

# RULE MAKING ACTIVITIES

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

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

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

---

---

## Department of Agriculture and Markets

---

---

### NOTICE OF ADOPTION

#### Standard of Identity and Grades of Maple Syrup

**I.D. No.** AAM-16-13-00003-A

**Filing No.** 825

**Filing Date:** 2013-08-09

**Effective Date:** 2015-01-01

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

**Action taken:** Repeal of Part 175; and addition of Part 270 to Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, sections 16, 18, 160-u, 203 and 214-b

**Subject:** Standard of identity and grades of maple syrup.

**Purpose:** To ensure that grades of maple syrup meet appropriate compositional requirements to promote public confidence and fair dealing.

**Text or summary was published** in the April 17, 2013 issue of the Register, I.D. No. AAM-16-13-00003-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Stephen Stich, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-4492, email: stephen.stich@agriculture.ny.gov

#### Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2016, which is no later than the 3rd year after the year in which this rule is being adopted.

#### Assessment of Public Comment

The Department received written comments prior to and after the hearing to consider adoption of the proposed rule, and also received oral testimony from witnesses at the hearing. Only one organization submitted written comments in opposition to adoption of the proposed rule and only one person, a member of that organization, submitted both written comments and gave oral testimony in opposition thereto - every other commentator and witness supported the proposed rule's adoption.

The Northern New York Maple Producers Co-op ("NNYMP"), located in Lowville, New York, opposed adoption of the proposed rule in a letter dated February 8, 2013. This organization opposed adoption of the proposed rule because it believes that the new grades of maple syrup, as provided for in the proposed rule, do not provide sufficiently definitive information to allow a consumer to make an informed choice when purchasing such food. This organization also opposed adoption of the proposed rule because a provision of the proposed rule will allow what it believes to be a lesser quality of maple syrup (i.e., the grade currently known as "Extra Dark for Cooking") to be labeled "Grade A", which, it believes, will cause consumers who purchase such food to be disappointed. This organization, however, suggested no alternatives to the proposed rule other than implying that the provisions to which it objected should not be adopted. Because the Department believes that the proposed rule will promote honesty and fair dealing in maple syrup, because it believes that the proposed rule will adequately inform consumers, and because the great majority of the relevant commentators and witnesses supported adoption of the proposed rule, the Department declines to amend the proposed rule as implicitly suggested by the NNYMP.

Mr. Warren L. Allen is a maple syrup producer and also a member of the NNYMP. Both in a letter to the Department, dated February 8, 2013, and at the hearing, Mr. Allen opposed adoption of the proposed rule (his letter was received into the record of the hearing as Exhibit 4, and a transcript of the substance of his oral testimony was received in the record of the hearing as Exhibit 6). In his letter, Mr. Allen set forth reasons for opposing adoption of the proposed rule that are substantially the same as those set forth in NNYMP's letter, as discussed above.

In his oral testimony, Mr. Allen set forth the same reasons for opposing adoption of the proposed rule that he set forth in his letter but also stated that he believed that the proposed rule, if adopted, would cause the income of maple syrup producers to decline. Mr. Allen stated that because relatively low-quality, inexpensive maple syrup would be allowed to be labeled "Grade "A", large purchasers of maple syrup would have no incentive to pay more for higher quality, hitherto more expensive maple syrup because they could sell the lesser quality maple syrup as "Grade A". Mr. Allen stated that maple syrup producers who produce high quality maple syrup could suffer a decrease in their incomes due to large purchasers no longer buying such maple syrup from them. Mr. Allen, however, suggested no alternatives to the proposed rule, in either his letter or his oral testimony, other than implying that the provisions to which he objected to should not be adopted. For the reasons set forth above for the Department's rejection of NNYMP's implicit suggestions, the Department declines to amend the proposed rule in response to Mr. Allen's comments and testimony.

## Office of Alcoholism and Substance Abuse Services

### NOTICE OF ADOPTION

#### Definitions Pertaining to This Chapter

**I.D. No.** ASA-24-13-00007-A

**Filing No.** 823

**Filing Date:** 2013-08-07

**Effective Date:** 2013-08-28

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

**Action taken:** Repeal of Part 72 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 19.07(c), 19.09(b), 19.40, 32.02 and 32.07(a)

**Subject:** Definitions pertaining to this chapter.

**Purpose:** Repeal of an outdated Part in Title 14 NYCRR.

**Text or summary was published** in the June 12, 2013 issue of the Register, I.D. No. ASA-24-13-00007-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Sara Osborne, Senior Attorney, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, email: Sara.Osborne@oasas.ny.gov

#### Assessment of Public Comment

The agency received no public comment.

