

RULE MAKING ACTIVITIES

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

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

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

Office of Alcoholism and Substance Abuse Services

ERRATUM

A Notice of Adoption, I.D. No. ASA-49-08-00009-A, pertaining to Detoxification of Substances and Stabilization Services, published in the November 4, 2009 issue of the *State Register* contained an incorrect effective date. The effective date of the rule is November 21, 2009.

The Department of State apologizes for any inconvenience this may have caused.

Department of Civil Service

NOTICE OF EXPIRATION

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

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-45-08-00002-P	November 5, 2008	November 5, 2009

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-45-08-00004-P	November 5, 2008	November 5, 2009

Department of Health

EMERGENCY RULE MAKING

Criminal History Record Check

I.D. No. HLT-41-08-00005-E

Filing No. 1250

Filing Date: 2009-11-10

Effective Date: 2009-11-11

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

Action taken: Addition of Part 402 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2899-a(4); and Executive Law, section 845-b(12)

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

Specific reasons underlying the finding of necessity: Emergency agency action is necessary for preservation of the public health, public safety and general welfare.

The regulation is needed on an emergency basis to implement the Department of Health's statutory duty to act on requests for criminal history record checks which are required by law. The law is intended to protect patients, residents, and clients of nursing homes and home health care providers from risk of abuse or being victims of criminal activity. These regulations are necessary to implement the law as of its effective date so that the Department of Health can fulfill its statutory duty of ensuring that the health, safety and welfare of such patients, residents and clients are not unnecessarily at risk.

Subject: Criminal History Record Check.

Purpose: Criminal background checks of certain prospective employees of NHs, CHHAs, LHCSAs & long term home health care programs.

Substance of emergency rule: This regulation adds a new Part 402 to Title 10 NYCRR, which relates to prospective unlicensed employees of nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs who will provide direct care or supervision to patients, residents or clients of such providers.

The regulation establishes standards and procedures for criminal history record checks required by statute. Provisions govern the procedures by which fingerprints will be obtained and describe the requirements and responsibilities of the Department and the affected providers with regard to this process. The regulations address the identification of provider staff responsible for requesting the criminal history checks, supervision of temporary employees, notice to the Department when an employee is no longer employed, the content and procedure for obtaining consent and acknowledgment for finger printing from prospective employees. The Department's responsibilities for reviewing requests are set forth and specify time frames and sufficient information to process a request.

The proposed rule also describes the extent to which reimbursement is available to such providers to cover costs associated with criminal history record checks and obtaining the fingerprints necessary to obtain the criminal history record check.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-41-08-00005-P, Issue of October 8, 2008. The emergency rule will expire January 8, 2010.

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

Regulatory Impact Statement

Statutory Authority:

Section 2899-a (4) of the Public Health Law requires the State Commissioner of Health to promulgate regulations implementing new Article 28-E of the Public Health Law which requires all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs ("the providers") to request, through the Department of Health ("the Department"), a criminal history record check for certain unlicensed prospective employees of such providers.

Subdivision (12) of section 845-b of the Executive Law requires the Department to promulgate rules and regulations necessary to implement criminal history information requests.

Legislative Objectives:

Chapter 769 of the Laws of 2005 as amended by Chapters 331 and 673 of the Laws of 2006 establish a requirement for all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs to obtain criminal history record checks of certain unlicensed prospective employees who will provide direct care or supervision to patients, residents or clients of such providers. This is intended to enable such providers to identify and employ appropriate individuals to staff their facilities and programs and to ensure patient safety and security.

Needs and Benefits:

New York State has the responsibility to ensure the safety of its most vulnerable citizens who may be unable to protect and defend themselves from abuse or mistreatment at the hands of the very persons charged with providing care to them. While the majority of unlicensed employees in all nursing homes, certified home health agencies, licensed home care services agencies and long term home health care programs are dedicated, compassionate workers who provide quality care, there are cases in which criminal activity and patient abuse by such employees has occurred. While this proposal will not eliminate all instances of abuse, it will eliminate many of the opportunities for individuals with a criminal record to provide direct care or supervision to those most at risk. Pursuant to Chapter 769 of the laws of 2005 as amended by Chapters 331 and 673 of the Laws of 2006 ("the Chapter Laws"), this proposal requires the providers to request the Department to obtain criminal history information from the Division of Criminal Justice Services ("the Division") and a national criminal history check from the FBI, concerning each prospective unlicensed employee who will provide direct care or supervision to the provider's patients, residents or clients.

Each provider subject to these requirements must designate "authorized persons" who will be empowered to request, receive, and review this information. Before a prospective unlicensed employee who will provide direct care or supervision to patients, residents or clients can be permanently hired, he or she must consent to having his/her fingerprints taken and a criminal history record check performed. Two sets of fingerprints will be taken and sent to the Department, which will then submit them to the Division. The Division will provide criminal history information for each person back to the Department.

The Department will then review the information and will advise the provider whether or not the applicant has a criminal history, and, if so, whether the criminal history is of such a nature that the Department disapproves the prospective employee's eligibility for employment, (e.g., the person has a felony conviction for a sex offense or a violent felony or for any crime specifically listed in section 845-b of the Executive Law and relevant to the prospective unlicensed employees of such providers). In some cases, a person may have a criminal background that does not rise to the level where the Department will disapprove eligibility for employment. The proposed regulations allow the provider, in such cases, to obtain sufficient information to enable it to make its own determination as to whether or not to employ such person. There will also be instances in which the criminal history information reveals a felony charge without a final disposition. In those cases, the Department will hold the application in abeyance until the charge is resolved. The prospective employee can be temporarily hired but not to provide direct care or supervision to patients, residents or clients of such providers.

The proposal implements the statutory requirement of affording the individual an opportunity to explain, in writing, why his or her eligibility for employment should not be disapproved before the Department can finally inform a provider that it disapproves eligibility for employment. If the Department maintains its determination to disapprove eligibility for employment, the provider must notify the person that the criminal history information is the basis for the disapproval of employment.

The proposed regulations establish certain responsibilities of providers in implementing the criminal history record review required by the law.

For example, a provider must notify the Department when an individual for whom a criminal history has been sought is no longer subject to such check. Providers also must ensure that prospective employees who will be subject to the criminal history record check are notified of the provider's right to request his/her criminal history information, and that he or she has the right to obtain, review, and seek correction of such information in accordance with regulations of the Division, as well as with the FBI with regard to federal criminal history information.

COSTS:

Costs to State Government:

The Department estimates that the new requirements will result in approximately 108,000 submissions for a criminal history record check on an annual basis. This number of submissions for an initial criminal history record check will decrease overtime as the criminal history record check database (CHRC) is populated. The Department will allow providers to access any prior Department determination about a prospective employee at such time as the prospective employee presents himself or herself to such provider for employment. In the event that the prospective employee has a permanent record already on file with the Department, this information will be made available promptly to the provider who intends to hire such prospective employee.

The provider will forward with the request for the criminal history review, \$75 to cover the projected fee established by the Division for processing a State criminal history record check, and a \$19.25 fee for a national criminal history record check. The Department estimates that the provider's administrative costs for obtaining the fingerprints will be \$13.00 per print. The total annual cost to providers is estimated to be approximately \$12 million.

Requests by licensed home care services agencies (LHCSAs) are estimated to constitute approximately 50% of the estimated 108,000 requests on an annual basis. The total annual cost to LHCSAs is estimated to be approximately \$6 million. Reimbursement shall be made available to LHCSAs in an equitable and direct manner for the above fees and costs subject to funds being appropriated by the State Legislature in any given fiscal year for this purpose. Costs to State government will be determined by the extent of the appropriations.

The Department estimates that nursing homes, certified home health agencies and long term home health care programs will constitute approximately 50% of the estimated 108,000 requests on an annual basis. The total annual costs to nursing homes, certified home health agencies and long term home health care programs is estimated to be approximately \$6 million. These providers may, subject to federal financial participation, claim the above fees and costs as reimbursable costs under the medical assistance program (Medicaid) and may recover the Medicaid percent of such fees and costs. Reimbursement to such providers will be determined by the percent of Medicaid days of care to total days of care. Therefore, approximately \$6 million of the total costs for these providers will be subject to a 50 percent federal share and approximately \$2.3 million will be borne entirely by the State.

Costs to Local Governments:

There will be no costs to local governments for reimbursement of the costs of the criminal history record check paid by LHCSAs. LHCSAs will receive reimbursement from the State subject to an appropriation (See "Costs to State Government").

Costs to local governments for reimbursement of the costs of the criminal history record check paid by nursing homes, certified home health agencies, and long term home health care programs will be the local government share of Medicaid reimbursement to such providers which is estimated to be annual additional cost to local governments of approximately \$123,727 (See "Costs to State Government").

Costs to Private Regulated Parties:

Costs to LHCSAs will be determined by the extent of annual appropriations by the State Legislature (See "Costs to State Government").

Costs to nursing homes, certified home health agencies and long term home health care programs will be determined by their Medicaid percentage of total costs (See "Costs to State Government").

Costs to the Department of Health:

The start up costs for CHRC in SFY 2006/2007 were 5,972,419 which included \$3,982,103 for the reimbursement of non-medicaid eligible providers such as LHCSAs (Licensed Home Care Services Agencies) and \$1,990,316 in operational costs such as PS (Personnel Services) and OTPS (supplies, equipment and contractual services (temps)). The LHCSAs were fully compensated for their costs. The 1.9 million in operational costs relates to the DOH costs for SFY 2006/2007.

Local Government Mandates:

The required criminal history record check is a statutory requirement, which does not impose any new or additional duties or responsibilities upon county, city, town, village, school or fire districts. The Chapter Laws state that they supercede any local laws or laws of any political subdivision of the state to the extent provided for in such Chapter Laws.

Paperwork:

Chapter 769 of the Laws of 2005 as amended by Chapters 331 and 673 of the Laws of 2006 require that new forms be developed for use in the process of requesting criminal history record information. The forms are, for example, an informed consent form to be completed by the subject party and the request form to be completed by the authorized person designated by the provider. Temporarily approved employees are required to complete an attestation regarding incidents/abuse. Provider supervision of temporary employees must be documented. In addition, other forms will be required by the department such as a form to designate an authorized party or forms to be completed when someone who has had a criminal history record check is no longer subject to the check.

The regulations also contain a requirement to keep a current roster of subject parties.

Duplication:

This regulatory amendment does not duplicate existing State or federal requirements. The Chapter Laws state that they supercede and apply in lieu of any local laws or laws of any political subdivision of the state to the extent provided for in such Chapter Laws.

Alternatives:

No significant alternatives are available. The Department is required by the Chapter Laws to promulgate implementing regulations.

Federal Standards:

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

Small Business Guide:

A small business guide as required by section 102-a of the State Administrative Procedure Act is unnecessary at this time. The Department provided an intensive orientation of program operations to those providers affected by criminal history record program.

Information was provided and continues to be provided to providers about implementation; process and procedures; and compliance with rules and regulations through a message board, staff attendance at trade association meetings, dear administrator letters, a training script or frequently asked questions document, and a dedicated e-mail log.

Compliance Schedule:

The Chapter Laws mandate that the providers request criminal history record checks for certain unlicensed prospective employees on and after September 1, 2006. These regulations are proposed to be effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Effect of Rule on Small Businesses and Local Governments:

For the purpose of this Regulatory Flexibility Analysis, small businesses are considered any nursing home or home care agency within New York State which is independently owned and operated, and employs 100 individuals or less. Approximately 100 nursing homes and 200 home care services agencies would therefore be considered "small businesses," and would be subject to this regulation.

For purposes of this regulatory flexibility analysis, small businesses were considered to be long term home health care programs with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the long term home health care program cost report 77 out of 110 long term home health care programs were identified as employing fewer than 100 employees. Twenty-eight local governments have been identified as operating long term home health care programs.

Compliance Requirements:

Providers must, by statute, on and after September 1, 2006, request criminal history information concerning prospective unlicensed employees who will provide direct care or supervision to patients, residents or clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record check must be obtained through the Department. Providers must inform prospective unlicensed employees of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State and the FBI. Although prospective employees cannot be permanently hired before a determination is received from the Department about whether or not the prospective employee's eligibility for employment must be disapproved, providers can give temporary approval to prospective employees and permit them to work so long as they meet the supervision requirements imposed on providers by the regulations.

Professional Services:

No additional professional services will be required by small businesses or local governments to comply with this rule.

Compliance Costs:

For programs eligible for Medicaid funding, fees and costs will be considered an allowable cost in the Medicaid rates for such providers (See "Regulatory Impact Statement - Costs to State Government").

For LHCSAs which are unable to access reimbursement from state and/or federally funded programs, reimbursement will be provided on a

direct and equitable basis subject to an appropriation by the State Legislature (See "Regulatory Impact Statement - Costs to State Government").

There will be costs to local governments only to the extent such local governments are providers subject to the regulations.

Economic and Technological Feasibility:

The proposed regulations do not impose on regulated parties the use of any technological processes. Fingerprints will be taken generally by the traditional "ink and roll" process. Under the "ink and roll" method, a trained individual rolls a person's fingers in ink and then manually places the fingers on a card to leave an ink print. Two cards would then need to be mailed to the Division by the Department. However, before the Department could submit the card, demographic information would need to be filled in on the card (such as the person's name, address, etc.) into the Department databases. Additional time delays may be encountered if it is determined that the fingerprint has been smudged and must be taken again, or when the handwriting on the fingerprint cards is difficult to read.

The Department hopes to move in the future to Live Scan. Live Scan is a technology that captures fingerprints electronically and would transmit the fingerprints directly to the Department to obtain criminal history information.

Minimizing Adverse Impact:

The Department considered the approaches for minimizing adverse economic impact listed in SAPA Section 202-b(1) and found them inapplicable. The requirements in this proposal are statutorily required. Compliance with them is mandatory.

Small Businesses and Local Government Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing nursing homes and home care providers and comments were solicited from all affected parties. Informational briefings were held with such associations. There will be informational letters to providers prior to the effective date of the regulations.

Rural Area Flexibility Analysis

Effect of Rule:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population of greater than 200,000 includes towns with population densities of 150 persons or less per square mile. The following 42 counties have a population less than 200,000.

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Reporting, Recordkeeping and Other Compliance Requirements:

Providers, including those in rural areas, must, by statute, request criminal history information concerning prospective unlicensed employees who will provide direct care or supervision to patients, residents or clients. One or more persons in their employ must be designated to check criminal history information. The criminal history record check must be obtained through the Department. Providers must inform covered unlicensed prospective employees of their right to request such information and of the procedures available to them to review and correct criminal history information maintained by the State. Although prospective employees cannot be permanently hired before a determination is received from the Department about whether or not eligibility for employment must be disapproved,

providers can give temporary approval to prospective employees and permit them to work so long as they meet the supervision requirements imposed on providers by the regulations.

Professional Services:

No additional professional services will be necessary to comply with the proposed regulations.

Compliance Costs:

For programs located in rural areas eligible for Medicaid funding, fees and costs will be considered an allowable cost in the Medicaid rates for such providers. (See "Regulatory Impact Statement - Costs to State Government").

