

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 for the Aging

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Expanded In-home Services for the Elderly Program Ancillary Services

I.D. No. AGE-07-10-00003-P

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

Proposed Action: Amendment of sections 6654.6(b)(4)(iii) and 6655.7(e); repeal of section 6654.19; and addition of new section 6654.19 to Title 9 NYCRR.

Statutory authority: Elder Law, sections 201(3) and 214

Subject: Expanded In-home Services for the Elderly Program Ancillary Services.

Purpose: The purpose of the proposed rule is to increase the flexibility that Area Agencies on Aging have in administering EISEP.

Text of proposed rule: 9 NYCRR section 6654.6(b)(4)(iii) is amended as follows:

(iii) the housing adjustment is the amount by which the client's average monthly housing expenses exceed 40 percent of the threshold, except that the housing adjustment shall not exceed [20] 40 percent of the threshold [(at the time these regulations were promulgated, 40 percent of the threshold was \$362 for clients living with spouses whose income is available to meet their needs and \$268 for all other clients)];

9 NYCRR section 6654.19 is repealed and replaced with a new section 6654.19 as follows:

Section 6654.19 EISEP ancillary services.

(a) *Ancillary services include non-medical services, items and other supports which together with other assistance are intended to provide an*

individual in need of long term care with the ability to remain safely in the community with an acceptable quality of life.

(b) *Ancillary services shall be provided only to an EISEP client pursuant to a care plan on a per client basis.*

(c) *A client will be re-evaluated in accordance with the reassessment process found in § 6654.16 of this Part to insure that all ancillary services provided under this section are appropriate and necessary and continue to be in accordance with the client's care plan.*

(d) *Expenditures for ancillary services may only be made if no other payment source is available.*

(e) *Allowable services, items/goods and other supports which may be provided under ancillary services are as follows:*

(1) *those that maintain or promote the individual's independence such as:*

- (i) *purchasing/renting of equipment or assistive devices*
- (ii) *purchasing/renting, maintaining and repair of appliances*
- (iii) *personal and household items*
- (iv) *social adult day services*
- (v) *transportation to needed medical appointments, community*

services and activities

(2) *those that maintain, repair or modify the individual's home so that it is a safe and adequate living environment, such as:*

- (i) *home maintenance and chores*
- (ii) *heavy house cleaning*
- (iii) *removal of physical barriers*

(3) *those that address everyday tasks, such as:*

- (i) *house cleaning*
- (ii) *laundry*
- (iii) *grocery shopping, shopping for other needed items and other essential errands*
- (iv) *bill paying and other essential activities*
- (v) *providing meals*
- (vi) *escort to appointments and other community activities*

(f) *The following items or services may not be provided as an ancillary service:*

(1) *food, except for meals provided under the nutrition program administered by an area agency or other meals that the area agency has determined meet the nutritional requirements of such program;*

(2) *housing expenses which include, but are not limited to, expenditures for rent, mortgage, property taxes, heating fuel, gas, electricity, water, sewage, garbage collection, cable television and telephone services; and*

(3) *items or services that can be obtained only with a prescription or doctor's order*

(g) *The area agency must have and follow written policies and procedures for ensuring justification and documentation for each ancillary service provided.*

(h) *Documentation verifying the receipt of the ancillary service must be maintained in the client case record.*

(i) *For any item or alteration to be left in the client's home for an extended period or permanently, the area agency must have a signed agreement with the client that includes statements regarding ownership of the item or alteration and the responsibilities of the client and agency regarding the item or alteration. Movable durable items remain the property of the area agency until the area agency determines that the item has no appreciable value.*

9 NYCRR Section 6655.7(e) is amended as follows:

(e) *No more than an amount equal to [10] 33 percent of the total county's State EISEP services allotment and local match under EISEP may be spent on ancillary support services. An amount equal to at least [50] 33 percent of the county's State EISEP services allotment and local match under EISEP must be spent on in home services, except for the first program year in which a county expends EISEP service dollars under its EISEP program.*

Text of proposed rule and any required statements and analyses may be obtained from: Stephen Syzdek, New York State Office for the Aging, Two Empire State Plaza, Albany, NY 12223-1251, (518) 474-5041, email: stephen.syzdek@ofa.state.ny.us

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

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

Regulatory Impact Statement

1. **Statutory Authority** - Section 201(3) of the New York State Elder Law allows the Director of the New York State Office for the Aging with the advice of the advisory committee for the aging to promulgate, adopt, amend or rescind rules and regulations necessary to carry out the provisions of Article II of the Elder Law.

New York State Elder Law Section 214 governs the administration of the Expanded In-home Services for the Elderly Program (EISEP).

2. **Legislative Objectives** - The legislative objectives of the statute that created EISEP are to increase the availability of in-home support services to non-Medicaid eligible elderly persons in need of assistance and improve access to and management of appropriate care through the use of comprehensive case management. In addition, the legislative intent of EISEP is to foster the use of non-medical supports to avoid the inappropriate use of more costly forms of care at home and in institutional settings; improve the targeting of aging network resources to those most in need and make optimal use of informal caregivers; and assist elderly clients to remain in their homes and communities.

3. **Needs and Benefits** - The purpose of this proposed rule is to increase the flexibility that Area Agencies on Aging (AAAs) have in administering EISEP. This rule increases that flexibility by expanding the definition of ancillary services and increasing their potential use. In addition, this proposed rule allows the AAAs to more effectively spend EISEP dollars in a manner that better serves their clients. This proposed rule also increases the maximum housing adjustment to a level that takes into account current housing costs. It should be noted that except for the change in the housing adjustment, all of the rule changes are permissive.

The genesis of this rulemaking was a survey conducted by the New York State Area Agency on Aging Association (NYS4A). The survey specifically discussed EISEP and what the AAA Directors thought needed to be done to allow the program to better serve EISEP clients. One of the most prevalent suggestions was to increase the flexibility of the program. As a result of this survey, the New York State Office for the Aging (NYSOFA) formed a workgroup. This workgroup worked in conjunction with a subcommittee of AAA Directors formed by the NYS4A to develop this rulemaking. This effort culminated with the proposed rulemaking being presented to all of New York State's AAA Directors at the NYS4A's Leadership Institute held October 2008. These changes were overwhelmingly endorsed by the Directors and the NYS4A. In addition, the concepts behind this proposed rulemaking were presented at the Adult Abuse Training Institute held in Albany in September 2008. At this conference, many of the state's EISEP case managers and program coordinators were in attendance and discussed their thoughts regarding this proposed rulemaking. NYSOFA next presented the proposed rulemaking to its advisory committee for the aging. The advisory committee indicated that it fully supports the proposed changes to the EISEP regulations.

This proposed rule is necessary because AAAs continue to strive to provide the types of services most needed and preferred by older New Yorkers to keep them in their homes and assist them in avoiding more costly institutional care. These proposed rule changes expand the definition of the types of services that may be offered as an ancillary service and provide the AAAs with administrative flexibility allowing them to better help older New Yorkers remain in their homes and communities.

Repealing and replacing Section 6654.19 (EISEP ancillary services) provides the AAAs with the flexibility to deliver needed services to older New Yorkers. Specifically, paragraph (a) is amended to define ancillary services and explain the purpose that the provision of ancillary services fulfills.

Paragraph (b) of Section 6654.19 is amended slightly in that the requirement that a client receive in-home services to be eligible to obtain ancillary services under Section 6654.19 has been removed. It was determined that individuals may need ancillary services, but not be in need of in-home services as described in Section 6654.17. These individuals are just as vulnerable for placement in an institution if their needs are not met. As a result, by removing this requirement, the AAAs will be allowed to serve a broader client base and have more options to address clients' needs.

Section 6654.19(c) is added to reinforce that clients' needs, including the need for ancillary services, are assessed on at least an annual basis. This annual review enables AAAs to be certain that the services and items provided to each client is appropriate and continue to meet the clients' needs.

Section 6654.19(e) is being added to redefine ancillary services so that this service category is broadened and made more flexible by now allowing a wider array of services such as, but not limited to, non-emergency transportation, house cleaning services, social adult day services not provided for respite purposes and assistive technology devices. It expands

the definition of ancillary services to allow AAAs to provide any item or service that can help a client remain safely in the community with an acceptable quality of life.

However, the new Section 6654.19(f) limits what services the AAA can provide as an ancillary service in that it does not allow AAAs to pay for items or services that require a doctor's order or prescription as EISEP is intended to be a non-medical program. Additionally, EISEP was never intended to pay for food and housing expenses. This proposal maintains this intent, except that it allows for meals to be provided under the nutrition program administered by an area agency or other meals that the area agency has determined meet the nutritional requirements of the program. This exception was included to enable individuals who have difficulty with shopping or cooking to remain in their homes.

Paragraph (i) of Section 6654.19 combines paragraphs (g) and (h) found in the current Section 6654.19 and is being amended to allow AAAs to amortize moveable durable items and non-moveable durable items provided to clients under this program. Previously, AAAs were required, after a client was no longer in their residence, to re-enter the client's home and remove items that were not permanently affixed to the residence. This practice has proved costly for AAAs as they have to expend resources to retrieve items that many times have no appreciable value. The amendment to this section allows AAAs to amortize such items so that once the AAA determines that the items have no appreciable value, the AAA may "write off" such items and as a result save resources by foregoing the retrieval process.

The language found in paragraphs (d), (g) and (h) of the proposed Section 6654.19 remain either unchanged or changed slightly from the language found in the current Section 6654.19 paragraphs (e), (f) and (i) respectively. None of these amendments are substantive changes.

The language found in the current Section 6654.19(c) is removed as it is duplicative of the language found in Section 6655.7(e).

Paragraph (d) of the current section 6654.19 is removed thereby eliminating the one time only expenditure and seven consecutive day expenditure requirements. These requirements are being eliminated in order to allow a broader array of services and assistance to be provided.

Section 6655.7(e) is being amended to allow AAAs to expend up to thirty-three percent (33%) of their EISEP state and local match services expenditures on ancillary services. Without this increase in the percentage, the increased flexibility noted above could not be realized by the AAAs because the current 10% expenditure cap would severely curtail what they could spend. Under the proposed amendment, the 33% remains a ceiling, and as such, AAAs are permitted to spend less than 33% percent of their EISEP state and local match services expenditures on ancillary services.

In order for AAAs to fund additional services under the ancillary services category, they may need to expend fewer funds on in-home services. Accordingly, an amendment to section 6655.7(e) is being made that would require AAAs to expend at least 33%, instead of 50% (the current requirement) of their EISEP state and local match services expenditures on in-home services. Under the proposed amendment, AAAs are not permitted to expend less than 33% of their state and local match services expenditures on in-home services.

The increase in the maximum housing adjustment found in 9 NYCRR section 6654.6(b)(4)(iii) is necessary as this housing adjustment has not been updated since 1987. Since that time housing costs have risen dramatically and have led to a situation where some individuals are using a larger portion of their income to pay for their housing costs than was originally intended. By increasing the maximum housing adjustment clients are able to receive the needed care while contributing a fair amount to paying the cost of that care. NYSOFA collaborated with the AAAs to determine if the maximum housing adjustment should be increased and, if so, by how much. Although increasing the maximum housing adjustment may decrease the amount of cost share that an AAA receives from program participants, the majority of AAAs agreed that the value gained by making EISEP more affordable was greater than the value of the cost share lost.

4. **Costs** - This proposed rule imposes no additional costs to the regulated parties, NYSOFA or state and local governments to implement and to continue to comply with this proposed rule. It should be noted that as mandated by the new 9 NYCRR section 6654.19(c), EISEP continues to be the payer of last resort and any services that are able to be provided through another source or program may not be provided through EISEP.

5. **Paperwork** - The proposed rule does not change any of the reporting requirements, forms or other paperwork from what is already required of the AAAs administering the program.

6. **Local Government Mandates** - The proposed rule does not impose any program, service, duty or responsibility upon any city, county, town, village, school district or other special district other than what is already required of the AAAs administering the program.

7. **Duplication** - There are no laws, rules or other legal requirements that duplicate, overlap or conflict with this proposed rule.

8. Alternatives - It is understood by all parties involved that EISEP needs additional programmatic and fiscal flexibility, within the parameters of appropriated funding, to enable AAAs to better serve their EISEP clients. The group discussed several significant programmatic alternatives during the development of this proposal; among them was the consideration of maintaining the requirement that individuals must receive in-home services to be eligible to receive ancillary services. This requirement was not maintained because internal and external discussions clarified that many clients' needs can be met with in-home services as defined in section 6654.16 or with ancillary services under the proposed rulemaking, so that clients can better and more efficiently access the services they need in order to age in place in their homes. There was also discussion around allowing the spending percentages for both in-home (currently at least 50% of EISEP funds must be spent on this category) and ancillary services (currently no more than 10% of EISEP fund may be spent on this category) to remain the same. After internal and external discussions, it was realized that AAAs needed financial flexibility to enable them to utilize the programmatic flexibility provided by this proposed rulemaking. As a result, the percentages were amended. There was extensive debate regarding increasing the maximum housing adjustment as by doing so the amount of cost share collected by some of the AAAs will be decreased. However, as a result of conversations both internally and externally, it was determined that it was more financially feasible to provide individuals with high housing costs with the opportunity to protect more of their income than to save the cost share that may be lost.

9. Federal Standards - This rule does not exceed Federal standards.

10. Compliance Schedule - AAAs will be able to comply with this proposed rule immediately after promulgation.

Regulatory Flexibility Analysis

This proposed rule will not have an adverse economic impact on small businesses or local governments nor will it impose reporting, recordkeeping or compliance requirements above those already required under the Expanded In-home Services for the Elderly Program (EISEP) on small businesses or local governments. This proposed rule simply changes the way in which EISEP is administered by the Area Agencies on Aging (AAA's). The proposed rule only affects the AAA's and the clients served by EISEP by enhancing the program so that a greater number of services can be offered allowing for more client choice and for the AAA's to better meet client need.

