

RULE MAKING ACTIVITIES

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

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

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

Office of Children and Family Services

NOTICE OF ADOPTION

Foster Children - Educational Stability and Identity Theft Prevention

I.D. No. CFS-07-12-00002-A

Filing No. 275

Filing Date: 2012-04-03

Effective Date: 2012-04-18

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

Action taken: Amendment of sections 428.3(b)(2)(v) and 430.11(c)(1)(i); and addition of sections 428.3(b)(2)(vi) and 430.12(k) to Title 18 NYCRR.

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

Subject: Foster Children - Educational Stability and Identity Theft Prevention.

Purpose: To implement the federal requirements relating to educational stability and identity theft prevention involving foster children.

Text or summary was published in the February 15, 2012 issue of the Register, I.D. No. CFS-07-12-00002-EP.

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

Text of rule and any required statements and analyses may be obtained from: Public Information Office, NYS Office of Children and Family Services, 52 Washington Street, Rensselaer, NY 12144, (518) 473-7793

Assessment of Public Comment

The Office of Children and Family Services (OCFS) received the following comments on the educational stability of foster children and prevention of identity theft involving foster children regulations:

1. Two comments from a voluntary agency:

The commenter requested that the terms, case manager, case planner or caseworker be further defined in regard to the agency responsible for providing or arranging for the provision of the consumer report for a foster child who is 16 years of age or older.

The terms case manager and case planner are currently defined in 18 NYCRR 428.2(b) and (c). The term case worker is defined in the model foster care purchase of services contract as established by OCFS in 18 NYCRR 405.3(d) and as issued by OCFS in release 06-OCFS-ADM-02.

The regulations were not revised in response to this comment because the terms in question are presently adequately defined.

The commenter also expressed concern that there was lack of clarity in terms of role and function as to which agency must provide the consumer report. The regulation presently states that the social services district with legal custody of the foster child determines which agency is responsible.

The regulations were not revised in response to this comment because the regulations, as proposed, clearly address who is responsible to determine which agency is to provide or cause the provision of the consumer report.

2. Two comments from an advocacy organization:

The commenter proposed that the regulations be amended to mandate credit literacy training be provided for all foster care agency staff who are charged with interpreting and resolving inaccuracies in the consumer report.

Such training is not required by federal law. OCFS is preparing guidance material for agency staff to be used to comply with the regulatory requirement and to address the training needs of staff.

The regulations were not revised in response to this comment to impose an additional mandate on agencies.

The commenter also proposed that the regulations be amended to provide that the child's court-appointed advocate should not be charged with resolving inaccuracies with the consumer report. The commenter stated that such advocacy would be outside of the purview of the child's court-appointed advocate.

The regulations presently provide that the agency with case planning, case management or casework responsibility, as determined by the social services district with legal custody over the foster child, must provide or arrange for the provision of assistance, including, where feasible, from any court appointed advocate, in interpreting or resolving any inaccuracies in the consumer report. The current regulation reflects the standards required by federal law. It anticipates the involvement of court-appointed advocates for the child, "when feasible". It does not mandate the involvement of the child's court-appointed advocate. If such advocate is not willing or able to provide such assistance, then the use of the court -appointed advocate would not be deemed as feasible.

The regulations were not revised in response to this request.

Education Department

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Form and Use of Electronic Prescriptions and Maintenance of Prescriptions by Pharmacists in a Secure Electronic Record

I.D. No. EDU-16-12-00015-P

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

Proposed Action: Amendment of sections 29.7(a) and 63.6(a)(7) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6504 (not subdivided), 6506(1), 6507(2)(a), 6509(9), 6802(23) and 6810(6)(a); L. 2011, ch. 590

Subject: Form and use of electronic prescriptions and maintenance of prescriptions by pharmacists in a secure electronic record.

Purpose: To implement Education Law sections 6802(23), as added, and section 6810(6)(a), as amended, by chapter 590 of the Laws of 2011.

Text of proposed rule: 1. Subdivision (a) of section 29.7 of the Rules of the Board of Regents is amended, effective July 11, 2012, as follows:

(a) The requirements of this section set forth for written prescriptions shall also be applicable to [electronically transmitted] *electronic* prescriptions, as defined in section [63.6(a)(7)] 63.6(a)(7)(i)(a) of this Title, unless otherwise indicated. For purposes of this section “signature” shall include an *electronic signature*, as defined in section 63.6(a)(7)(i)(c) of this Title, when applicable, and “sign” shall include the affixing of an *electronic signature*. Unprofessional conduct in the practice of pharmacy shall include all conduct prohibited by sections 29.1 and 29.2 of this Part except as provided in this section, and shall also include the following:

- (1) ...
- (2) ...
- (3) ...

(4) Refilling a prescription without entering on the reverse of the prescription or *within the electronic record* the date of the refill and the signature or readily identifiable initials of the pharmacist and of the intern, if applicable, dispensing the refill, except as provided in paragraph (8) of this subdivision. As a refill instruction, the pharmacist may accept a number of times, a time period, such as one year, or the Latin phrase *pro re nata* (abbreviated *prn*—meaning “as needed”). In the case of the latter, the pharmacist shall refill the prescription once only. The pharmacist receiving an oral order to refill a prescription shall reduce the order to writing or to an *electronic record* and shall sign or initial it legibly as the recipient of the oral order. When a prescription is refilled, the date placed on the label shall be the date of the refill.

(5) Using or substituting without authorization one or more drugs in the place of the drug or drugs specified in a prescription. Unauthorized use or substitution occurs if the same is done without the knowledge and consent of the prescriber. If other than the ingredients specified are utilized by the pharmacist in compounding or dispensing the prescription, improper substitution shall be presumed unless there shall be entered upon the reverse of the original prescription or *within the electronic record* information setting forth the facts of the substitution, the date, time and manner in which authorization for substitution was given and the signature of the pharmacist who received such authorization.

- (6) ...
- (7) ...

(8) Failure to maintain in a form which provides for ready retrieval of prescriptions a daily record of all prescriptions filled and refilled which identifies clearly the practitioner who ordered the prescription, the patient for whom the prescription is intended, the signature or readily identifiable initials of the pharmacist who filled or refilled the prescription, and the number assigned to the prescription where applicable. The record of the dispensing of a drug for an inpatient in a health care facility, including but not limited to general hospital, by the pharmacy of that facility may be maintained in a form which is consistent with the record of the total health service provided to the patient provided the information required by this paragraph is readily retrievable and available. Original prescriptions filed in accordance with the provisions of paragraph (7) of this subdivision may constitute the record of the initial filling of those prescriptions. The daily record may be maintained by a manual system or, alternatively, by an electronic data processing system which meets the following requirements:

- (i) ...

(ii) ...

(iii) ...

(iv) A pharmacist, and a pharmacy intern, if applicable, using a computerized system shall sign or initial the original prescription at the time of the first dispensing as provided in paragraph (3) of this subdivision and the *signature* or initials of the pharmacist shall be entered into the computer record of the dispensing.

(v) For all refills of a prescription, the records introduced into the system shall be sufficient if:

(a) the *signature* or initials of the pharmacist who dispensed the refill are entered by such pharmacist at the time of dispensing; and

(b) a printout or electronic record is produced of all prescriptions filled and refilled each day and the pharmacist(s) whose *signature* or initials appear(s) on the printout sign(s), either manually or electronically, the printout or electronic record to indicate that it is an accurate record.

- (9) ...
- (10) ...
- (11) ...
- (12) ...
- (13) ...
- (14) ...
- (15) ...
- (16) ...
- (17) ...
- (18) ...
- (19) ...
- (20) ...

2. Paragraph (7) of subdivision (a) of section 63.6 of the Regulations of the Commissioner of Education is amended, effective July 11, 2012, as follows:

(7) [Electronically transmitted] *Electronic* prescriptions.

(i) For the purposes of this section:

[electronically transmitted] (a) the term *electronic* prescription means a prescription created, recorded [, transmitted] or stored by electronic means; *issued and validated with an electronic signature*; and *transmitted by electronic means*; [, including but not limited to facsimile but excluding any such prescription for a controlled substance under Article 33 of the Public Health Law]

(b) the term *electronic* means of or relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities; and

(c) the term *electronic signature* means an *electronic sound, symbol, or process, attached to or logically associated with an electronic prescription, executed or adopted by a person with the intent to sign the prescription, and effectively secured from alteration by an unauthorized third party.*

(ii) A pharmacist may, based upon his or her professional judgment, accept an [electronically transmitted] *electronic* prescription from a prescriber, to the pharmacy of the patient’s choice, subject to the following requirements:

(a) the prescription shall contain [the signature, or] the electronic [equivalent of a] signature[,] of the prescriber;

(b) in the case of an [electronically transmitted] *electronic* prescription, [other than facsimile transmission,] such prescription shall be electronically encrypted, meaning protected to prevent access, alteration or use by any unauthorized person;

(c) [a permanent hard copy of an electronically transmitted] *an electronic* prescription or a *hard* copy of an [electronically transmitted] *electronic* prescription stored securely and permanently [by electronic means] shall be [produced and] maintained at the pharmacy for a period of five years from the date of the most recent filling, *provided that, if the prescription is maintained electronically, it shall be made available to the Department in hard copy upon request.* [A permanent facsimile copy shall be considered a hard copy];

(d) *except when the prescriber inserts an electronic direction to dispense the drug as written, the prescriber’s electronic signature shall designate approval of substitution by a pharmacist of a drug product pursuant to section 206(1)(o) of the Public Health Law. Notwithstanding any other provision of this section or any other law to the contrary, when a generic drug is not available and the brand name drug originally prescribed is available and the pharmacist agrees to dispense the brand name product for a price that will not exceed the price that would have been charged for the generic substitute had it been available, substitution of a generic drug product will not be required. If the generic drug product is not available and a medical emergency exists, which for purposes of this section shall be defined as a condition requiring the alleviation of severe pain or a condition which threatens to cause disability or death if not promptly treated, the pharmacist may dispense the brand name product at the regular price. In such instances, the pharmacist shall record the date, hour and nature of the medical emergency on the back of the prescription or*

within the electronic record of the prescription and shall keep a hard copy or electronic record of all such prescriptions;

(e) such prescriptions shall be processed in accordance with the requirements of section 29.7 of this title, *provided, however, that prescriptions for controlled substances shall be filled in accordance with the requirements of Article 33 of the Public Health Law*; and

[(e)] (f) in accepting an [electronically transmitted] *electronic* prescription, the [pharmacists] *pharmacist* shall be subject to the applicable requirements of Part 29 of this Title relating to unprofessional conduct, including but not limited to section 29.1(b)(2) and (3) of this Title.

