

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.

Crime Victims Board

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Crime Victims Board publishes a new notice of proposed rule making in the *NYS Register*.

General Updates to Regulations

I.D. No.	Proposed	Expiration Date
CVB-04-10-00005-P	January 27, 2010	January 27, 2011

Department of Economic Development

EMERGENCY RULE MAKING

Excelsior Jobs Program

I.D. No. EDV-48-10-00010-E

Filing No. 160

Filing Date: 2011-02-03

Effective Date: 2011-02-03

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

Action taken: Addition of Parts 190-196 to Title 5 NYCRR.

Statutory authority: Economic Development Law, art. 17; and L. 2010, ch. 59

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the Excelsior Jobs Program which was created by Chapter 59 of the Laws of 2010. The Excelsior Jobs Program will provide job creation and investment incentives to firms that create and maintain new jobs or make significant financial investment. The Excelsior Jobs Program is one of the State's key economic development tools for ensuring that businesses in the new economy choose to expand or locate in New York State. It is imperative that this Program be implemented immediately so that New York remains competitive with other States, regions, and even countries as businesses make their investment and location decisions. Helping existing New York businesses create new jobs and make significant capital investments with the financial incentives of the Excelsior Jobs Program is equally important and needs to happen now.

The emergency rule is necessary because it establishes the application process, standards for application evaluation and procedures for businesses claiming the tax credit under this Program. Immediate adoption of this rule will enable the State to begin achieving its economic development goals.

It bears noting that section 356 of the Economic Development Law directs the Commissioner of Economic Development to promulgate regulations and explicitly indicates that such regulations may be adopted on an emergency basis.

Subject: Excelsior Jobs Program.

Purpose: To create the process by which businesses may apply for and receive the tax credits provided by the Excelsior Jobs Program.

Substance of emergency rule: The regulation creates new Parts 190-196 in 5 NYCRR as follows:

1) The regulation adds the definitions relevant to the Excelsior Jobs Program (the "Program"). Key definitions include, but are not limited to, certificate of eligibility, certificate of tax credit, industry with significant potential for private sector growth and economic development in the State, preliminary schedule of benefits, regionally significant project and significant capital investment.

2) The regulation creates the application and review process for the Excelsior Jobs Program. In order to become a participant in the Program, an applicant must submit a complete application and agree to a variety of requirements, including, but not limited to, the following: (a) allowing the exchange of its tax information between Department of Taxation and Finance and Department of Economic Development (the "Department"); (b) allowing the exchange of its tax and employer information between the Department of Labor and the Department; (c) agreeing to be permanently decertified from the empire zones program if admitted into the Excelsior Jobs Program; (d) providing, if requested by the Department, a plan outlining the schedule for meeting job and investment requirements as well as providing its tax returns, information concerning its projected investment, an estimate of the portion of the federal research and development tax credits attributable to its research and development activities in New York state, and employer identification or social security numbers for all related persons to the applicant.

3) Applicants must also certify that they are in substantial compliance with all environmental, worker protection and local, state and Federal tax laws.

4) Upon receiving a complete application, the Commissioner of the Department shall review the application to ensure it meets eligibility criteria set forth in the statute (see 5 below). If it does not, the application shall not be accepted. If it does meet the eligibility criteria, the Commissioner may admit the applicant into the Program. If admitted into the Program, an applicant will receive a certificate of eligibility and a preliminary schedule of benefits. The preliminary schedule of benefits may be amended by the Commissioner provided he or she complies with the credit caps established in General Municipal Law section 359.

5) The regulation sets forth the eligibility criteria for the Program. To be a participant in the program, an applicant must be operating predominantly in a strategic industry and meet the respective job requirements for strategic industries or be a regionally significant project. The strategic industries are specifically delineated in the regulation as follows: (a) financial services data center or a financial services back office operation; (b) manufacturing; (c) software development; (d) scientific research and development; (e) agriculture; (f) back office operations in the state; (g) distribution center; or (h) in an industry with significant potential for private-sector economic growth and development in this state. When determining whether an applicant is operating predominantly in a strategic industry, or as a regionally significant project, the commissioner will examine the nature of the business activity at the location for the proposed project and will make eligibility determinations based on such activity.