For LHCSAs located in rural areas which are unable to access reimbursement from state/and/or federally funded programs, reimbursement will be provided on a direct and equitable basis subject to appropriation by the State Legislature. (See "Regulatory Impact Statement - Costs to State Government").

Minimizing Adverse Impact:

The Department considered the approaches for minimizing adverse economic impact listed in SAPA section 202-bb (2) and found them inapplicable. The requirements in this proposal are statutorily required. Compliance with them is mandatory.

Rural Area Participation:

Draft regulations, prior to filing with the Secretary of State, were shared with industry associations representing nursing homes and home care providers and comments solicited from all affected parties. Such associations include members from rural areas. Informational briefings were held with such associations. There will be informational letters to providers to include rural area providers prior to the effective date of the regulations.

Job Impact Statement

A Job Impact statement is not necessary for this filing. Proposed new 10 NYCRR Part 402 does not have any adverse impact on the unlicensed employees hired before September 1, 2006 as they apply only to future prospective unlicensed employees. The number of all future prospective unlicensed employees of providers who provide direct care or supervision to patients, residents or clients will be reduced to the degree that the criminal history record check reveals a criminal record barring such employment.

Since the inception of the program approximately 14% of all unlicensed employees applying for positions with nursing homes or home health care providers were found to have a criminal record barring such employment.

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

Insurance Department

EMERGENCY RULE MAKING

Minimum Standards for the Form, Content and Sale of Medicare Supplement Insurance

I.D. No. INS-47-09-00005-E

Filing No. 1246

Filing Date: 2009-11-09

Effective Date: 2009-11-09

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

Action taken: Amendment of Parts 215 (Regulation 34), 52 (Regulation 62), 360 (Regulation 145) and 361 (Regulation 146); and addition of Part 58 (Regulation 193) to Title 11 NYCRR.

Statutory authority: Federal Social Security Act (42 U.S.C., section 1395ss), Insurance Law, sections 201, 301, 3201, 3216, 3217, 3218, 3221, 3231, 3232 and 4235 and art. 43

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

Specific reasons: The federal Social Security Act (42 U.S.C. § 1395ss) provides for the certification of Medicare supplement health insurance regulatory programs by the U.S. Secretary of Health and Human Services to ensure that state regulatory programs provide for the application and enforcement of standards with respect to Medicare supplement insurance equal to or more stringent than the standards set forth in the National Association of Insurance Commissioners (NAIC) Model Regulation. If the

Secretary of Health and Human Services determines that a state's program regulating Medicare supplement insurance policies does not provide for the application of standards at least as stringent as those contained in the NAIC Model Regulation, the regulation of Medicare supplement insurance reverts to the federal Secretary of Health and Human Services.

New York's standards for Medicare supplement insurance are more stringent than the minimums set forth in the NAIC Model Regulation. Since 1993, New York has offered additional consumer protections including, for example, continuous open enrollment and community rating. New York also requires insurers to offer standardized Medicare supplement insurance Plan B in addition to Plan A, which is required by federal law.

The federal Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), however, included a number of changes to the standardized Medicare supplement insurance plans. The MIPPA charged the NAIC — specifically, the Senior Issues Task Force — with the task of updating the standards for Medicare supplement insurance. On September 24, 2008, the NAIC adopted a revised Model Regulation to implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act.

In addition, the federal Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits insurers from discriminating on the basis of genetic information with respect to the issuance, pricing or medical underwriting of medical policies or certificates. GINA prohibits insurers from requesting that an individual or a family member of an individual undergo a genetic test. For purposes of GINA, a "genetic test" is defined as an analysis of human DNA, RNA, chromosomes, proteins or metabolites that detect genotypes, mutations, or chromosomal changes. "Genetic information" is defined to mean, with respect to any individual, information about such individual's genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual. This rulemaking includes provisions to ensure that New York law complies with GINA. Pursuant to federal law, the prohibitions of GINA will be in effect for policies and certificates issued or renewed with an effective date for coverage on or after May 21, 2009.

The NAIC Model Regulation, revised to include the requirements of MIPPA and GINA, was adopted on September 24, 2008. MIPAA requires that each State shall have one year from the date the NAIC adopts the revised Model Regulation to adopt the provisions of GINA and MIPPA. Consequently, New York must take action by September 24, 2009 to ensure that it can continue to regulate Medicare supplement insurance.

The normal regulatory approval process did not allow for final adoption of these regulations prior to September 24, 2009. For this reason, and for the reasons stated above, the immediate adoption of these regulations was necessary for the preservation of the general welfare. This regulation was previously promulgated on an emergency basis on August 10, 2009. The regulation must be kept in effect on an emergency basis until the regulation is formally adopted.

Subject: Minimum standards for the form, content and sale of Medicare supplement insurance.

Purpose: To conform the regulations with the requirements of federal law.

Substance of emergency rule: The federal Social Security Act (42 U.S.C. § 1395ss) provides for the certification of Medicare supplement health insurance regulatory programs by the U.S. Secretary of Health and Human Services to ensure that a state's regulatory program provides for the application and enforcement of standards with respect to Medicare supplement insurance equal to or more stringent than the standards set forth in the National Association of Insurance Commissioners (NAIC) Model Standards. If the Secretary of Health and Human Services determines that a state's program regulating Medicare supplement insurance policies does not provide for the application of standards at least as stringent as those contained in the NAIC Model Regulation, the regulation of Medicare supplement insurance reverts to the federal Secretary of Health and Human Services.

In 1990, the federal Omnibus Budget Reconciliation Act of 1990 (OBRA) (P.L. 101-508) was enacted; establishing uniform requirements to govern Medicare supplement insurance. That federal law charged the NAIC with developing a model for the regulation and standardization of Medicare supplement insurance. The NAIC model (the "Model Regulation") was incorporated by reference into the federal statutory requirements. In 1992, New York amended provisions pertaining to the rules for the regulation of Medicare supplement insurance in 11 NYCRR 52 (Reg. 62) to ensure compliance with federal standards.

The federal Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (P.L. 110-275), however, included a number of changes to the standardized Medicare supplement insurance plans. The MIPPA charged the NAIC — specifically, the Senior Issues Task Force — with the task of updating the standards for Medicare supplement insurance. On September 24, 2008, the NAIC adopted a revised Model Regulation to

implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act.

In addition, the federal Genetic Information Nondiscrimination Act of 2008 (GINA) (P.L. 110-233) prohibits insurers from discriminating on the basis of genetic information with respect to the issuance, pricing or medical underwriting of medical policies or certificates. GINA prohibits insurers from requesting that an individual or a family member of an individual undergo a genetic test. For purposes of GINA, a "genetic test" is defined as an analysis of human DNA, RNA, chromosomes, proteins or metabolites that detect genotypes, mutations, or chromosomal changes. "Genetic information" is defined to mean, with respect to any individual, information about such individual's genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual.

The Superintendent of Insurance is empowered by the New York Insurance Law to promulgate regulations implementing the standards required by federal law, as well as additional protections and benefits as deemed appropriate.

In addition to requirements established by MIPPA and GINA, for purposes of conciseness and clarity, this rulemaking relocates, without substantive change, existing provisions in New York regulations pertaining to the rules for the regulation of Medicare supplement insurance from 11 NYCRR 52 (Reg. 62), which is a broad regulation addressing all types of accident and health insurance, to new Regulation 193 (11 NYCRR Part 58) addressing only Medicare supplement insurance.

Regulation 193 (11 NYCRR Part 58) consists of six sections addressing the regulation of Medicare supplement insurance.

Section 58.1 is relocated from subdivisions (a)-(c) and (f)-(o) of 11 NYCRR 52.22 (Reg. 62) with the addition of new subdivision (j) included to add the specific protections required by GINA, as specified in the revised NAIC Model Regulation.

Section 58.2 is relocated from subdivisions (d) and (e) of 11 NYCRR 52.22 (Reg. 62) and contains the standards for Medicare supplement insurance and the make-up of benefit plans issued with an effective date for coverage prior to June 1, 2010, which is the date applicable for changes made pursuant to MIPPA.

Section 58.3 is disclosure language relocated from 11 NYCRR 52.54 and 52.63 (Reg. 62) for Medicare supplement insurance plans issued with an effective date for coverage prior to June 1, 2010.

Section 58.4 is a new section conforming with Sections 8.1 and 9.1 of the NAIC Model Regulation to comply with MIPPA. The section describes each benefit of Medicare supplement insurance, and the combinations of the different benefits that comprise each benefit plan (A-D, F, G, K-N) set forth in the NAIC Model Regulation, for benefit plans issued with an effective date for coverage on or after June 1, 2010. The revised Medicare supplement insurance standards, as implemented by the revised NAIC Model Regulation, add a hospice benefit to the core benefit package for all Medicare supplement insurance plans.

Section 58.5 is a new section conforming to Section 17 of the NAIC Model Regulation, and sets forth new disclosure language for the plans issued with an effective date for coverage on or after June 1, 2010.

Section 58.6 is relocated from 11 NYCRR 52.14 (Reg. 62) and contains the standards for Medicare select insurance.

Part 215 (Regulation 34), Part 52 (Regulation 62), Part 360 (Regulation 145), and Part 361 (Regulation 146) of Title 11 NYCRR are amended to conform references to material that was relocated from Part 52 to the new Part 58.

The full text of the regulations may be found at the Department's website (<http://www.ins.state.ny.us/>).

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 6, 2010.

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, NYS Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-5585, email: amais@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the promulgation of 11 NYCRR 58 (Regulation No. 193), the Forty-second Amendment to Part 52 of Title 11 NYCRR (Regulation No. 62), the Third Amendment to Part 215 of Title 11 (Regulation No. 34), the Sixth Amendment to Part 361 of Title 11 (Regulation No. 146), and for the Seventh Amendment to Part 360 of Title 11 (Regulation No. 145) derives from the federal Social Security Act (42 U.S.C. section 1395ss) and Insurance Law Sections 201, 301, 3201, 3216, 3217, 3218, 3221, 3231, 3232, and 4235, and Article 43.

The federal Social Security Act (42 U.S.C. § 1395ss) provides for the certification of Medicare supplement health insurance regulatory programs by the U.S. Secretary of Health and Human Services to ensure that a state's

regulatory program provides for the application and enforcement of standards with respect to Medicare supplement insurance equal to or more stringent than the standards set forth in the National Association of Insurance Commissioners (NAIC) Model Regulation. If the Secretary of Health and Human Services determines that a state's program regulating Medicare supplement insurance policies does not provide for the application of standards at least as stringent as those contained in the NAIC Model Regulation, then the regulation of Medicare supplement insurance reverts to the federal Secretary of Health and Human Services.

Sections 201 and 301 of the Insurance Law authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law, and effectuate any power granted to the Superintendent under the Insurance Law.

Section 3201 authorizes the Superintendent to approve accident and health insurance policies for delivery or issuance for delivery in this state.

Section 3216 sets forth the standard provisions in individual accident and health insurance policies.

Section 3217 authorizes the Superintendent to issue regulations to establish minimum standards for the form, content and sale of health insurance.

Section 3218 authorizes the Superintendent to promulgate rules and regulations to establish minimum standards for the form, content and sale of Medicare supplement insurance.

Section 3221 sets forth the standard provisions in group and blanket accident and health insurance policies.

Section 3231 sets forth the requirement that individual and small group health insurance policies and Medicare supplement insurance policies be issued on a community rated and open enrollment basis.

Section 3232 establishes requirements for pre-existing condition provisions in certain health insurance policies.

Section 4235 establishes the types of permissible groups to which a group accident and health policy may be issued.

Article 43 of the Insurance Law sets forth requirements for non-profit medical and dental indemnity corporations and non-profit health or hospital corporations.

2. Legislative objectives: The statutory sections cited above establish a framework for the form, content and sale of Medicare supplement insurance. States must have a regulatory program that provides a minimum level of coverage as established by 42 U.S.C. § 1395ss. If the U.S. Secretary of Health and Human Services determines that a state's program regulating Medicare supplement insurance policies does not provide for the application of standards at least as stringent as those contained in the NAIC Model Regulation, then the regulation of Medicare supplement insurance reverts to the federal Secretary of Health and Human Services. The Superintendent is empowered by state law to promulgate regulations implementing the standards required by federal law, and to provide additional protections and benefits as appropriate.

3. Needs and benefits: In 1990, the federal Omnibus Budget Reconciliation Act of 1990 (OBRA) was enacted establishing uniform requirements to govern Medicare supplement insurance. That federal law charged the NAIC with developing a model for the regulation and standardization of Medicare supplement insurance. The NAIC model (the "Model Regulation") was incorporated by reference into the federal statutory requirements. In 1992, New York amended the provisions regulating Medicare supplement insurance in 11 NYCRR 52 (Reg. 62) to ensure compliance with the federal standards.

The federal Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) required a number of changes to the standardized Medicare supplement insurance plans. The MIPPA charged the NAIC — specifically, the Senior Issues Task Force — with the task of updating the standards for Medicare supplement insurance. On September 24, 2008, the NAIC adopted a revised Model Regulation to implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act.

In addition, the federal Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits insurers from discriminating on the basis of genetic information with respect to the issuance, pricing or medical underwriting of medical policies or certificates. Insurers are also prohibited from requesting that an individual or a family member of an individual undergo a genetic test. For purposes of GINA, a genetic test is defined as an analysis of human DNA, RNA, chromosomes, proteins or metabolites that detect genotypes, mutations, or chromosomal changes. Genetic information is defined to mean, with respect to any individual, information about such individual's genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual. This rulemaking includes provisions to ensure that New York Law complies with GINA. Pursuant to federal law, the prohibitions of GINA are already in effect for policies and certificates that were issued or renewed with an effective date for coverage on or after May 21, 2009.

Federal law requires that states amend their regulatory programs to

implement all new federal statutory requirements and applicable changes to the NAIC Model standards or lose their ability to regulate Medicare supplement insurance. The changes required by GINA and MIPPA, as set forth in the NAIC Model Regulation, are the only substantive changes being made to New York's Medicare supplement insurance regulatory program. The regulated parties are the insurers participating in the Medicare supplement insurance market and the parties affected are Medicare eligible consumers in New York. If New York fails to adopt the changes required by federal law, New York will be out of compliance and regulation of Medicare supplement insurance will revert to the federal U.S. Secretary of Health and Human Services. The Secretary will apply the standards of the NAIC Model Regulation, which do not include the additional consumer protections of community rating, continuous open enrollment, and mandated additional plan offerings, as are currently required by New York's existing regulatory program.

In addition to effectuating requirements established by MIPPA and GINA, for purposes of conciseness and clarity, this rulemaking relocates, without substantive change, existing provisions in New York regulations pertaining to the rules for the regulation of Medicare supplement insurance from 11 NYCRR 52 (Reg. 62) to new 11 NYCRR Part 58 (Reg. 193). Regulation 62 is a broad regulation addressing all types of accident and health insurance whereas new Regulation 193 addresses only Medicare supplement insurance. The rulemaking also makes conforming amendments to 11 NYCRR 52 (Regulation No. 62), 11 NYCRR 215 (Regulation No. 34), 11 NYCRR 361 (Regulation No. 146), and 11 NYCRR 360 (Regulation No. 145).