(iii) *An original hard copy prescription that is created electronically or otherwise may be transmitted from the prescriber to the pharmacist by facsimile and must be manually signed, provided, however, that prescriptions for controlled substances shall be filled in accordance with the requirements of Article 33 of the Public Health Law. A permanent hard copy of a prescription transmitted by facsimile shall be stored securely and permanently in hard copy or by electronic means and shall be maintained at the pharmacy for a period of five years from the date of the most recent filling, provided that if the prescription is maintained electronically, it shall be made available to the Department in hard copy upon request.*

Text of proposed rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Avenue, Albany, New York 12234, (518) 474-8857, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Office of Professions, Office of Deputy Commissioner, State Education Department, 89 Washington Ave., 2M, Albany, New York 12234, (518) 474-1941, email: opdepcom@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Subdivision (1) of section 6506 of the Education Law authorizes the Board of Regents to promulgate rules regarding the admission to and practice of the professions.

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

Subdivision (9) of section 6509 of the Education Law authorizes the Board of Regents to define unprofessional conduct in the practice of the professions.

Subdivision (23) of section 6802 of the Education Law, as added by Chapter 590 of the Laws of 2011, defines the terms “electronic prescription” and “electronic signature,” and authorizes the Commissioner of Education to promulgate regulations further defining the proper form of an electronic prescription and of an electronic signature used to validate such a prescription.

Paragraph (a) of subdivision (6) of section 6810 of the Education Law, as amended by Chapter 590 of the Laws of 2011, establishes the required elements and format of prescriptions written in New York State, including electronic prescriptions, and specifically authorizes the Commissioner of Education to promulgate regulations providing for the form and placement of the “dispense as written” direction on an electronic prescription.

Chapter 590 of the Laws of 2011 enacted Education Law § 6802(23), as added, and Education Law § 6810(6)(a), as amended, and clarified that such Chapter should not be construed to mean or imply that any other reference in statute or regulation to a prescription, signature, or writing does not include an electronic prescription, electronic signature, or entry of information by electronic means, respectively.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment implements the intent of the aforementioned statutes, which collectively provide the State Education Department (“Department”) with the authority to supervise the practice of the professions for the benefit and protection of the public. The proposed amendment will conform the Rules of the Board of Regents and the Regulations of the Commissioner of Education to Chapter 590 of the Laws of 2011, which provided for and clarified the valid form and proper use and transmission of electronic prescriptions and expressly required that pharmacists store these prescriptions in a secure electronic record. Although pharmacists are currently required to maintain detailed records of all prescriptions filled and refilled, Chapter 590 of the Laws of 2011 and the proposed amendment, accordingly, explicitly require that these records be properly

maintained in a secure electronic record, which will further protect the public from an inadvertent disclosure of such information.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Rules of the Board of Regents and the Commissioner’s regulations to Education Law § 6802(23), as added, and Education Law § 6810(6)(a), as amended, by Chapter 590 of the Laws of 2011, which provided for and clarified the valid form and proper use and transmission of electronic prescriptions. Chapter 590 was enacted to update the law governing the form and use of electronic prescriptions to reflect the current practice of using electronic prescriptions. The proposed amendment is needed to update the Rules of the Board of Regents and Commissioner’s regulations to these current practices, in accordance with these statutory amendments.

In particular, the proposed rule will amend the Rules of the Board of Regents to provide that, when used in the disciplinary rules relating to the profession of pharmacy, the term “signature” will refer to and include an electronic signature. The proposed rule will also amend of the Commissioner’s regulations to include the new terms and definitions of an electronic prescription and electronic signature, as set forth in Education Law § 6802(23); to provide for the proper use and form of such prescriptions; to authorize the use of an electronic direction to “dispense as written” in place of the prescriber’s handwritten notation, when specifically issuing an electronic prescription for a brand name drug; and to require that a prescription transmitted by facsimile be manually signed.

4. COSTS:

(a) There are no additional costs to state government.

(b) There are no additional costs to local government.

(c) Cost to private regulated parties. The proposed amendments will not increase costs, and may provide cost-savings to regulated parties. Therefore, there will be no additional costs to private regulated parties.

(d) There are no additional costs to the regulating agency.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment relates solely to the requirements for electronic prescriptions and for the storage and maintenance of records required to be maintained by pharmacists in registered pharmacies. The amendment does not impose any additional program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment will not impose any new reporting requirements.

7. DUPLICATION:

The proposed amendment does not duplicate any other existing state or federal requirement.

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

Federal standards do not apply, nor does the proposal exceed federal standards.

10. COMPLIANCE SCHEDULE:

Licensees using electronic prescriptions will need to comply with the proposed amendment as of the effective date of the amendments.

Regulatory Flexibility Analysis

The proposed amendment to the Rules of the Board of Regents and the Regulations of the Commissioner of Education relates to the practice of pharmacy, and specifically provides for and clarifies the form and use and transmission of an electronic prescription, as well as expressly requires pharmacists to maintain prescriptions in a secure electronic record. Pharmacists are currently required to maintain detailed records of all prescriptions filled and refilled. The proposed amendment merely amends the regulations to explicitly require that these records be properly maintained in a secure electronic record. The proposed amendment will not impose any additional reporting, recordkeeping, or other compliance requirement, or any adverse economic impact on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The regulations will apply to the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. Of the 5,044 pharmacies registered to operate in New York State by the State Education Department, 779 pharmacies are located in a rural county.

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

The proposed amendment will conform the Rules of the Board of Regents and the Commissioner's regulations to Education Law § 6802(23), as added, and Education Law § 6810(6)(a), as amended, by Chapter 590 of the Laws of 2011. These provisions will clarify the conditions under which pharmacists may accept electronic prescriptions from authorized prescribers, and maintain required records electronically subject to certain requirements. Although electronic prescriptions have been allowed for non-controlled substances for some time, the law regarding the prescribing of brand name drugs explicitly required a hand-written notation. The statutory amendments made by Chapter 590 remove this reference, and accordingly, the proposed rule amends section 63.6(a)(7) of the Commissioner's regulations to implement this change.

3. COSTS:

The proposed amendment does not impose any additional cost on regulated parties.

4. MINIMIZING ADVERSE IMPACT:

Following discussions, including obtaining input from practicing professionals, the State Board of Pharmacy has considered the terms of the proposed amendment to the Board of Regents and the Regulations of the Commissioner of Education and has recommended the changes. Additionally, the measures have been shared with educational institutions, professional associations, and practitioners representing the profession of pharmacy. The amendments are supported by representatives of these sectors. The proposed amendment makes no exception for individuals who live in rural areas. The Department has determined that such requirements should apply to all pharmacists and pharmacies, no matter their geographic location, to ensure a standard of practice across the State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited statewide from organizations representing all parties having an interest in the practice of pharmacy. Included in this group were members of the State Board of Pharmacy, educational institutions and professional associations representing the pharmacy profession, such as the Pharmacists Society of the State of New York and the New York State Council of Health System Pharmacists. These groups, which have representation in rural areas, have been provided notice of the proposed rule making and opportunity to comment on the proposed amendment.

Job Impact Statement

The proposed amendment implements Education Law § 6802(23), as added, and Education Law § 6810(6)(a), as amended, by Chapter 590 of the Laws of 2011, by providing for the valid form and proper use and transmission of electronic prescriptions and by expressly requiring that pharmacists store these prescriptions in a secure electronic record. The proposed amendment will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Health

EMERGENCY RULE MAKING

Audits of Institutional Cost Reports (ICR)

I.D. No. HLT-16-12-00002-E

Filing No. 270

Filing Date: 2012-03-29

Effective Date: 2012-03-29

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

Action taken: Amendment of Subpart 86-1 of Title 10 NYCRR.

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

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

Specific reasons underlying the finding of necessity: It is necessary to issue the proposed regulations on an emergency basis in order to implement Public Health Law section 2807-c(35)(b)(xiii), as amended by Chapter 59 of the Laws of 2011, in a timely manner related to imposing a fee schedule

associated with filing institutional cost reports, which is intended to fund the costs of auditing institutional cost reports. In addition, this regulation eliminates the need for hospitals to submit a CPA certification of their cost reports for years ended on and after December 31, 2010. To avoid these costs, hospitals need to be advised of the elimination of this requirement.

Public Health Law section 2807-c(35), as amended by Chapter 59 of the Laws of 2011, Part H, § 36, specifically provides the Commissioner of Health with authority to issue these emergency regulations.

Further, there is compelling interest in enacting these regulations immediately in order to secure federal approval of associated Medicaid State Plan amendments and assure there are no delays in implementation of these new policies related to fee obligations for filing institutional cost reports.

Subject: Audits of Institutional Cost Reports (ICR).

Purpose: To impose a fee schedule on general hospitals related to the filing of ICRs sufficient to cover the costs of auditing the ICRs.

Text of emergency rule: Subdivision (k) of section 86-1.2 of title 10 of NYCRR is amended to read as follows:

(k) Accountant's certification. *With regard to institutional cost reports filed for report years prior to 2010, [T]he institutional cost report shall be certified by an independent licensed public accountant or an independent certified public accountant. The minimum standard for the term independent shall be the standard used by the State Board of Public Accountancy.*

Subdivision (b) of section 86-1.4 of title 10 of NYCRR is amended and a new subdivision (i) is added to read as follows:

(b) Subsequent to the filing of fiscal and statistical reports, field audits [shall] may be conducted of the records of medical facilities in a time, manner and place to be determined by the State Department of Health. [Where feasible, the department shall enter into an agreement to use a combined audit (medicare-medicare and other organizations and agencies having audit responsibilities) to satisfy the department's auditing needs. In this respect, the State Department of Health reserves the right, after entering into an agreement to use a combined audit, to reject the audit findings of other organizations and agencies having audit responsibilities and to perform a limited scope or comprehensive audit of their own for the same fiscal period audited by the organization and/or agency.] *Alternatively or in addition the Department may, in its sole discretion, conduct desk audits of such fiscal and statistical reports.*

(i)(1) *Effective for institutional cost reports filed for report periods ending on and after December 31, 2010, the Department shall establish a fee schedule for the purpose of funding audit activities authorized pursuant to this section. Such fee schedule shall be published on the New York State Department of Health website at: <http://www.health.state.ny.us>. The amount of such fees shall be proportional to the amount of the total costs reported by each facility, provided, however, that minimum and maximum fee levels may be established.*

(2) *Additional fee obligations shall be established for facilities filing more than two institutional costs reports for a reporting period. The Department may, upon written application submitted prior to the submission of such additional institutional cost reports, waive or reduce such additional fees based on a showing of financial hardship or a showing that the additional submission is necessitated by Department error or other factors beyond the facility's control. Such a waiver must be in writing.*

(3) *Fees shall be submitted at the time of the submission of the institutional costs reports. A failure to pay such fees may be deemed by the Department as constituting the non-filing of the institutional cost report and subject the facility to the rate reduction authorized pursuant to section 86-1.2(c) of this Subpart. Failure to pay the additional fee associated with the filing of additional institutional cost reports as described in paragraph (2) of this subdivision shall result in the non-utilization of such revised cost reports by the Department. Delinquent fees may be collected by the Department in accordance with the provisions of paragraph (h) of subdivision 18 of section 2807-c of the Public Health Law.*

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 26, 2012.