6) In addition, a business entity operating predominantly in manufacturing must create at least twenty-five net new jobs; a business entity operating predominantly in agriculture must create at least ten net new jobs; a business entity operating predominantly as a financial service data center or financial services customer back office operation must create at least one hundred net new jobs; a business entity operating predominantly in scientific research and development must create at least ten net new jobs; a business entity operating predominantly in software development must create at least ten net new jobs; a business entity creating or expanding back office operations or a distribution center in the state must create at least one hundred fifty net new jobs; or a business entity must be a Regionally Significant Project; or a business entity operating predominantly in one of the industries referenced above but which does not meet the job requirements must have at least fifty full-time job equivalents, and must demonstrate that its benefit-cost ratio is at least ten to one (10:1).

7) A business entity must be in substantial compliance with all worker protection and environmental laws and regulations and may not owe past due state or local taxes. Also, the regulation explicitly excludes: a not-for-profit business entity, a business entity whose primary function is the provision of services including personal services, business services, or the provision of utilities, and a business entity engaged predominantly in the retail or entertainment industry, and a company engaged in the generation or distribution of electricity, the distribution of natural gas, or the production of steam associated with the generation of electricity from eligibility for this program.

8) The regulation sets forth the evaluation standards that the Commissioner can utilize when determining whether to admit an applicant to the Program. These include, but are not limited to, the following: (1) whether the Applicant is proposing to substantially renovate contaminated, abandoned or underutilized facilities; or (2) whether the Applicant will use energy-efficient measures, including, but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design (LEED) green building rating system for the project identified in its application; or (3) the degree of economic distress in the area where the Applicant will locate the project identified in its application; or (4) the degree of Applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or (5) the degree to which the project identified in the Application supports New York State's minority and women business enterprises; or (6) the degree to which the project identified in the Application supports the principles of Smart Growth; or (7) the estimated return on investment that the project identified in the Application will provide to the State; or (8) the overall economic impact that the project identified in the Application will have on a region, including the impact of any direct and indirect jobs that will be created; or (9) the degree to which other state or local incentive programs are available to the Applicant; or (10) the likelihood that the project identified in the Application would be located outside of New York State but for the availability of state or local incentives.

9) The regulation requires an applicant to submit evidence of achieving job and investment requirements stated in its application in order to become a participant in the Program. After such evidence is found sufficient, the Department will issue a certificate of tax credit to a participant. This certificate will specify the exact amount of the tax credit components a participant may claim and the taxable year in which the credit may be claimed.

10) A participant's increase in employment, qualified investment, or federal research and development tax credit attributable to research and development activities in New York state above its projections listed in its application shall not result in an increase in tax benefits under this article. However, if the participant's expenditures are less than the estimated amounts, the credit shall be less than the estimate.

11) The regulation next delineates the calculation of the tax credits as described in statute.

12) The tax credit components are refundable. If a participant fails to satisfy the eligibility criteria in any one year, it loses the ability to claim the credit for that year.

13) The regulation requires participants to keep all relevant records for their duration of program participation plus three years.

14) The regulation requires a participant to submit a performance report annually and states that the Commissioner shall prepare a program report on a quarterly basis for posting on the Department's website.

15) The regulation calls for removal of a participant in the Program for failing to meet the application requirements or failing to meet the minimum job or investment requirements of the statute. Upon removal, a participant will be notified in writing and have the right to appeal such removal.

16) The regulation lays out the appeal process for participant's who have been removed from the Program. A participant will have thirty (30) days to appeal to the Department. An appeal officer will be appointed and shall evaluate the merits of the appeal and any response from the Department. The appeal officer will determine whether a hearing is necessary and the level of formality required. The appeal officer will prepare a report and make recommendations to the Commissioner. The Commissioner will then issue a final decision in the case.

The full text of the emergency rule is available at the Department's website at <http://www.esd.ny.gov/BusinessPrograms/Excelsior.html>.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDV-48-10-00010-P, Issue of December 1, 2010. The emergency rule will expire April 3, 2011.

Text of rule and any required statements and analyses may be obtained from: Thomas P. Regan, NYS Department of Economic Development, 30 South Pearl Street, Albany, NY 12245, (518) 292-5123, email: tragan@empire.state.ny.us

Regulatory Impact Statement

STATUTORY AUTHORITY:

Chapter 59 of the Laws of 2010 established Article 17 of the Economic Development Law, creating the Excelsior Jobs Program and authorizing the Commissioner of Economic Development to adopt, on an emergency basis, rules and regulations governing the Program.