Rural Area Flexibility Analysis

This proposed rule will not have an adverse economic impact on public or private entities in rural areas nor will it impose reporting, recordkeeping or compliance requirements above those already required under the Expanded In-home Service for the Elderly Program on public or private entities in rural areas. This proposed rule simply changes the way in which EISEP is administered by the Area Agencies on Aging (AAA's). The proposed rule only affects the AAA's and the clients served by EISEP by enhancing the program so that a greater number of services can be offered allowing for more client choice and for the AAA's to better meet client need.

Job Impact Statement

The New York State Office for the Aging has determined that this proposed rule will not have a substantial adverse impact on jobs. This proposed rule simply changes the way in which the Expanded In-home Services for the Elderly Program (EISEP) is administered by the Area Agencies on Aging (AAA's). The proposed rule only affects the AAA's and the clients served by EISEP by enhancing the program so that a greater number of services can be offered allowing for more client choice and for the AAA's to better meet client need.

Action taken: Amendment of sections 61.15(c)(1)(v) and 61.18(d) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6504(not subdivided), 6507(2)(a), 6604-a(6) and 6605(5)

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

Specific reasons underlying the finding of necessity: The proposed amendment implements the requirements of Chapter 436 of the Laws of 2009, which authorizes a postgraduate student enrolled in an approved dental residency program to satisfy the mandatory dental jurisprudence and ethics continuing education requirement by taking an approved course during the period of their dental residency. The law also eliminates the need for a student in an approved dental residency program to obtain a limited permit in order to practice dentistry in connection with the residency program. Rather, the law requires dental residents to register with the department within 60 days from their entry into an approved residency program and to pay a residency registration fee established by the department, not to exceed the became limited permit fee. The proposed amendment implements these changes.

An emergency action is necessary for the preservation of the general welfare in order to timely implement the provisions of Chapter 436 of the Laws of 2009, which became effective on January 1, 2010.

Subject: Continuing education and limited permits for dentistry.

Purpose: To implement the provisions of Chapter 436 of the Laws of 2009.

Text of emergency rule: 1. Subparagraph (v) of paragraph (1) of subdivision (c) of section 61.15 of the Regulations of the Commissioner of Education is amended, effective January 27, 2010, as follows:

(v) (a)[During] *No later than the end of the first registration period for a licensed dentist beginning on or after January 1, 2008 in which completion of acceptable formal continuing education is required, a licensed dentist shall be required to have completed on a one-time basis, as part of the mandatory hours of acceptable continuing education required in this paragraph, no fewer than three hours in a course approved by the department in dental jurisprudence and ethics, which shall include the laws, rules, regulations and ethical principles relating to the practice of dentistry in New York State.*

(b) *A postgraduate dental student enrolled in a New York state dental residency program in accordance with section 61.18 of this Part may satisfy the requirements of this subparagraph by taking an approved dental jurisprudence and ethics course during the period of his or her dental residency prior to initial licensure.*

2. Section 61.18 of the Regulations of the Commissioner of Education is amended, effective January 27, 2010, by the addition of a new subdivision (d) to read as follows:

(d) *In accordance with subdivision (5) of section 6605 of the Education Law, not later than 60 days after entry into an acceptable residency program, and annually thereafter for the duration of such residency program, the dental resident shall register on a form acceptable to the department and pay to the department a residency registration fee in the amount prescribed for limited permit fees in subdivision (4) of section 6605 of the Education Law.*

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires April 26, 2010.

Text of rule and any required statements and analyses may be obtained from: Christine Moore, New York State Education Department, Room 148, Education Building, 89 Washington Avenue, Albany, NY 12234, (518) 473-8296, email: cmoore@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 6504 of the Education Law provides that admission to the professions shall be supervised by the Board of Regents, and administered by the Education Department, assisted by a state board for each profession.

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and practice of the professions.

Subdivision (6) of section 6604-a of the Education Law requires that each licensed dentist complete a course in dental ethics and juris-

Education Department

EMERGENCY RULE MAKING

Continuing Education and Limited Permits for Dentistry

I.D. No. EDU-07-10-00001-E

Filing No. 60

Filing Date: 2010-01-27

Effective Date: 2010-01-27

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

prudence on a one-time basis, no later than the end of the first registration period in which continuing education is required, and provides that postgraduate dental students may take this course during the period of their dental residency prior to licensure.

Subdivision (5) of section 6605 of the Education Law provides that dental school graduates who meet the education requirement for licensure and who are employed in approved residency programs shall be deemed exempt from licensure and shall not be required to obtain a limited permit to practice dentistry, but shall be required to register on a form acceptable to the Commissioner and pay a fee not to exceed the fee specified in statute for a limited permit.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment implements the aforementioned statutes by permitting a postgraduate dental student enrolled in an approved residency program to take the mandatory course in dental jurisprudence and ethics during their residency program, prior to licensure. The proposed amendment also requires dental residents to register with the Department no later than 60 days after entry into an approved residency program and pay a fee in the amount currently required for a limited permit.

3. NEEDS AND BENEFITS:

Existing regulations governing the ethics and jurisprudence component of mandatory continuing education for licensed dentists requires that this course be taken during the first registration period in which completion of formal education is required, which occurs after a dentist is licensed. The proposed amendment implements section 6604-a, as amended by Chapter 436 of the Laws of 2009, by permitting a postgraduate dental student enrolled in an approved residency program to take the dental jurisprudence and ethics course during their residency program, prior to licensure.

Existing regulations that describe the residency requirement for dental licensure make no provision for the registration of residents, or the payment of a residency fee. The proposed regulation implements section 6605(5) of the Education Law, as amended by Chapter 436 of the Laws of 2009, by requiring dental residents in an approved residency program to register with the Department and pay a registration fee equal to the amount now charged for a limited permit.

4. COSTS:

(a) Cost to State government: None.

(b) Cost to local government: None.

(c) Cost to private regulated parties: As authorized by Chapter 436 of the Laws of 2009, the proposed amendment establishes a dental residency registration fee equal to the limited permit fee (currently \$105). Because dental residents will not longer have to pay the limited permit fee, they will not be required to pay any more than they currently pay.

(d) Costs to the regulatory agency: As stated in "Costs to State Government," the proposed amendment does not impose additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment conforms the Commissioner's Regulations to recently amended statutes and does not impose any additional paperwork requirements.

7. DUPLICATION:

The amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment, and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards regarding continuing education requirements for licensed dentists or the registration of dental residents.

10. COMPLIANCE SCHEDULE:

The proposed amendment must be complied with on its stated effective date. No additional period of time is necessary to enable regulated parties to comply.

Regulatory Flexibility Analysis

The proposed amendment relates to the ethics and jurisprudence component of the mandatory continuing education required of licensed dentists, and the registration of dental residents. The purpose of the proposed amendments is to conform regulations of the Commissioner of Education to statutory changes made by Chapter 436 of the Laws of 2009, which authorizes the ethics and jurisprudence component of mandatory continuing education requirements for dentists to be taken by a dental school graduate during an approved dental residency program, and requires dental residents to register with the Department and pay a residency registration fee.

Because it is evident from the nature of the proposed amendment that it will have no affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all licensed dentists and dental residents who live in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed amendment does not impose reporting, recordkeeping or other compliance requirements that are not mandated by statute. Professional services will not be needed in rural areas to comply with the proposed amendments.

3. COSTS:

As authorized by Chapter 436 of the Laws of 2009, the proposed amendment establishes an annual dental residency registration fee equal to the limited permit fee (currently \$105). Because dental residents will not longer have to pay the limited permit fee, they will not be required to pay any more than they currently pay.

4. MINIMIZING ADVERSE IMPACT:

In order to implement statutory requirements, the proposed amendment makes changes to the Commissioner's Regulations regarding the ethics and jurisprudence component of the mandatory continuing education requirement for dentists, and the registration of dental residents. The proposed amendment does not impose any additional compliance requirements, local government mandates or costs on licensed dentists or dental residents in rural areas, other than the cost referenced above.

5. RURAL AREA PARTICIPATION:

The State Education Department solicited comments on the proposed amendments from the New York State Dental Association and the State Board for Dentistry, which includes members who live and work in all areas of New York State, including rural areas of the State.

Job Impact Statement

The proposed amendments relate to the ethics and jurisprudence component of the continuing education required of licensed dentists, and the registration of dental residents. The purpose of the proposed amendments is to conform regulations of the Commissioner of Education to statutory changes made by Chapter 436 of the Laws of 2009, which authorizes the ethics and jurisprudence component of mandatory continuing education requirements for dentists to be taken by a dental school graduate during an approved dental residency program, and requires the dental residents to register with the Department and pay a residency registration fee.

Because it is evident from the nature of the proposed amendments that they will have no impact on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one was not prepared.

Department of Environmental Conservation

NOTICE OF ADOPTION

Operation of Mechanically Propelled Vessels and Aircraft in the Forest Preserve

I.D. No. ENV-48-09-00005-A

Filing No. 69

Filing Date: 2010-02-02

Effective Date: 2010-02-17

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

Action taken: Amendment of section 196.4 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 1-0101(3)(b), (d), 3-0301(1)(b), (d), (2)(m) and 9-0105 (1); Executive Law, section 816(3) and art. 14, section 1

Subject: Operation of mechanically propelled vessels and aircraft in the forest preserve.

Purpose: To authorize an interim permit system that sets limits on the time and frequency of flights to Lows Lake until December 31, 2011.

Text or summary was published in the December 2, 2009 issue of the Register, I.D. No. ENV-48-09-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Peter J. Frank, Bureau of Forest Preserve Management, NYS DEC, 625 Broadway, Albany, NY 12233-4254, (518) 473-9518, email: lfadk@gw.dec.state.ny.us

Additional matter required by statute: This regulatory action is part of the Bog River Final Supplemental EIS which is in compliance with Article 8 of the Environmental Conservation Law.

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Ambulatory Patient Groups (APGs) Outpatient Rate Setting Methodology

I.D. No. HLT-07-10-00004-E

Filing No. 62

Filing Date: 2010-01-28

Effective Date: 2010-01-28

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

Action taken: Amendment of Subpart 86-8 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807(2-a)(e)

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

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulation on an emergency basis in order to meet the regulatory requirement found within the regulation itself to update the Ambulatory Patient Group (APG) weights at least once a year. To meet that requirement, the weights needed to be revised and published in the regulation for January 2010. Additionally, the regulation needs to reflect the many software changes made to the APG payment software, known as the APG grouper-pricer, which is a sub-component of the eMedNY Medicaid payment system. These changes include revised lists of payable and non-payable APGs, a new list of APGs that are not eligible for a capital add-on, and a list of APGs that are not subject to having their payment "blended" with provider-specific historical payment amounts.

Finally, a brand new payment software enhancement, which allows payment on a procedure code-specific basis rather than an APG basis, needs to be reflected in the regulation.

There is a compelling interest in enacting these amendments immediately in order to secure federal approval of associated Medicaid State Plan amendments and assure there are no delays in implementation of these provisions. APGs represent the cornerstone to health care reform. Their continued refinement is necessary to assure access to preventive services for all Medicaid recipients.

Subject: Ambulatory Patient Groups (APGs) Outpatient Rate Setting Methodology.

Purpose: To refine APG payment methodology regarding new APG weights, new procedure-based weights & minor changes in APG payment rules.

Substance of emergency rule: The amendments to Part 86 of Title 10 (Health) NYCRR are required to update the Ambulatory Patient Groups (APGs) methodology, implemented on December 1, 2008, which governs reimbursement for certain ambulatory care fee-for-service (FFS) Medicaid services. APGs group procedures and medical visits that share similar characteristics and resource utilization patterns so as to pay for services based on relative intensity.

86-8.2 - Definitions

The proposed amendments to section 86-8.2 of Title 10 (Health) NYCRR provide an amended subdivision (c) defining procedure-based APG weights and a new subdivision (u) defining no blend APGs.

86-8.7 - APGs and relative weights

The proposed revision to section 86-8.7 of Title 10 (Health) NYCRR provides revised APG weights and also sets forth procedure-based weights to be used under APG reimbursement.

86-8.9 - Diagnostic coding and rate computation

The proposed amendments to section 86-8.9 removes the restriction on allowing a capital add-on for ancillary-only visits and replaces that with a list of APGs with which a capital add-on will not be allowed, specifically: 94 Cardiac Rehabilitation; 274 Physical Therapy, Group; 275 Speech Therapy and Evaluation, Group; 322 Medication Administration and Observation; 414 Level I Immunization and Allergy Immunotherapy; 415 Level II Immunization; 416 Level III Immunization; 428 Patient Education, Individual; 429 Patient Education, Group. The list of no blend APGs is also provided, those being: 94 Cardiac Rehabilitation; 310 Developmental and Neuropsychological Testing; 312 Full Day Partial Hospitalization for Mental Illness; 321 Crisis Intervention; 322 Medication Administration and Observation; 414 Level I Immunization and Allergy Immunotherapy; 415 Level II Immunization; 416 Level III Immunization; 426 Medication Management; 428 Patient Education, Individual; 429 Patient Education, Group; 448 After Hours Services; 451 Smoking Cessation Treatment.

86-8.10 Exclusions from Payment

The proposed amendments removes 118 Nutrition Therapy from the "never pay" APG list set forth in subdivision (h) and places it on the "if stand alone do not pay" list set forth in subdivision (i). The following additional APGs are added to the never pay APG list; 441 Class VI Chemotherapy Drugs; 442 Class VII Combined Chemotherapy and Pharmacotherapy. The following additional APGs are added to the if stand alone do not pay list: 281 Magnetic Resonance Angiography - Head and/or Neck; 282 Magnetic Resonance Angiography - Chest; 283 Magnetic Resonance Angiography - Other Sites; 292 MRI - Abdomen; 293 MRI - Joints; 294 MRI - Back; 295 MRI - Chest; 296 MRI - Other; 297 MRI - Brain; 373 Level I Dental Film; 374 Level II Dental Film; 375 Dental Anesthesia; 440 Class VI Pharmacotherapy.