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

Regulatory Impact Statement

Statutory Authority:

Public Health Law section 2807-c(35)(b)(xiii) authorizes the Commissioner to impose a fee, by regulation, on general hospitals that is sufficient to cover the costs of auditing the institutional cost reports submitted by such hospitals.

Legislative Objectives:

The Legislature authorized the Commissioner to impose fees sufficient

to cover the costs of auditing institutional cost reports for fiscal purposes and to improve the data integrity of information reported by hospitals. Such information is used to make both policy and financial decisions related to the Medicaid program.

Needs and Benefits:

The proposed rule implementing the provisions of Public Health Law section 2807-c(35)(b)(xiii) provides for the establishment and implementation of a new fee schedule to support the costs of auditing institutional cost reports. The rule also details how the audit process will be implemented. At the same time the Department is exercising its discretion under its pre-existing hospital rate-setting regulation authority pursuant to PHL section 2807-c(35)(b) to eliminate the requirement that hospitals secure certification of their cost reports by an independent licensed CPA.

COSTS:

Costs to State Government:

There are no additional costs to State government as a result of this amendment.

Costs of Local Government:

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

Costs to the Department of Health:

There will be no additional costs to the Department of Health as a result of this amendment.

Local Government Mandates:

The proposed amendments do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

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

Duplication:

These regulations do not duplicate existing State and federal regulations.

Alternatives:

No significant alternatives are available. The Department is authorized by the Public Health Law section 2807-c(35)(b) to address certain aspects of the hospital reimbursement methodology through regulations.

Federal Standards:

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

Compliance Schedule:

The proposed amendments to Section 86-1.2 limits the requirement that institutional cost reports be certified by an independent licensed or certified public accountant to cost periods prior to 2010. Regulated parties must continue to comply with this provision when filing institutional cost reports for cost periods prior to 2010.

The proposed amendments to Section 86-1.4 allows the Department to impose fees on general hospitals sufficient to cover the costs of auditing the institutional cost reports submitted by general hospitals for cost periods on and after December 31, 2010. Regulated parties must comply with this provision at the time of submission of the institutional cost report. Failure to comply may subject the facility to a rate reduction. In addition, general hospitals that fail to pay the additional fee associated with filing more than two institutional cost reports for a reporting period will be subject to an additional fee.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

For the purpose of this regulatory flexibility analysis, small businesses were considered to be general hospitals with 100 or fewer full time equivalents. Based on recent financial and statistical data extracted from the Institutional Cost Report, seven hospitals were identified as employing fewer than 100 employees.

All health care providers who file Institutional Cost Reports with the Department, including the seven hospitals identified as small businesses, are subject to the provisions of this regulation under section 2807-c(35)(b) of the Public Health Law. However, this rule also eliminates the requirement for all hospitals that annual cost reports be certified by an independent CPA, thus reducing the costs and administrative burdens resulting from that current requirement. In addition, provisions are made to waive or reduce some of the new fees for institutions who demonstrate financial hardship and good cause and who apply for such in writing.

This rule will have no direct effect on Local Governments.

Compliance Requirements:

No new reporting, recordkeeping or other compliance requirements are being imposed as a result of this rule. Affected health care providers will bill Medicaid using procedure codes and ICD-9 codes approved by the American Medical Association, as is currently required. The rule should have no direct effect on Local Governments.

Professional Services:

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

Compliance Costs:

While fee obligations related to the filing of institutional cost reports represent a cost for general hospitals, this is offset by the reduction in costs resulting from the elimination of the requirement that reports be certified by an independent certified public accountant. No capital costs will be imposed as a result of this rule, nor will there be an annual cost of compliance.

Economic and Technological Feasibility:

Small businesses will be able to comply with the economic and technological aspects of this rule. The proposed amendments are technologically feasible because it requires the use of existing technology. The overall economic impact to comply with the requirements of this regulation is expected to be minimal.

Minimizing Adverse Impact:

The proposed amendments reflect statutory intent and requirements.

Small Business and Local Government Participation:

Hospital associations participated in discussions and contributed comments through the State's Medicaid Redesign Team process regarding these changes.

Rural Area Flexibility Analysis

Effect on Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 43 counties have a population less than 200,000:

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

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

Minimizing Adverse Impact:

The proposed amendments reflect statutory intent and requirements.

Rural Area Participation:

This amendment is the result of ongoing discussions with industry associations as part of the Medicaid Redesign team process. These associations include members from rural areas. As well, the Medicaid Redesign Team held multiple regional hearings and solicited ideas through a public process.

Job Impact Statement

A Job Impact Statement is not required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature and purpose of the proposed rules, that they will not have a substantial adverse impact on jobs or employment opportunities. The proposed regulations allow for the Department to perform field or desk audits of the fiscal and statistical records of medical facilities, establish a fee schedule for filing

institutional cost reports for report periods on and after December 31, 2010, and require accountant's certification only for institutional cost reports filed for cost years prior to 2010. The proposed regulations have no implications for job opportunities.

EMERGENCY RULE MAKING

Personal Care Services Program (PCSP) and Consumer Directed Personal Assistance Program (CDPAP)

I.D. No. HLT-16-12-00003-E

Filing No. 271

Filing Date: 2012-03-29

Effective Date: 2012-03-29

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

Action taken: Amendment of sections 505.14 and 505.28 of Title 18 NYCRR.

Statutory authority: Public Health Law, section 201(1)(v); and Social Services Law, sections 363-a(2), 365-a(2)(e) and 365-f

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

Specific reasons underlying the finding of necessity: Pursuant to the authority vested in the Commissioner of Health by Social Services Law § 365-a(2)(e), the Commissioner is authorized to adopt standards, pursuant to emergency regulation, for the provision and management of services for individuals whose need for such services exceeds a specified level to be determined by the Commissioner.

Subject: Personal Care Services Program (PCSP) and Consumer Directed Personal Assistance Program (CDPAP).

Purpose: To establish definitions, criteria and requirements associated with the provision of continuous PC and continuous CDPA services.

Text of emergency rule: Paragraph (3) of subdivision (a) of section 505.14 is repealed and a new paragraph (3) is added to read as follows:

(3) *Continuous personal care services means the provision of uninterrupted care, by more than one person, for more than 16 hours per day for a patient who, because of the patient's medical condition and disabilities, requires total assistance with toileting, walking, transferring or feeding at times that cannot be predicted.*

Paragraph (4) of subdivision (a) of section 505.14 is amended by adding new subparagraph (iii) to read as follows:

(iii) *Personal care services shall not be authorized if the patient's need for assistance can be met by either or both of the following:*

(a) *voluntary assistance available from informal caregivers including, but not limited to, the patient's family, friends or other responsible adult; or formal services provided by an entity or agency; or*

(b) *adaptive or specialized equipment or supplies including, but not limited to, bedside commodes, urinals, walkers and wheelchairs, when such equipment or supplies can be provided safely and cost-effectively.*

Paragraph (5) of subdivision (a) of section 505.14 is repealed and a new paragraph (5) is added to read as follows:

(5) *Live-in 24-hour personal care services means the provision of care by one person for a patient who, because of the patient's medical condition and disabilities, requires some or total assistance with one or more personal care functions during the day and night and whose need for assistance during the night is infrequent or can be predicted.*

Clause (b) of subparagraph (i) of paragraph (6) of subdivision (a) of section 505.14 is amended to read as follows:

(b) The [initial] authorization for Level I services shall not exceed eight hours per week. [An exception to this requirement may be made under the following conditions:

(1) The patient requires some or total assistance with meal preparation, including simple modified diets, as a result of the following conditions:

(i) informal caregivers such as family and friends are unavailable, unable or unwilling to provide such assistance or are unacceptable to the patient; and

(ii) community resources to provide meals are unavailable or inaccessible, or inappropriate because of the patient's dietary needs.

(2) In such a situation, the local social services department may authorize up to four additional hours of service per week.]

Clause (b) of subparagraph (ii) of paragraph (6) of subdivision (a) of section 505.14 is amended to read as follows:

(b) When continuous [24-hour care] personal care services is indicated, additional requirements for the provision of services, as specified in clause (b)(4)(i)(c) of this section, must be met.

Clause (c) of subparagraph (ii) of paragraph (3) of subdivision (b) of section 505.14 is relettered as clause (d) and a new clause (c) is added to read as follows:

(c) *When live-in 24-hour personal care services is indicated, the social assessment shall evaluate whether the patient's home has adequate sleeping accommodations for a personal care aide.*

Subclauses (5) and (6) of clause (b) of subparagraph (iii) of paragraph (3) of subdivision (b) of section 505.14 are renumbered as subclauses (6) and (7), and new subclause (5) is added to read as follows:

(5) *an evaluation whether adaptive or specialized equipment or supplies including, but not limited to, bedside commodes, urinals, walkers and wheelchairs, can meet the patient's need for assistance with personal care functions, and whether such equipment or supplies can be provided safely and cost-effectively;*

Subclause (7) of clause (a) of subparagraph (iv) of paragraph (3) of subdivision (b) of section 505.14 is amended to read as follows:

(7) *whether the patient can be served appropriately and more cost-effectively by using adaptive or specialized medical equipment or supplies covered by the MA program including, but not limited to, bedside commodes, urinals, walkers, wheelchairs and insulin pens; and*

Clause (c) of subparagraph (iv) of paragraph (3) of subdivision (b) of section 505.14 is amended to read as follows:

(c) A social services district may determine that the assessments required by subclauses (a)(1) through (6) and (8) of this subparagraph may be included in the social assessment or the nursing assessment.

Clause (c) of subparagraph (i) of paragraph (4) of subdivision (b) of section 505.14 is amended to read as follows:

(c) the case involves the provision of continuous [24-hour] personal care services as defined in paragraph (a)(3) of this section. Documentation for such cases shall be subject to the following requirements:

Subclause (2) of clause (c) of subparagraph (i) of paragraph (4) of subdivision (b) of section 505.14 is amended to read as follows:

(2) The nursing assessment shall document that: the functions required by the patient[,] ; the degree of assistance required for each function, *including that the patient requires total assistance with toileting, walking, transferring or feeding;* and the time of this assistance require the provision of continuous [24-hour care] personal care services.