LEGISLATIVE OBJECTIVES:

The emergency rulemaking accords with the public policy objectives the Legislature sought to advance because they directly address the legislative findings and declarations that New York State needs, as a matter of public policy, to create competitive financial incentives for businesses to create jobs and invest in the new economy. The Excelsior Jobs Program is created to support the growth of the State's traditional economic pillars including the manufacturing and financial industries and to ensure that New York emerges as the leader in the knowledge, technology and innovation based economy. The Program will encourage the expansion in and relocation to New York of businesses in growth industries such as clean-tech, broadband, information systems, renewable energy and biotechnology.

The emergency rule is specifically authorized by the Legislature.

NEEDS AND BENEFITS:

The emergency rule is required in order to immediately implement the statute contained in Article 17 of the Economic Development Law, creating the Excelsior Jobs Program. The statute directed the Commissioner of Economic Development to adopt regulations with respect to an application process and eligibility criteria and authorized the adoption of such regulations on an emergency basis notwithstanding any provisions to the contrary in the state administrative procedures act.

New York is in the midst of a national economic slowdown that some predict could become a double dip recession or worse. The impact of the national financial crisis and resulting slowed economic growth was particularly devastating to New York State and is having severe consequences on New York's immediate fiscal health and could harm its economic future.

The Excelsior Jobs Program will be one of the State's key economic development tools for ensuring that businesses in the new economy choose to expand or locate in New York State. It is imperative that this Program be implemented immediately so that New York remains competitive with other States, regions, and even countries as businesses make their investment and location decisions. Helping existing New York businesses create new jobs and make significant capital investments with the financial incentives of the Excelsior Jobs Program is equally important and needs to happen now.

This rule will establish the process and procedures for launching this new Program in the most efficient and cost-effective manner while protecting all New York State taxpayers with rules to ensure accountability, performance and adherence to commitments by businesses choosing to participate in the Program.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Excelsior Jobs Program, only voluntary participants.

B. Costs to the agency, the state, and local governments: The Department of Economic Development does not anticipate any significant costs with respect to implementation of this program. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

LOCAL GOVERNMENT MANDATES:

None. There are no mandates on local governments with respect to the Excelsior Jobs Program. This emergency rule does not impose any costs to local governments for administration of the Excelsior Jobs Program.

PAPERWORK:

The emergency rule requires businesses choosing to participate in the Excelsior Jobs Program to establish and maintain complete and accurate books relating to their participation in the Excelsior Jobs Program for a period of three years beyond their participation in the Program. However, this requirement does not impose significant additional paperwork burdens on businesses choosing to participate in the Program but instead simply requires that information currently established and maintained be shared with the Department in order to verify that the business has met its job creation and investment commitments.

DUPLICATION:

The emergency rule does not duplicate any state or Federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions. The Department conducted outreach with respect to this rulemaking. Specifically, it contacted the Citizens Budget Commission, Partnership for New York City, the Buffalo Niagara Partnership and the New York State Economic Development Council and received comments from them. The Department carefully considered all comments made with respect to the regulation. Certain comments were incorporated into the rulemaking while others deemed inappropriate were not.

FEDERAL STANDARDS:

There are no Federal standards in regard to the Excelsior Jobs Program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes recordkeeping requirements on all businesses (small, medium and large) that choose to participate in the Excelsior Jobs Program. The emergency rule requires all businesses that participate in the Program to establish and maintain complete and accurate books relating to their participation in the Program for the duration of their term in the Program plus three additional years. Local governments are unaffected by this rule.

2. Compliance requirements

Each business choosing to participate in the Excelsior Jobs Program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the program and relating to annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

The information that businesses choosing to participate in the Excelsior Jobs Program would be information such businesses already must establish and maintain in order to operate, i.e. wage reporting, financial records, tax information, etc. No additional professional services would be needed by businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