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 April 27, 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: regsqna@health.state.ny.us

Regulatory Impact Statement

Statutory Authority:

Authority for the promulgation of these regulations is contained in

section 2807(2-a)(e) of the Public Health Law, section 79(u) of part C of chapter 58 of the laws of 2008 and section 129(l) of part C of chapter 58 of the laws of 2009, which authorizes the Commissioner of Health to adopt and amend rules and regulations, subject to the approval of the State Director of the Budget, establishing an Ambulatory Patient Groups methodology for determining Medicaid rates of payment for diagnostic and treatment center services, free-standing ambulatory surgery services and general hospital outpatient clinics, emergency departments and ambulatory surgery services.

Legislative Objective:

The Legislature’s mandate is to convert, where appropriate, Medicaid reimbursement of ambulatory care services to a system that pays differential amounts based on the resources required for each patient visit, as determined through APGs.

Needs and Benefits:

The proposed regulations are in conformance with statutory amendments to provisions of Public Health Law section 2807(2-a), which mandated implementation of a new ambulatory care reimbursement methodology based on APGs. This reimbursement methodology provides greater reimbursement for high intensity services and relatively less reimbursement for low intensity services. It also allows for greater payment homogeneity for comparable services across all ambulatory care settings (i.e., Outpatient Department, Ambulatory Surgery, Emergency Department, and Diagnostic and Treatment Centers). By linking payments to the specific array of services rendered, APGs will make Medicaid reimbursement more transparent. APGs provide strong fiscal incentives for health care providers to improve the quality of, and access to, preventive and primary care services.

COSTS

Costs for the Implementation of, and Continuing Compliance with this Regulation to the Regulated Entity:

There will be no additional costs to providers as a result of these amendments.

Costs to Local Governments:

There will be no additional costs to local governments as a result of these amendments.

Costs to State Governments:

There will be no additional costs to NYS as a result of these amendments. All expenditures under this regulation are fully budgeted in the SFY 09/10 enacted budget.

Costs to the Department of Health:

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

Paperwork:

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

Duplication:

This regulation does not duplicate other state or federal regulations.

Alternatives:

These regulations are in conformance with Public Health Law section 2807(2-a). Alternatives would require statutory amendments.

Federal Standards:

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

Compliance Schedule:

The proposed amendment will become effective upon filing with the Department of State.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals, diagnostic and treatment centers, and free-standing ambulatory surgery centers. Based on recent data extracted from providers’ submitted cost reports, seven hospitals and 245 DTCs were identified as employing fewer than 100 employees.

Compliance Requirements:

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

Professional Services:

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

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are intended to further reform the outpatient/ambulatory care fee-for-service Medicaid payment system, which is intended to benefit health care providers, including those with fewer than 100 employees.

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Minimizing Adverse Impact:

The proposed amendments apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The Department of Health considered approaches specified in section 202-b (1) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that this reimbursement system is mandated in statute.

Small Business and Local Government Participation:

Local governments and small businesses were given notice of these proposals by their inclusion in the SFY 2009-10 enacted budget and the Department’s issuance in the State Register of federal public notices on February 25, 2009, and June 10, 2009.

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

No initial capital costs will be imposed as a result of this rule, nor is there an annual cost of compliance.

Minimizing Adverse Impact:

The proposed amendments apply to certain services of general hospitals, diagnostic and treatment centers and freestanding ambulatory surgery centers. The Department of Health considered approaches specified in section 202-bb (2) of the State Administrative Procedure Act in drafting the proposed amendments and rejected them as inappropriate given that the reimbursement system is mandated in statute.

Opportunity for Rural Area Participation:

Rural areas were given notice of these proposals by their inclusion in the SFY 2009-10 enacted budget and the Department's issuance in the State Register of federal public notices on February 25, 2009 and June, 10, 2009.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed regulations, that they will not have a substantial adverse impact on jobs or employment opportunities.

Higher Education Services Corporation

NOTICE OF ADOPTION

The Senator Patricia K. McGee Nursing Faculty Scholarship Program

I.D. No. ESC-49-09-00007-A

Filing No. 61

Filing Date: 2010-01-27

Effective Date: 2010-02-17

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

Action taken: Amendment of section 2201.5(c)(4) of Title 8 NYCRR.

Statutory authority: Education Law, sections 653(4), 655(4) and 679-c

Subject: The Senator Patricia K. McGee Nursing Faculty Scholarship Program.

Purpose: To clarify "nursing faculty preparation program" requirements.

Text or summary was published in the December 9, 2009 issue of the Register, I.D. No. ESC-49-09-00007-P.

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

Text of rule and any required statements and analyses may be obtained from: George M. Kazanjian, Senior Attorney, N.Y.S. Higher Education Services Corporation, 99 Washington Avenue, Room 1350, Albany, New York 12255, (518) 473-1581, email: regcomments@hesc.org

Assessment of Public Comment

The agency received no public comment.

Office of Mental Retardation and Developmental Disabilities

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

Rate/Fee/Price Setting for Various Programs and Services Provided Under the Auspices of OMRDD

I.D. No. MRD-07-10-00006-EP

Filing No. 68

Filing Date: 2010-02-01

Effective Date: 2010-02-01

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

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

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 43.02

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

The specific reasons underlying the finding of necessity: The reason justifying this action is the preservation of the general welfare of certain New York State citizens with developmental disabilities who are receiving services in the referenced OMRDD certified facilities and programs. Fiscal uncertainties precluded OMRDD from securing necessary control agency approval to allow for previous proposal and timely promulgation of these amendments within the regular SAPA procedural time frames. Some providers, especially those with smaller operations, could face increased fiscal constraints, if OMRDD did not file this Emergency/Proposed Agency Action and establish the regulatory authority to reimburse providers of the above referenced facilities and services at revised rates/fees/prices beginning February 1, 2010. The regulation also ensures the quality and continuity of services to citizens with developmental disabilities.

Subject: Rate/Fee/Price setting for various programs and services provided under the auspices of OMRDD.

Purpose: To establish trend factors for rates/fees/prices effective February 1, 2010.

Public hearing(s) will be held at: 10:30 a.m., April 5, 2010 at 75 Morton St., Rm. 3C25 A, 3rd Fl., New York, NY; and 2:00 p.m., April 7, 2010 at O.D. Heck, Balltown and Consaul Rds., Bldg. 3, 3rd Fl., Rm. 1, Schenectady, NY.

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

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

Text of emergency/proposed rule: Paragraph 81.10(b)(4) - Add new subparagraphs (vi) and (vii).

(vi) Effective February 1, 2010, integrated residential communities shall receive an amount that they would have received if the trend factor in subparagraph (v) had been 3.06 percent. On January 1, 2010, the trend factor for the previous fee period shall be deemed to be the 3.06 percent full annual trend. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon the provider reporting the use of the funds in the form and format specified by the Commissioner.

(vii) From February 1, 2010 to December 31, 2010, integrated residential communities shall be reimbursed operating costs that result in a full annual trend factor of 2.08 percent for the annual fee period. On January 1, 2011, the trend factor for the previous fee period shall be deemed to be the 2.08 percent full annual trend. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon the provider reporting the use of the funds in the form and format specified by the Commissioner.

Paragraph 635-10.5(a)(3) - Add a new subparagraph (v) and renumber existing subparagraphs (v)-(vii).

(v) *Effective February 1, 2010, the fee will be subject to a trend factor if one is specified in paragraph (i)(4) of this section.*

Paragraph 635-10.5(i)(1) - Amend paragraph (1); add new subparagraphs (xxviii) and (xxix); renumber existing subparagraph (xviii) as (xxx); and renumber erroneously numbered subparagraph (xix) as (xxxi).

(1) *Except for At Home Residential Habilitation as of February 1, 2009, Plan of Care Support Services and Family Education and Training, the following applies to [For] HCBS waiver providers in Region I, including those providers in Region II or III designated or elected to a Region I reporting year-end and fiscal cycle and excluding those HCBS waiver providers in Region I designated or elected to a Region II or III reporting year-end and fiscal cycle. For providers in operation on June 30th, the appropriate trend factor shall be applied to the operating portion, exclusive of property, of the price or fee in effect on June 30th.*

(xxviii) *Effective February 1, 2010, facilities shall receive an amount that they would have received if the trend factor in subparagraph (xxvii) of this paragraph for the price or fee period of July 1, 2009 through June 30, 2010 had been 3.06 percent. The trend factor in effect for the price or fee period ending June 30, 2010 shall be deemed to be the 3.06 percent full annual trend. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon the provider reporting the use of the funds in the form and format specified by the Commissioner. In addition, for agency sponsored family care, the agency must pay the trend factor related to the difficulty of care payment to the individual family care provider.*

(xxix) *2.08 percent to trend 2009-2010 costs to 2010-2011. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon the provider reporting the use of the funds in the form and format specified by the Commissioner. In addition, for agency sponsored family care, the agency must pay the trend factor related to the difficulty of care payment to the individual family care provider.*

[(xix)] (xxxi) *Once reimbursable costs are determined in accordance with this section, OMRDD shall apply an appropriate combined trend factor to the HCBS residential habilitation costs.*

Paragraph 635-10.5(i)(2) - Amend paragraph (2) and add new subparagraphs (xxviii) and (xxix) and renumber existing subparagraphs (xxviii) and (xxix).

(2) *Except for At Home Residential Habilitation as of February 1, 2009, Plan of Care Support Services and Family Education and Training the following applies to [For] HCBS waiver providers in Regions II and III, including those providers in Region I designated or elected to Region II or III reporting year-end and fiscal cycle and excluding those HCBS waiver services providers in Regions II and III designated or elected to a Region I reporting year-end and fiscal cycle. For providers in operation on December 31st, the appropriate trend factor shall be applied to the operating portion, exclusive of property, of the price or fee in effect on December 31st.*

(xxviii) *Effective February 1, 2010, facilities shall receive an amount that they would have received if the trend factor in subparagraph (xxvii) of this paragraph for the price or fee period of January 1, 2009 through December 31, 2009 had been 3.06 percent. The trend factor in effect for the calendar year price or fee period ending December 31, 2009 shall be deemed to be the 3.06 percent full annual trend. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon the provider reporting the use of the funds in the form and format specified by the Commissioner. In addition, for agency sponsored family care, the agency must pay the trend related to the difficulty of care payment to the individual family care provider.*

(xxix) *From February 1, 2010 to December 31, 2010, facilities shall be reimbursed operating costs that result in a full annual trend factor of 2.08 percent for the calendar year price or fee period. For providers operating both Individual Residential Alternatives (IRA) and Community Residences (CR) before January 1, 2010, the trend*

factor shall be applied to the allowable operating costs contained in the initial consolidated IRA/CR price in effect on January 1, 2010 instead of December 31, 2009. The trend factor in effect for the price or fee period ending December 31, 2010 shall be deemed to be the 2.08 percent full annual trend. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon the provider reporting the use of the funds in the form and format specified by the Commissioner. In addition, for agency sponsored family care, the agency must pay the trend related to the difficulty of care payment to the individual family care provider.

Subdivision 635-10.5(i) - Add new paragraphs (3) and (4).

(3) *Effective February 1, 2010, for At Home Residential Habilitation (AHRH) programs operating after January 31, 2009, only the standard regional fees shall be trended.*

(i) *Effective February 1, 2010, providers shall receive an amount that they would have received if the trend factor of 3.06 percent had been incorporated into the standard regional fees on February 1, 2009. The trend factor in effect for the period February 1, 2009 through December 31, 2009 shall be deemed to be the 3.06 percent full annual trend. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon the provider reporting the use of the funds in the form and format specified by the Commissioner.*

(ii) *From February 1, 2010, to December 31, 2010 providers shall be reimbursed operating costs that result in a full annual trend factor of 2.08 percent for the 2010 calendar year fee period. The trend factor in effect for the annual period ending December 31, 2010 shall be deemed to be the 2.08 percent full annual trend. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon the provider reporting the use of the funds in the form and format specified by the Commissioner.*

(4) *Effective February 1, 2010, reimbursement for Plan of Care Support Services (PCSS) and Family Education and Training (FET) shall be trended for the years indicated as follows:*

(i) *Effective February 1, 2010, providers shall receive an amount that they would have received if the trend factor of 3.06 percent had been incorporated into the fees on April 1, 2009. The trend factor in effect for the annual period ending March 31, 2010 shall be deemed to be the 3.06 full annual trend. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon the provider reporting the use of the funds in the form and format specified by the Commissioner.*

(ii) *2.08 percent to trend 2009-2010 to 2010-2011. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon the provider reporting the use of the funds in the form and format specified by the Commissioner.*

Paragraph 635-10.5(o) - Add a new subparagraph (vii).

(vii) *Effective February 1, 2010, the fee will be subject to a trend factor if one is specified in paragraph (i)(4) of this section.*

Subparagraphs 671.7(a)(8)(i) and (ii) - Amend as follows:

(8) *Total reimbursable costs derived through the application of the methodologies described in this subdivision shall be trended as follows:*

(i) *For providers reporting as Region I providers in operation on June 30th, the appropriate trend factor shall be applied to the allowable operating costs, exclusive of property, used to establish the price in effect on June 30th. That trend factor is 2.08 percent to trend June 30, 2010 costs to 2010-2011. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon the provider reporting the use of the funds in the form and format specified by the Commissioner.*

(ii) *For providers reporting as Region II or Region III providers in operation on December 31st, the appropriate trend factor shall be applied to the allowable operating costs, exclusive of property, used to establish the price in effect on December 31 except that for calendar year 2010, the initial price exclusive of property in effect on January 1, 2010 shall be trended. From February 1, 2010 to December 31, 2010, facilities shall be reimbursed operating costs that result in a full annual trend factor of 2.08 percent for the calendar year price period.*

The trend factor in effect for the price period ending December 31, 2010 shall be deemed to be the 2.08 percent full annual trend. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon the provider reporting the use of the funds in the form and format specified by the Commissioner.

