

RULE MAKING ACTIVITIES

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

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

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

Department of Economic Development

EMERGENCY RULE MAKING

Excelsior Jobs Program

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

Filing No. 775

Filing Date: 2011-09-02

Effective Date: 2011-09-02

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; L. 2010, ch. 59; L. 2011, ch. 61

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 and recently amended by Chapter 61 of the Laws of 2011. 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. Recent amendment to the law extends the current benefit period from five to ten years and offers an enriched package of tax credits. It is imperative that the amended 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 emergency rule is necessary because, in addition to establishing the application process, standards for application evaluation and procedures for businesses claiming the tax credit, it now incorporates recent statutory amendments which are designed to strengthen the 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 update the provisions of 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 for empire zone benefits at any location or locations that qualify for excelsior jobs program benefits if admitted into the Excelsior Jobs Program for such location or locations; (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. 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. Per recent statutory changes to the Program, 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. Per statutory change, participants may also begin to receive tax credits once the eligibility requirements are met and can continue to receive credits based on achieving interim milestones.

6) In addition, a business entity operating predominantly in manufacturing must create at least twenty-five net new jobs; a business entity operating predominately 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; 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; or (11) the recommendation of the relevant regional economic development council or the commissioner's determination that the proposed project aligns with the regional strategic priorities of the respective region.

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. Of note are the following changes made as a result of recent changes to the statute: the Excelsior Jobs Program Credit has been amended to be calculated as the product of gross wages and 6.85 percent. The Excelsior Research and Development Tax Credit has been increased from ten to fifty percent of the participant's federal research and development tax credit. The Excelsior Real Property Tax Credit is now based on the value of the property after improvements have been made. Under the amended program, a participant may claim both the Excelsior Investment Tax Credit and the investment tax credit for research and development property. In addition, the current tax benefit period for all credits has been lengthened from five years to ten years.

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) Pursuant to the amended statute, the regulation authorizes utilities to offer excelsior job program rates for gas or electric services to participants in the program for up to ten years.

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

15) 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.

16) 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.

17) 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 October 31, 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: tregan@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. Chapter 61 of the Laws of 2011 recently amended the statute to strengthen the Program.

LEGISLATIVE OBJECTIVES:

The emergency rulemaking accords with the public policy objec-

tives 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 and recently amending 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. 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. The rule implements the amendments to the statute which extend the current tax benefit period from five to ten years and offer an enriched package of tax credits.

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 record-keeping 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 record-keeping 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, record keeping 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, record keeping 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 agency received no public comment.

Office for People with Developmental Disabilities

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Willowbrook Case Services Add-On to the Rate for Intermediate Care Facilities (ICF/DD)

I.D. No. PDD-38-11-00001-EP

Filing No. 773

Filing Date: 2011-09-01

Effective Date: 2011-09-01

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

Proposed Action: Amendment of section 681.14 of Title 14 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The reason justifying the emergency adoption of these amendments is the preservation of the health, safety and general welfare of persons in New York State who are members of the Willowbrook Class who live in Intermediate Care Facilities (ICFs).

Historically, these individuals have received supplemental case management services from OPWDD employees. With attrition, the number of New York State employees who are available to deliver these special case management services is dwindling. OPWDD expects that beginning September 1, 2011, some Willowbrook Class members in specific geographic areas would no longer be able to access these essential services from New York State employees. In order

to meet the need for supplemental case management services, OPWDD is promulgating these emergency regulations to establish a mechanism to pay non-state providers to provide these services, which are known as Willowbrook Case Services.

Willowbrook Case Services include many functions important for the health, safety and/or welfare of these individuals. The services include providing advocacy related to the individual's safety and physical environment, and advocacy related to protection from harm. In addition, the services include assisting the individual and/or their family with unanticipated crisis intervention. Furthermore, the services include ensuring the implementation of preventive actions, and other needed follow-up on incidents that pose a risk to the health and safety of the class member or to others in the class member's immediate environment. Without the promulgation of these emergency regulations OPWDD considers that the health, safety and/or welfare of Willowbrook Class members who live in ICF/DDs might be compromised.

Subject: Willowbrook Case Services add-on to the rate for Intermediate Care Facilities (ICF/DD).

Purpose: To establish a mechanism to pay for case management services for ICF/DD residents who are members of the Willowbrook Class.

Text of emergency/proposed rule: Subparagraph 681.14(c)(4)(xi) is added as follows:

(xi) *Effective September 1, 2011, the rate shall be adjusted for providers with ICF/DD populations that include individuals who are Willowbrook Class members and who are accessing Willowbrook Case Services delivered by a non-State provider.*

(a) *The add-on to the rate shall be predicated on the number of Willowbrook Class members accessing Willowbrook Case Services delivered by a service coordinator who is qualified to provide Medicaid Service Coordination (see Subpart 635-5). Willowbrook Case Services are those case management services required by Appendix I of the Permanent Injunction ordered by the United States District Court of the Eastern District of New York on March 11, 1993 in the case of New York State Association for Retarded Children v. Cuomo, that exceed the case management services delivered by the QMRP in the ICF/DD.*

(b) *The amount of the additional reimbursement per provider on an annual basis shall be equal to the sum of the months in which each Willowbrook Class member residing in any of the provider's ICF/DDs receives Willowbrook Case Services over the span of the ICF/DD provider's accounting/reporting year multiplied by one half of the Medicaid Service Coordination fee established for Willowbrook Class members as identified in the Medicaid Service Coordination contract for providers of that service.*

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 November 29, 2011.