Businesses (small, medium or large) that choose to participate in the Excelsior Jobs Program must create new jobs and/or make capital investments in order to receive any tax incentives under the Program. If businesses choosing to participate in the Program do not fulfill their job creation or investment commitments, such businesses would not receive financial assistance. There are no other initial capital costs that would be incurred by businesses choosing to participate in the Excelsior Jobs Program. Annual compliance costs are estimated to be negligible for businesses because the information they must provide to demonstrate their compliance with their commitments is information that is already established and maintained as part of their normal operations. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development ("DED") estimates that complying with this recordkeeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Excelsior Jobs Program is a statewide business assistance program. Strategic businesses in rural areas of New York State are eligible to apply to participate in the program entirely at their discretion. Municipalities are not eligible to participate in the Program. The emergency rule does not impose any special reporting, recordkeeping or other compliance requirements on private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas nor on the reporting, recordkeeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Excelsior Jobs Program. The Excelsior Jobs Program will enable New York State to provide financial incentives to businesses in strategic industries that commit to create new jobs and/or to make significant capital investment. This Program, given its design and purpose, will have a substantial positive impact on job creation and employment opportunities. The emergency rule will immediately enable the Department to fulfill its mission of job creation and investment throughout the State and in economically distressed areas through implementation of this new economic development program. Because this emergency rule will authorize the Department to immediately begin offering financial incentives to strategic industries that commit to creating new jobs and/or to making significant capital investment in the State during these difficult economic times, it will have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The Department of Economic Development ("DED") received three letters commenting on the proposed regulations.

Below is a summary of the comments received along with DED's response.

1. Investment zones

Comments:

The Excelsior real property tax credit favors 48 areas of the State designated as "investment zones" as compared to 37 areas designated as "development zones" and that if a project qualifies for participation in the Program it should qualify for all credits without prejudice.

Investment zones should be delineated based on boundaries designated under General Municipal Law § 958(a)(i) and (d) and not based on an area that "... was wholly contained within up to four distinct and separate contiguous areas as those areas existed on June 29, 2010." Contiguous areas that are not within the boundaries as designated under section 958(a)(i) and (d) do not need enhanced financial support and would lead to waste, inefficiency and the flouting of the clear purpose of section 958.

Response:

The "investment zones" are defined in the Excelsior Jobs Program Act and cannot be eliminated or changed via the proposed regulation. It should be noted that a business admitted into the Excelsior Jobs Program can be located anywhere in NYS and receive three of the four tax credit components. If a business also meets the criteria as a regionally significant project, it can receive the additional excelsior real property tax credit component that a business located in an "investment zone" can receive.

Investment zones are those areas designated pursuant to General Municipal Law Section 958(a)(i) and (d), which defines them as economically distressed areas, and section 957(d), which requires the zone be contained within up to four distinct and separate contiguous areas. The proposed regulation simply clarifies that, for purposes of the Excelsior Jobs Program, the "investment zones" are those areas that existed on June 29, 2010, the day before the Empire Zones Program expired. In other words, a snapshot of the former "investment zones" is taken and businesses located in those economically distressed areas and admitted into the Excelsior Jobs Program are eligible for the excelsior real property tax credit component.

2. Accountability

Comments:

A public hearing should be held before the Commissioner makes a finding of "extraordinary economic circumstances" allowing a business to receive tax credits without meeting its job or investment obligations. The

hearing should be accompanied by a publicly disclosed report and if a finding of extraordinary circumstances occurs, the finding should be submitted to the Comptroller for comment.

Response:

The proposed regulation will be revised to indicate that the justification for the Commissioner's finding will be in writing to the company. The justification would therefore be subject to public disclosure.

3. Eligibility criteria

Comments:

Include job quality language into the eligibility criteria, e.g. require a business to pay prevailing wages.

Remove from eligibility as a strategic industry "an industry with significant potential for private sector economic growth and development in the state" because it is undefined and would cause the program to lose its targeted sector based approach.

All businesses should have to meet a benefit-cost ratio of at least 10:1.

Response:

There is no prevailing wage requirement in the Excelsior Jobs Program Act. However, the formula in the statute for determining the excelsior jobs tax credit component is based on the value of wages, up to a maximum of \$5,000 per job. Higher wage jobs qualify for a higher per job credit.

An "industry with significant potential for private sector growth" is an eligible industry per the statute and cannot be removed by regulation from the list of eligible industries. However, the proposed regulation would further define the eligibility criteria to require that any business deemed eligible under this broad definition create at least 300 net new jobs and make capital investments of at least \$30 million.

The statute only requires a 10:1 benefit-cost standard be met with respect to projects that cannot meet the minimum job creation requirements but may involve significant job retention AND capital investment. The estimated return on investment that a project will provide to the State is one of several evaluation criteria [§ 191.3(7)] included in the proposed regulation.

4. Reporting

Comments:

The components of the performance report should be spelled out in the regulation to ensure standard and consistent reporting. It is recommended that the NYC Local law 48 reporting requirements be mirrored. The quarterly report by the Commissioner of Economic Development should also include participant information and the Commissioner should verify all self reported data.