Subparagraph (ii) of paragraph (4) of subdivision (b) of section 505.14 is amended to read as follows:

(ii) The local professional director, or designee, must review the physician's order and the social, nursing and other required assessments in accordance with the standards for levels of services set forth in subdivision (a) of this section, and is responsible for the final determination of the level and amount of care to be provided. *The local professional director or designee may consult with the patient's treating physician and may conduct an additional assessment of the patient in the home.* The final determination must be made [within five working days of the request] *with reasonable promptness, generally not to exceed seven business days after receipt of the physician's order and the completed social and nursing assessments, except in unusual circumstances including, but not limited to, the need to resolve any outstanding questions regarding the level, amount or duration of services to be authorized.*

Paragraph (4) of subdivision (b) of section 505.28 is amended to read as follows:

(4) "continuous [24-hour] consumer directed personal assistance" means the provision of uninterrupted care, by more than one consumer directed personal assistant, *for more than 16 hours per day* for a consumer who, because of the consumer's medical condition [or] and disabilities, requires total assistance with toileting, walking, transferring or feeding at [unscheduled times during the day and night] *at times that cannot be predicted.*

Paragraphs (8) through (13) of subdivision (b) of section 505.28 are renumbered as paragraphs (9) through (14) and the renumbered paragraph (9) is amended to read as follows:

(9) "personal care services" means the nutritional and environmental support functions, personal care functions, or both such functions, that are specified in Section 505.14(a)(6) of this Part *except that, for individuals whose needs are limited to nutritional and environmental support functions, personal care services shall not exceed eight hours per week.*

A new paragraph (8) of subdivision (b) of section 505.28 is added to read as follows:

(8) "live-in 24-hour consumer directed personal assistance" means the provision of care by one consumer directed personal assistant for a consumer who, because of the consumer's medical condition and disabilities, requires some or total assistance with personal care functions, home health aide services or skilled nursing tasks during the day and night and whose need for assistance during the night is infrequent or can be predicted.

Subparagraph (iii) of paragraph (2) of subdivision (d) of section 505.28

is amended, and new subparagraphs (iv) and (v) of such paragraph are added, to read as follows:

(iii) an evaluation of the potential contribution of informal supports, such as family members or friends, to the individual's care, which must consider the number and kind of informal supports available to the individual; the ability and motivation of informal supports to assist in care; the extent of informal supports' potential involvement; the availability of informal supports for future assistance; and the acceptability to the individual of the informal supports' involvement in his or her care [...] and;

(iv) for cases involving continuous consumer directed personal assistance, documentation that: all alternative arrangements for meeting the individual's medical needs have been explored or are infeasible including, but not limited to, the provision of consumer directed personal assistance in combination with other former services or in combination with contributions of informal caregivers; and

(v) for cases involving live-in 24-hour consumer directed personal assistance, an evaluation whether the individual's home has adequate sleeping accommodations for a consumer directed personal assistant.

Subparagraph (i) of paragraph (3) of subdivision (d) of section 505.28 is repealed and a new subparagraph (i) is added to read as follows:

(i) The nursing assessment must be completed by a registered professional nurse who is employed by the social services district or by a licensed or certified home care services agency or voluntary or proprietary agency under contract with the district.

Clauses (g) and (h) of subparagraph (ii) of paragraph (3) of subdivision (d) of section 505.28 are relettered as clauses (h) and (i) and a new clause (g) is added to read as follows:

(g) for continuous consumer directed personal assistance cases, documentation that: the functions the consumer requires; the degree of assistance required for each function, including that the consumer requires total assistance with toileting, walking, transferring or feeding; and the time of this assistance require the provision of continuous consumer directed personal assistance;

Paragraph (5) of subdivision (d) of section 505.28 is amended to read as follows:

(5) Local professional director review. If there is a disagreement among the physician's order, nursing and social assessments, or a question regarding the level, amount or duration of services to be authorized, or if the case involves continuous [24-hour] consumer directed personal assistance, an independent medical review of the case must be completed by the local professional director, a physician designated by the local professional director or a physician under contract with the social services district. The local professional director or designee must review the physician's order and the nursing and social assessments and is responsible for the final determination regarding the level and amount of services to be authorized. *The local professional director or designee may consult with the consumer's treating physician and may conduct an additional assessment of the consumer in the home.* The final determination must be made with reasonable promptness, generally not to exceed [five] seven business days after receipt of the physician's order and the completed social and nursing assessments, except in unusual circumstances including, but not limited to, the need to resolve any outstanding questions regarding the level, amount or duration of services to be authorized.

Paragraph (1) of subdivision (e) of section 505.28 is amended to read as follows:

(1) When the social services district determines pursuant to the assessment process that the individual is eligible to participate in the consumer directed personal assistance program, the district must authorize consumer directed personal assistance according to the consumer's plan of care. The district must not authorize consumer directed personal assistance unless it reasonably expects that such assistance can maintain the individual's health and safety in the home or other setting in which consumer directed personal assistance may be provided. *Consumer directed personal assistance shall not be authorized if the consumer's need for assistance can be met by either or both of the following:*

(i) voluntary assistance available from informal caregivers including, but not limited to, the consumer's family, friends or other responsible adult; or formal services provided by an entity or agency; or

(ii) adaptive or specialized equipment or supplies including, but not limited to, bedside commodes, urinals, walkers and wheelchairs, when such equipment or supplies can be provided safely and cost-effectively.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 26, 2012.

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

Regulatory Impact Statement

Statutory Authority:

Social Services Law ("SSL") § 363-a(2) and Public Health Law § 201(1)(v) provide that the Department has general rulemaking authority to adopt regulations to implement the Medicaid program.

The Commissioner has specific rulemaking authority under SSL § 365-a(2)(e)(ii) to adopt standards, pursuant to emergency regulation, for the provision and management of personal care services for individuals whose need for such services exceeds a specified level to be determined by the Commissioner.

Under SSL § 365-a(2)(e)(iv), personal care services shall not exceed eight hours per week for individuals whose needs are limited to nutritional and environmental support functions.

Legislative Objectives:

The Legislature sought to reform the Medicaid personal care services program by controlling expenditure growth and promoting self-sufficiency.

The Legislature authorized the Commissioner of Health to adopt standards for the provision and management of personal care services for Medicaid recipients whose need for such services exceeds a specified level. The regulations adopt such standards for Medicaid recipients who seek continuous personal care services or continuous consumer directed personal assistance for more than 16 hours per day.

The Legislature additionally sought to promote the goal of self-sufficiency among Medicaid recipients who do not need hands-on assistance with personal care functions such as bathing, toileting or transferring. It determined that recipients whose need for personal care services is limited to nutritional and environmental support functions, such as shopping, laundry and light housekeeping, could receive no more than eight hours per week of such assistance.

Needs and Benefits:

The regulations have two general purposes: to conform the Department's personal care services and consumer directed personal assistance program (CDPAP) regulations to State law limiting the amount of services that can be authorized for individuals who require assistance only with nutritional and environmental support functions; and, to implement State law authorizing the Department to adopt standards for the provision and management of personal care services for individuals whose need for such services exceeds a specified level that the Commissioner may determine.

The term "nutritional and environmental support functions" refers to housekeeping tasks including, but not limited to, laundry, shopping and meal preparation. Department regulations refer to these support functions as "Level I" personal care services. Department regulations have long provided that social services districts cannot initially authorize Level I services for more than eight hours per week; however, an exception permitted authorizations for Level I services to exceed eight hours per week under certain circumstances.

The Legislature has nullified this regulatory exception. The regulations conform the Department's personal care services regulations to the new State law. They repeal the regulatory exception that permitted social services districts to authorize up to 12 hours of Level I services per week, capping such authorizations at no more than eight hours per week.

The regulations similarly amend the Department's CDPAP regulations. Some CDPAP participants are authorized to receive only assistance with nutritional and environmental support functions. Since personal care services are included within the CDPAP, it is consistent with the Legislature's intent to extend the eight hour weekly cap on nutritional and environmental services to that program.

The regulations also implement the Department's specific statutory authority to adopt standards pursuant to emergency regulation for the provision and management of personal care services for individuals whose need for such services exceeds a specified level. The Commissioner has determined to adopt such standards for individuals whose need for continuous personal care services or continuous consumer directed personal assistance exceeds 16 hours per day.

The regulations repeal the definition of "continuous 24-hour personal care services," replacing it with a definition of "continuous personal care services." The prior definition applied to individuals who required total assistance with certain personal care functions for 24 hours at unscheduled times during the day and night. The new definition applies to individuals who require such assistance for more than 16 hours per day at times that cannot be predicted.

Cases in which continuous personal care services are indicated must be referred to the local professional director or designee. Such referrals would now be required in additional cases: those involving provision of continuous care for more than 16 hours per day.

The regulations permit the local professional director or designee to consult with the recipient's treating physician and conduct an additional assessment of the recipient in the home.

The regulations amend the documentation requirements for nursing assessments in continuous personal care services cases.

The regulations add a definition of live-in 24 hour personal care services. This level of service has long existed, primarily in New York City, but has never been explicitly set forth in the Department's regulations. The regulations also require that, for recipients who may be eligible for such services, the social assessment evaluate whether the recipient's home has adequate sleeping accommodations for the live-in aide.

The regulations provide that personal care services shall not be authorized when the recipient's need for assistance can be met by the voluntary assistance of informal caregivers or by formal services or by adaptive or specialized equipment or supplies that can be provided safely and cost-effectively. The regulations require that the nursing assessments that districts currently complete or obtain include an evaluation whether adaptive or specialized equipment or supplies can meet the recipient's need for assistance and whether such equipment or supplies can be provided safely and cost-effectively.

The regulations adopt conforming amendments to the Department's CDPAP regulations.

Costs to Regulated Parties:

Regulated parties include entities that voluntarily contract with social services districts to provide personal care services to, or to perform certain CDPAP functions for, Medicaid recipients. These entities include licensed home care services agencies, agencies that are exempt from licensure, and CDPAP fiscal intermediaries.

Social services districts may no longer authorize certain Medicaid recipients to receive more than eight hours per week of assistance with nutritional and environmental support functions. To the extent that regulated parties were formerly reimbursed for more than eight hours per week for these services, their Medicaid revenue will decrease. This is a consequence of State law, not the regulations. The regulations do not impose any additional costs on these regulated parties.

Costs to State Government:

The regulations impose no additional costs on State government.

The statutory cap on nutritional and environmental support functions will result in cost-savings to the State share of Medicaid expenditures. The estimated annual personal care services and CDPAP cost-savings for subsequent State fiscal years are approximately \$3.4 million.