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Regulatory Affairs Unit, Office for People With Developmental Disabilities, 44 Holland Ave., 3rd Floor, Albany, NY 12229, (518) 474-1830, email: Barbara.Brundage@opwdd.ny.gov

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

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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, 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. OPWDD has the statutory 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. OPWDD has the statutory responsibility for setting Medicaid rates and fees for other services in facilities licensed or operated by OPWDD, as stated in section 43.02 of the Mental Hygiene Law.

2. Legislative Objectives: These emergency/proposed amendments further the legislative objectives embodied in sections 13.09(b) and 43.02 of the Mental Hygiene Law. The emergency/proposed amend-

ments concern changes in OPWDD's approach for delivering case management services to some Willowbrook Class members who reside in ICF/DDs and they establish a mechanism to accommodate reimbursement for those services.

3. Needs and Benefits: OPWDD is legally bound to comply with requirements outlined in the Willowbrook Permanent Injunction issued by the US District Court for the Eastern District of New York on March 11, 1993 in *New York State Association for Retarded Children v. Cuomo*. The Permanent Injunction guarantees class members certain rights and sets standards for care. As with most individuals served by OPWDD, case management is the starting point for assessing and reassessing needs and directing an individual to appropriate services. Traditionally, in an Intermediate Care Facility (ICF/DD) setting, Qualified Mental Retardation Professionals (QMRPs) deliver case management services to the individuals residing there. In the case of Willowbrook Class members, the additional services required to provide the case management outlined in Appendix I of the Permanent Injunction have been provided by State employees, generally from the local Developmental Disabilities Services Office (DDSO). These additional services include functions that are important for the health, safety and welfare of these individuals, as discussed in the emergency justification. With attrition, the number of State employees available to deliver these additional case management services is dwindling. These emergency/proposed regulations address the need to find alternative means to deliver the requisite level of case management services. By the promulgation of these regulations, OPWDD is increasing the ICF/DD rate in order to provide a mechanism to sufficiently compensate the ICF/DD for payments to service coordination providers which will be providing these additional, essential services. It is expected that the transition from augmented services delivered by the State to augmented services delivered by non-state providers will occur on a gradual basis corresponding to the attrition rate of State employees who previously performed these services.

4. Costs:

a. Costs to the agency and to the State and its local governments: Additional reimbursement reflected in the ICF/DD Medicaid rates for the first year of implementation is expected to fall within a range from \$22,750 to \$166,000 which will be shared evenly by the State (approximately \$11,375 to \$83,000) and the federal (approximately \$11,375 to \$83,000) governments. This broad range is indicative of OPWDD's inability to predict the attrition rate for those State employees currently delivering the augmented services to Willowbrook Class members living in ICF/DDs or the fluctuation in the Willowbrook Class member population of the ICF/DDs. The costs to the State will be mitigated as it recognizes savings attributable to the attrition of State employees. There will be no additional costs to local governments as a result of these specific amendments because pursuant to Social Services Law sections 365 and 368-a, either local governments incur no costs for these services or the State reimburses local governments for their share of the cost of Medicaid funded programs and services.

b. Costs to private regulated parties: There are no initial capital investment nor non-capital costs for providers of ICF/DD services. There will be an add-on to the rate for ICF/DD services to pay for the delivery of WCS when the services are needed. The amount of the add-on will be equivalent to the compensation paid to providers of service coordination for the provision of WCS. OPWDD estimates that the increase in compensation to private providers will fall within a range of \$22,750 to \$166,000. As noted above, OPWDD is unable to predict the rate of attrition of state service coordinators which will result in the need for the provision of WCS and the corresponding compensation to providers for the delivery of WCS.

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: The ICF/DD providers with Willowbrook Class members in their ICF/DD populations who access Willowbrook Case Services will need to enter into an agreement with the deliverer of the services. This will involve a minimum of paperwork and some engagement of the Board of Directors. Service coordination providers who

choose to provide WCS will have routine paperwork associated with billing and documentation of service delivery.

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

8. Alternatives: In developing this emergency/proposed regulation, OPWDD consulted with representatives of provider associations to refine the approach and the reimbursement terms. It did not consider other avenues by which to plug the anticipated gap in mandated services because it regards this approach as the most expedient and efficacious in the long term.

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: OPWDD is adopting the emergency amendments effective September 1, 2011. OPWDD expects to finalize the proposed regulations as soon as possible consistent with the timeframes established by the State Administrative Procedure Act.

There are minimal compliance activities required by these amendments. As discussed under "Paperwork," ICF/DD providers that serve Willowbrook Class members will need to execute agreements with a service coordination provider for the delivery of WCS.