Response:

The proposed regulation specifies that a participant submit a performance report demonstrating that it continues to satisfy the eligibility requirements. Such requirements are already defined in the statute and the proposed regulation. Further, the law and the proposed regulation require that an applicant agree to allow the Tax and Labor Department to share information with the Department of Economic Development and allow the Department of Economic Development access to its records to monitor compliance. The precise content of the performance report, the quarterly report and auditing procedures are best addressed administratively to provide sufficient flexibility to revise the report and procedures as needed.

5. Evaluation standards

Comments:

The evaluation standards should mandate that the Commissioner take into account whether: the application supports Smart Growth principles, the jobs created are quality jobs, the standards in the new national health care law are met, and the positions are full or part time.

Section 191.3(a)(10) of the proposed regulation should be deleted because it suggests that businesses should be able to hold taxpayers hostage by threatening to leave the State.

Response:

Evaluation standards in the proposed regulation cannot be mandated because the statute did not mandate them. There are mandated eligibility criteria in the statute and these standards were designed within the broad authority provided to the Commissioner for promulgating regulations to further guide decision-making and complement the mandated eligibility criteria.

Section 191.3(a)(10) addresses whether incentives are needed to encourage a business to locate or expand in the State. Businesses are often looking at multiple sites in several competing states to locate expansion projects. In these instances, the incentives of the Excelsior Jobs Program can make NYS more competitive in site selection and is an important consideration when evaluating applicants.

6. Calculation of the tax credits

Comments:

The Excelsior Jobs Program tax credits should be revised to shift emphasis towards the creation of jobs that pay at or above the prevailing wage for that industry and towards jobs that are full time and include health benefits.

Managerial and non-managerial wage rates in reporting and in calculating the tax credits should be separated in order to get a more accurate assessment of jobs created and a more nuanced calculation of the tax credits.

Response:

The calculation of the Excelsior Jobs Program tax credits are determined in statute and cannot be changed through regulation. There is no prevailing wage requirement in the Excelsior Jobs Program Act, nor is there a requirement to provide health insurance benefits. However, the formula in the statute for determining the excelsior jobs tax credit component is based on the value of wages, including fringe benefits, up to a maximum of \$5,000 per job. Higher wage jobs providing health benefits qualify for a higher per job credit.

Section 191.2(b) of the proposed regulation indicates that evidence of job creation would include a business's NYS-45-MN Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns filed with the Department of Labor (DOL). These official reports already require a business to provide a breakdown of wages for each employee on its payroll and provide sufficient information to assess the type and wage rate for each new job created.

Department of Health

NOTICE OF ADOPTION

Potentially Preventable Readmissions

I.D. No. HLT-46-10-00008-A

Filing No. 167

Filing Date: 2011-02-08

Effective Date: 2011-02-23

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

Action taken: Amendment of section 86-1.37 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2807-c(35)(b)(v)

Subject: Potentially Preventable Readmissions.

Purpose: Implements a revised reimbursement policy related to hospital readmissions that are determined to be potentially preventable.

Text of final rule: Pursuant to the authority vested in the Commissioner of Health by section 2807-c(35) of the Public Health Law, Subpart 86-1 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York, is amended by adding a new Section 86-1.37, to be effective upon publication of the Notice of Adoption in the New York State Register, to read as follows:

Part 86-1.37 Readmissions

(a) *For discharges occurring on and after July 1, 2010, Medicaid rates of payment to hospitals that have an excess number of readmissions as defined in accordance with the criteria set forth in subdivision (c), as determined by a risk adjusted comparison of the actual and expected number of readmissions in a hospital as described by subdivision (d), shall be reduced in accordance with subdivision (e).*

(b) *Definitions. For purposes applicable to this section the following terms shall be defined as follows:*

(1) *Potentially Preventable Readmission (PPR) shall mean a readmission to a hospital that follows a prior discharge from a hospital within 14 days, and that is clinically-related to the prior hospital admission.*

(2) *Hospital shall mean a general hospital as defined pursuant to section 2801 of the Public Health Law.*

(3) *Observed Rate of Readmission shall mean the number of admissions in each hospital that were actually followed by at least one PPR divided by the total number of admissions.*

(4) *Expected Rate of Readmission shall mean a risk adjusted rate for each hospital that accounts for the severity of illness, APR-DRG, and age of patients at the time of discharge preceding the readmission.*

(5) *Excess Rate of Readmission shall mean the difference between the observed rates of potentially preventable readmissions and the expected rate of potentially preventable readmissions for each hospital.*

(6) *Behavioral Health* shall mean an admission that includes a primary or secondary diagnosis of a major mental health related condition, including, but not limited to, chemical dependency and substance abuse.