## Department of Civil Service

### NOTICE OF EXPIRATION

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

#### Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-32-12-00004-P	August 8, 2012	August, 8, 2013

## State Commission of Correction

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

#### Electronic Submission of Grievances

**I.D. No.** CMC-35-13-00006-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 7032.5 and 7032.8 of Title 9 NYCRR.

**Statutory authority:** Correction Law, section 45(4), (6) and (15)

**Subject:** Electronic submission of grievances.

**Purpose:** To allow local correctional facilities to submit inmate grievances electronically.

**Text of proposed rule:** Subdivision (b) of section 7032.5 of Title 9 is amended to read as follows:

(b) Within three business days after receipt of the grievant's notice of

appeal, the grievance coordinator shall mail, or *electronically submit in a manner and form prescribed by the Commission of Correction*, the appeal, the accompanying investigation report and all other pertinent documents to the Commission's Citizens' Policy and Complaint Review Council.

Paragraph (1) of subdivision (d) of section 7032.5 of Title 9 is amended to read as follows:

(1) Except as provided in paragraph (2) of this subdivision, the Citizens' Policy and Complaint Review Council shall issue a written determination to the appeal within 45 business days of receipt, copies of which shall be [sent] *provided* to the grievant, the chief administrative officer and the grievance coordinator. If such determination is in favor of the grievant as a matter of law, the chairperson of the Citizens' Policy and Complaint Review Council shall direct the chief administrative officer to comply with the grievance and provide an appropriate remedy.

Section 7032.8 of Title 9 is amended to read as follows:

(a) The grievance coordinator shall act as a liaison between the grievant, the chief administrative officer and the Commission of Correction in all matters that pertain to the inmate grievance program.

(b) *For any grievance initially submitted electronically pursuant to subdivision (b) of section 7032.5 of this Part, the Citizens' Policy and Complaint Review Council may issue its determination to the chief administrative officer and grievance coordinator, as required by subdivision (d) of section 7032.5 of this Part, in a similar electronic manner. In such an instance, the grievance coordinator shall print and provide a paper copy of the written determination to the grievant, if still incarcerated in the facility, within one (1) business day.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Brian M. Callahan, Associate Attorney, New York State Commission of Correction, Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, New York 12210, (518) 485-2346, email: Brian.Callahan@scoc.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:

Subdivision (4) of section 45 of the Correction Law allows the Commission of Correction to establish procedures to assure the effective investigation of grievances of, and conditions affecting, inmates of local correctional facilities. Subdivision (6) of section 45 of the Correction Law authorizes the Commission of Correction to promulgate rules and regulations establishing minimum standards for the care, custody, correction, treatment, supervision, discipline, and other correctional programs for all persons confined in the correctional facilities of New York State. Subdivision (15) of section 45 of the Correction Law allows the Commission to adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of its functions, powers and duties.

2. Legislative objectives:

By vesting the Commission with this rulemaking authority, the Legislature intended the Commission to promulgate and maintain minimum standards which provide for the efficient and effective investigation of local correctional facility inmate grievances by the Commission's Citizens' Policy and Complaint Review Council (CPCRC).

3. Needs and benefits:

As set forth in section 42 of the Correction Law and Part 7032 of Title 9 NYCRR, there exists, within the Commission of Correction, a Citizen's Policy and Complaint Review Council (CPCRC). Comprised of unpaid members appointed by the Governor, the CPCRC accepts, reviews and renders determinations of appeals of written inmate grievances denied by the administrators of local correctional facilities.

Currently constructed, 9 NYCRR § 7032.5(b) requires the grievance coordinator of a local correctional facility to "mail the appeal, the accompanying investigation report and all other pertinent documents" to the CPCRC. As such submissions are often both numerous and voluminous, local correctional facilities must expend both significant postage fees and staff hours to accomplish the mailing.