Regulatory Flexibility Analysis

A regulatory flexibility analysis for small businesses and local governments is not being submitted because the amendments will not impose any adverse impact or reporting, record keeping or other compliance requirements on small businesses. There will be no professional services, capital, or other compliance costs imposed on small businesses as a result of these amendments.

The regulations amend the ratesetting methodology for ICF/DD facilities to establish an add-on for Willowbrook Case Services (WCS). This will create a mechanism to compensate ICF/DDs for payments to non-state providers for the provision of these services. Because of these regulations, some small business providers of service coordination will have the option to be compensated to provide WCS. Service coordination providers will need to comply with requirements established for service delivery of WCS only if they choose to deliver these services.

As noted in the Regulatory Impact Statement, there will be an increase in Medicaid expenditures. However, there is no local share in this increase. These amendments do not impose any requirements on local governments.

The amendments will consequently have no adverse impacts on small businesses or local governments.

Rural Area Flexibility Analysis

A rural area flexibility analysis for these 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 amendments.

The regulations amend the rate setting methodology for ICF/DD facilities to establish an add-on for Willowbrook Case Services (WCS). This will create a mechanism to compensate ICF/DDs for payments to non-state providers for the provision of these services. Because of these regulations, some private providers of service coordination in rural areas will have the option to be compensated to provide WCS. Service coordination providers will need to comply with requirements established for service delivery of WCS only if they choose to deliver these services.

The amendments will consequently have no adverse impacts on public or private entities in rural areas.

Job Impact Statement

A job impact statement for these amendments is not being submitted because it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment.

The regulations amend the rate setting methodology for ICF/DD facilities to establish an add-on for Willowbrook Case Services (WCS).

This will create a mechanism to compensate ICF/DDs for payments to non-state providers of WCS. Because of these regulations, some private providers of service coordination will have the option to be compensated to provide WCS. Although in some circumstances these providers will utilize service coordinators who are currently employed by the agency, OPWDD generally expects that providers will hire new service coordinators to provide WCS. OPWDD expects that the number of new employment opportunities at non-state providers will be roughly equivalent to the decrease in the number of service coordinators employed by OPWDD which necessitated the promulgation of these regulations. Since rules governing the provision of the case management services are the same whether the services are delivered by state or non-state staff (e.g. mandated caseload size), the overall number of employees necessary to deliver the services should be about the same.

The amendments are consequently expected to have a neutral overall impact on jobs and employment opportunities.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Operation and Maintenance Procedures Pertaining to Steam Trap Caps

I.D. No. PSC-38-11-00002-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 petition by Consolidated Edison Company of New York, Inc. to allow modification of steam operation and maintenance procedures pertaining to steam traps.

Statutory authority: Public Service Law, sections 2, 5, 79 and 80

Subject: Operation and maintenance procedures pertaining to steam trap caps.

Purpose: Adopt modified steam operation and maintenance procedures.

Substance of proposed rule: On August 4, 2011 the Consolidated Edison Company of New York, Inc. (Company) filed a petition requesting Commission approval of the Company's proposal to modify its steam trap cap inspection and replacement program. Specifically, the Company proposes: (1) to discontinue the inspection of steam trap caps for steam traps installed in new-style trap assemblies; (2) to modify the frequency of scheduled trap replacements from once every year to once every three years for steam traps installed in new-style trap assemblies; (3) that the Commission authorize the Staff of the Department of Public Service (Staff) to approve future Company proposals to either further extend the time between scheduled trap replacements or eliminate scheduled trap replacements; and (4) to discontinue the Company's quarterly written status reports on the feasibility of alternative trap designs and remote monitoring. The Company proposal is supported by new procedures, process changes, enhanced design of the trap assemblies, and equipment that have greatly improved steam trap inspection findings and is estimated to provide savings of approximately \$330,000 annually. The Commission may approve, reject or modify in whole or in part, the Company's request and may apply aspects of its decision here to the requirements for other utilities.

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.

(07-S-0984SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver of Certain Provisions of the Electric Service Tariffs of Con Edison

I.D. No. PSC-38-11-00003-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 New York City requesting a waiver of certain provisions of the electric service tariffs of the Consolidated Edison Company of New York, Inc. (Con Edison).

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

Subject: Waiver of certain provisions of the electric service tariffs of Con Edison.

Purpose: Consideration of waiver of certain provisions of the electric service tariffs of Con Edison.

Substance of proposed rule: The Public Service Commission is considering a petition filed on August 24, 2011 by the City of New York, acting on behalf of its Department of Corrections (DOC), asking that it be decided that a cogeneration facility DOC plans to install at Rikers Island is eligible for standby delivery service of energy and capacity provided by the New York Power Authority under the terms contained in Consolidated Edison Company of New York Inc.'s tariffs at P.S.C. No. 2, Retail Access, S.C. No. 14-RA, Special Provision E. The City requests that any provisions of that tariff that prevent DOC from qualifying for standby service be waived. 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.

(11-E-0464SP1)