Clause 681.14(c)(3)(ii)(b) - Add a new subclause (10).

(10) If a facility is subject to an expanded desk audit per subclause (2) of this clause, but the desk audit has not been completed by January 1, 2010 or July 1, 2010, OMRDD shall continue the rate established according to the first sentence of subclause (3) of this clause and, if applicable, further trended to 2010 or 2010-2011 dollars until OMRDD completes the expanded desk audit. Upon OMRDD's completion of the expanded desk audit, for the base period and subsequent periods beginning January 1, 2003 or July 1, 2003, the methodology described in this section shall apply.

Paragraph 681.14 (h)(1) - Amend subparagraphs (xix) and (xx) and add new subparagraphs (xxx) and (xxii).

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

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

(xxi) Effective February 1, 2010, facilities shall receive an amount that they would have received if the trend factor in subparagraph (xx) of this paragraph for the rate period of July 1, 2009 through June 30, 2010 had been 3.06 percent. The trend factor in effect for the rate period ending June 30, 2010 shall be deemed to be the 3.06 percent full annual trend. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon the provider reporting the use of the funds in the form and format specified by the Commissioner; and

(xxii) 2.08 percent for 2009-2010 to 2010-2011. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon the provider reporting the use of the funds in the form and format specified by the Commissioner.

Paragraph 681.14(h)(2) - Amend subparagraphs (xix) and (xx) and add new subparagraphs (xxi) and (xxii).

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

(xx) 0.00 percent for 2008 to 2009[.];

(xxi) Effective February 1, 2010, facilities shall receive an amount that they would have received if the trend factor in subparagraph (xx) of this paragraph for the rate period of January 1, 2009 through December 31, 2009 had been 3.06 percent. The trend factor in effect for the rate period ending December 31, 2009 shall be deemed to be the 3.06 percent full annual trend. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon the provider reporting the use of the funds in the form and format specified by the Commissioner; and

(xxii) From February 1, 2010 to December 31, 2010, facilities shall be reimbursed operating costs that result in a full annual trend factor of 2.08 percent for the 2010 calendar year rate period. The trend factor in effect for the rate period ending December 31, 2010 shall be deemed to be the 2.08 percent full annual trend. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon the provider reporting the use of the funds in the form and format specified by the Commissioner.

Paragraph 681.14(h)(3) - Amend subparagraphs (xxvii) and (xxviii) and add new subparagraphs (xxix) and (xxx).

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

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

(xxix) Effective February 1, 2010, facilities shall receive an amount that they would have received if the trend factor in subparagraph (xxviii) of this paragraph for the rate period of July 1, 2009 through June 30, 2010 had been 3.06 percent. The trend factor in effect for the rate period ending June 30, 2010 shall be deemed to be the 3.06 percent full annual trend. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon

the provider reporting the use of the funds in the form and format specified by the Commissioner; and

(xxx) 2.08 percent for 2009-2010 to 2010-2011. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon the provider reporting the use of the funds in the form and format specified by the Commissioner.

Paragraph 681.14(h)(4) - Amend subparagraphs (xxvii) and (xxviii) and add new subparagraphs (xxix) and (xxx).

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

(xxviii) 0.00 percent for 2008 to 2009[.];

(xxix) Effective February 1, 2010, facilities shall receive an amount that they would have received if the trend factor in subparagraph (xxviii) of this paragraph for the rate period of January 1, 2009 through December 31, 2009 had been 3.06 percent. The trend factor in effect for the calendar year rate period ending December 31, 2009 shall be deemed to be the 3.06 percent full annual trend. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon the provider reporting the use of the funds in the form and format specified by the Commissioner; and

(xxx) From February 1, 2010 to December 31, 2010, facilities shall be reimbursed operating costs that result in a full annual trend factor of 2.08 percent for the 2010 calendar year rate period. The trend factor in effect for the rate period ending December 31, 2010 shall be deemed to be the 2.08 percent full annual trend. Retention of the proceeds attributable to the application of the trend factor increase shall be contingent upon the provider reporting the use of the funds in the form and format specified by the Commissioner.

Subparagraph 690.7(d)(6)(iii) - add a new clause (h):

(h) From April 1, 2010 to March 31, 2011 the trend factor shall be 0.00 percent for all facilities.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire May 1, 2010.

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

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

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

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

Regulatory Impact Statement

1. Statutory authority:

a. 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).

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

2. Legislative objectives: These emergency/proposed amendments further the legislative objectives embodied in sections 13.07, 13.09(b) and 43.02 of the Mental Hygiene Law. The enactment of these emergency/proposed amendments will provide funding increases to voluntary agency providers of the following services:

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

b. Individualized Residential Alternative (IRA) facilities and Home

and Community-based (HCBS) Waiver services (amendments to section 635-10.5).

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

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

These funding increases will enhance the ability of agencies that operate the above facilities to maintain services in the areas of care, treatment, rehabilitation, and training of persons with mental retardation and developmental disabilities.

3. Needs and benefits: OMRDD has provided funding for the above referenced facilities and services. Such funding is necessary for the continued delivery of services to persons with developmental disabilities. The emergency/ proposed amendments are concerned with identifying the respective trend factors applicable to these facilities and services, effective February 1, 2010.

When OMRDD issues trend factor increases, the percentage increase is spread across all operating cost categories of the reimbursement price or rate so that the proportion of each cost category to total operating costs stays constant. Although OMRDD is not mandating that providers spend the trend factor increment in any particular way, OMRDD would expect that providers use a portion of the funding increase to augment compensation and fringe benefits and continually address employee recruitment and retention issues with these increases.

Providers have expressed the importance of the trend factor as related to their ability to enhance employee salaries and benefits and therefore address recruitment and retention. New York State has responded by doing three things. First, the State is increasing reimbursement to what providers would have received if there were trends for the 2009 calendar year/2009-2010 fiscal year. Second, the State is making these increases part of the permanent funding upon which future trends will be based. Third, the State is establishing trends for the 2010 calendar year/2010-2011 fiscal year. In deference to providers to exercise their discretion and to allocate in ways most productive for their specific circumstances, OMRDD does not intend to mandate any particular use of these funds. Nonetheless, OMRDD encourages providers to use these funds to support their employees and it is requiring that providers report how they will, or have, utilized the funding attributable to these two trend factors.

Fiscal uncertainties precluded OMRDD from securing necessary control agency approval to allow for previous proposal and timely promulgation of these amendments within the regular SAPA procedural time frames. Some providers, especially those with smaller operations, could face increased fiscal constraints, if OMRDD did not file this Emergency/Proposed Agency Action and establish the regulatory authority to reimburse providers of the above referenced facilities and services at revised rates/fees/prices beginning February 1, 2010. The regulation also ensures the quality and continuity of services to citizens with developmental disabilities.

4. Costs:

a. Costs to the Agency and to the State and its local governments. For those facilities or programs which do not receive a trend factor of zero percent, the emergency/proposed amendments permanently increase reimbursement to what providers would have received if there were a 3.06 percent trend for the 2009 calendar year/2009-2010 fiscal year and establish a trend factor of 2.08 percent for the 2010 calendar year/2010-2011 fiscal year. The aggregate cost of the application of the trend factors contained in the emergency/proposed amendments is approximately \$76 million for the amount providers would have received in the 2009 calendar/2009-2010 fiscal year. This represents approximately \$38 million in State funds and \$38 million in federal funds. For the 2010 calendar/2010-2011 fiscal year, the aggregate cost is \$127.4 million. This represents approximately \$63.7 million in State funds and \$63.7 million in federal funds.

Pursuant to Social Services Law sections 365 and 368-a, local governments incur no costs for most of the above referenced facilities or services, or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. Further, for the current State fiscal year, there are no 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.

The specific impacts by facility or program type are as follows:

As of January 2010 there were only two programs authorized by OMRDD to provide services as integrated residential communities (amendments to section 81.10). They served approximately 100 individuals. The estimated cost to the State of the proposed trend factor amendments will be approximately \$29,000 in the first year and an additional \$20,500 in the second year. There is no federal or local government share associated with this cost.

For Individualized Residential Alternative (IRA) facilities and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5). New York State currently funds IRA facilities and all authorized HCBS Waiver residential habilitation, day habilitation, supported employment, respite, prevocational services, family education and training and plan of care support services for the approximately 103,000 persons receiving such services as of January 2010. The estimated cost for implementation of the trend factor contained in the emergency/proposed amendments on an annual aggregate basis is approximately \$60 million in the first year and an additional \$40.8 million in the second year. This represents approximately \$29.9 million in State share and \$29.9 million in federal funds in the first year. This represents approximately \$20.4 million in State share and \$20.4 million in federal funds in the second year. There are no costs to local governments as a result of these amendments.

For Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7). Currently, OMRDD funds voluntary operated community residence facilities which are providing services to approximately 390 persons as of January 2010. The estimated cost for implementation of the trend factor contained in the emergency/proposed amendments on an annual aggregate basis is approximately \$366,000. This represents approximately \$183,000 in State share and \$183,000 in federal funds. There are no costs to local governments as a result of these amendments.

For Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD), (amendments to section 681.14). As of January 2010, there were approximately 5500 people in New York State being served in Intermediate Care Facilities. The estimated cost for implementation of the trend factors contained in the emergency/proposed amendments on an annual aggregate basis is approximately \$16 million in the first year and an additional \$10.4 million in the second year. This represents approximately \$8 million in State share and \$8 million in federal funds in the first year. This represents approximately \$5.2 million in State share and \$5.2 million in federal funds in the second year. There are no costs to local governments resulting from emergency/proposed amendments to section 681.14.

For Day Treatment (amendments to section 690.7). OMRDD funds Day Treatment programs providing services to approximately 1780 persons with developmental as of January 2010. The emergency/proposed amendments implement a trend factor of zero percent. There are therefore no costs attributable to this amendment, either to the State or to local governments.

In all instances, these estimated cost impacts have been derived by applying the trend factor provisions of the emergency/proposed amendments within the context of the respective reimbursement methodologies to the providers of services certified or authorized as of January, 2010.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There may be minimal costs associated with complying with the reporting requirements. The emergency/proposed amendments are necessary to maintain funding of the above cited facilities at revised levels of reimbursement in effect as of February 1, 2010. To the extent that the amendments provide trend factor increases to the providers of the various facilities and services, the amendments will result in increased funding to provider agencies.

As stated above, providers that receive trend factor increases as a result of the emergency/proposed amendments will be required to report, in a form and format specified by the Commissioner, how they will, or have, utilized the funding attributable to these trend factors.

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: Providers which receive additional funding will be required by the emergency/proposed amendments to report to OMRDD how they expect to utilize or how they have utilized the additional funds. OMRDD shall issue guidance to providers that will clarify what information is required and how it is to be expressed and transmitted to OMRDD.

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

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

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

10. Compliance schedule: The emergency rule is effective February 1, 2010. OMRDD has concurrently filed the rule as a Notice of Proposed Rule Making, and it intends to finalize the rule as soon as possible within the time frames mandated by the State Administrative Procedure Act. The emergency/proposed amendments are concerned with revising the various reimbursement methodologies to implement trend factor adjustments for facilities and providers of services to persons with developmental disabilities. These amendments will impose a reporting requirement but OMRDD is constructing a form for providers to use to standardize and streamline the reporting and to facilitate compliance.

Regulatory Flexibility Analysis

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

Programs certified by OMRDD as integrated residential communities (amendments to section 81.10). As of January 2010, there were only two such programs authorized by OMRDD to operate as integrated residential communities. They serve approximately 100 persons.

Individualized Residential Alternative (IRA) facilities, and Home and Community-based (HCBS) Waiver services (amendments to section 635-10.5). New York State currently funds IRA facilities and all authorized HCBS Waiver residential habilitation, day habilitation, supported employment, respite, prevocational services, family education and training and plan of care support services for the approximately 103,000 persons receiving such services as of January 2010.

Home and Community-based (HCBS) Waiver Community Residential Habilitation Services (amendments to section 671.7). As of January 2010, OMRDD funds voluntary operated community residence facilities which serve approximately 400 persons.

Intermediate Care Facilities for Persons with Developmental Disabilities (ICF/DD), (amendments to section 681.14). As of January 2010, there were approximately 5,500 people served in ICF/DD facilities in New York State.

Day Treatment Facilities for Persons with Developmental Disabilities, (amendments to section 690.7). As of January 2010, there were approximately 1,780 people served in Day Treatment facilities in New York State.

While most of the above services are provided by voluntary agencies which employ more than 100 people overall, many of the facilities operated by these agencies at discrete sites (e.g. IRAs or Day Habilitation programs) employ fewer than 100 employees at each site,

and each site (if viewed independently) would therefore be classified as a small business. Some smaller agencies which employ fewer than 100 employees overall would themselves be classified as small businesses.

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

The emergency/proposed amendments will have no impact on local governments because Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs.

OMRDD has provided funding for the above referenced facilities and services. Such funding is necessary to assure the continued delivery of services to persons with developmental disabilities. The emergency/ proposed amendments are concerned with identifying the respective trend factors applicable to these facilities and services, effective February 1, 2010.

When OMRDD issues trend factor increases, the percentage increase is spread across all operating cost categories of the reimbursement price or rate so that the proportion of each cost category to total operating costs stays constant. Although OMRDD has not mandated that providers spend the trend factor increment in any particular way, it has been a concern of OMRDD that providers use a portion of the funding increase to augment compensation and fringe benefits. OMRDD has voiced this expectation and has encouraged providers continually to address employee recruitment and retention issues.