This estimate is based on 2010 recipient and expenditure data for the personal care services program. According to such data, 2,377 New York City recipients received more than eight hours per week of Level I services, the average being 11 weekly hours of such service. The number of Level I hours that exceeded eight hours per week was thus approximately 370,800 hours (2,377 recipients x 3 hours per week x 52 weeks). Multiplying this hourly total by the 2010 average hourly New York City personal care aide cost (\$17.30) results in total annual savings of \$6.4, or \$3.2 million in State share savings. Application of this calculation to the Rest of State recipient and expenditure data yields an additional \$200,000 in State share savings, or \$3.4 million.

State Medicaid cost-savings are also projected to occur as a result of changes to continuous personal care services authorizations. It is not possible to accurately estimate such savings. However, the Department anticipates that most recipients currently authorized for continuous 24-hour personal care services will continue to receive that level of care. Others may be authorized for continuous services for 16 hours per day or live-in 24 hour personal care services. Still others may be authorized for services for more than 16 hours per day but fewer than 24 hours per day.

The estimated State share savings for this portion of the regulations are \$33.1 million. This comprises approximately \$17.1 million in personal care savings and \$15.9 million in CDPAP savings. This estimate is based on 2010 personal care services and CDPAP recipient and expenditure data. In 2010, 1,809 Medicaid recipients were authorized to receive more than 16 hours of services per day. The assumption is that these recipients were authorized for continuous 24-hour services, which has an average annual per person cost of approximately \$166,000. Assuming that 20 percent were authorized for live-in 24-hour services at an average annual per person cost of approximately \$83,000, and 15 percent were authorized for 16 hours per day at an average hourly cost of between approximately \$17.00 and \$22.00, depending on service and location, the annual State share savings per recipient would range from approximately \$28,000 to \$35,000.

Costs to Local Government:

The regulation will not require social services districts to incur new costs. State law limits the amount that districts must pay for Medicaid services provided to district recipients. Districts may claim State reimbursement for any costs they may incur when administering the Medicaid program.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

The regulations require social services districts to refer additional cases

to their local professional directors or designees. Currently, the regulations require that such referrals be made for continuous 24 hour care and certain other cases. Under the proposed regulations, such referrals must also be made for recipients who may require continuous services for more than 16 hours.

Paperwork:

The regulations specify additional documentation requirements for the social and nursing assessments that districts currently complete or obtain for personal care services and CDPAP applicants and recipients. For persons who may be eligible for live-in 24 hour services, the social assessment must evaluate whether the recipient's home has adequate sleeping accommodations for the live-in aide. The nursing assessments for all personal care services and CDPAP cases, including those not involving continuous services, must include an evaluation whether adaptive or specialized equipment or supplies can meet the recipient's need for assistance and whether such equipment or supplies can be used safely and cost-effectively. The amendments to the CDPAP regulations also specify additional documentation requirements for the social and nursing assessments for cases involving continuous consumer directed personal assistance. These requirements mirror long-standing documentation requirements in the personal care services regulations.

Duplication:

The regulations do not duplicate any existing federal, state or local regulations.

Alternatives:

With respect to the regulation that caps authorizations for nutritional and environmental support functions to eight hours per week, no alternatives exist. The regulation must conform to State law that imposes this weekly cap. With respect to the regulation that establishes new requirements for continuous services, alternatives existed but were not now pursued. One such alternative may be the repeal of the regulatory authorization for continuous 24-hour services. The Department determined to promulgate further regulatory controls regarding the provision and management of continuous services, rather than repeal such services in their entirety.

Federal Standards:

This rule does not exceed any minimum federal standards.

Compliance Schedule:

The Department has issued instructions to social services districts advising them of the new State law that limits nutritional and environmental support functions to no more than eight hours per week for certain recipients. Districts should not now be authorizing more than eight hours per week of such assistance and should thus be able to comply with the regulations when they become effective. With regard to the remaining regulations, social services districts should be able to comply with the regulations when they become effective. For applicants, social services districts would apply the regulations when assessing applicants' eligibility for personal care services and the CDPAP. For current recipients, districts would apply the regulations upon reassessing these recipients' continued eligibility for services.

Regulatory Flexibility Analysis

Effect of Rule:

The regulation limiting authorizations of nutritional and environmental support functions to no more than eight hours per week primarily affects licensed home care services agencies and exempt agencies that provide only such Level I services. These entities are the primary employers of individuals providing Level I services. Most recipients of Level I personal care services are located in New York City. There are currently eight Level I only personal care service providers in New York City, none of which employ fewer than 100 persons.

Fiscal intermediaries that are enrolled as Medicaid providers and that facilitate payments for the nutritional and environmental support functions provided to consumer directed personal assistance program (CDPAP) participants may also experience slight reductions in service hours reimbursed. There are approximately 46 fiscal intermediaries that contract with social services districts. Fiscal intermediaries are typically non-profit entities such as independent living centers but may also include home care services agencies.

With respect to continuous care, a significant majority of existing 24-hour a day continuous care cases are located in New York City. There are currently 60 Level II personal care service providers in New York City, none of which employ fewer than 100 persons.

The regulations also affect social services districts. There are 62 counties in New York State, but only 58 social services districts. The City of New York comprises five counties but is one social services district.

Compliance Requirements:

Social services districts currently assess whether Medicaid recipients are eligible for personal care services and the CDPAP. When 24 hour continuous care is indicated, districts are currently required to refer such cases to the local professional director or designee for final determination.

The regulations would require districts to refer additional continuous care cases to the local professional director or designee; namely, those cases in which continuous care for more than 16 hours a day is indicated would also be referred to the local professional director or designee. The local professional director or designee would be required to consult with the recipient's treating physician before approving continuous care for more than 16 hours per day.

In addition, the nursing assessments that districts currently complete or obtain for personal care services and CDPAP applicants and recipients would be required to include an evaluation of whether adaptive or specialized equipment or supplies would be appropriate and could be safely and cost-effectively provided. In cases involving the authorization of live-in 24 hour services, the social assessments that districts currently are required to complete would have to include an evaluation whether the recipient's home had sufficient sleeping accommodations for a live-in aide.

Professional Services:

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

Compliance Costs:

No capital costs will be imposed as a result of this rule, nor are there any annual costs of compliance.

Economic and Technological Feasibility:

There are no additional economic costs or technology requirements associated with this rule.

Minimizing Adverse Impact:

The regulations should not have an adverse economic impact on social services districts. Districts currently assess Medicaid recipients to determine whether they are eligible for personal care services or the CDPAP. The regulations modify these assessment procedures. Should districts incur administrative costs to comply with the regulation, they may seek State reimbursement for such costs.

Small businesses providing Level I personal care services and consumer directed environmental and nutritional support functions may experience slight reductions in service hours provided. This is a consequence of State law limiting these services to no more than eight hours per week.

Small businesses currently providing continuous 24-hour services may experience some reductions in service hours provided.

Small Business and Local Government Participation:

The Department solicited comments on the regulations from the New York City Human Resources Administration, which administers the personal care services program and CDPAP for New York City Medicaid recipients who are not enrolled in managed care. Most of the State's personal care services and CDPAP recipients reside in New York City. Personal care services provided to New York City recipients comprises approximately 84 percent of Medicaid personal care services expenditures.

Small business and local governments also have the opportunity to provide input into the redesign of New York State's Medicaid program. The Medicaid Redesign Team (MRT) was tasked by Governor Cuomo to find ways to reduce costs and increase quality and efficiency in the Medicaid program for the 2011-12 Fiscal Year. As part of its work, the MRT sought and continues to seek ideas from the public at large, as well as experts in health care delivery and insurance, the health care workforce, economics, business, consumer rights and other relevant areas. The MRT conducted regional public hearings across the State to solicit ideas from the public on ways to reduce costs and improve the quality of the Medicaid program. Additionally, a web page was established, providing a vehicle for all individuals and organizations to provide ideas, comments and recommendations.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, include towns with population densities of 150 persons or less per square mile. In 2010, only 6% of all continuous care cases resided in the counties listed below. Currently there are 34 organizations which maintain contracts with local districts to provide consumer directed environmental and nutritional support functions, and 50 individual licensed home care services agencies which maintain contracts with local districts to provide Level I personal care services, within the following 43 counties having populations of less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan

Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

Social services districts would be required to refer additional cases to their local professional directors or designees. Currently, the personal care services and CDPAP regulations require that such referrals be made for recipients seeking continuous 24-hour services and in certain other cases. Under the regulations, such referrals must also be made for recipients who require continuous care for more than 16 hours. The regulations also specify additional documentation requirements for the social and nursing assessments that districts currently complete or obtain for personal care services and CDPAP applicants and recipients.

Costs:

There are no new capital or additional operating costs associated with the rule.

Minimizing Adverse Impact:

It is anticipated the rule will have minimal impact on rural areas as the Department has determined that the preponderance of Level I services in excess of eight hours per week occur in downstate urban areas. Additionally, in 2010, only 6% of all individuals receiving continuous care services resided in those counties listed above. To the extent that social services districts incur administrative costs to comply with the regulations' requirements for referral of continuous care cases and social and nursing assessment documentation requirements, they may seek State reimbursement of such expenses.

Rural Area Participation:

Individuals and organizations from rural areas have the opportunity to provide input into the redesign of New York State's Medicaid program. The Medicaid Redesign Team (MRT) is tasked by Governor Cuomo to find ways to reduce costs and increase quality and efficiency in the Medicaid program for the 2011-12 Fiscal Year. As part of its work, the MRT sought and continues to seek ideas from the public at large, as well as experts in health care delivery and insurance, the health care workforce, economics, business, consumer rights and other relevant areas. The MRT conducted regional public hearings across the State to solicit ideas from the public on ways to reduce costs and improve the quality of the Medicaid program. Additionally, a web page was established, providing a vehicle for all individuals and organizations to provide ideas, comments and recommendations.

Job Impact Statement

No Job Impact Statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have a substantial adverse impact on jobs and employment opportunities.

**EMERGENCY
RULE MAKING**

Establishment of Certified Home Health Agencies (CHHAs)

I.D. No. HLT-16-12-00006-E

Filing No. 276

Filing Date: 2012-04-03

Effective Date: 2012-04-03

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

Action taken: Amendment of section 760.5 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3612(5)

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

Specific reasons underlying the finding of necessity: This amendment to Title 10 NYCRR section 760.5 is being filed as an emergency action due to the need to facilitate the transition of Medicaid cases from traditional

fee-for-service programs to managed care, managed long term care plans, integrated health systems, and other types of care coordination models as required under the 2011-12 budget. Authority to file such emergency regulations is set forth in Chapter 59 of the Laws of 2011, Part H, § 103(t). It is further necessary to file the proposed rule on an emergency basis due to the need to improve access and patient choice in counties with limited access.