4. Costs: Insurers issuing Medicare supplement insurance in New York have been aware of the new requirements since the 2008 federal incorporation of the revised NAIC Model Regulation. The changes required by GINA and MIPPA, as set forth in the NAIC Model Regulation, are the only substantive changes being made to New York's Medicare supplement insurance regulatory program.

The changes to the benefit structure and the addition and elimination of plans will necessitate changes to Medicare supplement insurance policy and certificate forms and disclosure notices issued by insurers to insureds. Such forms will require updating to comply with the regulatory changes. Insurers will be making these same changes in all states in which they write Medicare supplement insurance. The insurers in the Medicare supplement insurance market are staffed with existing salaried personnel tasked with compliance. Based upon insurer information, we estimate that each insurer will expend approximately 20 - 25 work hours updating forms at an estimated cost of approximately \$25 - 50 per hour. Using such estimates, the cost to insurers associated with updating forms will be minimal, ranging from \$500 - 1,250 per insurer. There are currently sixteen Medicare supplement insurance insurers in New York. Therefore, the estimated cost statewide to all insurers will be approximately \$8,000 - 20,000.

GINA prohibits an issuer of a Medicare supplement insurance policy from using genetic information to deny, condition the effectiveness of, or discriminate in the pricing of a Medicare supplement insurance policy. New York already requires continuous open enrollment and community rating for all Medicare supplement insurance. Insurers are currently prohibited from using genetic information to deny, condition the effectiveness of, or discriminate in the pricing of a Medicare supplement insurance policy. Thus, there are no costs associated with compliance with the GINA provisions for Medicare supplement insurers.

Costs to the Insurance Department also should be minimal, as existing personnel are available to review any modified filings necessitated by the regulations. These rules impose no compliance costs on state or local governments or health care providers.

5. Local government mandates: These rules do not impose any program, service, duty or responsibility upon a city, town, village, school district or fire district.

6. Paperwork: The regulations impose no new reporting requirements. Other than the provisions included to comply with the federal requirements under MIPPA and GINA, the new Regulation 193 merely carries over existing regulatory provisions, located in various sections of Regulation 62, to provide a consolidated regulation containing the applicable provisions regulating Medicare supplement insurance. Insurers will need to revise policy form filings to comply with the regulation.

7. Duplication: The regulations will not duplicate any existing state or federal rule for insurers that write accident and health insurance, but rather implement and conform to the federal requirements.

8. Alternatives: In order for the State to regulate Medicare supplement insurance, federal law requires that it adopt, at a minimum, the standards set forth in the NAIC Model Regulation. The NAIC Model Regulation was revised in 2008 to include the requirements of two additional federal Acts, MIPPA and GINA. Failure to adopt the revised NAIC Model Regulation standards would result in the regulation of Medicare supplement insurance in New York State reverting to the federal U.S. Secretary

of Health and Human Services. The federal minimum standards would then be applicable. Such federal standards do not include the additional consumer protections that New York currently has in place. This result is undesirable for consumers and therefore, is not a viable alternative.

The changes required by GINA and MIPPA, as set forth in the NAIC Model Regulation, are the only substantive changes being made to New York's Medicare supplement insurance regulatory program. However, these changes made numerous revisions to the benefit plan offerings and the benefit structure for policies that become effective on or after June 1, 2010. As such, New York's regulation needs to set forth the separate standards that are applicable to policies that are effective both pre- and post-June 1, 2010. Adding sections to Regulation 62 would have created an unwieldy and confusing set of standards for the regulation of Medicare supplement insurance. For ease of reference for insurers and any interested parties who may refer to the Medicare supplement insurance regulation, various applicable sections of current regulation were pulled out and inserted into the new Regulation 193 rather than adding additional sections to an already voluminous regulation. Regulation 62 is relevant to all types of accident and health insurance, not just Medicare supplement insurance. Therefore, drafting a new regulation was considered to be the best alternative for insurers.

9. Federal standards: The existing New York standards exceed the federal minimum standards set forth in the NAIC Model Regulation, in order to offer longstanding additional protections, not imposed by federal law, for residents of the State. The existing provisions of Regulation 62 (11 NYCRR 52) require insurers (1) to utilize community rating, (2) to offer continuous open enrollment to individuals enrolled in Medicare by reason of age or disability, and (3) mandates that insurers selling Medicare supplement insurance must offer benefit plan B. Federal law specifically permits the state to establish more stringent standards for insurers offering Medicare supplement insurance, and since 1993, New York residents have benefited from the security of these extra protections. With this rulemaking, New York is substantially adopting the federal changes required by MIPPA and GINA while maintaining all of the existing protections currently afforded New York residents.

10. Compliance schedule: The provisions of the regulations took effect upon filing with the Department of State on August 10, 2009 and some insurers have already submitted filings to comply with the regulatory changes. Pursuant to federal law, the prohibitions of GINA are already in effect for policies and certificates that were issued or renewed with an effective date for coverage on or after May 21, 2009. MIPPA applies to policies and certificates issued with an effective date of coverage on or after June 1, 2010.

Regulatory Flexibility Analysis

1. Small Businesses:

The Insurance Department believes that these rules will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this belief is that these rules are directed at all insurers that write accident and health insurance and Article 43 corporations, none of which falls within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act. Indeed, the Insurance Department has reviewed filed Reports on Examination and Annual Statements of these entities, and believes that there are none that are both independently owned and that employ fewer than 100 persons. Accordingly, there is no need to prepare any special guidance materials for small businesses with regard to this rule.

2. Local Governments:

The regulations do not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at insurers that write accident and health insurance and Article 43 corporations, none of which are local governments.

Rural Area Flexibility Analysis

The Insurance Department finds that these rules do not impose any significant burden on persons located in rural areas, and the Insurance Department finds that it will not have an adverse impact on rural areas.

The entities covered by these regulations — all insurers that write accident and health insurance and Article 43 corporations — do business in every county in this state, including rural areas as defined under SAPA § 102(10). Insurers issuing Medicare supplement insurance in New York have been aware of the new requirements since the 2008 federal incorporation of the revised NAIC Model Regulation. The changes required by the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) and the Genetic Information Nondiscrimination Act of 2008 (GINA), as set forth in the NAIC Model Regulation, are the only substantive changes being made to New York's Medicare supplement insurance regulatory program.

The changes to the benefit structure, and the addition and elimination of

plans, will necessitate changes to the requirements for Medicare supplement insurance applications and disclosure notices. Any additional cost of compliance with MIPPA for insurers and Article 43 corporations should be minimal. The insurers and Article 43 corporations in the Medicare supplement insurance market are staffed with existing salaried personnel tasked with compliance.

GINA prohibits an issuer of a Medicare supplement insurance policy from using genetic information to deny, condition the effectiveness of, or discriminate in the pricing of a Medicare supplement insurance policy. New York already requires continuous open enrollment and community rating for all Medicare supplement insurance. Insurers are currently prohibited from using genetic information to deny, condition the effectiveness of, or discriminate in the pricing of a Medicare supplement insurance policy. Thus, there should be no cost associated with compliance with the GINA provisions.

Job Impact Statement

Adoption of the five consolidated regulations should not adversely impact job or employment opportunities in New York. The consolidated regulations will involve revision of some mandatory practices that insurers must follow in issuing Medicare supplement insurance policies to bring company practices into conformance with the revised NAIC Model Regulation for Medicare supplement insurance, as required by 42 U.S.C. § 1395ss. Such revisions to company practices will not have any negative affect on jobs or employment opportunities.

There is no evidence that these rules would have any adverse impact on self-employment opportunities.

The Insurance Department has no reason to believe that the rules will result in any adverse impacts.

EMERGENCY RULE MAKING

Financial Statement Filings and Accounting Practices and Procedures

I.D. No. INS-47-09-00006-E

Filing No. 1247

Filing Date: 2009-11-10

Effective Date: 2009-11-10

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

Action taken: Amendment of Part 83 (Regulation 172) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law, sections 4403, 4403-a, 4403-c and 4408-a; and L. 2002, ch. 599; and L.2008, ch. 311

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

Specific reasons underlying the finding of necessity: Certain provisions of the Insurance Law require that insurers file financial statements annually and quarterly with the superintendent. These insurers are subject to the provisions of Sections 307 and 308 of the Insurance Law and are required to file what are known as annual and quarterly statement blanks on forms prescribed by the superintendent. The superintendent has prescribed forms and annual and quarterly statement instructions that are adopted from time to time by the National Association of Insurance Commissioners ("NAIC"), as supplemented by additional New York forms and instructions. To assist in the completion of the financial statements, the NAIC also adopts and publishes from time to time certain policy procedure and instruction manuals. The latest edition of one of the manuals, the "Accounting Practices and Procedures Manual as of March 2009" ("Accounting Manual") includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles ("SSAPs"). This regulation incorporates by reference the Accounting Manual adopted by the NAIC in March, 2009.

The Accounting Manual represents a codification of statutory accounting principles. The purpose of the codification of statutory accounting principles is to produce a comprehensive guide for regulators, insurers and auditors. The preamble to the Accounting Manual states that "this Manual is not intended to preempt states' legislative and regulatory authority. It is intended to establish a comprehensive basis of accounting recognized and adhered to if not in conflict with state statutes and/or regulations." Section 83.4 of the proposed regulation sets out the "Conflicts and Exceptions" to the Accounting Manual, and makes clear that in instances of conflict or deviation, New York statutes and regulations control.

Chapter 311 of the Laws of 2008, effective July 21, 2008, amended the Insurance Law relating to the treatment of certain assets in the filing of quarterly and annual financial statements by certain regulated insurers. Insurance Law Section 1302 provides a listing of non-admitted assets. Chapter 311 removed "goodwill" from non-admitted assets listed in the statute. Insurance Law Section 1301 provides a listing of admitted assets. Chapter 311 established a new Insurance Law Section 1301(a)(14) that allows an insurer to take positive goodwill up to 10% of the insurer's capital and surplus (adjusted for certain items) as an admitted asset. Chapter 311 also modified certain limitations on the ability of regulated insurers to take credit for electronic data processing (EDP) equipment as an admitted asset. Chapter 311 made the changes regarding the treatment of goodwill and EDP equipment subject to such limitations and conditions as may be established in regulations promulgated by the superintendent.

Under the proposed rule, accident and health insurance companies, Article 43 corporations, Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV Special Needs Plans (collectively, "health insurers") will not be permitted to take credit for goodwill as an admitted asset in financial statements, because goodwill is not a tangible asset available for paying claims on an ongoing basis. As compared to other regulated insurers, health insurers must pay claims on a constant and ongoing basis, which requires a higher degree of asset liquidity for the payment of claims. In addition, because there is no guarantee fund for health insurers, liquidity of assets for health insurers is more important than for other regulated insurers.

The proposed rule allows health insurers to amortize EDP equipment over a ten-year period, rather than the three-year period required of other regulated insurers, because many health companies are relatively small, certified to operate only in New York State, or in a limited number of counties in New York. The Department is concerned that such companies might find a three-year requirement to be financially burdensome.

Absent the amendment being effective immediately, health insurers would be allowed to treat goodwill and EDP equipment, for financial statement purposes, as other regulated insurers do. In other words, the Department is concerned that absent an amendment, the financial statements that health insurers must file with the Department on an annual and quarterly basis may not reflect with sufficient accuracy the true financial condition of such companies.

For the reasons stated above, this rule must be promulgated on an emergency basis for the furtherance of the general welfare.

Subject: Financial statement filings and accounting practices and procedures.

Purpose: To update the regulation to conform to NAIC guidelines, statutory amendments, and to clarify existing provisions.

Substance of emergency rule: Subdivision (c) of Section 83.2 of Part 83 is amended to update the publication dates for the *Accounting Practices and Procedures Manual* ("Accounting Manual"), which is incorporated by reference in Regulation 172. The Accounting Manual includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles ("SSAPs").

Subdivision (c) of Section 83.3 is repealed and a new subdivision (c) is adopted to clarify the fact that the Accounting Manual is adopted in its entirety, subject to such conflicts and exceptions as found in Section 83.4 of this part.

Section 83.4 is amended to conform to updates to the Accounting Manual and the provisions of Chapter 311 of the Laws of 2008. Section 83.4 sets out "Conflicts and Exceptions" to the Accounting Manual, and makes clear that in instances of conflict or deviation, New York statutes and regulations control. Section 83.4 is amended as follows:

Subdivision (b) is amended so that the admitted value of gross deferred tax assets is in accordance with SSAP No. 10.

Subdivision (c) is repealed and a new subdivision (c) is added to require insurers other than accident and health insurance companies, Article 43 corporations, Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV special needs plans to depreciate electronic data processing equipment and operating system software over three years.

Paragraph (3) of subdivision (e), which permitted insurers to take credit for aircraft as admitted assets, has been deleted.

Subdivision (h) is amended so that insurers may no longer take credit for certain prepaid real estate taxes as admitted assets.

Subdivision (i), which set forth rules different from the rules set forth in the Accounting Manual for valuing investments in common shares of insurers which are not subsidiaries, has been deleted.

Subdivision (j), which set forth rules different from the rules set forth in the Accounting Manual for the calculation of investment income due and accrued has been deleted.

Subdivision (k) is relettered (i).

Subdivision (l), which set forth rules different from the rules set forth in the Accounting Manual for limitations on accrued mortgage loan interest, has been deleted.

Paragraph (1) of subdivision (m), which set forth rules different from the rules set forth in the Accounting Manual, for depreciation of life insurers' investments in real estate, has been deleted.

Paragraph (2) of subdivision (m) has been relettered 83.4(j).

Paragraphs (1) and (3) of subdivision (n) have been renumbered paragraphs (1) and (2) of subdivision (k) respectively.

Paragraph (2) of subdivision (n), which set forth rules different from the rules set forth in the Accounting Manual for valuing investments in common shares of insurers which are subsidiaries, has been deleted.

Subdivision (o) is relettered (l).

Subdivision (p), which required all goodwill from assumption reinsurance transactions pertaining to life, deposit-type and accident and health reinsurance to be non-admitted, has been deleted.

Subdivision (q) is relettered (m).

Subdivision (r) is relettered (n).

Subdivision (s) is relettered (o).

Subdivision (t) has been relettered (p), and has been amended to permit insurers, other than accident and health insurance companies, Article 43 corporations, Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV special needs plans, to admit goodwill in accordance with the Accounting Manual.

Subdivision (u), which set forth rules for declaring and distributing dividends, in the case of the quasi-reorganization of a domestic stock property/casualty insurer, has been deleted.

Subdivision (v) is relettered (q).

Subdivision (w) is relettered (r).

Subdivision (x) is relettered (s).

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 7, 2010.

Text of rule and any required statements and analyses may be obtained from: Andrew Mais, NYS Insurance Department, 25 Beaver Street, New York, NY 10004, (212) 480-2285, email: amais@ins.state.ny.us

Regulatory Impact Statement

1. Statutory authority: Insurance Law Sections 107(a)(2), 201, 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404 of the Insurance Law; Sections 4403, 4403-a, 4403-c(12) and 4408-a of the Public Health Law; and Chapter 599 of the Laws of 2002 and Chapter 311 of the Laws of 2008.