In an effort to reduce these costs, as well as expedite the process by which grievance appeals are submitted to the CPCRC, distributed to the members, and resulting determinations are returned to the facility and grievant inmate, the Commission is currently developing a procedure to accomplish the above electronically. To implement such a process, the regulation requiring submission of grievance appeals by mail must be amended.

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: None. The proposed rule only provides another avenue by which local correctional facilities may submit inmate grievance appeals to the CPCRC.

b. Costs to the agency, the state and local governments for the imple-

mentation and continuation of the rule: None. The regulation does not apply to state agencies or governmental bodies. As set forth above in subdivision (a), there will be no additional costs to local governments.

c. This statement detailing the projected costs of the rule is based upon the Commission’s oversight and experience relative to the operation and function of a local correctional facility.

5. Local government mandates:

None.

6. Paperwork:

No change is sought to the necessary forms and documents by which local correctional facility inmate grievances are appealed to the CPCRC, and thus this rule does not require any additional paperwork on regulated parties. The proposed rule seeks only to provide another avenue by which local correctional facilities may submit inmate grievance appeals to the CPCRC.

7. Duplication:

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

8. Alternatives:

The alternative, maintaining current regulations that require local correctional facilities to mail inmate grievance appeals to the CPCRC, was explored by the Commission. This alternative was rejected upon the Commission’s finding that the proposed amendment could reduce postage fees, as well as expedite the process by which grievance appeals are submitted to the CPCRC, distributed to the members, and resulting determinations are returned to the facility and grievant inmate.

9. Federal standards:

There are no applicable minimum standards of the federal government.

10. Compliance schedule:

Each county correctional facility is expected to be able to achieve compliance with the proposed rule immediately.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not required pursuant to subdivision three of section 202-b of the State Administrative Procedure Act because the rule does not impose an adverse economic impact on small businesses or local governments. The proposed rule seeks only to allow local correctional facilities to electronically submit inmate grievances to the Citizens’ Policy and Review Council. Accordingly, it will not have an adverse impact on small businesses or local governments, nor impose any additional significant reporting, record keeping, or other compliance requirements on small businesses or local governments.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not required pursuant to subdivision four of section 202-bb of the State Administrative Procedure Act because the rule does not impose an adverse impact on rural areas. The proposed rule seeks only to allow local correctional facilities to electronically submit inmate grievances to the Citizens’ Policy and Review Council. Accordingly, it will not impose an adverse economic impact on rural areas, nor impose any additional significant record keeping, reporting, or other compliance requirements on private or public entities in rural areas.

**Job Impact Statement**

A job impact statement is not required pursuant to subdivision two of section 201-a of the State Administrative Procedure Act because the rule will not have a substantial adverse impact on jobs and employment opportunities, as apparent from its nature and purpose. The proposed rule seeks only to allow local correctional facilities to electronically submit inmate grievances to the Citizens’ Policy and Review Council. As such, there will be no impact on jobs and employment opportunities.

---



---

## Department of Economic Development

---



---

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

**Excelsior Jobs Program**

**I.D. No.** EDV-35-13-00001-P

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

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

**Statutory authority:** L. 2013, ch. 68; L. 2011, ch. 61; L. 2010, ch. 59; Economic Development Law, art. 17

**Subject:** Excelsior Jobs Program.

**Purpose:** To Administer the Excelsior Jobs Program.

**Substance of proposed rule (Full text is posted at the following State website:www.esd.ny.gov):** The regulation creates new Parts 190-196 in 5 NYCRR as follows:

1) The regulation adds the definitions relevant to the Excelsior Jobs Program (the “Program”). Key definitions include, but are not limited to, certificate of eligibility, certificate of tax credit, industry with significant potential for private sector growth and economic development in the State, preliminary schedule of benefits, regionally significant project and significant capital investment. The definition of “net new jobs” has been amended to clarify the fact that the “net new job” minimum eligibility requirement for participation in the Excelsior Tax Credit program means net new job creation above a base level of employment. The definition of “new media” has been amended to include post production film projects and the term “distribution center” now allows processing and repackaging of goods directly to consumers. Also, the definition of “regionally significant project” has been revised to ensure that it mirrors the statutory definition.