Providers have expressed the importance of the trend factor as related to their ability to enhance employee salaries and benefits and therefore address recruitment and retention. New York State has responded by doing three things. First, the State is increasing reimbursement to what providers would have received if there were trends for the 2009 calendar year/2009-2010 fiscal year. Second, the State is making these increases part of the permanent funding upon which future trends will be based. Third, the State is establishing trends for the 2010 calendar year/2010-2011 fiscal year. In deference to providers to exercise their discretion and to allocate in ways most productive for their specific circumstances, OMRDD does not intend to mandate any particular use of these funds. Nonetheless, OMRDD encourages providers to use these funds to support their employees and it is requiring that providers report how they will, or have, utilized the funding attributable to these two trend factors.

2. Compliance requirements: As stated above, providers that receive trend factor increases as a result of the emergency/proposed amendments will be required to report in a form and format specified by the Commissioner, how they will, or have, utilized the funding attributable to these trend factors.

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

4. Compliance costs: There may be some additional compliance costs to small business regulated parties or local governments associated with the implementation of, and continued compliance with, these emergency/proposed amendments. In order to assist providers in reporting the use of the additional funds, OMRDD will issue a survey for providers to complete. OMRDD has considered the desirability of a small business regulation guide to assist provider agencies with this rule, as provided for by new section 102-a of the State Administrative Procedure Act. In lieu of this, OMRDD believes that its survey will be sufficient for providers to comprehend and expeditiously comply with the reporting requirement.

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

6. Minimizing adverse economic impact: The purpose of these

emergency/proposed amendments is to reimburse providers of the referenced services at increased levels. The trend factor provisions increase funding of small business providers of services.

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

7. Small business and local government participation: The trend factor increases of these emergency/proposed amendments implement a part of the 2010-11 Executive Budget. OMRDD also highlighted information about the trend factors in a budget briefing for provider associations, and discussed the trend factors in the OMRDD Budget Briefing Booklet for 2010-11, which has been widely disseminated and posted on the OMRDD website.

Rural Area Flexibility Analysis

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

As stated in the Regulatory Impact Statement, providers that receive trend factor increases as a result of the emergency/proposed amendments will be required to report in a form and format specified by the Commissioner, how they will, or have, utilized the funding attributable to these trend factors. OMRDD will endeavor to keep such reporting to the minimum necessary to achieve the desired effect.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial impact on jobs and/or employment opportunities. This finding is based on the fact that the amendments are concerned with the reimbursement methodologies which OMRDD uses in determining the appropriate reimbursement of the affected developmental disabilities services or facilities. The amendments implement trend factors which are applied to the funding of the various programs and services provided under the auspices of OMRDD, effective February 1, 2010. As discussed in the Regulatory Impact Statement, the amendments are not expected to have any adverse impacts on jobs or employment opportunities in New York State.

The amendments will result in funding increases for most providers, and although OMRDD does not expect this to create significant changes in staffing patterns, it is hoped that providers will use a portion of the funding increase to augment compensation and fringe benefits of their employees.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Fee Setting for HCBS Waiver Day Habilitation Services

I.D. No. MRD-07-10-00007-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 635-10.5 of Title 14 NYCRR.

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

Subject: Fee setting for HCBS waiver day habilitation services.

Purpose: To implement an efficiency adjustment.

Text of proposed rule: Add new paragraph 635-10.5(c)(15) to read as follows:

(15) Effective May 1, 2010, for all regions there shall be an efficiency adjustment to group day habilitation and supplemental group day habilitation prices. The efficiency adjustment shall take the form of a two-tiered reduction in reimbursable operating costs as follows:

(i) All providers shall be subject to the first tier of the efficiency adjustment which shall reduce total reimbursable operating costs inclusive of transportation and Health Care Adjustments (HCA) in the price in effect on May 1, 2010. The reduction shall be 2.5 percent.

(ii) The second tier adjustment shall be applied to all non-personal services (NPS) reimbursable operating costs reflected in the reimbursement prices for providers at or above the benchmark described in clause (b) of this subparagraph.

(a) For purposes of this paragraph, non-personal services (NPS) include Other Than Personal Services (OTPS), transportation, program administration OTPS and agency administration OTPS. NPS does not include Personal Services, contracted personal services, Fringe Benefits, and HCA.

(b) The benchmark is predicated on the value of all NPS reflected in a provider's group day habilitation price in effect on June 30, 2008 for Region I reporting providers and on December 31, 2007 for Region II and Region III reporting providers. This value is expressed as a percentage of the total reimbursable operating costs including transportation and HCA in a provider's group day habilitation price on the respective date. The percentages for each provider of group day habilitation services are ranked ordinally. OMRDD has established the benchmark to coincide with the 40th percentile. All providers below the 40th percentile are exempt from the second tier reduction.

(c) For all providers ranked at or above the benchmark, the second tier reduction shall be applied to gross NPS reimbursable operating costs in the price in effect on May 1, 2010 without consideration of the effect of the first tier reduction described in subparagraph (i) of this paragraph.

(d) The second tier percentage reduction shall be 4.29 percent.

(e) The Commissioner may waive all or a portion of this reduction for a provider upon a showing that the imposition of the full NPS reduction would jeopardize the continued operation of the group day habilitation and/or supplemental group day habilitation program.

(iii) For purposes of price adjustments, the effects of this efficiency adjustment shall be not be construed as a basis for loss. OMRDD shall offset any price adjustment it would otherwise make by the efficiency adjustment described in this paragraph.

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

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

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

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

Regulatory Impact Statement

1. Statutory authority:

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

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

2. Legislative objectives: These proposed amendments further the legislative objectives embodied in sections 13.09(b) and 43.02 of the Mental Hygiene Law. The proposed amendments are necessary to

make adjustments to the reimbursement methodology applicable to Home and Community Based (HCBS) waiver day habilitation services.

3. Needs and benefits: OMRDD is instituting an efficiency adjustment for group day habilitation programs including supplemental group day habilitation programs. This measure is designed to encourage providers to seek efficiencies in their operations. Consolidated Fiscal Reporting for group day habilitation programs in recent years suggests that reimbursement has been adequate to sustain optimal program requirements and economies are eminently possible.

The two-tiered approach first imposes a modest across the board adjustment for all providers of 2.5 percent in operating reimbursement reducing all cost categories proportionately and secondly, an adjustment of 4.29 percent reducing reimbursement for Non-Personal Services (NPS) for those providers with NPS in their reimbursement that exceeded specified parameters. OMRDD ranked providers according to their reimbursable NPS operating costs as a percentage of total operating costs contained in the reimbursement price. All providers are subject to the first reduction and approximately 60 percent of all providers--those at or above the 40th percentile in the ranking-- will be subject to the second phase of the efficiency adjustment. The second tier reduction is applied to gross NPS reimbursable operating costs in the price in effect on May 1, 2010 without consideration of the effect of the first tier reduction.

4. Costs:

a. Costs to the Agency and to the State and its local governments. The efficiency adjustment is expected to result in a savings of approximately \$14 million in the State share of funding for the affected group day habilitation services. The amendments will have no impact on local governments.

b. Costs to private regulated parties: There are no initial capital investment costs nor initial non-capital expenses. There are no additional costs associated with implementation and continued compliance with the rule. The proposed amendments are expected to result in a decrease of approximately \$28 million in funding to providers of the affected HCBS waiver group day habilitation services.

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

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

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

8. Alternatives: The current course of action as embodied in these proposed amendments reflects what OMRDD believes to be a fiscally prudent, cost-effective reimbursement of HCBS waiver group day habilitation services. OMRDD had previously, in collaboration with representatives of provider associations, discussed alternatives to achieve the desired efficiencies in the provision of the affected services. Other alternatives were thoroughly explored but this was determined to be the optimal methodology.

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

10. Compliance schedule: OMRDD expects to finalize the proposed amendments with an effective date of May 1, 2010. The amendments do not impose any new requirements with which regulated parties are expected to comply.

Regulatory Flexibility Analysis

1. Effect on small business: These proposed regulatory amendments will apply to voluntary not-for-profit corporations that provide HCBS waiver group day habilitation services to persons with developmental disabilities in New York State. As of January 2010, there were 258 providers with sites certified by OMRDD providing group day habilitation services to approximately 40,000 individuals in New York State.

The OMRDD has determined, through a review of the certified cost reports, that while most services are provided by non-profit agencies which employ more than 100 people overall, many of the 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.

The proposed amendments have been reviewed by OMRDD in light of their impact on these small businesses. The proposed amendments are expected to result in a decrease of approximately \$28 million in funding to providers of the affected HCBS waiver group day habilitation services. OMRDD has determined that these amendments will not cause undue hardship to providers due to increased costs for additional services or increased compliance requirements.

2. Compliance requirements: There are no additional compliance requirements resulting from the implementation of these proposed amendments. The proposed amendments revise the reimbursement methodology for HCBS waiver group day habilitation services to adjust payments made to providers, consistent with goals for increased operational efficiency. While operators of the referenced facilities will need to address adjustments in funding through increased operational efficiencies, the amendments do not specifically impose any new requirements with which regulated parties are expected to comply.

3. Professional services: In accordance with existing practice, providers are required to submit annual cost reports certified by licensed or public accountants. The proposed amendments do not alter this requirement. Therefore, no additional professional services are required as a result of these amendments.

4. Compliance costs: There are no additional compliance costs to regulated parties associated with the implementation of, and continued compliance with, these amendments.

5. Economic and technological feasibility: The proposed amendments are concerned with fiscal and reimbursement issues, and do not impose on regulated parties the use of any new technological processes.

6. Minimizing adverse economic impact: The purpose of these proposed amendments is to revise the reimbursement methodologies of the referenced programs and services to adjust payments made to providers, consistent with goals for increased operational efficiency. OMRDD determined that it could adjust prices for HCBS waiver group day habilitation services to encourage efficiencies in operation and still adequately reimburse providers of such services. The proposed amendments which adjust the group day habilitation reimbursement methodology represent OMRDD's best effort at adjusting reimbursement in a way which will accommodate the realization of efficiencies where they can best be achieved and afforded, and in the most equitable distribution possible.

OMRDD has also reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. However, since these amendments require no specific compliance response of regulated parties, the approaches outlined cannot be effectively applied.

7. Small business participation: In an effort to include small businesses as much as possible in the decision-making process, OMRDD has continued to meet regularly with associations of providers of services to discuss issues of interest. Options for implementing a day habilitation efficiency adjustment were discussed with representatives of the provider associations on a number of occasions beginning in the summer of 2009. In particular, the efficiency adjustment contained in the proposed regulations, and the available options for achieving efficiencies, were the main topic of discussion at a meeting with provider associations held on January 5, 2010.

Rural Area Flexibility Analysis

A rural area flexibility analysis for these proposed amendments is not being submitted because the amendments will not impose any adverse impact or reporting, record keeping or other compliance requirements on public or private entities in rural areas. There will be no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments. While the efficiency adjustment contained in the proposed amendments may have some adverse fiscal impact on providers of HCBS waiver group day habilitation services, the

geographic location of any given program (urban or rural) will not be a contributing factor to any such impact.

This is because the reimbursement methodology OMRDD uses to reimburse HCBS waiver group day habilitation services is primarily based upon provider specific cost projections. Thus, both this reimbursement methodology and the efficiency adjustment, which is applied proportionately to reimbursement, have been developed to reflect variations in cost and reimbursement which could be attributable to urban/rural and other geographic and demographic factors.

Job Impact Statement

A Job Impact Statement for these proposed amendments is not being submitted because OMRDD does not anticipate a substantial adverse impact on jobs and employment opportunities. The proposed rule making revises the reimbursement methodology for HCBS waiver group day habilitation services by implementing an efficiency adjustment. In establishing a lower percentage reduction for the first tier which is imposed on all reimbursed costs including salaries and fringe benefits, OMRDD intended to preserve funding for personal services to as great an extent as possible. The second tier reduction is a larger percentage, but, because it targets non-personal services, it is unlikely to affect salaries and fringe benefits. Moreover, before the effective date of this regulation, OMRDD will have put in place other initiatives intended to bolster salaries and fringe benefits. Consequently, OMRDD does not anticipate an adverse impact on jobs and employment opportunities.

Department of Motor Vehicles

NOTICE OF WITHDRAWAL

Dealers and Transporters, Motor Vehicle Inspection and Motor Vehicle Repair Shops

I.D. No. MTV-04-10-00011-W

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

Action taken: Notice of proposed rule making, I.D. No. MTV-04-10-00011-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on January 27, 2010.

Subject: Dealers and Transporters, Motor Vehicle Inspection and Motor Vehicle Repair Shops.

Reason(s) for withdrawal of the proposed rule: Incomplete document submission in prior Notice of Proposed Rulemaking.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Dealers and Transporters, Motor Vehicle Inspection and Motor Vehicle Repair Shops

I.D. No. MTV-07-10-00002-P

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

Proposed Action: This is a consensus rule making to amend Parts 78, 79 and 82 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 303(h), 398-e and 415

Subject: Dealers and Transporters, Motor Vehicle Inspection and Motor Vehicle Repair Shops.

Purpose: Conform regulations with statutory increase of penalties imposed to certified inspectors, repair shops and dealers.

Text of proposed rule: Subdivision (b) of Part 78.32 is amended to read as follows:

(b) In addition to, or in lieu of, such suspension or revocation, the violation of any of the provisions of section 415 of the Vehicle and Traffic Law or of any of the regulations herein may result in the imposition of a civil penalty not to exceed \$1,000 for [each] a first violation[.] and for a second or subsequent violation not arising out of the same incident both of which were committed within a period of 30 months, a sum of not more than \$1,500 for each violation found to have been committed; provided,

however, the penalty for each and any violation of paragraph (c) of subdivision 9 of section 415 of the Vehicle and Traffic Law found to have been committed shall be no less than \$350 and no more than \$1,500.