Insurance Law Section 107(a)(2) defines the term "accredited reinsurer", which is used in sections 83.2, 83.3, and 83.5 of Part 83, to mean an assuming insurer not authorized to do an insurance business in this state but which (i) presents satisfactory evidence to the superintendent that it meets the applicable standards of solvency required in this state, (ii) is in compliance with the conditions prescribed by regulation under which a ceding insurer may be allowed credit for reinsurance recoverable from an insurer not authorized in this state, and (iii) has received a certificate of recognition as an accredited reinsurer issued by the superintendent pursuant to such regulation; provided that no insurer shall be an accredited reinsurer with respect to any kind of insurance not provided for in such certificate.

Insurance Law Sections 201 and 301 authorize the superintendent to prescribe forms and regulations interpreting the Insurance Law, and to effectuate any power granted to the superintendent under the Insurance Law.

Insurance Law Sections 307 and 308 require insurers to file annual and quarterly statements on forms prescribed by the superintendent and in accordance with instructions prescribed by the superintendent. Section 307(a)(1) of the Insurance Law requires every insurer authorized in New York to file an annual statement showing its financial condition in such form as prescribed by the superintendent. Section 307(a)(2) permits the use of the annual statement form adopted from time to time by the National Association of Insurance Commissioners (NAIC).

Insurance Law Section 1109(a) provides that an organization complying with the provisions of Article 44 of the Public Health Law is subject to various specified sections of the Insurance Law, including section 308. Section 1109(e) provides that the superintendent may promulgate regulations in effectuating the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law.

Insurance Law Article 13 specifies the requirements regarding the treatment of assets and deposits in determining the financial condition of insurers for the purposes of the Insurance Law.

Insurance Law Sections 1301 and 1302 define which assets are "admitted" or "not admitted" (only "admitted" assets are included in determining an insurer's solvency).

Insurance Law Section 1308 (in conjunction with Insurance Law Section 1301(a)(14)) allows for an authorized insurer to reduce the amount that it must hold in its reserves through the use of reinsurance with another authorized insurer or an accredited reinsurer.

Insurance Law Article 14 establishes the investments that may be used by insurers to satisfy minimum capital, surplus and reserve requirements. It further governs those classes of investments in which insurance companies may invest after satisfying minimum capital, surplus and reserve requirements, and establishes allocation or diversification limits among assets classes. Article 14 also sets forth provisions concerning the valuation of various assets of insurers.

Insurance Law Section 1404 establishes the types of reserve investments that may be used by non-life insurers to satisfy reserve requirements.

Insurance Law Section 1405 establishes the types of surplus investments that may be used by life insurers, after minimum capital and reserve requirements have been satisfied.

Insurance Law Section 1407 establishes the types of surplus investments that may be used by property/casualty and certain other insurers, after minimum capital and reserve requirements have been satisfied.

Insurance Law Section 1411 establishes the types of investments that domestic insurers are prohibited from making.

Insurance Law Section 1415 sets forth provisions concerning the valuation of various assets of insurers.

Insurance Law Article 15 contains provisions that govern the establishment and operation of holding company systems, including controlled insurers. Insurance Law Section 1501 provides for an administrative determination of the existence or absence of control to determine whether the insurer is a member of a holding company system. Insurance Law Section 1505 establishes standards for transactions between a controlled insurer and other members of the holding company system to safeguard the interests of the insurer and policyholders.

Insurance Law Section 3233 sets forth provisions concerning stabilization of health insurance markets and premium rates.

Insurance Law Section 4117 sets forth provisions concerning loss reserves and loss expense reserves of property/casualty insurance companies.

Insurance Law Section 4233 sets forth provisions concerning the annual statements of life insurance companies, including a provision that in addition to any other matter that may be required to be stated therein, either by law or by the superintendent pursuant to law, every annual statement of every life insurer doing business in New York shall conform substantially to the form of statement adopted from time to time for such purpose by, or by the authority of, the NAIC, together with such additions, omissions or modifications, similarly adopted from time to time, as may be approved by the superintendent.

Insurance Law Section 4239 sets forth provisions concerning allocation and reporting of income and expenses of life insurers.

Insurance Law Article 43 establishes organizational requirements, investment and reserve requirements for non-profit medical and dental indemnity, or health and hospital service corporations organized in this state. The article also establishes "stop loss" funds, from which health maintenance organizations, corporations or insurers may receive reimbursement for claims paid by such entities for members covered under certain contracts.

Insurance Law Section 4301 establishes requirements applicable to the formation and operation of the corporate entity, including composition and term limits of the corporation's board of directors.

Insurance Law Section 4310 sets forth requirements applicable to investments, reserves and the financial condition of not-for-profit health insurers and health maintenance organizations (HMOs).

Insurance Law Sections 4321-a, 4322-a, and 4327 establish state-funded stop loss pools to subsidize claim payments made by HMOs pursuant to policies issued in the individual market and the Healthy NY market.

Insurance Law Section 6404 sets forth provisions concerning the investments that may be used by title insurance corporations. It also sets forth provisions concerning the valuation of various assets of title insurers.

Insurance Law Sections 1109(e) and 4301(e)(5), respectively, provide that the superintendent may promulgate regulations to effectuate the purposes and provisions of the Insurance Law and Article 44 of the Public Health Law pertaining to health maintenance organizations. Public Health Law Article 44 authorizes the superintendent to establish standards governing the fiscal solvency of integrated delivery systems, and requires the filing of financial reports by prepaid health service plans and comprehensive HIV special needs plans.

Pursuant to the above provisions, the superintendent is authorized to implement the NAIC's *Accounting Practices and Procedures Manual* ("Accounting Manual"), subject to any provisions in New York law that conflict with particular points in the Accounting Manual. The Accounting Manual includes a body of accounting guidelines referred to as Statements of Statutory Accounting Principles ("SSAPs"). The Accounting Manual represents a codification of Statutory Accounting Principles.

Chapter 599 of the Laws of 2002 amended the Insurance Law relating to the treatment of deferred tax assets in the filing of quarterly and annual financial statements by certain insurers.

Chapter 311 of the Laws of 2008, effective July 21, 2008, amended the Insurance Law relating to the treatment of certain assets in the filing of quarterly and annual financial statements by certain insurers. Insurance Law Section 1302 provides a listing of non-admitted assets. Chapter 311 removed "goodwill" from non-admitted assets listed in the statute. Insurance Law Section 1301 provides a listing of admitted assets. Chapter 311 established a new Insurance Law Section 1301(a)(14) that allows an insurer to take positive goodwill up to 10% of the insurer's capital and surplus (adjusted for certain items) as an admitted asset, subject to such limitations and conditions as may be established in regulations promulgated by the superintendent.

Chapter 311 also modified the limitations on the ability of insurers to take credit for electronic data processing (EDP) equipment as an admitted asset.

2. **Legislative objectives:** Certain provisions of the Insurance Law provide that authorized insurers, accredited reinsurers, authorized fraternal benefit societies, and Public Health Law Article 44 health maintenance organizations and integrated delivery systems shall file financial statements annually and quarterly with the superintendent. These entities are subject to the provisions of Sections 307 and 308 of the Insurance Law, which require the filing of what are known as Annual and Quarterly Statement Blanks on forms prescribed by the superintendent. Except with regard to filings made by Underwriters at Lloyd's, London, the superintendent has prescribed forms and Annual and Quarterly Statement Instructions that have been adopted from time to time by the NAIC, as supplemented by additional New York forms and instructions. To assist in the completion of the financial statements, the NAIC also adopts and publishes from time to time certain policy, procedure and instruction manuals. One of these manuals, the Accounting Manual, sets forth Statements of Statutory Accounting Principles. The Accounting Manual is incorporated by reference into this regulation.

The preamble to the Accounting Manual states that "this Manual is not intended to preempt states' legislative and regulatory authority. It is intended to establish a comprehensive basis of accounting recognized and adhered to if not in conflict with state statutes and/or regulations." Section 83.4 of the proposed regulation sets out the "Conflicts and Exceptions" to the Accounting Manual, and makes clear that in instances of conflict or deviation, New York statutes and regulations control.

3. **Needs and benefits:** Section 83.3 of the regulation provides that the financial statements of all authorized insurers, accredited reinsurers (except Underwriters at Lloyd's, London), authorized fraternal benefit societies, and Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV special needs plans (collectively, to as "regulated insurers") shall be completed in accordance with statutory accounting practices and procedures as prescribed by applicable provisions of the Insurance Law and regulations.

The purpose of this Part is to enhance the consistency of the accounting treatment of assets, liabilities, reserves, income and expenses by regulated insurers, by clearly setting forth the accounting practices and procedures to be followed in completing annual and quarterly financial statements that must be filed with the Department.

The NAIC has most recently adopted a new Accounting Manual as of March 2009. The Accounting Manual represents a codification of statutory accounting principles, presented in the form of the SSAPs. The purpose of the codification of statutory accounting principles is to produce a comprehensive guide for regulators, insurers and auditors. Codification provides examiners and analysts with uniform accounting rules against which insurers' financial statements can be evaluated.

Chapter 311 of the Laws of 2008, effective July 21, 2008, amended the Insurance Law relating to the treatment of certain assets in the filing of quarterly and annual financial statements by certain regulated insurers. Section 1302 provides a listing of non-admitted assets. Chapter 311 removed "goodwill" from non-admitted assets listed in the statute. Insurance Law Section 1301 provides a listing of admitted assets. Chapter 311 established a new Insurance Law Section 1301(a)(14) that allows an insurer to take positive goodwill up to 10% of the insurer's capital and surplus (adjusted for certain items) as an admitted asset, subject to such limitations and conditions as may be established in regulations promulgated by the superintendent.

Under the proposed rule, accident and health insurance companies, Article 43 corporations, Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV Special Needs Plans (collectively, "health insurers") will not be permitted to take credit for goodwill as an admitted asset in financial statements, because goodwill is not a tangible asset available for paying claims on an ongoing basis. As compared to other regulated

insurers, health insurers must pay claims on a constant and ongoing basis, which requires a higher degree of asset liquidity for the payment of claims. In addition, because there is no guarantee fund for health insurers, liquidity of assets for health insurers is more important than for other regulated insurers.

Chapter 311 also modified the limitations on the ability of regulated insurers to take credit for electronic data processing (EDP) equipment as an admitted asset. The proposed rule allows health insurers to amortize EDP equipment over a ten-year period, rather than the three-year period required of other regulated insurers, because many health companies are relatively small, certified to operate only in New York State, or in a limited number of counties in New York. The Department is concerned that such companies might find a three-year requirement to be financially burdensome.

4. **Costs:** Direct cost to regulated entities as a result of implementing Part 83 is the acquisition of the Accounting Manual from the NAIC. The Accounting Manual costs \$465 for a hard copy, or \$395 for a CD-ROM, plus shipping charges. Each insurer will need to determine how many copies (either print or CD-ROM) it needs to obtain to fulfill its statutory accounting functions. In any event, the Department believes that most regulated insurers will purchase the Accounting Manual to comply with other states' requirements as much as New York's.

The changes to Regulation 172, most of which amend the regulation to conform with changes that have already been made to the Insurance Law, will result in changes to insurance companies' net worth. The changes will have different effects on various insurance companies. The changes are not intended to increase or decrease insurers' overall net worth; rather, the changes are intended to bring New York statutory accounting rules into closer conformance with the rules set forth in the NAIC's Accounting Practices and Procedures Manual and adopted in other states.

There is no cost to the Insurance Department for the Accounting Manual, since the Department may obtain it free of charge from the NAIC.

5. **Paperwork:** To the extent that this rule makes changes in accounting principles, regulated insurers will need to familiarize themselves with this regulation. To the extent that the rule conforms New York's requirements to those of other states, the need for separate New York filings will be reduced. Once insurers are familiar with the changes, there should be no increase in required paperwork or a net decrease because of the reduced necessity for separate New York filings in other states.

6. **Local government mandates:** This rule does not impose any obligations on local governments.

7. **Duplication:** This rule will not duplicate any existing state or federal rule.

8. **Viable alternatives:** Chapter 311 amended the Insurance Law relating to the treatment of certain assets in the filing of quarterly and annual financial statements by certain regulated insurers, subject to such limitations and conditions as may be established in regulations promulgated by the superintendent. Under the proposed rule, accident and health insurance companies, Article 43 corporations, Public Health Law Article 44 health maintenance organizations, integrated delivery systems, prepaid health services plans and comprehensive HIV Special Needs Plans (collectively, "health insurers") will not be permitted to take credit for goodwill as an admitted asset in financial statements, because goodwill is not a tangible asset available for paying claims on an ongoing basis.

The superintendent determined that, as compared to other regulated insurers, health insurers must pay claims on a constant and ongoing basis, which requires a higher degree of asset liquidity for the payment of claims. In addition, because there is no guarantee fund for health insurers, liquidity of assets for health insurers is more important than for other regulated insurers.

The Department also contacted four law firms who have health insurer clients. All four acknowledged receipt of the Department's request and none of the four raised any objections.

9. **Federal standards:** There are no minimum standards of the federal government in the same or similar areas.

10. **Compliance schedule:** Regulated insurers already should be aware of the need to comply with the provisions of the Accounting Manual, since the NAIC issued the most recent version of the accounting Manual in March, 2009. Regulated insurers use the Accounting Manuals in preparing their Quarterly Statements and the Annual Statements.

Regulatory Flexibility Analysis

The Insurance Department finds that this rule will have no adverse economic impact on local governments, and will not impose reporting, recordkeeping or other compliance requirements on local governments. The basis of this finding is that this rule is directed at regulated insurers, as defined under section 83.3 of this regulation, none of which are local governments.

The Insurance Department is not aware of any adverse impact that this rule will have on small businesses or of any reporting, recordkeeping or other compliance requirements that it will impose on small businesses.

This rule is directed at regulated insurers, most of which do not come within the definition of "small business" found in Section 102(8) of the State Administrative Procedure Act, because none is independently owned and operated, and employs less than one hundred individuals.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: This rule applies to regulated insurers doing business or resident in every county in the state, including those that are, or contain, rural areas, as defined under Section 102(13) of the State Administrative Procedure Act. Some of the home offices of these insurers are located within rural areas.

2. Reporting, recordkeeping and other compliance requirements, and professional services: This amendment does not impose new reporting or recordkeeping requirements. To the extent that the rule conforms New York filings to other states' requirements, the need for separate New York filings will be reduced. To the extent that the rule renders changes in accounting principles, insurers will need to familiarize themselves with the principles themselves.

3. Costs: Direct cost to regulated entities as a result of implementing Part 83 is the acquisition of the Accounting Manual from the NAIC. The Accounting Manual costs \$465 for a hard copy, or \$395 for a CD-ROM, plus shipping charges. Each insurer will need to determine how many copies (either print or CD-ROM) it needs to obtain to fulfill its statutory accounting functions. In any event, the Department believes that most regulated insurers will purchase the Accounting Manual to comply with other states' requirements as much as New York's.

The changes to Regulation 172, most of which amend the regulation to conform with changes that have already been made to the Insurance Law, will result in changes to insurance companies' net worth. The changes will have different effects on various insurance companies. The changes are not intended to increase or decrease insurers' overall net worth; rather, the changes are intended to bring New York statutory accounting rules into closer conformance with the rules set forth in the NAIC's Accounting Practices and Procedures Manual and adopted in other states.