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

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

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

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

6) The rule is now further amended by to address certain changes to Sections 353 and 354 of the Economic Development Law made by Chapter 68 of the Laws of 2013, which are effective August 23, 2013. In particular, the minimum job requirements for business entities to meet in each of the strategic industries have been reduced, as follows: a business entity operating predominantly in manufacturing must now create at least ten net new jobs; a business entity operating predominately in agriculture must now create at least five net new jobs; a business entity operating predominantly as a financial service data center or financial services customer back office operation must now create at least fifty net new jobs; a business entity operating predominantly in scientific research and development must now create at least five net new jobs; a business entity operating predominantly in software development must now create at least five net new jobs; a business entity creating or expanding back office operations must now create at least fifty net new jobs or a business operating predominantly as a distribution center in the state must now create at least seventy-five net new jobs; a business entity must be a Regionally Significant Project. Furthermore, a business entity operating predominantly in one of the industries referenced above but which does not meet the job requirements must have at least twenty-five full-time job equivalents, un-

less such business is operating predominantly in manufacturing then it must have at least ten full-time job equivalents and must demonstrate that its benefit-cost ratio is at least ten to one (10:1). Finally, in accordance with the recent statutory changes, if, in any given year, a participant who has satisfied the eligibility criteria specified in the statute realizes job creation less than the estimated amount, the credit shall be reduced by the proportion of actual job creation to the estimated amount, provided the proportion is at least seventy-five percent of the jobs estimated.

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

8) The regulation sets forth the evaluation standards that the Commissioner can utilize when determining whether to admit an applicant to the Program. These include, but are not limited to, the following: (1) whether the Applicant is proposing to substantially renovate contaminated, abandoned or underutilized facilities; or (2) whether the Applicant will use energy-efficient measures, including, but not limited to, the reduction of greenhouse gas and emissions and the Leadership in Energy and Environmental Design (LEED) green building rating system for the project identified in its application; or (3) the degree of economic distress in the area where the Applicant will locate the project identified in its application; or (4) the degree of Applicant's financial viability, strength of financials, readiness and likelihood of completion of the project identified in the application; or (5) the degree to which the project identified in the Application supports New York State's minority and women business enterprises; or (6) the degree to which the project identified in the Application supports the principles of Smart Growth; or (7) the estimated return on investment that the project identified in the Application will provide to the State; or (8) the overall economic impact that the project identified in the Application will have on a region, including the impact of any direct and indirect jobs that will be created; or (9) the degree to which other state or local incentive programs are available to the Applicant; or (10) the likelihood that the project identified in the Application would be located outside of New York State but for the availability of state or local incentives; or (11) the recommendation of the relevant regional economic development council or the commissioner's determination that the proposed project aligns with the regional strategic priorities of the respective region.

9) The regulation requires an applicant to submit evidence of achieving job and investment requirements stated in its application in order to become a participant in the Program. After such evidence is found sufficient, the Department will issue a certificate of tax credit to a participant. This certificate will specify the exact amount of the tax credit components a participant may claim and the taxable year in which the credit may be claimed. Per the new statute if, in any given year, a participant who has satisfied the eligibility criteria specified in the statute realizes job creation less than the estimated amount, the credit shall be reduced by the proportion of actual job creation to the estimated amount, provided the proportion is at least seventy-five percent of the jobs estimated.

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

11) The regulation next delineates the calculation of the tax credits as described in statute. The Excelsior Jobs Program Credit is the product of gross wages and 6.85 percent. The Excelsior Research and Development Tax Credit is fifty percent of the participant's federal research and development tax credit. The Excelsior Real Property Tax Credit is based on the value of the property after improvements have been made. A participant may claim both the Excelsior Investment Tax Credit and the investment tax credit for research and development property. In addition, the current tax benefit period for all credits is up to ten years.

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

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

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

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

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

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

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

**Text of proposed rule and any required statements and analyses may be obtained from:** Thomas P. Regan, NYS Department of Economic Development, 625 Broadway, 8th Floor, Albany, NY 12245, (518) 292-5123, email: [tregan@esd.ny.gov](mailto:tregan@esd.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**

##### **STATUTORY AUTHORITY:**

Section 356 of the Economic Development Law authorizes the Commissioner of Economic Development to promulgate regulations to implement the Excelsior Jobs Program.

##### **LEGISLATIVE OBJECTIVES:**

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

##### **NEEDS AND BENEFITS:**

The rule is required in order to administer the Excelsior Jobs Program. Section 365 of the Economic Development Law directs the Commissioner of Economic Development to promulgate regulations with respect to an application process and eligibility criteria.