(7) *Managed Care Encounter Data* shall mean claims-like data that describes services provided by managed care plans to their enrollees.

(c) *Readmission Criteria.*

(1) A readmission is a return hospitalization following a prior discharge that meets all of the following criteria:

(i) The readmission could reasonably have been prevented by the provision of appropriate care consistent with accepted standards in the prior discharge or during the post discharge follow-up period.

(ii) The readmission is for a condition or procedure related to the care during the prior discharge or the care during the period immediately following the prior discharge and including, but not limited to:

(a) The same or closely related condition or procedure as the prior discharge.

(b) An infection or other complication of care.

(c) A condition or procedure indicative of a failed surgical intervention.

(d) An acute decompensation of a coexisting chronic disease.

(iii) The readmission is back to the same or to any other hospital.

(2) Readmissions, for the purposes of determining PPRs, excludes the following circumstances:

(i) The original discharge was a patient initiated discharge and was Against Medical Advice (AMA) and the circumstances of such discharge and readmission are documented in the patient's medical record.

(ii) The original discharge was for the purpose of securing treatment of a major or metastatic malignancy, multiple trauma, burns, neonatal and obstetrical admissions.

(iii) The readmission was a planned readmission or one that occurred on or after 15 days following an initial admission.

(iv) For readmissions occurring during the period up through March 31, 2012, the readmission involves an original discharge determined to be behavioral health related.

(d) *Methodology.*

(1) Rate adjustments for each hospital shall be based on such hospital's 2007 Medicaid paid claims data and managed care encounter data for discharges that occurred between January 1, 2007 and December 31, 2007.

(2) The expected rate of readmissions shall be reduced by 24% for each hospital for periods prior to September 30, 2010; 38.5% for the period October 1, 2010 through December 31, 2010; and 33.3% on and after January 1, 2011.

(3) Excess readmission rates are calculated based on the difference between the observed rate of PPRs and the expected rate of PPRs for each hospital.

(4) In the event the observed rate of PPRs for a hospital is lower than the expected rate of PPRs, the excess number of readmissions shall be set at zero.

(e) *Payment Calculation.*

(1) For the excess readmissions identified in paragraph (3) of subdivision (d) of this section, each hospital's projected payment rate for the 2010 rate period, as otherwise computed in accordance with this subpart, will be used to compute the relative aggregate payments, excluding behavioral health, associated with the risk adjusted excess readmissions in each hospital.

(2) For each hospital, a hospital specific readmission adjustment factor shall be computed as one minus the ratio of the hospital's relative aggregate payments associated with the excess readmissions from paragraph (3) of subdivision (d) of this section and the hospital's relative aggregate payments for all non-behavioral health Medicaid discharges as determined pursuant to this subdivision.

(3) Non-behavioral health related payments to hospitals shall be reduced by applying the hospital readmission adjustment factor from paragraph (2) of this subdivision to the applicable case payment or per-diem payment amount for all non-behavioral health related Medicaid discharges to the hospital.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 86-1.37(d)(2).

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

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

Changes made to the last published rule do not necessitate revision to the previously published RIS, RFA, RAFA and JIS.

Assessment of Public Comment

The Department received a letter with comments and concerns relating to the establishment of Part 86-1.37, regulations implementing the Potentially Preventable Readmissions payment policy. The comments in the letter coordinated by the Healthcare Association of New York State (HANYs) and our response to them are as follows:

1. Comment: HANYs argues that the methodology of adjusting expected experiences to meet targeted rate reductions, which effects over 90% of hospitals, is counterintuitive to promoting appropriate quality related measures.

Response: The Department has established a risk adjusted method that predicts the expected number of PPRs within a 14 day window at each hospital based on historic (2007) claims data. For all hospital admissions that were "at risk" of being followed by a PPR, a statistical model was developed that predicted the likelihood of a subsequent PPR based on the recipient's condition (APR-DRG) and severity of illness, as well as the recipient's age at the time of that initial hospital admission. In this way, the recipient's clinical condition prior to any subsequent readmissions served as the basis for our estimate of whether or not a subsequent readmission was likely to occur.