The Accounting Manual specifies substantive changes to eight of the ninety-six "Statements of Statutory Accounting Principles" contained therein. Affected parties will have the opportunity to assess the changes and provide comments to the Department.

4. Minimizing adverse impact: This rule applies to regulated insurers that do business in New York State. It does not impose any unique adverse impact on rural areas. The impact(s) are discussed in items 2 and 3 above.

5. Rural area participation: The Department contacted four law firms who have health insurer clients. All four acknowledged receipt of the Department's request and none of the four raised any objections. All affected parties, including those doing business in rural areas of the State, will have the opportunity to comment upon and discuss the rule after the proposal is published in the State Register.

Job Impact Statement

The Insurance Department has no reason to believe that this rule will have any impact on jobs and employment opportunities. The rule codifies numerous accounting practices and procedures that had not previously been organized in such a unified and coherent manner.

The Department has no reason to believe that this rule will have any adverse impact on jobs or employment opportunities, including self-employment opportunities.

(b) As alternatives to the foregoing, the institution requesting designation by the trustees of an account as eligible to accept the deposit of IOLA funds may offer:

(1) *The greater of 60% of the Federal Funds Target Rate or 1%*, paid on an interest-bearing checking account; or

(2) A yield specified by the IOLA fund, if it so chooses, which is agreed to by the financial institution and would be in effect for a period to be mutually agreed upon.

Text of proposed rule and any required statements and analyses may be obtained from: Stephen G. Brooks, Esq., General Counsel, Interest on Lawyer Account Fund, 11 East 44th Street, New York, NY 10017, (646) 865-1541, email: sgbrooks@iola.org

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

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

Regulatory Impact Statement

1. Statutory Authority:

The Interest on Lawyer Account's Board of Trustees (Board) is authorized to adopt rules for the administration of the Interest on Lawyer Account Fund (Fund) pursuant to State Finance Law (SFL) § 97-v and Judiciary Law (Jud. L) § 497. SFL 97-v(3)(d) authorizes the Board to adopt rules for the "administration of the IOLA Fund to carry out the purposes and provisions of this section and of section four hundred ninety-seven of the judiciary law." Jud. L § 497(6)(b) requires attorneys to deposit certain client funds into an IOLA account for which the banking institution pays an interest rate not less than the rate paid on "similar accounts" and which does not impose charges or fees greater than those imposed on such "similar accounts."

Rule 1.15 of the Rules of Professional Conduct provides that "A lawyer in possession of any funds or other property belonging to another person, where such possession is incident to his or her practice of law, is a fiduciary, and must not misappropriate such funds or property or commingle such funds or property with his or her own." The rule further provides guidance for the maintenance of client funds in an account separate from the lawyer's business or personal accounts, as well as the requisite record keeping for such accounts. Jud. L § 497(2-a) similarly provides that funds received by an attorney from a client in the course of his or her practice of law are "funds received in a fiduciary capacity." Jud. L § 497(2) provides that certain funds received in a fiduciary capacity may, in the judgment of the lawyer, be deemed "qualified funds" to be deposited in an IOLA account.

In addition, Rule 6.1 of the Rules of Professional Conduct embodies the long-standing philosophy that lawyers should help to ensure that every person in our society has ready access to independent legal services by encouraging lawyers to provide pro bono legal services to poor persons and contribute financially to organizations that provide legal services to poor persons. The Fund's revenue, derived solely from lawyers' IOLA accounts, also furthers this philosophy by providing financial support in the form of grants to legal services organizations throughout the State, including those that facilitate the delivery of pro bono legal services.

2. Legislative Objectives:

Created in 1983, the IOLA program requires an attorney to open an IOLA bank account to deposit nominal or short term funds held by the attorney on behalf of a client or third party. This means that funds that would otherwise generate no net interest can be pooled to generate interest income. The bank then sends the interest earned, net of charges and fees, to the IOLA Fund.

The money is used to provide funding through grants and contracts to not-for-profit entities that are engaged or assist in the delivery of civil legal services to the poor, and the improvement of the administration of justice.

3. Needs and Benefits:

The proposed rule furthers the legislative objectives of the Fund by establishing a floor under an interest rate option that enables banks to adjust their IOLA interest rate whenever the Federal Reserve changes its "Federal Funds Target Rate." Thus, the bank need not change its IOLA rate each time it adjusts the rate on similar non-IOLA accounts.

Interest on Lawyer Account Fund

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

An IOLA Account Interest Rate Option

I.D. No. IOL-47-09-00011-P

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

Proposed Action: Amendment of section 7000.9(b)(1) of Title 21 NYCRR.

Statutory authority: State Finance Law, section 97-v(3)(d)

Subject: An IOLA account interest rate option.

Purpose: Revise an IOLA account interest rate option to ensure that the account yields highest income to the IOLA Fund.

Text of proposed rule: Section 7000.9 Interest and dividends.

* * *

This option provides administrative convenience to banks while virtually ensuring that, under current economic conditions, use of the Target Rate option would not result in an interest rate lower than that which the bank set for similar accounts. Use of the option is subject to approval by the Fund.

The proposed rule may result in additional interest payments to the Fund, partially addressing the sharp reduction of interest rates during late 2008 and continuing into 2009. The banks that hold the largest amount of IOLA deposits currently pay a weighted average interest rate of .26%. Should a sufficient number of banks choose to set their interest rates pursuant to the proposed rule, the Fund's income could increase significantly. Estimating the amount of any increase is inherently speculative and cannot be performed reliably.

4. Costs:

Account management, recordkeeping and reporting costs have not been assessed by banks to the Fund in the past, except for routine fees and charges typically applied to retail accounts. The higher interest rate resulting from the proposed rule will have no impact on banks, unless they opt to set rates under it. The rule will have no impact on the Fund's costs.

5. Local Government Mandates:

Local governments are not affected by the proposed rule.

6. Paperwork/Reporting Requirements:

No additional paperwork will be required of attorneys to open or maintain IOLA accounts. Under existing rules, attorneys and law firms must notify the IOLA Fund within 30 days after establishing an IOLA account and provide certain identifying information. These requirements will continue.

All participating financial institutions (199 currently) will continue to report, in the form and manner prescribed by the Fund. The Fund is in the process of eliminating the use of paper for reports filed by banks and substituting electronic reporting. The change should be complete by late summer 2009.

7. Duplication:

The proposed rule does not duplicate existing State or Federal requirements. It is comparable to rules recently adopted in other states.

8. Alternatives:

An alternative would be to make no changes to the existing rule. However, this alternative was rejected, because the goals of the proposed amendment are (1) to enable the Fund to enforce its existing statute and receive increased revenue from IOLA accounts to increase the availability of high quality civil legal services for the poor and (2) continue to offer to banks an interest rate option that is administratively convenient. Maintaining the status quo would not serve those goals.

To perform outreach before the proposed regulatory amendment is published in the State Register, the Fund wrote to a trade association and institutions holding 70% of the monies in all IOLA accounts, informing them of the Fund's intention. A few letters resulted in follow-up conversations. In no conversation did an institution's representative express opposition to the proposal. No written opposition was received.

9. Federal Standards:

The proposed rule does not exceed any minimum standards of the Federal government. The Federal government does not regulate IOLA accounts, as such.

10. Compliance Schedule:

Attorneys and law firms are currently required by existing regulation to maintain IOLA accounts for client funds. There are no changes to the requirement to maintain IOLA accounts, or to prepare certain paperwork or maintain certain records. Attorneys are not involved in setting bank interest rates. Therefore, attorneys and law firms will not be required to take any steps in regard to the proposed rule upon its adoption.

Financial institutions must provide to the IOLA Fund information that demonstrates compliance with regulatory requirements on a continuing basis. The proposed rule will not affect such reporting.

Regulatory Flexibility Analysis

1. Effect of Rule:

The rule will affect all banks in that it would change an interest rate

option available to them, subject to the IOLA Fund's approval. The banks include those that could be considered small banking institutions because they have assets of less than \$1 billion. As of March 31, 2009 there were 154 such institutions in the State.

Under existing regulations, these entities account for and remit to the IOLA Fund at least quarterly the interest earned on IOLA accounts. The proposed rule has no effect on that requirement.

Attorneys and law firms will not be affected by the rule, including those with fewer than 100 full time employees.

2. Compliance Requirements:

The proposed rule modifies an interest rate setting rule that is optional for banking institutions. If chosen, it has no effect on existing reporting and remitting compliance requirements. As indicated, banking institutions would continue to account for and remit to the IOLA Fund at least quarterly the interest earned on IOLA accounts maintained by such bank branch.

Existing regulations require attorneys to notify the IOLA fund within 30 days of establishing an IOLA account of the account number and name and address of the banking institution where the account has been established. If an attorney or law firm currently maintains an IOLA account at a banking institution that for whatever reason no longer offered IOLA accounts or an attorney or law firm established a new IOLA account, such information would have to be provided to the IOLA Fund within 30 days of relocating or establishing the IOLA account. The proposed rule has no effect on these requirements. The number of law firms with fewer than 100 FTEs is unknown.

3. Professional Requirements:

The regulations would not require the hiring of additional staff or independent professionals. No special expertise would be necessary for an attorney or law firm to provide the notification of the establishment of an IOLA account. Banking institutions already must account for the interest to be collected and paid on IOLA. Therefore, it is anticipated that no additional employees or professionals would need to be hired to comply with the proposed rule.

4. Compliance Costs:

No significant compliance costs would result from the proposed rule.

5. Economic and Technological Feasibility:

The proposed rule will not impose additional economic or technological burdens on banking institutions, attorneys or law firms.

6. Minimizing Adverse Impact:

There are no significant adverse impacts anticipated from the proposed rule.

7. Small Business and Local Government Participation:

Small businesses and local government would not be affected by the proposed rule.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

There are 70 banking institutions that collectively have 981 branches located in 44 rural counties of the State. The number of law firms located in rural areas cannot with any reasonable certainty be determined.

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

All banking institutions, including those banks with branches located in rural areas, account for and remit to the IOLA fund at least quarterly the interest earned on IOLA accounts maintained by such banks. Attorneys must notify the IOLA fund within 30 days of establishing an IOLA account of the account number and name and address of the banking institution where the account has been established. The proposed regulation makes no change to these requirements.

3. Costs:

No significant compliance costs would result from the proposed rule.

4. Minimizing adverse impact:

There are no adverse impacts anticipated from the proposed rule.

5. Rural area participation:

There are no unique rural effects of the proposed rule and no significant impacts anticipated.

Job Impact Statement

The proposed rule will not have a substantial adverse impact on jobs and employment opportunities. The proposed rule would revise a standard concerning the interest rates paid on IOLA Accounts. This change would have no impact on the creation or retention of jobs or employment opportunities in the State.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY RULE MAKING

Amendment of Liability for Services Regulations

I.D. No. MRD-47-09-00010-E

Filing No. 1251

Filing Date: 2009-11-10

Effective Date: 2009-11-10

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

Action taken: Amendment of Subpart 635-12 and section 671.7(h) of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07 and 13.09(b)

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

Specific reasons underlying the finding of necessity: The reason justifying the emergency adoption of these amendments to Subpart 635-12 and section 671.7(h) is the preservation of the health, safety and general welfare of persons in New York State who are receiving, or wish to receive certain developmental disabilities services provided under the auspices of OMRDD. The emergency amendments delay implementation of the provisions of Subpart 635-12 for certain developmental disabilities services. If OMRDD did not temporarily suspend full implementation of Subpart 635-12, effective November 10, 2009, for the services specified in the emergency amendments, some individuals in need of these services might be unable to access these services or be otherwise adversely affected.

Subject: Amendment of Liability for Services Regulations.

Purpose: To delay implementation of provisions of Subpart 635-12 for certain services.

Text of emergency rule: Subdivision 635-12.1(e) is amended as follows:

(3) Services which an individual was receiving on a regular basis as of February 15, 2009, and receives from a different provider after February 15, 2009, where the individual's receipt of the Services from the different provider is the result of one provider assuming operation or control of the other provider's operations and programs, or is the result of a merger or consolidation of providers [; and].

[(4) HCBS Waiver Respite Services which converted after February 15, 2009 from respite services funded as a type of family support services if:

(i) the individual received the Respite Services funded as a type of family support services on a regular basis as of February 15, 2009; and

(ii) the HCBS Waiver Respite Services are delivered by the same provider.]

Subdivision 635-12.1(g) is amended as follows:

(g) "Services" means ICF/DD Services (Intermediate Care Facilities for Persons with Developmental Disabilities, see Part 681); *the following HCBS Waiver Residential Habilitation Services: community (in a community residence), IRA, and family care; and HCBS Waiver Day Habilitation Services.* [; Medicaid Service Coordination, Day Treatment Services, and the following HCBS Waiver Services: Residential Habilitation Services (community (in a community residence), IRA, family care, and at home), Day Habilitation Services, Prevocational Services, Supported Employment Services, and Respite Services. Blended and Comprehensive Services which are a combination of the Services listed above are also considered "Services."]

Paragraph 635-12.3(b)(1) is amended as follows:

(1) Prior to the individual receiving Services, the provider shall take [all] *such* steps to obtain personal and financial information as may be reasonably required to identify liable parties and to ascertain the individual's and any other liable parties' ability to pay for Services or the individual's ability to obtain and maintain Full Medicaid Coverage.

Subparagraph 635-12.3(d)(1)(ii) is amended as follows:

(ii) OMRDD approval for a reduction or waiver of fees is only available when the individual has taken all necessary steps to obtain and maintain Full Medicaid Coverage. [However, OMRDD may approve a reduction or waiver of fees for Medicaid Service Coordination (MSC) for up to 3 months if an individual does not have Full Medicaid Coverage and MSC is necessary to assist the individual in obtaining Full Medicaid Coverage.]

Paragraph 635-12.4(b)(1) is amended as follows:

(1) Prior to March 15, 2009 the provider shall take [all] *such* steps to obtain personal and financial information concerning individuals without Full Medicaid Coverage as may be reasonably required to identify liable parties and to ascertain the individual's and any other liable parties' ability to pay for Services or the individual's ability to obtain and maintain Full Medicaid Coverage.

Subparagraph 635-12.4(d)(1)(ii) is amended as follows:

(ii) OMRDD approval for a reduction or waiver of fees is only available when the individual has taken all necessary steps to obtain and maintain Full Medicaid Coverage. [However, OMRDD may approve a reduction or waiver of fees for Medicaid Service Coordination (MSC) for up to 3 months if an individual does not have Full Medicaid Coverage and MSC is necessary to assist the individual in obtaining Full Medicaid Coverage.]

Paragraph 635-12.8(a)(5) is deleted as follows:

[(5) Medicaid Service Coordination (MSC). OMRDD may, subject to the availability of state funds, pay a provider for up to 3 months of MSC if:

(i) the individual does not have Full Medicaid Coverage and MSC is necessary to assist the individual in obtaining Full Medicaid Coverage;

(ii) the individual is not paying for MSC and no one else is paying for MSC; and

(iii) the provider is meeting its obligations under this Subpart.]