The current regulations for the Excelsior Jobs Program were last published as an emergency rule making in the July 31, 2013 State Register. This rule making will allow for the continued administration of the Excelsior Jobs Program, which is one of the State's key economic development tools for ensuring that businesses in the new economy choose to expand or locate in New York State. It is imperative that the administration of this Program continues so that New York remains competitive with other states, regions, and even countries as businesses make their investment and location decisions. Helping existing New York businesses create new jobs and make significant capital investments with the financial incentives of the Excelsior Jobs Program is equally important and needs to happen now.

In addition to allowing for the continued administration of the Program, this rule making also incorporates certain changes to the rule made in the latest emergency rule making, published on July 31, 2013. Those changes modified certain key definitions in order to broaden participation in the Program and ensure accountability. The definition of "net new jobs" has been amended to clarify the fact that the "net new job" minimum eligibility requirement for participation in the Excelsior Tax Credit program means net new job creation above a base level of employment. The definition of "new media" has been amended to include post production film projects and the term "distribution center" now allows processing and repackaging of goods directly to consumers. Finally, the definition of "regionally significant project" has been revised to ensure that it mirrors the statutory definition.

The rule is now further amended by to address certain changes to Sections 353 and 354 of the Economic Development Law made by Chapter 68 of the Laws of 2013, which are effective August 23, 2013. In particular, the minimum job requirements for business entities to meet in each of the strategic industries have been reduced, as follows: a business entity operating predominantly in manufacturing must now create at least ten net new jobs; a business entity operating predominately in agriculture must now create at least five net new jobs; a business entity operating predomi-

nantly as a financial service data center or financial services customer back office operation must now create at least fifty net new jobs; a business entity operating predominantly in scientific research and development must now create at least five net new jobs; a business entity operating predominantly in software development must now create at least five net new jobs; a business entity creating or expanding back office operations must now create at least fifty net new jobs or a business operating predominantly as a distribution center in the state must now create at least seventy-five net new jobs; a business entity must be a Regionally Significant Project. Furthermore, a business entity operating predominantly in one of the industries referenced above but which does not meet the job requirements must have at least twenty-five full-time job equivalents, unless such business is operating predominantly in manufacturing then it must have at least ten full-time job equivalents and must demonstrate that its benefit-cost ratio is at least ten to one (10:1). Finally, in accordance with the recent statutory changes, if, in any given year, a participant who has satisfied the eligibility criteria specified in the statute realizes job creation less than the estimated amount, the credit shall be reduced by the proportion of actual job creation to the estimated amount, provided the proportion is at least seventy-five percent of the jobs estimated.

**COSTS:**

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

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

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

**LOCAL GOVERNMENT MANDATES:**

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

**PAPERWORK:**

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

**DUPLICATION:**

The rule does not duplicate any state or federal statutes or regulations.

**ALTERNATIVES:**

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

**FEDERAL STANDARDS:**

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

**COMPLIANCE SCHEDULE:**

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

**Regulatory Flexibility Analysis**

1. Effect of rule

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

2. Compliance requirements

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

3. Professional services

The information that businesses choosing to participate in the Excelsior Jobs Program would be information such businesses already must estab-

lish and maintain in order to operate, i.e. wage reporting, financial records, tax information, etc. No additional professional services would be needed by businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

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

5. Economic and technological feasibility

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

6. Minimizing adverse impact

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

7. Small business and local government participation

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

**Rural Area Flexibility Analysis**

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

**Job Impact Statement**

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

---



---

## New York State Gaming Commission

---



---

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

**Video Lottery Gaming Advertising**

**I.D. No.** SGC-35-13-00002-P

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

**Proposed Action:** Addition of section 5116.6(b)(3) to Title 9 NYCRR.

**Statutory authority:** Tax Law, sections 1604 and 1617-a; and Racing, Pari-Mutuel Wagering and Breeding Law, section 104

**Subject:** Video Lottery Gaming advertising.

**Purpose:** To conform with the Memorandum of Understanding between the Seneca Nation of Indians and the State of New York.

**Text of proposed rule:** Pursuant to the authority granted by Section 104 of the Racing, Pari-Mutuel Wagering and Breeding Law and Sections 1604 and 1617-a of the Tax Law, the New York State Gaming Commission hereby promulgates this amendment of Section 5116.6 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to read as follows:

§ 5116.6. Advertising.