The expected number of PPRs are derived from the statistical model for all at risk events at each hospital was then compared to the observed number of PPRs at that hospital within 14 days of the at risk event to examine performance standards. As a result of budget negotiations, the statute incorporated a required gross Medicaid savings target. In order to comply with the enabling statute, the expected number of PPRs derived from the statistical model had to be reduced.

Although under the proposed regulations 92% of hospitals would suffer financial penalties, only 3.8% of hospitals will sustain a PPR penalty exceeding 2% of their Medicaid revenue (full annual hospital-specific PPR percentage reduction factors).

2. Comment: HANYs contends that the Department's use of 2007 data does not incentivize hospitals to improve outcomes now and in the future.

Response: 2007 claims were the most recent and reliable records that the Department had available during the development of the PPR methodology. During budget discussions and in the educational webinars the State has indicated that a process to engage stakeholders was underway to begin advancing the base year data for 2011 and forward.

3. Comment: HANYs does not agree with the State's policy to include PPRs where the initial admission was medical/surgical but the readmission has a primary or secondary diagnosis of behavioral health.

Response: The PPR proposal excludes all initial events followed by PPRs and all subsequent readmissions (regardless of whether they were behavioral health related or not) if the initial admission had a primary or secondary diagnosis that was behavioral health related, mental health or substance abuse related (as defined by ICD-9-CM diagnosis codes). However, if the initial admission was not behavioral health related, this admission and all subsequent readmissions (behavioral health or not) were included in all subsequent calculations. The State believes that it is entirely appropriate to include these events since it was the initial medical/surgical admission that was clinically related to subsequent readmissions.

4. Comment: HANYs proposes utilizing other variables in assess-

ing the risk adjusted rates for readmissions, which will recognize the disproportionate impact on safety net providers and other hospitals serving low income communities.

Response: Although we believe clinical risk for readmissions was appropriately assessed using the methodology described, the State is open to further discussions with the Industry on any opportunity to improve the risk adjusted methodology. Regardless of any revisions, unless statutorily changed, \$47 million in gross Medicaid savings will have to be achieved.

5. Comment: HANYS contends that non-case payment hospitals should be excluded from the PPR reduction calculation.

Response: A statutory change would be required to exclude non-case payment hospitals and/or low volume Medicaid providers from the PPR reduction calculation.

6. Comment: HANYS is advocating for a reconciliation of savings by hospital to the statewide target reduction due to fluctuations in volume.

Response: A statutory change would be required to reconcile the actual savings achieved to the total penalty calculated for each hospital based on historic data. Although there will most likely be inequities caused by fluctuations in hospital volume and any increase in hospital admissions subsequent to 2007, some of that is captured under DOH's current methodology because the percentage reduction is calculated using projected 2010 revenue (using 2008 Medicaid claims). In addition, the Department plans to use more recent Medicaid claims data (2009) to calculate PPR rates and adjustments in subsequent fiscal years, which should mitigate this issue.

7. Comment: HANYS indicates that the 3M proprietary software is cost prohibitive, thus limiting the ability of hospitals to access the software to monitor and replicate the calculations used by DOH or to inform their ongoing quality improvement efforts.

Response: 3M's APR-DRG grouping software is currently being used by all hospitals and most vendors for Medicaid claiming purposes. In addition, at the request of the State, 3M has worked with the Associations and individual hospitals to negotiate significantly discounted rates for the grouping and PPR software applications.

8. Comment: HANYS believes that Medicaid savings should come from reduced readmission rates, not financial penalties adjusted to meet a budget target. HANYS is concerned that the message this proposal communicates to the provider community is that cost savings, not standards of care, will drive quality of care and patient safety.

Response: The current design of the Medicaid fee-for-service inpatient payment system does not provide incentives to contain avoidable readmissions or promote high quality of care. It presents incentives for providers to increase volume of care rather than to reduce it; reducing readmissions would result in fewer billable discharges. A hospital that has performed poorly, observed higher readmission rates than what was expected, will be penalized.

9. Comment: HANYS encourages an approach targeted toward the dual goals of cost savings and improved care management. HANYS believes a positive first step toward creation of a quality-directed readmissions policy is for DOH to reward hospitals that take action to reduce preventable readmissions.