Subdivisions 635-12.9(e) and (f) are deleted as follows:

[(e) For At Home Residential Habilitation Services, the fee shall equal the Medicaid fee OMRDD established for the At Home Residential Habilitation Services for the dates the Services were provided.]

[(f) For Day Treatment Services, the fee shall equal the Medicaid fee OMRDD established for the day treatment facility for the dates the Services were provided.]

Note: Subdivisions (g) and (h) are renumbered as (e) and (f).

Subdivision 635-12.9(e) is amended as follows:

(e) For an ICF/DD, the fee shall equal the Medicaid rate OMRDD established for the ICF/DD for the dates the Services were provided, *excluding any day program services add-on for education and related services in accordance with Title 8 NYCRR.*

Subdivisions 635-12.9(i) through (m) are deleted as follows:

[(i) For Medicaid Service Coordination, the fee shall equal the payment level applicable to the individual's situation as stated in the Medicaid Service Coordination Vendor Contract between the provider and OMRDD in effect on the dates the Services were provided.]

[(j) For Prevocational Services, the fee shall equal the Medicaid price OMRDD established for the Prevocational Services on the dates the services were provided.]

[(k) For Supported Employment Services, the fee shall equal the Medicaid fee OMRDD established for the Supported Employment Services for the dates the Services were provided.]

[(l) For Respite Services, the fee shall equal the Medicaid price OMRDD established for the Respite Services for the dates the Services were provided.]

[(m) For Blended or Comprehensive Services, the fee shall equal the price OMRDD established for the Blended or Comprehensive Services for the dates the Services were provided.]

Subdivision 671.7(h) is amended as follows:

(h) Reimbursement for persons ineligible for medical assistance.

(1) In order to receive other reimbursement for community residential habilitation services, the facility must meet the requirements of *Subpart 635-12 of this Title, and section 671.1(d) of this Part, and ensure that all the requirements of section 671.6 of this part are satisfied.*

(2) (Paragraph remains unchanged).

[(3) A person ineligible for medical assistance shall be charged for community residential habilitation services in accordance with a sliding fee scale.]

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire February 7, 2010.

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

Additional matter required by statute: Pursuant to the requirements of SEQRA and 14 NYCRR Part 602, OMRDD has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory Authority:

a. The New York State Office of Mental Retardation and Developmental Disabilities' (OMRDD) statutory responsibility for seeing that persons with mental retardation and developmental disabilities are provided with services, as stated in the New York State Mental Hygiene Law Section 13.07.

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

2. Legislative Objectives: These emergency regulations further the legislative objectives embodied in Section 13.07 and 13.09(b) of the Mental Hygiene Law by amending newly promulgated Subpart 635-12 (Liability for Services) by the deletion of specific services. OMRDD determined that individuals in need of those services might have been unable to access the services or might have been otherwise adversely impacted if Subpart 635-12 had become effective without the amendments in this emergency regulation.

3. Needs and Benefits: OMRDD filed a notice of adoption which added a new 14 NYCRR Subpart 635-12, Liability for Services, effective February 15, 2009. Subpart 635-12 established the obligations of providers and individuals receiving or requesting services related to liability for services. Generally, the regulations required that individuals obtain and maintain Medicaid which would pay for the services, and, if necessary, apply for enrollment in OMRDD's Home and Community Based Services (HCBS) Waiver, or that the individuals (or other liable parties) pay for the services themselves. The new requirements were applied to a list of specific service types included in the regulation.

Some of the service types included in the new Subpart 635-12 had previously been targeted by a similar OMRDD policy that has been in effect for some time. Compliance by these service types was not at issue.

However, the proposed regulations also included additional service types that had not been subject to the OMRDD policy. Providers of services not subject to the policy, as well as advocates, expressed concern that providers and individuals would not be able to comply with the regulatory requirements within the specified timeframes. The providers cited the workload involved (the number of individuals involved who do not currently have Medicaid and the extent of the efforts necessary for the provider to work with the individuals to obtain Medicaid) as making regulatory compliance difficult.

Beginning April 15, 2009, Subpart 635-12 specified that individuals receiving preexisting services who do not have Medicaid will generally be liable to pay the fee for services. However, providers and advocates were concerned that some Medicaid-eligible individuals would not be able to obtain Medicaid by this time and would therefore be personally liable for the fee. This might cause individuals to discontinue services which are important for their health, safety or welfare. In addition, concerns were raised about applying the regulations to individuals requesting those services, especially those transitioning from supported employment under VESID (Office of Vocational and Educational Supports for Individuals with Disabilities) to OMRDD supported employment and individuals requesting respite services. Application of the regulations to individuals requesting services might have been an impediment to the provision of services to those individuals with additional adverse consequences.

In response to the concerns raised, OMRDD adopted emergency regulations, effective February 15, 2009 to coincide with the effective date of the adoption of the new Subpart 635-12. The current emergency regulations, effective November 10, 2009, continue to exempt certain services from compliance with Subpart 635-12. It is not OMRDD's intention to permanently delete the specified services from the Subpart. OMRDD is temporarily suspending the application of Subpart 635-12 to the services in order to give individuals and providers more time to pursue Medicaid and HCBS waiver enrollment, and to evaluate whether changes might be appropriate related to those services. OMRDD intends to promulgate future regulations at a later date to include these services in Subpart 635-12.

The emergency regulation also clarifies that the provider's duty to gather information concerning liable parties and the ability to pay and qualify for Medicaid is limited to what is reasonably necessary to gather this information, not everything that is possible to gather the information. OMRDD made this clarification in response to provider concerns.

This emergency adoption also includes a clarification that the add-on for educational services is to be excluded from the ICF/DD fee that can be charged to individuals and liable parties.

Finally, this emergency adoption includes a conforming amendment to section 671.7(h), making that section consistent with the requirements of Subpart 635-12 for OMRDD payments.

4. Costs:

a. Costs to the Agency and to the State and its local governments: OMRDD will not incur any new costs as a result of these amendments. OMRDD had originally estimated that full implementation of the Subpart 635-12 regulations would result in a saving to the State of approximately \$17.5 million as services currently funded with 100 percent State monies become funded with 50 percent participation of federal funds and some individuals or liable parties pay the fees established. While the emergency adoption of these amendments may subtract from the full amount of these savings, a reliable estimate of the shortfall is very difficult to quantify. OMRDD is strongly encouraging providers to maintain and even step up efforts to help individuals obtain Medicaid and enroll in the HCBS waiver for the services during the interval that implementation has been delayed. Although Subpart 635-12 will not apply to these services because of these emergency amendments, the State will experience much of the same savings through the compliance of individuals and providers with this request.

There will be no additional costs to local governments as a result of these specific amendments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs to individuals and providers associated with implementation and continued compliance with the amendments.

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

6. Paperwork: There will be no paperwork required as a result of the emergency amendments. The emergency amendments will instead decrease paperwork, since providers will not have to give the required notices to individuals and liable parties for the specified services.

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

8. Alternatives: OMRDD had considered delaying the application of Subpart 635-12 for only "preexisting services" (services delivered as of February 15, 2009) of the service types addressed. However, in response to concerns raised concerning "new" services started after February 15, particularly regarding the supported employment transition from VESID to OMRDD services and intermittent respite services, OMRDD decided to delay the application for these services as well as "preexisting services" in the same categories, in order to more fully evaluate the concerns raised with regard to these issues.

9. Federal Standards: The proposed regulations do not exceed any applicable federal standards.

10. Compliance Schedule: No specific compliance activities are necessary to implement the emergency regulations. On the contrary, the emergency regulations defer the compliance activities necessary to implement Subpart 635-12 for the specified services.

In order to inform providers about the change, OMRDD notified providers in the OMRDD system of its intention to delete the specified services on January 30, 2009, and also announced its intention during a provider association meeting in January. Similar emergency regulations were adopted effective February 15, 2009, May 14, 2009 and Aug. 12, 2009. OMRDD received no formal, written, public or provider comment as a result of the emergency adoption of these amendments, and informal reaction was positive.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments: These proposed regulatory amendments will apply to agencies which provide developmental disabilities services under the auspices of OMRDD. While most services are provided by voluntary agencies which employ more than 100 people overall, many of the facilities and services operated by these agencies at discrete sites employ fewer than 100 employees at each site, and each site (if viewed independently) would therefore be classified as a small business. Some smaller agencies which employ fewer than 100 employees overall would themselves be classified as small businesses. As of December, 2008, OMRDD estimates that there are approximately 274 provider agencies that would be affected by the emergency amendments.

The amendments have been reviewed by OMRDD in light of their impact on these small businesses and on local governments. OMRDD has determined that adoption of these emergency amendments is necessary for the health, safety and general welfare and that they will have a positive effect on the regulated parties, including small business providers of services, associated with the specific developmental disabilities services for

which implementation of Subpart 635-12 is being delayed by these emergency amendments. The emergency amendments will have no effect on local governments.

OMRDD filed a notice of adoption which added a new 14 NYCRR Subpart 635-12, Liability for Services, effective February 15, 2009. Subpart 635-12 established the obligations of providers and individuals receiving or requesting services related to liability for services. Generally, the regulations required that individuals obtain and maintain Medicaid which would pay for the services, and, if necessary, apply for enrollment in the HCBS Waiver, or that the individuals (or other liable parties) pay for the services themselves. The new requirements were applied to a list of specific service types included in the regulation.

Some of the service types included in the new Subpart 635-12 had previously been targeted by a similar OMRDD policy that has been in effect for some time. Compliance by these service types was not at issue.

However, the regulations also included additional service types that had not been subject to the OMRDD policy. Providers of services not previously subject to the policy, as well as advocates, expressed concern that providers and individuals would not be able to comply with the regulatory requirements within the specified timeframes. The providers cited the workload involved (the number of individuals involved who do not currently have Medicaid and the extent of the efforts necessary for the provider to work with the individuals to obtain Medicaid) as making regulatory compliance difficult.

Beginning April 15, 2009, Subpart 635-12 specified that individuals receiving preexisting services who do not have Medicaid will generally be liable to pay the fee for services. However, providers and advocates were concerned that some Medicaid-eligible individuals would not be able to obtain Medicaid by this time and would therefore be personally liable for the fee. This might cause individuals to discontinue services which are important for their health, safety or welfare. In addition, concerns were raised about applying the regulations to individuals requesting those services, especially those transitioning from supported employment under VESID (Office of Vocational and Educational Supports for Individuals with Disabilities) to OMRDD supported employment and individuals requesting respite services. Application of the regulations to individuals requesting services might have been an impediment to the provision of services to those individuals with additional adverse consequences.

This emergency adoption also includes a clarification that the add-on for educational services is to be excluded from the ICF/DD fee that can be charged to individuals and liable parties.

Finally, this emergency adoption includes a conforming amendment to section 671.7(h), making that section consistent with the requirements of Subpart 635-12 for OMRDD payments.

2. Compliance requirements: In response to the concerns raised, OMRDD promulgated emergency regulations, effective February 15, 2009 to coincide with the effective date of the adoption of the new Subpart 635-12. The emergency amendments suspended the compliance requirements of Subpart 635-12 for certain developmental disabilities services. The present emergency regulations continue this suspension. It is not OMRDD's intention to permanently delete the specified services from the Subpart. OMRDD is temporarily suspending the application of Subpart 635-12 to the services in order to give individuals and providers more time to pursue Medicaid and HCBS waiver enrollment, and to evaluate whether changes might be appropriate related to those services.

3. Professional services: There are no additional professional services required as a result of these amendments and the amendments will not add to the professional service needs of local governments.

4. Compliance costs: There will be no compliance costs for regulated parties or local governments as a result of the emergency amendments.

5. Economic and technological feasibility: The emergency amendments do not impose on regulated parties the use of any new technological processes.

6. Minimizing adverse economic impact: The amendments will not result in any adverse economic impacts for small businesses, local governments and other regulated parties.

7. Small business and local government participation: OMRDD conducted extensive outreach to providers related to the proposed regulations adding the new Subpart 635-12. OMRDD facilitated discussions of the proposed regulations in numerous meetings including the provider associations, the Benefit Development Workgroup which includes regulated parties, and a subcommittee of the Commissioner's Advisory Council. OMRDD also informed all providers of the proposed regulations. The emergency rule responds to concerns raised during these discussions and in written comments addressing the proposed rule making during the comment period for the proposed Subpart 635-12.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for this rule making is not submitted because the amendments will not impose any adverse impact or significant reporting, recordkeeping or other compliance requirements on public

or private entities in rural areas. As discussed in the Regulatory Impact Statement, these emergency amendments temporarily delay implementation of the provisions of Subpart 635-12 for certain developmental disabilities services.

Job Impact Statement

A Job Impact Statement for this rule making is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial impact on jobs and/or employment opportunities. The emergency amendments temporarily delay implementation of Subpart 635-12 for certain developmental disabilities services.

New York State 911 Board

INFORMATION NOTICE

NOTICE OF PROPOSED AMENDMENTS

The New York State 911 Board, established pursuant to County Law § 326, is charged with assisting local governments, service suppliers, wireless telephone service suppliers and appropriate state agencies by facilitating the most efficient and effective routing of wireless 911 emergency calls; developing minimum standards for public safety answering points; promoting the exchange of information, including emerging technologies; and encouraging the use of best practice standards among the public safety answering point community. The Board is exempt from the requirements of the New York State Administrative Procedure Act, but is required to publish its proposed and final standards pursuant to the provisions of County Law § 327. This Notice is published pursuant to those provisions.

Summary of Proposed Amendments to Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Parts 5201 and 5203:

At its meeting on September 29, 2009, the Board proposed amendments to Part 5201 titled "Minimum Standards Regarding Call-Taker/Dispatcher Training" to add a new training topic as part of the minimum training program and 21 NYCRR Part 5203 titled "Minimum Standards Regarding Equipment, Facilities and Security for Public Safety Answering Points" to make a minor technical correction. A minimum 45-day comment period follows this Notice, during which all interested persons and organizations are invited to comment.

For further information, contact Thomas J. Wutz, Chief, Fire Service Bureau, New York State Department of State, Office of Fire Prevention and Control, One Commerce Plaza, 99 Washington Avenue, Albany New York, 12231, phone: 518-474-6746.

Text of proposed rule:

Part 5201 of Title 21 of the Official Compilation of Code, Rules and Regulations of the State of New York, Section 5201.3 is amended to read as follows:

Section 5201.3 Basic training standards

(b) Classroom and related instruction

(1) In addition to the ESDTEP program training, all call-takers/dispatchers shall complete the following:

(i) a course of classroom instruction consisting of a minimum of 40 hours, including but not limited to, the following topics:

- (a) roles and responsibilities;
- (b) legal aspects;
- (c) interpersonal communications;
- (d) technologies;
- (e) telephone techniques;
- (f) call classification;
- (g) radio communications;
- (h) stress management;

(i) *emotionally disturbed persons; and*

(ii) a course of study in incident command system, to include, but not be limited to:

(a) IS-700, or the equivalent, as required by Homeland Security Presidential Directive Number Five; and

(b) ICS-100, or the equivalent, as required by Homeland Security Presidential Directive Number Five.

Part 5203 of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Section 5203.2 is amended to read as follows:

Section 5203.2. Equipment

(a) Intelligent workstations (IWS)

(1) All PSAPs shall have the ability to integrate multiple systems (CAD, IWS, and Mapping) into one operational system.