(a) Advertising generally.

(1) The content or concept of all advertising and any advertisement shall be provided as prescribed by the commission.

(2) A video lottery gaming agent shall be responsible for all advertising and advertisements that are made by the agents or representatives of such video lottery gaming agent, regardless of whether the video lottery gaming agent participated directly in such advertising's development, preparation, placement or dissemination.

(3) Issuance of a video lottery gaming agent license pursuant to these regulations permits conducting video lottery gaming in a manner approved by the commission. Use of any name, logo or design owned by the commission or the video lottery gaming machine manufacturers without a valid license may constitute a violation of Federal and State copyright and trademark laws. Permitted use of the logo by a licensee must be in compliance with approved guidelines.

(b) Criteria governing advertising.

(1) Approved advertising criteria shall be published from time to time by the commission.

(2) The following practices shall be prohibited with respect to all advertisements:

(i) The use or statement of any information, representation, or description that contrasts or compares video lottery gaming agents or facilities with regard to total payout.

(ii) The failure to maintain any offer for the advertised period of availability or in a quantity sufficient to meet reasonably anticipated demand. Should anticipated demand be exceeded, items of equal or greater value may be substituted on notice to the commission.

(3) *No video lottery agent located within the geographic area defined by:*

(i) *to the east, State Route 14 from Sodus Point to the Pennsylvania border with New York;*

(ii) *to the north, the border between New York and Canada;*

(iii) *to the south, the Pennsylvania border with New York; and*

(iv) *to the west, the border between New York and Canada and the border between Pennsylvania and New York, is permitted to use the terms "slots," "slot machines," and "casino" or "casinos" for marketing or other purposes.*

**Text of proposed rule and any required statements and analyses may be obtained from:** Julie B. Silverstein Barker, Associate Attorney, New York Gaming Commission, Division of Lottery, One Broadway Center, Schenectady, NY 12301-7500, (518) 388-3408, email: nylrules@gaming.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: Pursuant to the authority conferred in New York State Tax Law Sections 1604(a) and 1617-a(c), Racing, Pari-Mutuel Wagering and Breeding Law Section 104(19), the following advertising restrictions shall apply to any video lottery gaming agent located within the area west of State Route 14, from Sodus Point on Lake Ontario to the north to the New York-Pennsylvania border to the south.

2. Legislative objectives: As part of a settlement of a longstanding dispute with the Seneca Nation of Indians, the State of New York agreed to, as soon as practicable, commence a notice of proposed rulemaking to prohibit the use of the terms "slots", "slot machines", and "casino" or "casinos" for marketing or other purposes by video lottery gaming device facilities or licensed agents of the State Lottery, operating within the Seneca Nation exclusivity zone. The zone is the geographic area defined by: (i) to the east, State Route 14 from Sodus Point to the Pennsylvania border with New York; (ii) to the north, the border between New York and Canada; (iii) to the south, the Pennsylvania border with New York; and (iv) to the west, the border between New York and Canada and the border between Pennsylvania and New York.

3. Needs and benefits: This amendment allows the State to fulfill its obligation in the Memorandum of Understanding with the Nation to prohibit specified advertising or marketing.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: Certain video lottery agents within a portion of Western New York may need to modify advertising and marketing materials to conform to the amended regulation.

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

c. Sources of cost evaluations: The foregoing cost evaluation is based on the New York State Lottery's experience in operating video Lottery games for almost 10 years.

5. Local government mandates: None.

6. Paperwork: There are no changes in paperwork requirements.

7. Duplication: None.

8. Alternatives: The State of New York committed to this rulemaking pursuant to the Memorandum of Understanding by and between the Seneca Nation of Indians and the State of New York, commonly referred to as the Exclusivity Settlement Agreement.

9. Federal standards: None.

10. Compliance schedule: None.

#### Regulatory Flexibility Analysis and Rural Area Flexibility Analysis

The proposal does not require a Regulatory Flexibility Analysis Statement or Rural Area Flexibility Analysis Statement. There will be no adverse impact on jobs, rural areas, small business or local governments.

#### Job Impact Statement

The proposed addition of paragraph (3) to subdivision (b) of 9 NYCRR § 5116.6 does not require a Job Impact Statement because there will be no adverse impact on jobs and employment opportunities in New York State.