Subject: Establishment of Certified Home Health Agencies (CHHAs).

Purpose: To establish new or expand existing CHHAs to promote cost effectiveness and integration of health care coordination of services.

Text of emergency rule: Section 760.5 is amended by adding new subdivision (l) to read as follows:

Section 760.5 – Determinations of public need.

(l) *Notwithstanding the provisions of this section, the Commissioner is authorized to issue a request for applications to establish new certified home health agencies or expand the approved geographic service area and/or approved population of existing certified home health agencies. Public need, in connection with any such request for applications, shall be found to exist only if the applicant demonstrates, in accordance with the criteria set forth in subdivision (a) of section 709.1 of this title that approval of the application will:*

(i) *facilitate the shift of Medicaid beneficiaries from traditional fee-for-service programs to managed long term care systems, integrated health systems, or similar care coordination models; or*

(ii) *improve access to certified home health agency services in counties with less than two existing certified home health agencies, not including those operated by the county.*

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires July 1, 2012.

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

Regulatory Impact Statement

Statutory Authority:

Section 3612 of the Public Health Law authorizes the Public Health and Health Planning Council to develop regulations pertaining to the establishment of and standards applicable to certified home health agencies (CHHAs).

Legislative Objectives:

Article 3612 of the Public Health Law provides for the establishment of CHHAs to provide home health services Medicaid recipients with chronic needs who can be served in the community in lieu of institutional care, which supports patient choice, leads to better care outcomes and decreases overall costs to the Medicaid program.

The 2011-12 budget enacted several significant initiatives recommended by the Medicaid Redesign Team (MRT), including the expansion of enrollment in the Medicaid managed care program. In particular, the budget reflected the Legislature adoption of the MRT's proposal to require the transition of Medicaid recipients who receive long term care services into Managed Long Term Care Plans (MLTCPs) or other care coordination models.

Needs and Benefits:

There are two objectives of this proposed rule.

First, the proposed rule will help facilitate the transition of Medicaid beneficiaries from traditional fee-for-service programs to managed care and MLTCPs, integrated health care systems and other types of care coordination models, as envisioned by the MRT and enacted in the 2011-12 budget. It is anticipated that CHHAs will play a central role in connection with these models and will enhance their ability to provide care coordination within the comprehensive array of services they provide and more fully meet the needs of their patients.

In particular, MLTCPs are facing an immediate influx of members who require community-based services that will more easily be provided by allowing the MLTCPs and other entities to establish CHHAs. The addition of home health care agencies will improve the ability of MLTCPs and other entities to provide care coordination to their members, ultimately resulting in cost savings to the Medicaid program, enhanced care coordination, and increased quality and efficiency in the provision of home health services to Medicaid recipients.

Second, the proposed rule will increase the number of CHHAs in New York State in those areas where patient choice of home health services is limited. Currently, there are 130 CHHA providers in New York State. Of these, 32 are county-operated agencies and 16 are sole providers within their county. In recent years, 17 county-operated CHHAs have closed, and an additional 18 counties have indicated to the Department that they intend to close or have a closure plan in place to occur over the next year. In many cases, closure of the county operated agencies will leave only one existing CHHA in the county, limiting patient access and choice in the selection of home health services.

By allowing establishment of new CHHAs and giving existing CHHAs the opportunity to expand their geographic service areas or populations served, of existing CHHAs, the rule will enhance access and improve choice for recipients with chronic illness, facilitating their ability to obtain home health services provided through a coordinated care approach. Accordingly, the rule will promote community-based care over costlier institutional care and encourage quality outcomes. Moreover, permitting new or expanded CHHAs will result in competition that may lower the costs of home health care services to the Medicaid program.

Costs:

Costs to Regulated Parties:

The rule does not impose any new compliance costs on regulated parties.

Costs to the Agency and to the State and Local Governments:

This rule should not impose any costs upon the Department of Health or New York State, except for incidental costs that may be associated with the issuance of a request for applications and evaluation of applications received. As discussed above, the rule is expected to promote utilization of community-based services, decreasing institutional health care costs in the Medicaid program.

Although local governments share a percentage of the costs in the Medicaid program, such participation is capped and as a result they would not bear a share of any incidental costs that may arise as a result of the proposed rule. If a local government operates a CHHA or wishes to establish a new CHHA, it would be impacted by this proposal to the same extent as other providers.

Local Government Mandates:

This rule imposes no mandates upon any county, city, town, village, school district, fire district, or other special district.

Paperwork:

The rule imposes no new reporting requirements, forms, or other paperwork upon regulated parties.

Duplication:

There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

Alternatives:

There are no other alternatives that will allow the Department to achieve the objectives outlined above in a matter that expediently implements the MRT initiatives enacted as part of the 2011-12 budget.

Federal Standards:

The rule does not conflict with nor exceed any minimum standards of the Federal government for the same or similar subject area.

Compliance Schedule:

None.

Regulatory Flexibility Analysis

Effect of Rule:

Local governments will not be affected by this rule except to the extent that they are providers of certified home health agency (CHHA) services and wish to file an application to expand their services, or do not provide CHHA services but wish to apply. Currently there are 32 county-based CHHAs in New York State.

The small businesses that will be affected by the proposed rule are CHHA providers which employ fewer than 100 persons, and which wish to file an application to expand their services. Based on the most recent data, there are approximately 21 CHHAs that are considered small businesses in New York State.

Compliance Requirements:
None.

Professional Services:

New CHHAs would be required to retain appropriate staff and existing agencies may need to hire additional staff if they were to expand their services, but any staffing required would only arise if agencies choose to submit an application for establishment or expansion pursuant to a request for applications issued in accordance with this rule.

Compliance Costs:

All candidates will be required to pay the \$2,000 application fee. The application fees are statutorily mandated, in Public Health Law § 3605(13).

Economic and Technological Feasibility:

The proposed rules can be met with minimal economic and technological impact. This rule establishes approval criteria to determine the need to establish or expand existing CHHAs. The NYSDOH is not placing any new requirements on the regulated community. Accordingly, there are no economic or technical requirements being imposed on the regulated community.

Minimizing Adverse Impact:

There is no adverse impact expected on local governments or small businesses, except that small businesses that operate CHHAs may experience increased competition as a result of the rule. However, providing opportunities for additional or expanded CHHAs is necessary for the reasons outlined herein.

Small Business and Local Government Participations:

This rule is proposed as an emergency action because of the need to expedite implementation of the budget provisions, as authorized by Chapter 59 of the Laws of 2011, Part H, § 103(t), and to improve access and patient choice in counties with few CHHAs.

For Rules that Either Establish or Modify a Violation or Penalties Associated with a Violation:

This regulation does not create or modify any penalty. Consequently, no cure period has been considered.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

All counties in New York State have rural areas with the exception of seven downstate counties. Counties with rural areas are served by 92 of the existing 130 CHHAs within the State.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

Providers will continue to have personnel and clinical record requirements and are expected to maintain a Health Commerce System account to communicate with the Department.

Professional personnel required of the certified home health agencies are unchanged from existing requirements.

Costs:

All candidates will be required to pay the \$2,000 application fee. The application fees are statutorily mandated, in Public Health Law § 3605(13).

Minimizing Adverse Impact:

The proposed rule is expected to increase CHHA services in areas of the State, especially rural areas, where such services are limited. Accordingly, there is no adverse impact on rural areas.

Rural Area Participation:

Since this is an emergency rule making, the normal public participation could not be accommodated including rural area participation.

Job Impact Statement

Nature of Impact:

This proposed rule is not expected to have an adverse impact on jobs and employment opportunities. The 130 certified home health agencies (CHHA) statewide directly employ approximately 54,290 full time equivalents (FTEs), most of whom are professionally licensed by the State Education Department and subject to the credentialing rules of that agency. By permitting new and expanded CHHAs, the proposed rule may create opportunities for retention of additional staff.

Categories and Numbers Affected:

Any new CHHAs established as a result of the proposed rule will be required to hire professional as well as support staff. A major reason for this rule is increased access in smaller rural counties and should have the effect of creating additional employment opportunities in these areas.

Regions of Adverse Impact:

None.

Minimizing Adverse Impact:

Not applicable.

Self-Employment Opportunities:

Not applicable.

Long Island Power Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Excelsior Jobs Program and Other Business Development Programs Under the Authority's Tariff

I.D. No. LPA-16-12-00007-P

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

Proposed Action: The Long Island Power Authority ("Authority") is considering a proposal to modify its Tariff for Electric Service ("Tariff") to add an Excelsior Jobs Program discount and to modify other programs under the Tariff to promote business development.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: Excelsior Jobs Program and other business development programs under the Authority's Tariff.

Purpose: To add an Excelsior Jobs Program discount and to modify business development programs.

Public hearing(s) will be held at: 10:00 a.m., June 4, 2012 at H. Lee Denison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; 2:00 p.m., June 4, 2012 at Long Island Power Authority, 333 Earle Ovington Blvd., 2nd Fl., Uniondale, NY.

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

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

Substance of proposed rule: The Long Island Power Authority ("Authority") is considering a proposal to modify its Tariff for Electric Service to implement an Excelsior Jobs Program discount in furtherance of New York State legislation, and to modify LIPA's business attraction, expansion, manufacturing competitiveness and business incubator programs to encourage business development. The Authority may approve, modify, or reject, in whole or part, the proposal.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

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

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

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.

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED**

Smart Grid Small Generator Interconnection Procedures

I.D. No. LPA-16-12-00008-P

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

Proposed Action: The Long Island Power Authority (“Authority”) is considering a proposal to modify its Tariff for Electric Service to add Smart Grid Small Generator Interconnection Procedures and incorporate additional types of customer generation for net metering.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: Smart Grid Small Generator Interconnection Procedures.

Purpose: To adopt Smart Grid Small Generator Interconnection Procedures and incorporate additional customer generation for net metering.

Public hearing(s) will be held at: 10:00 a.m., June 4, 2012 at H. Lee Denison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; 2:00 p.m., June 4, 2012 at Long Island Power Authority, 333 Earle Ovington Blvd., 2nd Fl., Uniondale, NY.

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

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

Substance of proposed rule: The Long Island Power Authority (“Authority”) is considering a proposal to modify its Tariff for Electric Service (“Tariff”) to add Smart Grid Small Generator Interconnection Procedures for New Distributed Resources 20 MW or Less Connected in Parallel with LIPA Distribution Systems, repeal the existing Interconnection Guide for Independent Power Producers and to incorporate additional types of customer generation as eligible for net metering. The Authority may approve, modify, or reject, in whole or part, the proposal.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

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

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

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.