Subdivision (b) of Part 79.14 is amended to read as follows:

(b) In addition to, or in lieu of, suspending or revoking an official inspection station license, the commissioner may require an official inspection station to pay a civil penalty not in excess of [\$350] \$750 for a first violation [for each violation] of the Motor Vehicle Inspection Law (article 5 of the Vehicle and Traffic Law) or of these regulations, and for a second or subsequent violation committed within 30 months, not arising out of the same incident, a sum of not more than \$1,500 for each violation found to have been committed; provided however, the penalty for each and any violation of paragraph 3 of subdivision (e) of section 303 of the Vehicle and Traffic Law found to have been committed shall be no less than \$350 and no more than \$1,000.

Subdivision (a) of 82.6 is amended to read as follows:

(a) The commissioner, or any person deputized by him, in addition to or in lieu of revoking or suspending the certificate of registration of a registrant in accordance with the provisions of the act or this Part, or upon finding that a registrant has been grossly negligent in the performance of any repair or adjustment covered by the act or this Part, or has grossly overcharged for such repair or adjustment, may in any one proceeding by order require the registrant to pay to the People of this State a penalty for a first violation in a sum not exceeding [\$350] \$750 for each violation found to have been committed, and for a second or subsequent violation not arising out of the same incident both of which were committed within a period of 30 months, be in a sum of not more than one \$1,000 dollars for each violation found to have been committed; provided, however, the penalty for each and any violation of paragraph (g) of subdivision one of section 398-e of the Vehicle and Traffic Law found to have been committed shall be no less than \$350 and no more than \$1,000 dollars, except that if a finding of financial loss is made pursuant to subdivision (b) of this section, the amount of such penalty may be increased by the amount of financial loss so found. Upon the failure of such registrant to pay such penalty within 30 days after the mailing of such order, postage prepaid, registered, and addressed to the last known place of business of such registrant, the commissioner may revoke the certificate of registration of such registrant or may suspend the same for such period as he may determine without further proceedings.

Text of proposed rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Room 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.state.ny.us

Data, views or arguments may be submitted to: Everett A. Mayhew Jr., Department of Motor Vehicles, Empire State Plaza, Room 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.state.ny.us

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

Consensus Rule Making Determination

Part OO of Chapter 59 of the Laws of 2009, effective July 6, 2009, increased the penalties for violations for certified vehicle inspectors, inspection stations, repair shops and dealers by amending Vehicle and Traffic Law (VTL) §§ 303(h), 398-e(b), and 415(12).

This is submitted as a consensus rule because it merely conforms the commissioner's regulations to the statutory amendments.

Job Impact Statement

A Job Impact Statement is not submitted with this proposal because there is no adverse on impact on job creation or development in New York State.

Public Service Commission

NOTICE OF WITHDRAWAL

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

The following rule makings have been withdrawn from consideration:

I.D. No.	Publication Date of Proposal
PSC-45-04-00014-P	November 10, 2004
PSC-15-05-00023-P	April 13, 2005
PSC-31-08-00018-P	July 30, 2008
PSC-31-08-00026-P	July 30, 2008

NOTICE OF ADOPTION

Water Rates and Charges

I.D. No. PSC-23-09-00009-A

Filing Date: 2010-02-02

Effective Date: 2010-02-02

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

Action taken: On 1/19/10, the PSC adopted an order approving in part and denying in part, the complaint of Home Depot U.S.A., Inc. and LNT Inc. against Independent Water Works, Inc.

Statutory authority: Public Service Law, sections 89-c(4), 89-j and 114

Subject: Water rates and charges.

Purpose: To approve in part and deny in part the complaint of Home Depot U.S.A., Inc. and LNT Inc. against Independent Water Works, Inc.

Substance of final rule: The Commission, on January 19, 2010 adopted an order approving in part and denying in part, the complaint of Home Depot U.S.A., Inc. and LNT Inc. against Independent Water Works, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(05-W-0707SA2)

NOTICE OF ADOPTION

Water Rates and Charges

I.D. No. PSC-28-09-00010-A

Filing Date: 2010-01-29

Effective Date: 2010-01-29

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

Action taken: On 1/19/10, the PSC adopted an order, establishing a three year rate plan for New York Water Service Corporation.

Statutory authority: Public Service Law, section 89-c(10)

Subject: Water rates and charges.

Purpose: To approve a three year rate plan for New York Water Service Corporation.

Substance of final rule: The Commission, on January 19, 2010, adopted the terms and conditions of a Joint Proposal, as amended, executed by New York Water Service Corporation (NYWS) and Department of Public Service Staff for a three year rate plan for NYWS, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Leann Ayer, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: leann_ayer@dps.state.ny.us An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(09-W-0237SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition for Rehearing of the Commission's December 22, 2009 Order Authorizing Bill Credits

I.D. No. PSC-07-10-00008-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 whether to grant or deny, in whole or in part, a January 21, 2010 petition for rehearing filed by Multiple Intervenors in Case 09-M-0435.

Statutory authority: Public Service Law, sections 5(2) and 65(1)

Subject: Petition for Rehearing of the Commission's December 22, 2009 Order Authorizing Bill Credits.

Purpose: To consider whether to reappportion the bill credits ordered on December 22, 2009.

Substance of proposed rule: The Commission is considering whether to approve or reject, in whole or in part, a petition for rehearing, filed by Multiple Intervenors, which represents the SC-13 customer class in National Fuel Gas Distribution Corporation's (NFG) service territory. The petition seeks to amend the Commission's December 22, 2009 order that approved \$5.219 million in NFG bill credits by changing the distribution from an equal sharing of the bill credits among all customers to a distribution of the credits based upon revenues generated by each customer class.

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-M-0435SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Petition to Revise the Uniform Business Practices

I.D. No. PSC-07-10-00009-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Retail Energy Supply Association (RESA) to allow for rescission of a customer request to return to full utility service.

Statutory authority: Public Service Law, section 66(1)

Subject: Petition to revise the Uniform Business Practices.

Purpose: To consider the RESA petition to allow rescission of a customer request to return to full utility service.

Substance of proposed rule: On January 26, 2010, the Retail Energy Supply Association (RESA) submitted a petition seeking revisions to the Uniform Business Practices (UBP) to allow a customer, or the customer's current ESCO commodity supplier, to cancel the customer's previously requested or scheduled return to full utility service. The petition also asks that the Commission address the existing situation in which a utility automatically drops a customer's ESCO supplier when a change in customer information precipitates a change in that customer's utility account number. The Commission is considering whether to adopt, modify, or reject, in whole or in part, the petition filed by RESA, and may also consider related matters.

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.

(98-M-1343SP18)

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

Petition for the Submetering of Electricity

I.D. No. PSC-07-10-00010-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 2148 Broadway Owner LLC to submeter electricity at 2150 Broadway, New York, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of 2148 Broadway Owner LLC to submeter electricity at 2150 Broadway, New York, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by 2148 Broadway Owner LLC to submeter electricity at 2150 Broadway, New York, New York located in the territory of Consolidated Edison Company of New York, Inc.

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.

(10-E-0046SP1)

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

Guidance or Increased Funding in the Case of Over-Subscribed Energy Efficiency Programs

I.D. No. PSC-07-10-00011-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 whether to provide guidance or increased funding to utility-administrators of gas energy efficiency "Fast Track" Residential HVAC Programs.

Statutory authority: Public Service Law, sections 2, 5 and 66

Subject: Guidance or increased funding in the case of over-subscribed energy efficiency programs.

Purpose: To encourage gas energy efficiency measures in New York State.

Substance of proposed rule: The New York State Public Service Com-

mission is considering whether to adopt, modify, or reject, in whole or in part, the request of Rochester Gas and Electric Corporation (RG&E) in a petition dated December 21, 2009, seeking guidance and increased funding regarding continuation of the gas "Fast Track" Residential HVAC Program approved by an order of the Commission in Case 08-G-1004, *et al.*, entitled "Order Approving "Fast Track" Utility-Administered Gas Energy Efficiency Programs with Modifications" issued on April 9, 2009. In its petition, RG&E seeks guidance from the Commission as to whether to extend the program by accepting applications that exceed the allocated budgets (with a deferral of the extra costs for later recovery) or to end the program in an orderly fashion. The Commission is also considering whether to provide such guidance or increased funding to the other administrators of gas "Fast Track" Residential HVAC Programs including Orange and Rockland Utilities, Inc. (Case 08-G-1004), Consolidated Edison Company of New York, Inc. (Case 08-G-1008), Corning Natural Gas Corporation (Case 08-G-1010), New York State Electric and Gas Corporation (Case 08-G-1012), Niagara Mohawk Power Corporation (Case 08-G-1015), The Brooklyn Union Gas Company d/b/a National Grid (Case 08-G-1016), KeySpan Gas East Corporation d/b/a National Grid (Case 08-G-1017), Central Hudson Gas & Electric Corporation (Case 08-G-1020), and St. Lawrence Gas Company (Case 08-G-1021).

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.

(08-G-1013SP3)

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

Water Rates and Charges

I.D. No. PSC-07-10-00012-P

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

Proposed Action: On January 27, 2010, Bethel Water Company, Inc. (Bethel) filed a petition requesting authority to increase its annual revenues by approximately \$7,792 or 33% to become effective May 1, 2010.

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

Subject: Water rates and charges.

Purpose: For approval to increase Bethel Water Company, Inc.'s annual revenues by approximately \$7,792 or 33%.

Text of proposed rule: On January 27, 2010, Bethel Water Company, Inc. (Bethel or the company) filed, to become effective on May 1, 2010, tariff amendments (Leaf No. 12, Revision 1 and Leaf No. 13, Revision 1) to its electronic tariff schedule P.S.C. No. 1 – Water. The filed amendments are designed to increase the company's annual revenues by \$7,792 or 33%. The company provides flat rate water service to 176 residential customers, a country club and swimming pool in a development known as Country Club Estates, in the Town of Bethel, Sullivan County.

The company's current tariff, along with the proposed changes, is available on the Commission's Home Page on the World Wide Web (www.dps.state.ny.us) located under Commission Documents – Tariffs). The Commission may approve or reject, in whole or in part, or modify the company's request.

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, Secre-

tary, 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.
 (10-W-0045SP1)

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

St. Lawrence’s Administration of a “Fast Track” Gas Energy Efficiency Program

I.D. No. PSC-07-10-00013-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 request by St. Lawrence Gas Company, Inc. (St. Lawrence) in a petition dated May 6, 2009, seeking clarification of an order of the Commission in Case 08-G-1004 dated April 9, 2009.

Statutory authority: Public Service Law, sections 2, 5 and 66

Subject: St. Lawrence’s administration of a “fast track” gas energy efficiency program.

Purpose: To consider St. Lawrence’s request for clarification.

Substance of proposed rule: The New York State Public Service Commission is considering whether to adopt, modify, or reject, in whole or in part, the request of St. Lawrence Gas Company, Inc. (St. Lawrence) in a petition dated May 6, 2009, seeking clarification of an order of the Commission in Case 08-G-1004, et al., entitled “Order Approving “Fast Track” Utility-Administered Gas Energy Efficiency Programs with Modifications” issued on April 9, 2009. In its petition, St. Lawrence seeks clarification regarding the deferral of administration costs, the preparation of evaluation plans, the forum for seeking recovery of quality assurance costs, and the manner in which customer rebates are to be provided. The program that is the subject of the petition is the gas “fast track” Residential HVAC Program.

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.
 (08-G-1021SP3)

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

The Small and Mid-Size Commercial Gas Efficiency Program Proposed by Central Hudson Gas & Electric Corporation

I.D. No. PSC-07-10-00014-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: The Small and Mid-Size Commercial Gas Efficiency Program proposed by Central Hudson Gas & Electric Corporation.

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 - Central Hudson Gas & Electric Corporation, “Small Commercial Business Direct Installation Program Proposal” dated July 31, 2008, and Updates dated June 5, 2009 and November 25, 2009; (a) Small and Mid-Size Commercial Gas Efficiency 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: 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-0363SP4)

Department of State

**EMERGENCY
 RULE MAKING**

Installation of Carbon Monoxide Alarms in Residential Buildings

I.D. No. DOS-07-10-00005-E

Filing No. 63

Filing Date: 2010-01-28

Effective Date: 2010-02-22

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

Action taken: Addition of sections 1220.1(d)(13) and 1225.1(d)(3) to Title 19 NYCRR.

Statutory authority: Executive Law, sections 377(1), 378(1) and (5-a)

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

Specific reasons underlying the finding of necessity: Adoption of this rule on an emergency basis is required to preserve public safety by requiring the installation of carbon monoxide alarms in all one- and two-family dwellings, townhouse dwellings, dwelling accommodations in buildings owned as condominiums or cooperatives, and multiple dwellings, without regard to the date of construction or sale of such buildings, as required by Amanda’s Law (Chapter 367 of the Laws of 2009), which will reduce the number of deaths and injuries caused by carbon monoxide poisoning and, in the words of the sponsor of the bill that became Amanda’s Law, “create safer homes for New Yorkers.”

Subject: Installation of carbon monoxide alarms in residential buildings.

Purpose: To implement Executive Law section 378(5-a), as amended by Chapter 367 of the Laws of 2009.

Substance of emergency rule: Provisions relating to the installation of carbon monoxide alarms in residential buildings are currently found in section RR313.4 of the Residential Code of New York State (the publication referred to and incorporated by reference in 19 NYCRR Part 1220) and section F611 of the Fire Code of New York State (the publication referred to and incorporated by reference in 19 NYCRR Part 1225). The current provisions require the installation of carbon monoxide alarms in

one- and two-family dwellings, townhouses and dwelling accommodations in condominiums and cooperatives constructed or offered for sale after July 30, 2002 and in multiple dwellings constructed or offered for sale after August 9, 2005. This rule implements Amanda's Law (Chapter 367 of the Laws of 2009) by amending section RR313.4 of the Residential Code of New York State and section F611 of the Fire Code of New York State to require the installation of carbon monoxide alarms in all one- and two-family dwellings, townhouses, dwelling accommodations in condominiums and cooperatives, and multiple dwellings, without regard to the date of construction or sale.