The amendment is being made to conform to the Memorandum of Understanding between the Seneca Nation of Indians and the State of New York, which provides that the State will cause the Gaming Commission to promulgate regulations implementing the advertising restrictions contained in such Memorandum of Understanding.

## REVISED RULE MAKING NO HEARING(S) SCHEDULED

### Prohibited Use of Anabolic Steroids in Horse Racing and Testing of Plasma Samples

I.D. No. RWB-08-13-00003-RP

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

**Proposed Action:** Amendment of sections 4043.15, 4120.2(e)(9), (i) and 4120.12 of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 101(1), 301(1), (2)(a) and 902(1)

**Subject:** Prohibited use of anabolic steroids in horse racing and testing of plasma samples.

**Purpose:** To include plasma samples and establish plasma thresholds in anabolic steroid testing of racehorses.

**Text of revised rule:** Section 4043.15 of 9 NYCRR is amended to read as follows:

4043.15 Anabolic steroids

(a) [The use of one of four approved a]Anabolic steroids shall [be permitted] *not be administered except that the following substances may be administered during permitted time frames and at concentrations that on race day are less than these thresholds* [under the following conditions]:

(1) [Not to exceed the following permitted urine or plasma threshold concentrations:

(i) 16 B-hydroxystanozolol (metabolite of stanozolol [Winstrol]) - 1 ng/ml in urine;

(ii) Boldenone (Equipose)[ in male horses other than geldings,] *All horses may have less than 100 pg/ml ( including free boldenone and boldenone liberated from its conjugates) [15 ng/ml in urine] in plasma;*

(2) [(iii)] Nandrolone: [-]

(i) *Female horses and geldings may have less than 100 pg/ml in plasma; and*

(ii) *Intact male horses may have less than [1 ng/ml in urine] 500 pg/ml in plasma.*

(3) *Stanozolol (Winstrol): All horses may have less than 100 pg/ml in plasma.*

(4) [(iv)] Testosterone:

[(a) In geldings - 20 ng/ml in urine; and

(b) In fillies and mares - 55 ng/ml in urine.]

(i) *Female horses and geldings may have less than 100 pg/ml in plasma; and*

(ii) Intact male horses may have less than 2000 pg/ml in plasma.  
 (5) In addition, no anabolic steroid shall be administered by injection into a joint at any time.

[(2)] (b) Any other anabolic steroids are prohibited to be administered.

[(3)] The presence of more than one of the above four approved anabolic steroids above the approved thresholds is not permitted.

[(4)] (c) Post-race urine or plasma samples collected from intact males must be identified to the laboratory.

[(5)] (d) Any horse to which a[n] permissible anabolic steroid has been administered in order to assist in the recovery from an illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug[ in urine]. Once the concentration is below the designated plasma threshold the horse is eligible to be removed from the list.

[(b)] (e) A violation of this section shall be considered a positive test within the meaning of this Part.

Section 4120.12 of 9 NYCRR is amended to read as follows:

4120.12 Anabolic steroids

(a) [The use of one of four approved a]Anabolic steroids shall [be permitted] not be administered except that the following substances may be administered during permitted time frames and at concentrations that on race day are less than these thresholds [under the following conditions]:

(1) [Not to exceed the following permitted urine or plasma threshold concentrations:

(i) 16 B-hydroxystanozolol (metabolite of stanozolol [Winstrol]) - 1 ng/ml in urine;

(ii) Boldenone (Equipoise)[ in male horses other than geldings.]; All horses may have less than 100 pg/ml( including free boldenone and boldenone liberated from its conjugates) [15 ng/ml in urine] in plasma;

(2) [(iii)] Nandrolone: [-]

(i) Female horses and geldings may have less than 100 pg/ml in plasma; and

(ii) Intact male horses may have less than [1 ng/ml in urine] 500 pg/ml in plasma.

(3) Stanozolol (Winstrol): All horses may have less than 100 pg/ml in plasma.

(4) [(iv)] Testosterone:

[(a)] In geldings - 20 ng/ml in urine; and

[(b)] In fillies and mares - 55 ng/ml in urine.]

(i) Female horses and geldings may have less than 100 pg/ml in plasma; and

(ii) Intact male horses may have less than 2000 pg/ml in plasma.