(2) All PSAPs shall have the ability to accept and process 10 digits of ANI information and 20 digits (10 ANI and 10 pANI) of ALI information.

(3) The authority shall have a written procedure for the use of a manual backup system in the case of failure of the CAD system.

Commission on Public Integrity

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Honoraria

I.D. No. CPI-47-09-00001-P

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

Proposed Action: Amendment of Part 930 of Title 19 NYCRR.

Statutory authority: Executive Law, section 94(9)(c) and (16)(a)

Subject: Honoraria.

Purpose: Rules limiting the receipt of honoraria to executive branch State officers and employees.

Substance of proposed rule (Full text is posted at the following State website: www.nyintegrity.org): Title 19 NYCRR Part 930 is amended to include only rules governing limitations on the receipt of honoraria. Similarly, Title 19 NYCRR Part 931 is amended to include only rules governing limitations on the receipt of payments for official services rendered and related travel expenses. The amendments to this Part 930 conform to the Public Employee Ethics Reform Act of 2007 (“PEERA”) and that law’s prohibition of statewide elected officials and heads of civil departments from receiving honoraria. In addition, these amendments simplify the honoraria reporting procedure and expand the ban on the acceptance of honoraria from non-governmental entities whose officers are associated with disqualified sources.

Text of proposed rule and any required statements and analyses may be obtained from: Shari Calnero, Associate Counsel, NYS Commission on Public Integrity, 540 Broadway, Albany, NY 12207, (518) 408-3976, email: scalnero@nyintegrity.org

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

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

Regulatory Impact Statement

1. Statutory authority: Executive Law Section 94(9)(c) generally directs the Commission on Public Integrity (“CPI”) to adopt, amend, and rescind rules and regulations to govern the procedures of the CPI; Executive Law Section 94(16)(a) directs the CPI to promulgate rules concerning limitations on the receipt of honoraria by persons subject to its jurisdiction.

2. Legislative objectives: The Public Employee Ethics Reform Act of 2007 (“PEERA”) established the CPI. PEERA intended that the CPI would strengthen integrity, public trust and confidence in New York State government. As part of the Act, the CPI is charged with the authority to promulgate rules including governing the receipt of honoraria by persons subject to its jurisdiction. By setting forth conditions under which honoraria may be accepted, these rules provide comprehensive parameters of acceptable conduct for covered individuals.

3. Needs and benefits: The proposed rulemaking is necessary in order to make substantive and technical changes to conform to the recently enacted governing statute, PEERA. Accordingly, these amendments reflect the Legislature’s recently enacted prohibition of statewide elected officials and heads of civil departments from receiving honoraria. In addition, these amendments simplify the honoraria reporting procedure and expand the ban on the acceptance of honoraria from non-governmental entities whose officers are associated with disqualified sources. In addition, there was a need to clarify the regulation in regard to which provisions applied to honoraria for services that were not related to official duties versus travel reimbursement for services that were officially related. By revising Part 930 to only apply to the rules governing acceptance of honoraria and other expenses for services that are not officially related, the Commission seeks to make the regulation simpler and easier to follow. Accordingly, the Commission deleted from Part 930 the rules governing travel reimbursement for officially related services, which will be addressed in the amended Part 931.

4. Costs:

a. Costs to regulated parties for implementation and compliance: None.

b. Costs to the agency, state and local government: None

c. Cost information is based on the fact that the proposed rule-making involves primarily the elimination of confusing and outdated references currently contained in the regulation. There are no costs associated with these changes.

5. Local government mandate: None.

6. Paperwork: It will not require the preparation of any additional forms or paperwork.

7. Duplication: None

8. Alternatives: The Commission considered not amending the regulation and leaving it status quo. PEERA, however, expressly prohibits statewide elected officials and heads of civil departments from receiving honoraria. Under the existing regulation these individuals may receive honoraria, which is in contravention of PEERA’s mandate. Accordingly, CPI deemed that a formal rulemaking that amends the regulation to include the aforementioned prohibition was necessary. In addition, the Commission considered not separating honoraria-related rules from officially-related services rules. Due to the confusion among the public involving the interpretation of the existing Part 930, the Commission decided that separating it into two parts was the optimal solution.

9. Federal standards: The proposed rulemaking pertains to the receipt of honoraria by certain State officers and employees pursuant to PEERA and does not exceed any federal minimum standard with regard to a similar subject area.

10. Compliance schedule: The rule will be effective upon adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this Notice since the proposed rule-making will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any reporting, recordkeeping or other affirmative acts on the part of these entities for compliance purposes. CPI makes these findings based on the fact that the limitations on the receipt of honoraria affect only certain State officers and employees.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this Notice since the proposed rule-making will not impose any adverse economic impact on rural areas, nor will compliance require or impose any reporting, recordkeeping or other affirmative acts on the part of rural areas. CPI makes these findings based on the fact that the limitations on the receipt of honoraria affect only certain State officers and employees. Rural areas are not affected in any way.

Job Impact Statement

Job Impact Statement is not submitted with this Notice since the proposed rule-making will have no impact on jobs or employment opportunities. The Commission on Public Integrity makes this finding based on the fact that the proposed rule-making applies narrowly to the limitations on the receipt of honoraria. In addition, the regulation applies only to certain State officers and employees and does not apply, nor relate to small businesses, economic development or employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Receipt of Payment for Official Services and Related Travel Expenses

I.D. No. CPI-47-09-00002-P

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

Proposed Action: Addition of Part 931 to Title 19 NYCRR.

Statutory authority: Executive Law, section 94(9)(c) and (16)(a)

Subject: Receipt of payment for official services and related travel expenses.

Purpose: Rules concerning limitations of the gifts/receipt of payment for official services and related travel expenses.

Substance of proposed rule (Full text is posted at the following State website: www.nyintegrity.org): Prior to this proposed rulemaking, the rules governing limitations on the receipt of payment for official services and related travel expenses were set forth in Title 19 NYCRR Part 930. With this proposed rulemaking, Title 19 NYCRR Part 931 is established and amended to include only rules governing limitations on the receipt of payments for official services rendered and related travel expenses. The proposed regulations contained in Part 931 comport with the Public Em-

ployee Ethics Reform Act of 2007 ("PEERA"). In addition, these amendments expand the ban on the acceptance of such payments from non-governmental entities whose officers are associated with disqualified sources.

Text of proposed rule and any required statements and analyses may be obtained from: Shari Calnero, Associate Counsel, NYS Commission on Public Integrity, 540 Broadway, Albany, New York 12207, (518) 408-3976, email: scalnero@nyintegrity.org

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

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

Regulatory Impact Statement

1. Statutory authority: Executive Law Section 94(9)(c) generally directs the Commission on Public Integrity ("CPI") to adopt, amend, and rescind rules and regulations to govern the procedures of the CPI; Executive Law Section 94(16)(a) directs the CPI to promulgate rules concerning limitations on the receipt of gifts by persons subject to its jurisdiction.

2. Legislative objectives: The Public Employee Ethics Reform Act of 2007 ("PEERA") established the CPI. PEERA intended that the CPI would strengthen integrity, public trust and confidence in New York State government. As part of the Act, the CPI is charged with the authority to promulgate a variety of rules including ones governing the receipt of gifts in the form of payment for official services and related travel expenses. By setting forth conditions under which payment for official services and related travel expenses may be accepted, these rules provide comprehensive parameters of acceptable conduct for covered individuals.

3. Needs and benefits: The proposed rule making is necessary in order to make substantive and technical changes to conform to the recently enacted governing statute, PEERA. In addition, these amendments expand the ban on the acceptance of payments from non-governmental entities whose officers are associated with disqualified sources.

4. Costs:

a. Costs to regulated parties for implementation and compliance: None.

b. Costs to the agency, State and local government: None.

c. Cost information is based on the fact that the proposed rule-making involves primarily the elimination of confusing and outdated references currently contained in the regulation. There are no costs associated with these changes.

5. Local government mandate: None.

6. Paperwork: It will not require the preparation of any additional forms or paperwork.

7. Duplication: None.

8. Alternatives: The Commission considered not amending the existing Part 930 and leaving it status quo. However, because State officers affected by the rule, with whom the Commission has day-to-day contact, have expressed confusion in regard to how Part 930 applied to their receipt of travel reimbursement for officially related activities as opposed to honoraria, the Commission concluded that the best way to clarify the issue was to separate the two procedures into two rules, which are amended as Part 930 for honoraria and Part 931 for officially related activities.

9. Federal standards: The proposed rule making pertains to the receipt of payment for official services and related travel expenses by certain State officers and employees pursuant to PEERA and does not exceed any federal minimum standard with regard to a similar subject area.

10. Compliance schedule: The rule will be effective upon adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this Notice since the proposed rule-making will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any reporting, recordkeeping or other affirmative acts on the part of these entities for compliance purposes. CPI makes these findings based on the fact that the rules governing the limitations on the receipt of payment for official services rendered and related travel expenses only impacts certain State officers and employees.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this Notice. Since the proposed rule-making will not impose any adverse economic impact on rural areas, nor will compliance require or impose any reporting, recordkeeping or other affirmative acts on the part of rural areas. The Commission on Public Integrity makes these findings based on the fact that the limitations on the receipt of payment for official services and related travel expenses affect only certain State officers and employees. Rural areas are not affected in any way.

Job Impact Statement

Job Impact Statement is not submitted with this Notice of Proposed Rule Making since the proposed rule-making will have no impact on jobs or employment opportunities. The Commission on Public Integrity makes

this finding based on the fact that the proposed rule-making applies narrowly to the limitations on the receipt of payment for official services and related travel expenses. In addition, the regulation applies only to certain State officers and employees and does not apply, nor relate to small businesses, economic development or employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Access to Agency Records

I.D. No. CPI-47-09-00003-P

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

Proposed Action: Amendment of Part 937 of Title 19 NYCRR.

Statutory authority: Executive Law, section 94(9)(c)

Subject: Access to agency records.

Purpose: Rules governing access to publicly available records.

Substance of proposed rule (Full text is posted at the following State website: www.nyintegrity.org): The rules governing the procedure to access records are amended to comport with the Public Employee Ethics Reform Act of 2007 ("PEERA"). PEERA authorizes the Commission to make publicly available all of the records listed in Executive Law section 94 (17)(a)(1). The amended regulations incorporate this change. The amendments also set forth a uniform procedure for accessing these public records that mirrors the Freedom of Information Law. In addition, the amendments repeal various obsolete provisions, such as the existence of the Public Advisory Council.

Text of proposed rule and any required statements and analyses may be obtained from: Shari Calnero, Associate Counsel, NYS Commission on Public Integrity, 540 Broadway, Albany, New York 12207, (518) 408-3976, email: scalnero@nyintegrity.org

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

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

Regulatory Impact Statement

1. Statutory authority: Executive Law Section 94(9)(c) generally directs the Commission on Public Integrity ("CPI") to adopt, amend, and rescind rules and regulations to govern the procedures of the CPI.

2. Legislative objectives: The Public Employee Ethics Reform Act of 2007 ("PEERA") established the CPI. PEERA intended that the CPI would strengthen integrity, public trust and confidence in New York State government. As part of the Act, the CPI is charged with the authority to promulgate rules governing its procedures including how it provides public access to available records. These rules promote transparency to the extent that they inform the public of the necessary steps to access certain records that CPI is required to make publicly available.

3. Needs and benefits: The proposed rule making is necessary to comport with PEERA's expansion of the list of CPI's records that are now publicly available. PEERA authorizes the CPI to make publicly available all of the records listed in Executive Law section 94 (17)(a)(1). The amended regulations will incorporate this change. The amendments will also set forth a uniform procedure for accessing these public records that mirrors the Freedom of Information Law. In addition, the amendments repeal obsolete provisions, such as the existence of the Public Advisory Council.

4. Costs:

a. Costs to regulated parties for implementation and compliance: None.

b. Costs to the agency, State and local government: None.

c. Cost information is based on the fact that the proposed rule making involves primarily the elimination of confusing and outdated references currently contained in the regulation. There are no costs associated with these changes.

5. Local government mandate: None.

6. Paperwork: It will not require the preparation of any additional forms or paperwork.

7. Duplication: None.

8. Alternatives: The Commission considered not amending the regulation and leaving it status quo. PEERA, however, substantially expanded the class of records that CPI is required to make publicly available. Accordingly, CPI deemed that a formal rule making that expressly states which records are available and sets forth a procedure to obtain said records was the optimal way to implement PEERA's mandate. Also, CPI considered charging reproduction fees for all requests for records, as is authorized by New York's Freedom of Information Law. CPI concluded that it was more efficient, in terms of human resources and cost for materials, to waive reproduction fees for requests for copies under 40 pages.

9. Federal standards: The proposed rule making pertains to public access to records and does not exceed any federal minimum standard with regard to a similar subject area.

10. Compliance schedule: These rules shall become effective upon adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this Notice as the amendments will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any reporting, recordkeeping or other affirmative acts on the part of these entities for compliance purposes. The Commission on Public Integrity makes these findings based on the fact that the rules only govern the public's access to a limited set of records.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this Notice of Proposed Rule Making since the proposed rule making will not impose any adverse economic impact on rural areas, nor will compliance require or impose any reporting, recordkeeping or other affirmative acts on the part of rural areas. The Commission on Public Integrity makes these findings based on the fact that the rules only govern the public's access to a limited set of records. Rural areas are not affected in any way.

Job Impact Statement

Job Impact Statement is not submitted with this Notice since the proposed rule-making will have no impact on jobs or employment opportunities. The Commission on Public Integrity makes this finding based on the fact that the proposed rule-making applies narrowly to the procedure for requesting public access to a limited set of available records. In addition, the regulation does not apply, nor relate to businesses, economic development or employment opportunities.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Outside Activities for Executive Branch State Officers and Employees

I.D. No. CPI-47-09-00004-P

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

Proposed Action: Amendment of Part 932 of Title 19 NYCRR.

Statutory authority: Executive Law, section 94(16)(a)

Subject: Outside Activities for executive branch State officers and employees.

Purpose: Rules concerning restrictions on outside activities.

Text of proposed rule: Title 19 NYCRR Part 932 is amended to read as follows:

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 19. DEPARTMENT OF STATE
CHAPTER XX. [STATE ETHICS COMMISSION] COMMISSION ON PUBLIC INTEGRITY
PART 932 OUTSIDE ACTIVITIES
932.1 Definitions.

(a) Approving authority shall mean the head of a State agency or appointing authority, or his or her designee, as appropriate, for the [individual] person involved and, for the [four] statewide elected officials defined in this Subpart and the heads of State agencies, shall mean the [State Ethics] Commission as defined in this Subpart [which may delegate its approval authority to its executive director].

(b) Commission shall mean the New York State Commission on Public Integrity.

[(b) Covered individual shall mean the four statewide elected officials and State officers or employees.]

[(c) Four statewide elected officials shall mean the Governor, the Lieutenant Governor, the Comptroller and the Attorney General.]