The rule adds definitions of terms relevant to the carbon monoxide alarm provisions.

The requirements for newly building constructed after January 1, 2009 are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed on or after January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located;

(2) in Group I-1 occupancies constructed on or after January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area and on each story where a carbon monoxide source is located;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed on or after January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (and, in the case of a multiple-story dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) all carbon monoxide alarms must be hard-wired to the building wiring and, where more than one alarm is required, the alarms must be interconnected; and

(5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

The requirements for buildings constructed prior to January 1, 2008 are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed prior to January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on the lowest story having a sleeping area;

(2) in Group I-1 occupancies constructed prior to January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed prior to January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (in the case of a multiple-story dwelling unit or sleeping unit, the alarm must be installed on the lowest story having a sleeping area), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) battery operated, cord-type and direct-plug alarms may be used, and the alarms are not required to be interconnected; and

(5) Carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

In the case of a building of any age that has no commercial or on-site power source, the alarms must be battery operated and need not be interconnected.

Carbon monoxide alarms are not required if no carbon monoxide source is located in or attached to the building.

All carbon monoxide alarms must be listed and labeled as complying with UL 2034 or CAN/CSA 6.19, and must be installed in accordance with the manufacturer's installation instructions.

Carbon monoxide alarms shall not be removed or disabled, except for service or repair purposes.

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 April 27, 2010.

Text of rule and any required statements and analyses may be obtained from: Raymond J. Andrews, Department of State, 99 Washington Ave., Albany, NY 12231-0001, (518) 474-4073, email: Raymond.Andrews@dos.state.ny.us

Summary of Regulatory Impact Statement

1. STATUTORY AUTHORITY.

Executive Law section 377 section 377(1) authorizes the State Fire Prevention and Building Code Council to amend the provisions of the New York State Uniform Fire Prevention and Building Code ("Uniform Code") from time to time. Executive Law section 378(1) directs that the Uniform Code shall address standards for safety and sanitary conditions. Executive Law section 378(5-a), as amended by Chapter 367 of the Laws of 2009, provides that the Uniform Code must require one- and two-family dwellings, dwelling accommodations in a building owned as a condominium or cooperative, and multiple dwellings to be equipped with carbon monoxide alarms.

2. LEGISLATIVE OBJECTIVES.

Memoranda accompanying the bills that most recently amended subdivision (5 a) of Executive Law section 378 included the following justifications:

"This legislation is aimed at preventing more unnecessary deaths due to carbon monoxide poisoning. . . . As with smoke detector/fire alarms many years ago, carbon monoxide alarms have earned the respect of the fire service as a valuable tool in the saving of lives. Everyone recognizes that carbon monoxide kills if not responded to immediately. The most serious quality of CO is that, unlike smoke, it is virtually undetectable, even when someone is awake and alert. Chapter 257 of the laws of 2002 required carbon monoxide alarms be installed in one and two family dwellings and in condominiums and cooperatives that are constructed or sold in order to prevent the loss of life. . . . This bill requires multiple dwelling units of three or more families to install carbon monoxide alarms as well."

"Current law requires residential dwellings that are constructed or offered for sale after July 30, 2002 to be updated with a carbon monoxide detector. This legislation would remove the construction and sale provisions, leaving it a new requirement that all homes regardless of construction or sale date be outfitted with a carbon monoxide detector. On January 17th, 2009 Amanda Hansen, a 16 year old from West Seneca, New York, died from carbon monoxide poisoning from a defective boiler while at a sleepover at her friend's house. This legislation would create safer homes for New Yorkers and also prevent future tragedies from occurring."

The Legislative objective sought to be achieved by this rule is a reduction in the number of deaths and injuries caused by CO poisoning.

3. NEEDS AND BENEFITS.

CO is an invisible, odorless gas that is generated by the incomplete combustion of carbonaceous fuels such as fuel oil, natural gas, kerosene and wood. CO poisoning results from displacement of oxygen in the blood supply by carboxyhaemoglobin, reducing oxygen supply to the brain. In non fire situations, elevated CO levels may be caused by improperly installed or maintained fuel fired appliances, motor vehicles operated in enclosed garages, or appliances intended for outdoor use being used indoors during power failures. As CO is not detectable by the senses, its presence and concentration can only be determined by instruments.

The rule provides that CO alarms shall be listed and labeled as complying with UL 2034 or CAN/CSA 6.19, the consensus standards for single and multiple station CO alarms in the United States and Canada. Listing of alarm devices ensures their safety and compliance with performance standards. The sensitivity standard in UL 2034 and CAN/CSA 6.19 is based on an alarm response to specified concentrations of CO (in parts per million) within specified time frames. These are based on limiting carboxyhaemoglobin saturation to 10 percent, which earlier studies indicated would have no significant effects on human subjects.

A number of different sources were reviewed to develop an estimate of the annual number of fatalities attributable to unintentional, non fire, building source CO poisoning. The sources reviewed contain estimates ranging between 200 and 1200, nationally. The sources include the U.S. Consumer Product Safety Commission (CPSC), California Air Resources Board, the Journal of the American Medical Association, the Morbidity and Mortality Weekly Report (published by the U.S. Centers for Disease Control) and studies by Dr. David Penney (Wayne State University School of Medicine). Extrapolating these data to New York State, excluding New York City, leads the Code Council to expect between 8 and 48 annual fatalities. Using specific coding in the Vital Statistics Death File prepared by its Bureau of Injury Prevention, the New York State Department of Health (DOH) estimates 14 fatalities annually.

In situations where CO poisoning does not result in death, it may cause significant injuries and long term health consequences. In an observation in Archives of Neurology (Vol. 57, No. 8, August 2000), Sohn et al noted the incidence of Parkinsonism and intellectual impairment in a married couple who experienced CO poisoning simultaneously. While it was noted that both individuals showed complete recovery after thirteen months, the observation is suggestive of additional potential consequences. It should also be noted that CPSC has estimated an average of 10,000 injuries or hospital emergency room visits annually from CO poisoning. Based solely on population, New York State (excluding New York City) could experience approximately 400 injuries annually.

In an article in the American Journal of Forensic Medicine and Pathology (Vol. 10, No. 1, 1989), I. R. Hill notes that fine discriminatory functions begin to be impaired at 5 percent saturations, with significant decrements being noted at the 10 percent saturation level. Hill also notes that headaches occur at 20 to 30 percent saturation, and that nausea, dizziness and muscular weakness occur at 30 to 40 percent. Thus, CO poisoning will affect the judgment and capability of persons to evacuate or take other appropriate actions well before concentrations reach fatal levels.

4. COSTS.

The Uniform Code's current requirements regarding the installation of CO alarms in newly constructed buildings have been in effect since January 1, 2008 (the effective date of the most recent major revision of the Uniform Code). Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on regulated parties who construct new buildings.

Under this rule, owners of residential buildings constructed prior to January 1, 2008 will also be required to install one or more CO alarms in the places specified in this rule. The requirements for buildings constructed prior to January 1, 2008 are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed prior to January 1, 2008, a CO alarm must be installed within each dwelling unit or sleeping unit, on the lowest story having a sleeping area;

(2) in Group I-1 occupancies constructed prior to January 1, 2008, a CO alarm must be installed on each story having a sleeping area;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed prior to January 1, 2008 and not covered by (1) or (2), a CO alarm must be installed in each dwelling unit or sleeping unit where a CO source is located (in the case of a multiple-story dwelling unit or sleeping unit, the alarm must be installed on the lowest story having a sleeping area), and in each dwelling unit or sleeping unit on the same story as a CO source;

(4) battery operated, cord-type and direct-plug alarms may be used, and the alarms are not required to be interconnected; and

(5) CO alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

The initial capital costs of complying with the rule will include the cost of purchasing and installing the CO alarm(s). Cord or plug connected and battery operated CO alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new

construction are estimated to be not more than \$50 per device. The annual costs of complying with this rule will include the cost of maintaining each alarm in operative condition, such maintenance to include cleaning the alarm and replacing of the alarm's battery (typically once a year). In addition, most manufacturers recommend that their alarms be checked using the alarm's "test" button on a periodic basis (typically once a week) and replaced on a periodic basis (typically once every five years).

There are no costs to the Department of State for the implementation of this rule. The Department is not required to develop any additional regulations or develop any programs to implement this rule.

There are no costs to the State of New York or to local governments for the implementation of the provisions to be added by this rule, except as follows:

First, if the State or any local government owns a one- and two-family dwelling, townhouse, dwelling unit in a condominium or cooperative, or multiple dwelling that is not now equipped with CO alarms, the State or such local government, as the case may be, will be required to install one or more CO alarms in the building.

Second, the authorities responsible for administering and enforcing the Uniform Code (typically, cities, towns, villages and, in some cases, counties) will have additional items to verify in the process of reviewing building permit applications, conducting construction inspections, and (where applicable) conducting periodic fire safety and property maintenance inspections. However, the need to verify the installation of required CO alarms will not have a significant impact on the permitting process or inspection process.

5. PAPERWORK.

This rule imposes no new reporting requirements. No new forms or other paperwork will be required as a result of this rule.

6. LOCAL GOVERNMENT MANDATES.

This rule will not impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district, except as follows:

First, any county, city, town, village, school district, fire district or other special district that owns a one- and two-family dwelling, townhouse, dwelling unit in a condominium or cooperative, or multiple dwelling that is not now equipped with CO alarms will be required to install one or more CO alarms in the building.

Second, cities, towns, villages and counties that administer and enforce the Uniform Code will be responsible for administering and enforcing the requirements of the rule along with all other provisions of the Uniform Code.

The rule does not otherwise impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

7. DUPLICATION.

The rule does not duplicate any existing Federal or State requirement.

8. ALTERNATIVES.

Consideration was given to adopting a rule requiring all CO alarms, including those to be installed in buildings constructed prior to January 1, 2008, to be hard wired and interconnected. This alternative was rejected as it would have unnecessarily increased the cost of bringing pre-2008 buildings into compliance with the new statutory mandate as set forth in subdivision (5 a) of section 378 of the Executive Law.

9. FEDERAL STANDARDS.

There are no standards of the Federal Government which address the subject matter of the rule. The U.S. Consumer Product Safety Commission does recommend installation of CO alarms.

10. COMPLIANCE SCHEDULE.

Regulated persons who own buildings constructed prior to 2008 will be able to comply with this rule by purchasing and installing readily available, battery operated CO alarms.

Requirements for installing CO alarms in newly constructed buildings have been in place since January 1, 2008 and are not changed by this rule. Regulated persons constructing new buildings will continue

to be able to comply with this rule by installing hard-wired CO alarms as part of the construction process.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The State Uniform Fire Prevention and Building Code (Uniform Code) currently requires that all residential buildings (one- and two-family dwellings, townhouses, dwelling accommodations in condominiums and cooperatives, and multiple dwellings) constructed after January 1, 2008, and certain residential buildings constructed prior to January 1, 2008, be equipped with one or more carbon monoxide alarms. This rule will amend the Uniform Code to require that all one- and two-family dwellings, all townhouses, all dwelling units in condominiums and cooperatives and all multiple dwellings, without regard to the date of construction or sale, be equipped with one or more carbon monoxide alarms. Therefore, this rule will affect any small business or local government that owns a residential building in which carbon monoxide alarms were not previously.

Since this rule adds provisions to the Uniform Code, each local government that is responsible for administering and enforcing the Uniform Code will be affected by this rule. The Department of State estimates that approximately 1,604 local governments (mostly cities, towns and villages, as well as several counties) are responsible for administering and enforcing the Uniform Code.

2. COMPLIANCE REQUIREMENTS:

No reporting or record keeping requirements are imposed upon regulated parties by the rule.

Since this rule amends the Uniform Code, local governments that administer and enforce the Uniform Code will be required to check for compliance with this rule when reviewing applications for building permits, when performing construction inspections, and when performing periodic fire safety and property maintenance inspections.

In addition, small businesses and local governments that own or construct one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, or multiple dwellings will be required to install, use and maintain carbon monoxide alarms in accordance with the rule's provisions. The requirements applicable to newly constructed buildings differ from the requirements applicable to existing buildings, and will be discussed separately.

Newly Constructed Buildings. The Uniform Code's current requirements regarding the installation of carbon monoxide alarms in newly constructed buildings have been in effect since January 1, 2008 (the effective date of the most recent major revision of the Uniform Code). Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on regulated parties who construct new buildings. The current requirements for newly constructed buildings (which are continued by this rule) are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed on or after January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located;

(2) in Group I-1 occupancies constructed on or after January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area and on each story where a carbon monoxide source is located;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed on or after January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (and, in the case of a multiple-story dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) all carbon monoxide alarms must be hard-wired to the building wiring and, where more than one alarm is required, the alarms must be interconnected; and

(5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

Existing Buildings. Under this rule, owners of one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings constructed prior to January 1, 2008 will also be required to install one or more carbon monoxide alarms in the places specified in this rule. However, the current version of the Uniform Code requires the installation of carbon monoxide alarms in three major groups of pre-2008 buildings: (1) one- and two-family dwellings and townhouses which are more than three stories in height and which were constructed or offered for sale after June 30, 2002, (2) dwelling accommodations in condominiums and cooperatives constructed or offered for sale after June 30, 2002, and (3) multiple dwellings constructed or offered for sale after August 9, 2005. The requirements currently applicable to these three groups of pre-2008 buildings have been in effect since January 1, 2008. Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on buildings in these three groups.

