ny.us. The regulatory agenda may be accessed on OTDA's website at [www.otda.state.ny.us](http://www.otda.state.ny.us).