[(d) c] [Nominal][c] Compensation threshold shall mean [no more than either:

(1) the per diem amount provided to such position, where no other compensation for such appointment is received; or

(2) \$4,000] \$5,000 in annual compensation for personal services actually rendered, e.g., wages, salaries, health insurance benefits, professional fees, royalties, bonuses, or commissions on sales, and [that] the portion of income received from a corporation or unincorporated trade or business [which] that represents a reasonable allowance for salaries and compensation for personal services actually rendered.

(1) Income received by the [individual] person from transactions involving the [individual's] person's own investments, securities, personal property, partnership interest or real estate is not included in determining annual compensation for personal services actually rendered, provided the transactions are not with any State agency as the term is defined in this Subpart.

[(e) d] Policy-making position shall mean that position annually determined by the appointing authority as set forth in a written instrument filed with the [State Ethics] Commission or as amended as required by Public Officers Law, section 73-a(1)(c)(ii) and (iii).

[(f) e] Political organization shall mean any organization that is affiliated with or a subsidiary to a political party [, and shall include, for example, partisan political clubs. Political organization shall not include an organization supporting a particular cause with no partisan inclination, for example, the League of Women Voters, and shall not include campaign or fund-raising committees] including, without limitation, a partisan political club or committee, or a campaign or fundraising committee for a political party or political candidate.

[(g) f] State agency shall mean any State department, or division, board, commission or bureau of any State department, any public benefit corporation, public authority or commission at least one of whose members is appointed by the Governor, [and] or the State University of New York [and] or the City University of New York, including all their constituent units except community colleges of the State University of New York and the independent institutions operating statutory or contract colleges on behalf of the State.

[(h) g] State officer or employee shall [be defined as the term State officer or employee is defined in section 73 and section 73-a of the Public Officers Law.] mean:

(1) Heads of State departments and their deputies and assistants other than members of the Board of Regents of the University of the State of New York who receive no compensation or are compensated on a per diem basis;

(2) Officers and employees of statewide elected officials;

(3) Officers and employees of State departments, boards, bureaus, divisions, commissions, councils or other State agencies other than officers of such boards, commissions or councils who receive no compensation or are compensated on a per diem basis; and

(4) Members or directors of public authorities, other than multi-state authorities, public benefit corporations and commissions at least one of whose members is appointed by the Governor, who receive compensation other than on a per diem basis, and employees of such authorities, corporations and commissions.

(h) Statewide elected official shall mean the Governor, Lieutenant Governor, Comptroller or Attorney General.

932.2 Restriction on policymakers and certain others holding positions [of officer or member of] in political [party] parties and other political organizations.

(a) No [head of a State department,] [individual] State officer or employee who serves in a policy-making position, [who serves as one of the four] statewide elected official[s], [individual who serves in a policy-making position] or member or director of a public authority (other than a multi-state authority), public benefit corporation or commission at least one of whose members is appointed by the Governor shall serve as an officer, director or board member of any political party or other political organization.

(b) No [head of a State department, individual] State officer or employee who serves in a policy-making position, [who serves as one of the four] statewide elected official[s], [individual who serves in a policymaking position] or member or director of a public authority (other than a multi-state authority), public benefit corporation or commission at least one of whose members is appointed by the Governor shall serve as a member of any political party committee including political party district leader (however designated) or member of the national committee of a political party.

(c) Notwithstanding subdivisions (a) and (b) of this Subpart, any State officer or employee or statewide elected official may serve as a delegate to a State or national party convention.

932.3 Restriction on holding other public office or private employment or engaging in other outside activities.

(a) No [covered individual] State officer or employee or statewide elected official shall engage in any outside activity [which] that interferes or is in substantial conflict with the proper and effective discharge of such [individual's] person's official duties or responsibilities.

(b) No [individual] State officer or employee who serves in a policy-making position on other than a nonpaid or per diem basis, or [who serves as one of the four S]statewide elected official[s], shall hold any other public office regardless of compensation, or public employment for which more than [nominal] the compensation threshold, in whatever form, is received or anticipated to be received without, in each case, obtaining prior approval from the [State Ethics] Commission.

(c) No [individual] *State officer or employee* who serves in a policy-making position on other than a nonpaid or per diem basis, or [who serves as one of the four S] statewide elected official[s] shall expend time or otherwise engage in any private employment, profession or business, or other outside activity from which more than [nominal] *the compensation threshold*, in whatever form, is received or anticipated to be received without, in each case, obtaining prior approval from the [State Ethics] Commission.

(d) No [individual] *State officer or employee* who serves in a policy-making position on other than a nonpaid or per diem basis, or [who serves as one of the four] S] statewide elected official[s] shall expend time or otherwise engage in any private employment, profession or business, or other outside activity from which more than \$1,000 but less than [nominal] *the compensation threshold*, in whatever form, is received or anticipated to be received without, in each case, obtaining prior approval from his or her approving authority.

(e) No [individual] *State officer or employee* who serves in a policy-making position on other than a nonpaid or per diem basis, or [who serves as one of the four] S] statewide elected official[s] shall serve as a director or officer of a for-profit corporation or institution without, in each case, obtaining prior approval from the [State Ethics] Commission.

932.4 Procedure to approve certain outside activities.

(a) Any [individual] *person* who requests approval to engage in any of the outside activities set forth in section 932.3 of this Part from which more than [nominal] *the compensation threshold*, in whatever form, is to be received, [must file] *shall submit to the Commission* a written [Request to Approve Outside Activities with the State Ethics Commission] *request on forms approved by the Commission* [which] *that* [must] *shall* contain the consent of the [individual's] *person's* approving authority [and any other information the Commission deems necessary to make a determination]. The Commission will not consider requests without such consent. The [State Ethics] Commission may require such [individual] *person* to submit additional information as it deems appropriate.

(b) The approving authority shall make its determination based on the provisions of sections 73 and 74 of the Public Officers Law, as well as pertinent State agency policies, procedures or rules and regulations governing employee conduct, and such other factors as the approving authority may deem appropriate. The interpretations of the approving authority of sections 73 or 74 of the Public Officers Law shall not be binding on the [State Ethics] Commission in any later investigation or proceeding.

(c) The [State Ethics] Commission shall make its determination based on whether the proposed outside activity interferes with or is in conflict with the proper and effective discharge of such [individual's] *person's* duties. In making its determination, the Commission shall consider the provisions of sections 73 and 74 of the Public Officers Law.

[d] Those individuals who, prior to the effective date of this Part (April 11, 1990), are engaged in activities prohibited by section 932.3 of this Part shall have forty-five (45) days from such effective date to submit a request to approve outside activities to the State Ethics Commission to continue to engage in such activity. Upon a determination by State Ethics Commission that such outside activity is not appropriate, the individual must immediately cease and desist from engaging in such activity.]

[(e)]d Nothing contained in this Part shall prohibit any State agency from adopting or implementing its own rules, regulations or procedures with regard to outside employment [which] *that* are more restrictive than the requirements of this Part.

932.5 Codes of Ethics for uncompensated and per diem directors, members and officers.

The boards or councils whose officers or members are subject to section 73-a of the Public Officers Law and are not subject to section 73 of such law by virtue of their uncompensated or per diem compensation status and the commissions, public authorities and public benefit corporations whose member or directors are subject to section 73-a of the Public Officers Law and are not subject to section 73 by virtue of their uncompensated or per diem compensation status shall adopt a code of ethical conduct covering conflicts of interest and business and professional activities, including outside activities, of such directors, members or officers both during and after service with such boards, councils, commissions, public authorities and public benefit corporations. Such codes of ethical conduct shall be filed with the [State Ethics] Commission.

932.6 Complaints.

Any *person* may file a complaint with the [State Ethics] Commission [which] *that* alleges [that] a violation of the provisions of this Part has occurred. The Commission, pursuant to its authority under section 94 of the Executive Law, may conduct an investigation and take such other action as it deems proper.

932.7 Violations.

In addition to any penalty contained in any provision of law, a [knowing and intentional] violation of this Part by a[n individual] *person* subject

to it may result in appropriate action taken by the [State Ethics] Commission or referral by it to the [individual's] *person's* appointing authority. The appointing authority, after such a referral, may take disciplinary action [which] *that* may include a fine, suspension without pay or removal from office or employment in the manner provided by law.

Text of proposed rule and any required statements and analyses may be obtained from: Shari Calnero, Associate Counsel, NYS Commission on Public Integrity, 540 Broadway, Albany, New York 12207, (518) 408-3976, email: scalnero@nyintegrity.org

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

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

Regulatory Impact Statement

1. Statutory authority: Executive Law section 94(16)(a) directs the Commission on Public Integrity ("Commission") to promulgate rules concerning restrictions on outside activities.

2. Legislative objectives: The Public Employee Ethics Reform Act of 2007 ("PEERA") established the Commission. PEERA intended that the Commission would strengthen integrity, public trust and confidence in New York State government. As part of the Act, the Commission is charged with the authority to promulgate rules including those concerning restrictions on outside activities by persons subject to its jurisdiction. By setting forth conditions under which public employees may engage in outside activities, these rules provide comprehensive parameters of acceptable conduct for covered individuals.

3. Needs and benefits: The proposed rulemaking is necessary to amend the rules governing outside activities to comport with PEERA. These amendments include technical changes as well as the deletion of obsolete terms. These amendments also increase the minimum annual earning threshold from \$4,000 to \$5,000, which will simplify the Commission's internal auditing procedures. The financial disclosure statement form defines Category B income as \$5,000 to \$20,000. Thus, by matching the compensation threshold with the beginning range of Category B, the Commission's audit staff can easily select for audit those marked as Category B and higher incomes. This amendment will allow the Commission's audit staff to review more thoroughly a fewer number of financial disclosure statements. In addition, these amendments revise the definition of "political organization" to include campaign or fundraising committees for a political party or political candidate. This amended definition is now consistent with the definition contained in the Commission's proposed gift regulations.

4. Costs:

a. Costs to regulated parties for implementation and compliance: None.
b. Costs to the agency, State and local government: None.
c. Cost information is based on the fact that the proposed rulemaking involves primarily the elimination of confusing and outdated references currently contained in the regulation. There are no costs associated with these changes.

5. Local government mandate: None.

6. Paperwork: It will not require the preparation of any additional forms or paperwork.

7. Duplication: None.

8. Alternatives: Due to inflation, the Commission concluded that the compensation threshold should be increased. In considering alternatives to the existing \$4,000 threshold, the Commission concluded that increasing the amount to \$5,000 would simplify the Commission's internal auditing procedures. The financial disclosure statement form defines Category B income as \$5,000 to \$20,000. Thus, by matching the compensation threshold with the beginning range of Category B, the Commission's audit staff can easily select for audit those financial disclosure statements with reported Category B and higher incomes. This amendment will allow the Commission's audit staff to review more thoroughly a fewer number of financial disclosure statements. Also, the Commission considered not amending the rules to reflect the revised definition of "political organization." The Commission, however, deemed that the definition should match the proposed gift regulations and that a formal rulemaking expressly amending the definition of "political organization" was the optimal manner in which to give the public notice and an opportunity to comment on the Commission's interpretation of this term.

9. Federal standards: The proposed rulemaking pertains to the restrictions on outside activities of State officers and employees pursuant to PEERA and does not exceed any federal minimum standard with regard to a similar subject area.

10. Compliance schedule: This rule shall become effective upon adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this Notice since the proposed rule-making will not impose any adverse economic impact on small businesses or local

governments, nor will it require or impose any reporting, recordkeeping or other affirmative acts on the part of these entities for compliance purposes. Commission makes these findings based on the fact that restrictions on outside activities affect only certain State officers and employees.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this Notice since the proposed rule-making will not impose any adverse economic impact on rural areas, nor will compliance require or impose any reporting, recordkeeping or other affirmative acts on the part of rural areas. The Commission on Public Integrity makes these findings based on the fact that the restrictions on outside activities affect only certain State officers and employees. Rural areas are not affected in any way.

Job Impact Statement

Job Impact Statement is not submitted with this Notice since the proposed rule-making will have no impact on jobs or employment opportunities. The Commission on Public Integrity makes this finding based on the fact that the proposed rule-making applies narrowly to restrictions on outside activity. In addition, the regulation only affects certain State officers and employees and does not apply, nor relate to small businesses, economic development or employment opportunities.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

The Issuance of a \$150,000 Loan to Finance Water System Upgrades

I.D. No. PSC-47-09-00007-P

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

Proposed Action: The Commission is considering the petition of Garrow Water Works Company, Inc. requesting approval of a loan agreement with TD Bank, N.A. in the amount of \$150,000 to finance water system upgrades.

Statutory authority: Public Service Law, sections 89-b(1), 89-c and 89-h

Subject: The issuance of a \$150,000 loan to finance water system upgrades.

Purpose: Consideration of approval for a loan of \$150,000 to finance water system upgrades.

Text of proposed rule: On October 27, 2009, Garrow Water Works Company, Inc. (the company) filed a petition requesting Public Service Commission approval to enter into a financing agreement of approximately \$150,000 with TD Bank, N.A., in order to make water system improvements, and to institute a customer surcharge to support the financing. The company provides unmetered water service to 47 residential customers located in the Town of Schuyler Falls, Clinton County. The Commission may approve or reject, in whole or in part, or modify the company's petition.

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

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

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

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

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

(09-W-0775SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Specific Commercial and Industrial Gas Energy Efficiency Programs

I.D. No. PSC-47-09-00008-P

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

Proposed Action: The Commission is considering commercial and industrial gas energy efficiency program proposals as a component of the Energy Efficiency Portfolio Standard, and collection of the costs of such programs through the System Benefits Charge.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Specific commercial and industrial gas energy efficiency programs.

Purpose: To encourage electric and gas energy conservation in the State.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, commercial and industrial gas energy efficiency program proposals made in response to a notice in Case 07-M-0548 entitled "Notice Requesting Proposals" issued by the Secretary to the Public Service Commission on April 20, 2009. The program proposals under consideration for this rule include the following:

1. Case 09-G-0363 - The Brooklyn Union Gas Company/KeySpan Gas East Corporation, "Gas Energy Efficiency Program Proposals" dated September 22, 2008, and Updates dated June 5, 2009 and October 20, 2009: (a) Commercial High-Efficiency Heating and Water Heating Program (gas).

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

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

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

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

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

(09-G-0363SP3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Transfer of Assets from Utility Plant to Non-utility Property and/or to a Separate Entity

I.D. No. PSC-47-09-00009-P

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

Proposed Action: The Commission is considering a petition filed by Corning Natural Gas Corporation for authority to transfer certain assets from utility accounts to non-utility property accounts.

Statutory authority: Public Service Law, sections 66, 70, 107 and 110

Subject: Transfer of assets from utility plant to non-utility property and/or to a separate entity.

Purpose: Transfer of assets.

Substance of proposed rule: The Public Service Commission is considering a petition by Corning Natural Gas Corporation (Company/Corning) for authority, pursuant to PSL sections 66, 70, 107, and 110 to transfer certain natural gas pipeline facilities no longer required for the Company's distribution business from utility to non-utility property accounts under the Uniform Systems of Accounts and/or transfer such facilities from Corning to an affiliated entity that could use those facilities for the transportation of locally produced natural gas. The Commission may approve, reject or modify, in whole or in part, the relief requested by Corning.

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

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

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

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

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

(09-G-0790SP1)