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED**

Recharge New York Power Program

I.D. No. LPA-16-12-00009-P

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

Proposed Action: The Long Island Power Authority is considering a proposal to modify its Tariff for Electric Service to add the Recharge New York Power Program and repeal the expiring Power for Jobs Program.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: Recharge New York Power Program.

Purpose: To add to the Tariff the Recharge New York Power Program and repeal the expiring Power for Jobs Program.

Public hearing(s) will be held at: 10:00 a.m., June 4, 2012 at H. Lee Denison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; 2:00 p.m., June 4, 2012 at Long Island Power Authority, 333 Earle Ovington Blvd., 2nd Fl., Uniondale, NY.

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

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

Substance of proposed rule: The Long Island Power Authority (“Authority”) is considering a proposal to modify its Tariff for Electric Service to add the Recharge New York Power Program and repeal the expiring Power for Jobs Program in furtherance of Chapter 60 of the Laws of 2011. The Authority may approve, modify, or reject, in whole or part, the proposal.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

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

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

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.

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED**

Feed-In Tariff

I.D. No. LPA-16-12-00013-P

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

Proposed Action: The Long Island Power Authority is considering a proposal to modify its Tariff for Electric Service to add a Feed-in Tariff.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: Feed-in Tariff.

Purpose: To add a Feed-in Tariff to the Authority’s Tariff for Electric Service.

Public hearing(s) will be held at: 10:00 a.m., June 4, 2012 at H. Lee Denison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; 2:00 p.m., June 4, 2012 at Long Island Power Authority, 333 Earle Ovington Blvd., 2nd Fl., Uniondale, NY.

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

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

Substance of proposed rule: The Long Island Power Authority (“Authority”) is considering a proposal to modify its Tariff for Electric Service to add a Feed-in Tariff authorizing the purchase of solar photovoltaic renewable resources, including all environmental attributes, from customers for a fixed term of 20 years at a fixed price for the entire term. The proposed purchase offer would be included under Service Classification No. 11 - Buyback Service. Customers that enroll in the Feed-in Tariff must sell 100% of the output and all of the environmental attributes from their eligible generation directly to LIPA. The Authority may approve, modify, or reject, in whole or part, the proposal.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

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

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

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.

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED**

Service Classification No. 11, Buy-Back Service

I.D. No. LPA-16-12-00014-P

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

Proposed Action: The Long Island Power Authority is considering a proposal to modify its Tariff for Electric Service ("Tariff") to update Service Classification No. 11, Buy-Back Service.

Statutory authority: Public Authorities Law, section 1020-f(z) and (u)

Subject: Service Classification No. 11, Buy-Back Service.

Purpose: To modify Service Classification No. 11, Buy-Back Service under the Tariff.

Public hearing(s) will be held at: 10:00 a.m., June 4, 2012 at H. Lee Denison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; 2:00 p.m., June 4, 2012 at Long Island Power Authority, 333 Earle Ovington Blvd., 2nd Fl., Uniondale, NY.

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

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

Substance of proposed rule: The Long Island Power Authority ("Authority") is considering a proposal to modify its Tariff for Electric Service regarding Service Classification No. 11 ("SC-11"), Buy-Back Service for the purchases of energy, capacity and ancillary services from Qualifying Facilities pursuant to the federal Public Utilities Regulatory Policy Act ("PURPA") and Net Metering Customer-Generators (as applicable) to better reflect spot market prices for those products and services. The Authority may approve, modify, or reject, in whole or part, the proposal.

Text of proposed rule and any required statements and analyses may be obtained from: Andrew McCabe, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 222-7700, email: amccabe@lipower.org

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

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

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.

Office of Mental Health

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

Personalized Recovery Oriented Services (PROS)

I.D. No. OMH-16-12-00001-P

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

Proposed Action: Amendment of Part 512 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.04 and 43.02; and Social Services Law, section 365-m

Subject: Personalized Recovery Oriented Services (PROS).

Purpose: To add provisions regarding Behavioral Health Organization (BHO) implementation.

Text of proposed rule: 1. 14 NYCRR Part 512 is amended as follows:

PART 512

PERSONALIZED RECOVERY ORIENTED SERVICES

(Statutory Authority: Mental Hygiene Law, §§ 7.09(b), 31.04, 41.05, 43.01, 43.02; and Social Services Law, §§ 364(3), 364-a(1), 365-m)

2. A new subdivision (g) is added to Section 512.2 of Title 14 NYCRR to read as follows:

(g) Section 365-m of the Social Services Law authorizes the Commissioner of the Office of Mental Health and the Commissioner of the Office of Alcoholism and Substance Abuse Services, in consultation with the Department of Health, to contract with regional behavioral health organizations to provide administrative and management services for the provision of behavioral health services.

3. New subdivisions (d) and (l) are added to Section 512.4 of Title 14 NYCRR to read as follows. The remaining subdivisions are re-lettered accordingly.

(d) Behavioral Health Organization or BHO means an entity selected by the Commissioner of the Office of Mental Health and the Commissioner of the Office of Alcoholism and Substance Abuse Services pursuant to Section 365-m of the New York State Social Services Law to provide administrative and management services for the purposes of conducting concurrent review of Behavioral Health admissions to inpatient treatment settings, assisting in the coordination of Behavioral Health Services, and facilitating the integration of such services with physical health care.

(l) Concurrent Review shall mean the review of the clinical necessity for continued inpatient Behavioral Health Services, resulting in a non-binding recommendation regarding the need for such continued inpatient services.

4. A new Section 512.19 is added to Title 14 NYCRR Part 512 to read as follows:

512.19 Behavioral health organizations.

Providers shall cooperate with the designated regional behavioral health organizations and shall be authorized pursuant to Section 33.13(d) of the Mental Hygiene Law to exchange clinical information concerning clients with such organizations. Information so exchanged shall be limited to the minimum necessary in light of the reason for the disclosure. Such information shall be kept confidential and any limitations on the release of such information imposed on the party giving such information shall apply to the party receiving such information.

Text of proposed rule and any required statements and analyses may be obtained from: Joyce Donohue, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: Joyce.Donohue@omh.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.

Regulatory Impact Statement

1. Statutory authority: Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the power and responsibility to plan, establish and evaluate programs and services for the benefit of individuals with mental illness and to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 43.02 of the Mental Hygiene Law gives the Commissioner the authority to request from operators of facilities licensed by the Office of Mental Health such financial, statistical and program information as the Commissioner may determine to be necessary.

Section 365-m of the Social Services Law authorizes the Commissioner of the Office of Mental Health and the Commissioner of the Office of Alcoholism and Substance Abuse Services, in consultation with the Department of Health, to contract with regional behavioral health organizations to provide administrative and management services for the provision of behavioral health services.

2. Legislative objectives: Chapter 59 of the Laws of 2011 authorizes the Office of Mental Health and the Office of Alcoholism and Substance Abuse Services to contract with regional behavioral health organizations to provide administrative and management services for the provision of behavioral health services. The intent of this legislation is to facilitate the coordination of mental health and substance use services and physical health care services for individuals with significant behavioral health needs.

3. Needs and benefits: A key element of the New York State Medicaid agenda is to increase the quality and efficiency of the Medicaid program and reduce Medicaid costs. To accomplish these objectives, Governor Cuomo issued Executive Order No. 5 to convene a Medicaid Redesign Team (MRT), consisting of representatives from the legislature, health care industry, patient advocacy groups, and State executive staff including the Commissioners of the Office of Mental Health and the Office of Alcoholism and Substance Abuse Services and the New York State Medicaid Director. One of the MRT recommendations that was adopted into New York State Law authorizes the Commissioners of the Office of Mental Health and the Office of Alcoholism and Substance Abuse Ser-

vices to jointly select and contract for the services of one or more regional Behavioral Health Organizations (BHO). The BHOs shall provide administrative and management services for the purposes of conducting concurrent review of inpatient behavioral health services and coordinating the provision of behavioral health services and other services available under the Medicaid Program. After a successful procurement, five regional BHOs were selected. The amendments to 14 NYCRR Part 512 necessary to inform providers of Personalized Recovery Oriented Services (PROS) of the requirements and expectations of the Office of Mental Health with respect to the BHO implementation.

4. Costs:

a) Costs to state government: These regulatory amendments will not result in any additional costs to State government.

b) Costs to local government: These regulatory amendments will not result in any additional costs to local government.

c) Costs to regulated parties: There will be no fiscal impact, nor will there be any change in reimbursement or rates of payments to regulated parties as a result of these regulatory amendments.

5. Local government mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not have a significant increase in the paperwork requirements of providers.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: The only alternative to the regulatory amendment would be inaction. BHO implementation is consistent with statute. PROS providers must be aware of their responsibilities and the requirements associated with the BHO implementation; this rule making clarifies those responsibilities and makes clear the Office's expectations with respect to BHO implementation. Therefore, that alternative was not considered.

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

10. Compliance schedule: These regulatory amendments are effective immediately upon adoption.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not being submitted with this notice because the amended rule will not have an adverse economic impact upon small businesses or local governments. The rule making merely serves to clarify the expectations of the Office of Mental Health regarding Behavioral Health Organization (BHO) implementation and notify Personalized Recovery Oriented Services (PROS) providers of their responsibilities as a result of the BHO implementation.

Rural Area Flexibility Analysis

The amendments to Part 512 of Title 14 NYCRR serve to clarify the expectations of the Office of Mental Health regarding Behavioral Health Organization (BHO) implementation and notify Personalized Recovery Oriented Services (PROS) providers of their responsibilities as a result of the BHO implementation. The amendments will not impose any adverse economic impact on rural areas; therefore, a Rural Area Flexibility Analysis is not submitted with this notice.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the purpose of this rule making is merely to clarify the expectations of the Office of Mental Health regarding Behavioral Health Organization (BHO) implementation and notify Personalized Recovery Oriented Services (PROS) providers of their responsibilities as a result of the BHO implementation. There will be no adverse impact on jobs and employment opportunities as a result of this rulemaking.

Office of Parks, Recreation and Historic Preservation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Smoking at OPRHP Facilities

I.D. No. PKR-16-12-00004-P

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

Proposed Action: This is a consensus rule making to add section 377.1(p) to Title 9 NYCRR.

Statutory authority: Parks, Recreation and Historic Preservation Law, section 3.09(2), (5), (8) and (14)

Subject: Smoking at OPRHP facilities.

Purpose: To protect public health.

Text of proposed rule: A new subdivision (p) is added to section 377.1 of Title 9 NYCRR as follows:

377.1. Regulated activities.

The following activities are prohibited on property under the jurisdiction, custody and control of the office, except in areas specifically designated therefor, during such hours or seasonal periods specifically authorized and subject to such conditions as may be contained herein.