The principal impact of this rule will be on regulated parties who own a residential building in which carbon monoxide alarms were not previously required, viz., (1) one- and two-family dwellings and townhouses which are not more than three stories in height and which were constructed prior to January 1, 2008, (2) one- and two-family dwellings and townhouses which are more than three stories in height, which were constructed prior to June 30, 2002 and which have not been offered for sale since June 30, 2002, (3) dwelling accommodations in condominiums and cooperatives which were constructed prior to June 30, 2002 and which have not been offered for sale since June 30, 2002, and (4) multiple dwellings which were constructed prior to August 9, 2005 and which were not offered for sale at any time since August 9, 2005. The requirements to be imposed by this rule on the buildings in the groups described in this paragraph will be identical to the existing requirements now imposed by the Uniform Code on the buildings in the groups described in the preceding paragraph. Those requirements are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed prior to January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on the lowest story having a sleeping area;

(2) in Group I-1 occupancies constructed prior to January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed prior to January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (in the case of a multiple-story dwelling unit or sleeping unit, the alarm must be installed on the lowest story having a sleeping area), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) battery operated, cord-type and direct-plug alarms may be used, and the alarms are not required to be interconnected; and

(5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

3. PROFESSIONAL SERVICES:

No professional services will be required to comply with the rule.

4. COMPLIANCE COSTS:

The initial capital costs of complying with the rule will include the cost of purchasing and installing the carbon monoxide alarm(s). Cord or plug connected and battery operated carbon monoxide alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device. Such costs are not likely to vary for small businesses or local governments of different types and differing sizes.

The annual costs of complying with this rule will include the cost of maintaining each alarm in operative condition, such maintenance to include cleaning the alarm and replacing of the alarm's battery (typically once a year). In addition, most manufacturers recommend that their alarms be checked using the alarm's "test" button on a periodic

basis (typically once a week) and replaced on a periodic basis (typically once every five years).

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

It is economically and technologically feasible for regulated parties to comply with the rule. No substantial capital expenditures are imposed and no new technology need be developed for compliance.

6. MINIMIZING ADVERSE IMPACT:

The current requirements for the installation of carbon monoxide alarms in buildings constructed on or after January 1, 2008 (the effective date of the most recent overall revision of the Uniform Code) have been in effect since January 1, 2008 and are continued without substantial change by this rule. Thus, the principal impact of this rule will be on regulated parties (including small businesses or local governments) who own buildings constructed prior to January 1, 2008 and who will now be required to install carbon monoxide alarms in such buildings. The rule minimizes any potential adverse economic impact on such regulated parties by allowing for the installation of battery operated, cord-type or direct plug carbon monoxide alarms in buildings constructed prior to January 1, 2008, and by not requiring the alarms installed in such buildings to be interconnected.

The applicable statute (Executive Law section 378(5-a)) requires that this rule apply to all one- and two-family dwellings, townhouses, dwelling units in condominiums or cooperatives, and multiple dwellings. The statute does not authorize the establishment of differing compliance requirements or timetables with respect to dwellings owned or operated by small businesses or local governments.

Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(5-a) and would endanger public safety.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

The Department of State notified interested parties throughout the State of the proposed adoption of this rule by means of notices posted on the Department's website and notices published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 7,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule implements the provisions of subdivision (5-a) of section 378 of the Executive Law, as amended by Chapter 367 of the Laws of 2009, by adding provisions to the State Uniform Fire Prevention and Building Code (the Uniform Code) requiring that carbon monoxide (CO) alarms be installed in all one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings. Since the Uniform Code applies in all areas of the State (other than New York City), this rule will apply in all rural areas of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS.

The rule will not impose any reporting or recordkeeping requirements.

The rule will impose the following compliance requirement: owners of one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings will be required to install one or more carbon monoxide alarms in the places or places specified in this rule. The requirements applicable to newly constructed buildings differ from the requirements applicable to existing buildings, and will be discussed separately.

Newly Constructed Buildings. The Uniform Code's current requirements regarding the installation of carbon monoxide alarms in newly constructed buildings have been in effect since January 1, 2008 (the effective date of the most recent major revision of the Uniform Code). Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on regulated parties who construct new buildings. The current requirements for newly constructed buildings (which are continued by this rule) are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed on or after January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located;

(2) in Group I-1 occupancies constructed on or after January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area and on each story where a carbon monoxide source is located;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed on or after January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (and, in the case of a multiple-story dwelling unit or sleeping unit, on each story where a sleeping area or a carbon monoxide source is located), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) all carbon monoxide alarms must be hard-wired to the building wiring and, where more than one alarm is required, the alarms must be interconnected; and

(5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

Existing Buildings. Under this rule, owners of one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings constructed prior to January 1, 2008 will also be required to install one or more carbon monoxide alarms in the places specified in this rule. However, the current version of the Uniform Code requires the installation of carbon monoxide alarms in three major groups of pre-2008 buildings: (1) one- and two-family dwellings and townhouses which are more than three stories in height and which were constructed or offered for sale after June 30, 2002, (2) dwelling accommodations in condominiums and cooperatives constructed or offered for sale after June 30, 2002, and (3) multiple dwellings constructed or offered for sale after August 9, 2005. The requirements currently applicable to these three groups of pre-2008 buildings have been in effect since January 1, 2008. Those requirements are continued without substantial change by this rule. Therefore, this rule imposes no new requirement on buildings in these three groups.

The principal impact of this rule will be on regulated parties who own a residential building in which carbon monoxide alarms were not previously required, viz., (1) one- and two-family dwellings and townhouses which are not more than three stories in height and which were constructed prior to January 1, 2008, (2) one- and two-family dwellings and townhouses which are more than three stories in height, which were constructed prior to June 30, 2002 and which have not been offered for sale since June 30, 2002, (3) dwelling accommodations in condominiums and cooperatives which were constructed prior to June 30, 2002 and which have not been offered for sale since June 30, 2002, and (4) multiple dwellings which were constructed prior to August 9, 2005 and which were not offered for sale at any time since August 9, 2005. The requirements to be imposed by this rule on the buildings in the groups described in this paragraph will be identical to the existing requirements now imposed by the Uniform Code on the buildings in the groups described in the preceding paragraph. Those requirements are summarized as follows:

(1) in one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives constructed prior to January 1, 2008, a carbon monoxide alarm must be installed within each dwelling unit or sleeping unit, on the lowest story having a sleeping area;

(2) in Group I-1 occupancies constructed prior to January 1, 2008, a carbon monoxide alarm must be installed on each story having a sleeping area;

(3) in Group R occupancies, nursery schools, bed and breakfasts, and multiple dwellings constructed prior to January 1, 2008 and not covered by (1) or (2), a carbon monoxide alarm must be installed in each dwelling unit or sleeping unit where a carbon monoxide source is located (in the case of a multiple-story dwelling unit or sleeping unit, the alarm must be installed on the lowest story having a sleeping area), and in each dwelling unit or sleeping unit on the same story as a carbon monoxide source;

(4) battery operated, cord-type and direct-plug alarms may be used, and the alarms are not required to be interconnected; and

(5) carbon monoxide alarms shall be maintained in an operative condition at all times, shall be replaced or repaired where defective, and shall be replaced when they cease to operate as intended.

3. COMPLIANCE COSTS.

The initial capital costs of complying with the rule will include the cost of purchasing and installing the carbon monoxide alarm(s). Cord or plug connected and battery operated carbon monoxide alarms are available in home centers and over the internet for \$20 to \$50. Direct wired devices with interconnection capability cost up to \$80. Installation costs in new construction are estimated to be not more than \$50 per device. Such costs are not likely to vary for different types of public and private entities in rural areas.

The annual costs of complying with this rule will include the cost of maintaining each alarm in operative condition, such maintenance to include cleaning the alarm and replacing of the alarm's battery (typically once a year). In addition, most manufacturers recommend that their alarms be checked using the alarm's "test" button on a periodic basis (typically once a week) and replaced on a periodic basis (typically once every five years).

4. MINIMIZING ADVERSE IMPACT.

The current requirements for the installation of carbon monoxide alarms in buildings constructed on or after January 1, 2008 (the effective date of the most recent overall revision of the Uniform Code) have been in effect since January 1, 2008 and are continued without substantial change by this rule. Thus, the principal impact of this rule will be on regulated parties who own buildings constructed prior to January 1, 2008 and who will now be required to install carbon monoxide alarms in such building. The rule minimizes any potential adverse economic impact on such regulated parties by allowing for the installation of battery operated, cord-type or direct plug carbon monoxide alarms in buildings constructed prior to January 1, 2008, and by not requiring the alarms installed in such buildings to be interconnected.

The rule also permits the use of battery operated alarms in buildings without a commercial or on-site power source.

Executive Law section 378(5-a) makes no distinction between one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings located in rural areas and those located in non-rural areas. However, the impact of this rule in rural areas will be no greater than the impact of this rule in non-rural areas, and the ability of individuals or public or private entities located in rural areas to comply with the requirements of this rule should be no less than the ability of individuals or public or private entities located in non-rural areas.

Executive Law section 378(5-a) requires that this rule apply to all one- and two-family dwellings, townhouses, dwelling units in condominiums and cooperatives, and multiple dwellings. The statute does not authorize the establishment of differing compliance requirements or timetables in rural areas.

Providing exemptions from coverage by the rule was not considered because such exemptions are not authorized by Executive Law section 378(5-a) and would endanger public safety.

5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State of the proposed adoption of this rule by means of notices posted on the Department's website and notices published in Building New York, a monthly electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 7,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

Job Impact Statement

The Department of State has concluded after reviewing the nature and purpose of the rule that it will not have a "substantial adverse impact on jobs and employment opportunities" (as that term is defined in section 201-a of the State Administrative Procedures Act) in New York.

This rule amends the State Uniform Fire Prevention and Building Code (the Uniform Code) to require that all one- and two-family dwellings, townhouses, dwelling accommodations in condominiums and cooperatives, and multiple dwellings be equipped with carbon monoxide alarms. This amendment is required to satisfy the requirements of subdivision (5-a) of section 378 of the Executive Law, as amended by Chapter 367 of the Laws of 2009.

The Uniform Code has contained provisions requiring installation of carbon monoxide alarms in certain situations since at least 2002. The current requirements relating to installation of alarms in newly constructed buildings have been in effect since January 1, 2008, and are continued without substantial change by this rule. For newly constructed buildings, the carbon monoxide alarms will continue to be installed as part of the construction process.

Under the current version of the Uniform Code and under prior versions of the Uniform Code, an existing building that was not required to have carbon monoxide alarms installed at the time of construction would be required to have carbon monoxide alarms installed at the time the building was offered for sale. Under this rule, existing residential buildings will be required to have carbon monoxide alarms installed, even if they are not being offered for sale. However, potential adverse economic impact on regulated parties is minimized by the provisions of the rule that allow the use of battery operated, cord-type or direct plug carbon monoxide alarms in buildings constructed prior to January 1, 2008, and by provisions that permit the use of battery operated carbon monoxide alarms in buildings without a commercial or on-site power source.

Once installed, the carbon monoxide alarms must be used and maintained in accordance with manufacturer's instructions.

Existing provisions in the Uniform Code require the installation of carbon monoxide alarms in newly constructed residential buildings. Those requirements are continued without substantial change by this rule. Therefore, this rule adds no new requirements relating to newly constructed buildings, and this rule should have no substantial adverse impact on jobs and employment opportunities related to the construction of new residential buildings.

The costs of purchasing, installing and maintaining the alarms is insignificant in comparison to the cost of purchasing, owning, and operating an existing residential building. Therefore, this rule should have no substantial adverse impact on sales, purchases, ownership or operation of existing residential buildings and, consequently, this rule should have no substantial adverse impact on jobs and employment opportunities related to the sale, purchase, ownership or operation of existing residential buildings.

NOTICE OF ADOPTION

Firefighter Training

I.D. No. DOS-46-09-00004-A

Filing No. 71

Filing Date: 2010-02-02

Effective Date: 2010-02-17

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

Action taken: Addition of Part 438 to Title 19 NYCRR.

Statutory authority: Executive Law, section 156(6); L. 2006, ch. 615

Subject: Firefighter Training.

Purpose: To set forth standards regarding the state firefighter training program.

Text or summary was published in the November 18, 2009 issue of the Register, I.D. No. DOS-46-09-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Elisha S. Tomko, Esq., Department of State, 99 Washington Avenue, Albany NY 12231, (518) 474-6740.

Assessment of Public Comment

The agency received no public comment.

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Safety Net Assistance Application Supplement

I.D. No. TDA-14-09-00009-A

Filing No. 70

Filing Date: 2010-02-02

Effective Date: 2010-02-17

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

Action taken: Repeal of section 350.4(a)(7) and amendment of section 350.4(b) and (c)(1) of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 158(1)(a)

Subject: Safety Net Assistance Application Supplement.

Purpose: To eliminate the requirement that public assistance recipients complete a safety net assistance (SNA) application supplement to transition from federally funded assistance to SNA when they reach the State 60-month time limit for federally funded assistance.

Text or summary was published in the April 8, 2009 issue of the Register, I.D. No. TDA-14-09-00009-P.

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

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

Assessment of Public Comment

During the public comment period for the proposed rule which eliminates the requirement that a Safety Net Assistance (SNA) application supplement be completed by able-bodied adults who want to receive SNA after reaching the State 60-month time limit for federally funded assistance, the Office of Temporary and Disability Assistance (OTDA) received a comment from one social services district.

Comment: The commentator opposed the proposed rule and stated that the SNA application supplement reinforces the concept of self-sufficiency and functions as an employability assessment tool.

Response: The OTDA disagrees with the comment. The SNA application supplement was an interim procedure to ensure that individuals who reached the 60-month time limit for federally funded assistance were eligible for continued assistance under the SNA program. Since the interim use of the SNA application supplement began, the OTDA has established policies and procedures that ensure program eligibility, reinforce self-sufficiency and assess employability. These safeguards have eliminated the need for the SNA application supplement.