Response: DOH's original intent was to promote quality improvement through incentive payments to improved/high quality of care performers. The Governor's Executive Budget (2010-11) proposal for PPRs did include financial incentives for those hospitals demonstrating improved rates of readmissions. However, this initiative was not included as part of the final negotiated budget. Incentive payments cannot be made without statutory authority. DOH agrees that there will be associated savings accrued from a decrease in the number of readmissions going forward, and that these savings need to be recognized in some manner (i.e. incentive payment funding).

Department of Motor Vehicles

NOTICE OF ADOPTION

Private Service Bureaus

I.D. No. MTV-51-10-00006-A

Filing No. 163

Filing Date: 2011-02-08

Effective Date: 2011-02-23

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

Action taken: Amendment of section 77.1 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 395

Subject: Private Service Bureaus.

Purpose: To require Private Service Bureaus who have websites to post a disclaimer on such website.

Text or summary was published in the December 22, 2010 issue of the Register, I.D. No. MTV-51-10-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Monica Staats, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Inspection of Stretch Limousines

I.D. No. MTV-51-10-00008-A

Filing No. 164

Filing Date: 2011-02-08

Effective Date: 2011-02-23

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

Action taken: Amendment of section 79.20 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 301(a), (c), 302(a) and (e)

Subject: Inspection of stretch limousines.

Purpose: To require DOT inspections of vehicles that have been modified or "stretched".

Text or summary was published in the December 22, 2010 issue of the Register, I.D. No. MTV-51-10-00008-P.

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

Text of rule and any required statements and analyses may be obtained from: Monica Staats, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Fee for Driver's Manual

I.D. No. MTV-51-10-00010-A

Filing No. 166

Filing Date: 2011-02-08

Effective Date: 2011-02-23

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

Action taken: Amendment of Part 160 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 502(3)

Subject: Fee for Driver's Manual.

Purpose: The Department proposes to charge certain entities \$1 for the Driver's Manual.

Text or summary was published in the December 22, 2010 issue of the Register, I.D. No. MTV-51-10-00010-P.

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

Text of rule and any required statements and analyses may be obtained from: Monica Staats, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Relicensing After Revocation Action

I.D. No. MTV-51-10-00023-A

Filing No. 165

Filing Date: 2011-02-08

Effective Date: 2011-02-23

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

Action taken: Amendment of Part 136 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 510(6)(a) and 1193(2)(c)

Subject: Relicensing after revocation action.

Purpose: Enhances the criteria for re-licensing after revocation.

Text or summary was published in the December 22, 2010 issue of the Register, I.D. No. MTV-51-10-00023-P.

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

Text of rule and any required statements and analyses may be obtained from: Monica J Staats, NYS Department of Motor Vehicles, Legal Bureau, Room 526, 6 Empire State Plaza, Albany, NY 12228, (518) 474-0871, email: monica.staats@dmv.ny.gov

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

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

Overbilling Credits for Telephone Service

I.D. No. PSC-08-11-00001-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 a proposal by Verizon New York Inc. (company) to revise its rules and regulations concerning overbilling credit for its customers.

Statutory authority: Public Service Law, section 92(2)

Subject: Overbilling credits for telephone service.

Purpose: To limit claims made to the company for overbilling credits on account of termination or disconnection of service.

Substance of proposed rule: Verizon New York Inc. (Company) filed tariff revisions to limit claims made to the Company for overbilling on account of termination or disconnection of service, effective April 15, 2011. Credit will only be given for overpayment claims where the Customer provides verifiable documentation to the Company that it provided written notice of termination of service or that Customer complied with established Company procedures for the disconnection of service. The Commission will consider Verizon's petition and may apply its decision to other utilities as well.

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

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

(11-C-0048SP1)

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

New Targets for RG&E's Customer Contact Satisfaction Survey

I.D. No. PSC-08-11-00002-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 filing from Rochester Gas and Electric Company (RG&E) proposing new targets for its customer contact satisfaction survey.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (3), (5), (10) and (12)

Subject: New targets for RG&E's customer contact satisfaction survey.

Purpose: Consideration of new targets for RG&E's customer contact satisfaction survey.

Substance of proposed rule: The Commission is considering a filing from Rochester Gas and Electric Company (RG&E) made on February 3, 2011 proposing new targets for its customer contact satisfaction survey that would replace prior metrics for performance thresholds and maximum revenues at risk. The targets would be effective retroactively to January 2011. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

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

Data, views or arguments may be submitted to: Jaclyn A. Brilling, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: 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-E-0717SP3)