(p) Smoking.

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen L. Martens, Associate Counsel, Office of Parks, Recreation and Historic Preservation, Empire State Plaza, Agency Bldg. 1, Albany, NY 12238, (518) 486-2921, email: rulemaking@parks.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.

Consensus Rule Making Determination

The rule codifies in rule OPRHP's practice of protecting the public health of its patrons, especially children, by designating smoking and non-smoking areas at its facilities.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the rule will have no impact on jobs and employment opportunities.

Public Service Commission

NOTICE OF WITHDRAWAL

Temporary State Assessment

I.D. No. PSC-13-12-00007-W

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

Action taken: Notice of proposed rule making, I.D. No. PSC-13-12-00007-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on March 28, 2012.

Subject: Temporary State Assessment.

Reason(s) for withdrawal of the proposed rule: Withdrawn by staff.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition for the Submetering of Electricity

I.D. No. PSC-16-12-00010-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Meadow Manor Holdings LLC to submeter electricity at 3412 113 Street, Flushing, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Meadow Manor Holdings LLC to submeter electricity at 3412 113 Street, Flushing, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Meadow Manor Holdings LLC to submeter electricity at 3412 113 Street, Flushing, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

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.

(12-E-0151SP1)

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

Orange and Rockland Utilities, Inc. Proposes to Modify its Customer Performance Incentive Mechanism

I.D. No. PSC-16-12-00011-P

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

Proposed Action: The Commission is considering a petition filed by Orange and Rockland Utilities, Inc. to modify the Customer Performance Incentive Mechanism included in the Joint Proposal adopted in Case 08-G-1398.

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

Subject: Orange and Rockland Utilities, Inc. proposes to modify its Customer Performance Incentive Mechanism.

Purpose: The Company proposes to use the same survey for both its gas and electric customers to measure Customer Satisfaction.

Substance of proposed rule: The Commission is considering whether to adopt, modify or reject, in whole or in part, the proposal set forth by Orange and Rockland Utilities, Inc. (the Company) in a petition dated March 29, 2012, seeking to modify its Customer Service Performance Mechanism included in the Joint Proposal adopted by the Commission in Case 08-G-1398. The Company requests the discontinuation of the Customer Assessment Survey and to use the Customer Contact Satisfaction Survey as the basis for measuring customer satisfaction for purposes of the Company's gas Customer Service Performance Incentive mechanism. This will allow consistent customer satisfaction measurement for Gas and Electric Customers as the same survey would now be used in both instances.

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.ny.gov

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

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

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

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

(08-G-1398SP2)

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

Petition for the Submetering of Electricity

I.D. No. PSC-16-12-00012-P

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

Proposed Action: The Public Service Commission is considering whether

to grant, deny or modify, in whole or part, the petition filed by Concord Village Owners Corp to submeter electricity at 225 and 235 Adams Street and 270 Jay Street, Brooklyn, New York.

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

Subject: Petition for the submetering of electricity.

Purpose: To consider the request of Concord Village Owners Corp to submeter electricity at 225 and 235 Adams Street and 270 Jay Street, Brooklyn, NY.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Concord Village Owners Corp to submeter electricity at 225 and 235 Adams Street and 270 Jay Street, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc.

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

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

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.

(12-E-0150SP1)

Racing and Wagering Board

**EMERGENCY
RULE MAKING**

Claims of Thoroughbred Horses That Die on the Track During or After a Race

I.D. No. RWB-16-12-00005-E

Filing No. 274

Filing Date: 2012-04-02

Effective Date: 2012-04-02

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

Action taken: Amendment of section 4038.5 of Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, section 101(1)

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

Specific reasons underlying the finding of necessity: The Board has determined that immediate adoption of this rule is necessary for the preservation of the public safety and general welfare and that compliance with the requirements of subdivision 1 of Section 202 of the State Administrative Procedure Act would be contrary to the public interest.

Since November, 2011, 18 thoroughbred horses in New York State that were entered in claiming races have been injured and subsequently died. Their deaths have prompted a comprehensive analysis of the circumstances and possible causes for the deaths of these horses. One common aspect in these races is the fact that the horse that broke down was involved in a claiming race. This rule is necessary to remove an incentives that a trainer or owner may have for entering an unsound horse in claiming race for the purpose of racing and potentially transferring a horse without proper regard to the horse's well-being and the integrity of racing.

Given the danger of a horse breaking down, and the safety threat presented to both the jockey on the horse and the jockeys riding in close proximity, this rule is necessary to protect the safety of human and equine athletes. Thoroughbred horses travel over the racetrack at an average speed of approximately 40 miles per hour, sometimes exceeding that average as they sprint to the finish or sprint to gain positional advantage. An unsound

horse racing on short rest may be forced to race beyond its limits and result in a fatal breakdown, oftentimes in a sudden or uncontrollable breakdown.

This rule is also necessary to protect the general welfare of the horse racing industry and the thousands of jobs that are created through it. Public confidence in both the process of racing and in pari-mutuel wagering system is necessary for the sport to survive, and with it the jobs and revenue generated in support of government. Claiming races play an essential part of thoroughbred racing and pari-mutuel wagering. This rule is necessary to ensure integrity in the claiming process, and in turn ensure that the when a horse steps onto a race track, it doing so for the purpose of winning and not merely to foster a transaction.

Subject: Claims of thoroughbred horses that die on the track during or after a race.

Purpose: Reduce fatalities of thoroughbred horses and injuries to jockeys.

Text of emergency rule: Subdivision (a) of Section 4038.5 of 9 NYCRR is amended to read as follows:

4038.5. Requirements for claim; determination by stewards.

(a) All claims shall be in writing, sealed in an envelope and deposited in a locked box provided for this purpose by the racing secretary or his designee, at least 10 minutes before post time. Claim slip forms must be completely filled out and must, in the judgment of the stewards, be sufficiently accurate to identify the claim, otherwise the claim will be void. No money shall accompany the claim. Each person desiring to make a claim, unless he shall have such amount to his credit with the association, must first deposit with the association the whole amount of the claim, in a manner approved by the racing secretary or designee for which a receipt will be given. All claims shall be passed upon by the stewards, and the person determined at the closing time for claiming to have the right of claim shall become the owner of the horse when the start is effected, whether it be [alive or dead,] sound or unsound or injured before or during the race or after it, except that:

i. the claim is voidable at the discretion of the new owner pursuant to the conditions stated in section 4038.18 of this subchapter unless the age or sex of such horse has been misrepresented, and subject to the provisions of subdivision (b) of this section; and

ii. a claim shall be void for any horse that dies during a race or is euthanized on the track following a race.

In the event more than one person should enter a claim for the same horse, the disposition of the horse shall be decided by lot by the stewards. Any horse so claimed shall then be taken to the test barn for delivery to the claimant after the test sample is taken.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 30, 2012.

Text of rule and any required statements and analyses may be obtained from: John J. Googas, New York State Racing and Wagering Board, One Broadway Center, Suite 600, Schenectady, New York 12305-2553, (518) 395-5400, email: info@racing.ny.gov

Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The Board is authorized to promulgate this rule pursuant to Racing Pari-Mutuel Wagering and Breeding Law section 101(1). Under section 101, the Board has general jurisdiction over all horse racing activities and all pari-mutuel thoroughbred racing activities.

2. Legislative objectives: To enable the New York State Racing and Wagering Board to preserve the integrity of pari-mutuel racing, while generating reasonable revenue for the support of government.

3. Needs and benefits: This rulemaking is necessary to assure integrity, safety and public confidence in claiming races by removing incentives to use the claiming race process as a means of racing and transferring unsound horses. This rulemaking removes the incentive to enter an unsound horse in a claiming race with the intended goal of protecting both the health and safety of the equine and human athlete.

A claiming horse is, in effect, offered for sale at a designated price within the range of the claiming race at which they are entered by their owners. The potential buyer of a horse in a claiming race must enter his claim before the race. By entering a horse in a claiming race, the owner is offering his horse up for sale to another individual.

This amendment will reduce the incidence of injuries/deaths in horse races by changing the claiming rule, which presently has no disincentive to a trainer entering a potentially unsound horse with the expectation that it will be claimed. The current rule provides a mechanism by which an unsound horse might be claimed and the risk of racing the unsound horse is not borne by the person who races the horse. This situation is unique to claiming races. This same mechanism also places the jockey at risk.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: None.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: Board staff reviewed the cost factors and determined that the rule can be implemented using the existing system for voiding a claim, and no additional costs will be added.

(d) Where an agency finds that it cannot provide a statement of costs, a statement setting forth the agency's best estimate, which shall indicate the information and methodology upon which the estimate is based and the reason(s) why a complete cost statement cannot be provided. Not applicable.

5. Local government mandates: None. The New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel harness racing activities.

6. Paperwork: There will be no additional paperwork. The process will rely on the existing administrative forms and processes for voiding a claim.

7. Duplication: None.

8. Alternatives. Proposals include allowing the claimant to void a claim immediately after a race for no reason or giving race secretaries authority to include the above condition in claiming races. These alternatives were considered impractical.

The Board also considered a rule to require the stewards to consult with a designated veterinarian before voiding a claims for a horse that has suffered a catastrophic injury or death before it was unsaddled following its race. This alternative was rejected in favor of the proposed rule, which is a bright line threshold rather than an arguably judgmental determination.

9. Federal standards: None.

10. Compliance schedule: The rule can be implemented immediately upon publication as an adopted rule.

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

As is evident by the nature of this rulemaking, this proposal affects the voiding of claims where a horse suffers a fatal breakdown while on the racetrack. The Board currently has a rule that permits the voiding of a claim, and this amendment expands that rule to include the death of a horse. This amendment will not adversely impact rural areas, jobs, small businesses or local governments and does not require a Regulatory Flexibility Statement, Rural Area Flexibility Statement or Job Impact Statement because it will not impose an adverse impact on rural areas, nor will it affect jobs. This amendment is intended to reduce an incentive to race an unsound horse. A Regulatory Flexibility Statement and a Rural Area Flexibility Statement are not required because the rule does not adversely affect small business, local governments, public entities, private entities, or jobs in rural areas. There will be no impact for reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. There will also be no adverse impact on small businesses and jobs in rural areas. A Jobs Impact Statement is not required because this rule amendment will not adversely impact jobs. This rulemaking does not impact upon a small business pursuant to such definition in the State Administrative Procedure Act § 102(8) nor does it negatively affect employment. The proposal will not impose adverse economic impact on reporting, recordkeeping or other compliance requirements on small businesses in rural or urban areas nor on employment opportunities. The rule does not impose any technological changes on the industry either.