(5) In addition, no anabolic steroid shall be administered by injection into a joint at any time.

[(2)] (b) Any other anabolic steroids are prohibited to be administered.

[(3)] The presence of more than one of the above four approved anabolic steroids above the approved thresholds is not permitted.

[(4)] (c) Post-race [urine or] plasma samples collected from intact males must be identified to the laboratory.

[(5)] (d) Any horse to which a[n] permissible anabolic steroid has been administered in order to assist in the recovery from an illness or injury may be placed on the veterinarian's list in order to monitor the concentration of the drug[ in urine]. Once the concentration is below the designated plasma threshold the horse is eligible to be removed from the list.

[(b)] (e) A violation of this section shall be considered a positive test within the meaning of this Part.

Paragraph 9 of Subdivision (e) of Section 4120.2 of 9 NYCRR is amended to read as follows:

(e) The following substances are permitted to be administered by any means until 48 hours before the scheduled post time of the race which the horse is to compete:

(9) hormones and non-anabolic steroids, [(e.g., [testosterone,] progesterone, estrogens, chorionic gonadotropin, glucocorticoids (e.g., Prednisolone, Depormedrol), [and anabolic steroids (e.g. Equipoise),] except in [conjunction with] joint [aspiration] injections as restricted in subdivision (i) of this section]; the use of anabolic steroids is governed by Rule 4120.12];

Subdivision (i) of Section 4120.2 of 9 NYCRR is amended to read as follows:

(i) In addition, a horse which has had a joint injected [aspirated (in conjunction] with a steroid [injection]) may not race for at least five days following such procedure, and whenever such procedure is performed, the trainer shall notify the stewards of such fact, in writing, before the horse is entered to race.

**Revised rule compared with proposed rule:** No changes have been made to the text of the proposed rule. The purpose of publishing this Notice of Revised Rule Making is to remedy an error in the original filing of the Notice of Proposed Rulemaking, which resulted in the publication of a different Regulatory Impact Statement, and to provide an additional comment period for this proposed rule to ensure proper public notification and opportunity for public comment.

**Text of revised proposed rule and any required statements and analyses may be obtained from** Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 388-3332, email: info@gaming.ny.gov

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

**Public comment will be received until:** 30 days after publication of this notice.

#### Revised Regulatory Impact Statement

1. Statutory authority and legislative objectives of such authority: The Board is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 101(1), 301(1), 301(2)(a), and 902(1). Under section 101, the Board has general jurisdiction over all horse racing activities and all pari-mutuel betting activities in the state, both on track and off-track, and the persons engaged therein, including the authority to regulate the use of drugs to manipulate race performance. Section 301, subdivision (1), authorizes the Board to prescribe rules and regulations for harness racing. Section 301, subdivision (2), paragraph (a) directs the Racing and Wagering Board to prescribe rules and regulations for effectually preventing the administration of drugs or improper acts for the purpose of affecting the speed of harness horses in races in which they are about to participate. Section 902(1) prescribes that a state college within New York with an approved equine science program shall conduct equine drug testing to assure public confidence in and to continue the high degree of integrity at pari-mutuel race meetings, and authorizes the Board to promulgate any rules and regulations necessary to implement such equine drug testing program and to impose substantial administrative penalties for racing a drugged horse.

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 bring the Board's anabolic steroid rule for thoroughbred and harness horses in line with current enforcement needs and realities. The amendment is necessary to substitute plasma thresholds for the urine thresholds of the previous rule. The rule prohibits the administration of anabolic steroids to any race horse with the exception of four substances. These four substances may be found in a horse as a long-lasting residue or without an administration of drugs because they are naturally occurring. As a result, the regulatory approach adopted in New York and throughout the country is to prohibit anabolic steroids in a race horse except for these four substances at levels that are consistent with accepted veterinary practice and no impact on the integrity of racing. The previous rule was adopted rapidly in response to public outcry generated by various incidents during 2008, including revelations that Triple Crown contender "Big Brown" was routinely administered an anabolic steroid. The previous rule applied the urine thresholds for these four substances based on available research at the time. Acceptable plasma thresholds have now been identified.

The new rule substitutes the plasma standards that have been developed by the Racing, Medication, and Testing Consortium ("RMTC"), a prominent research organization in thoroughbred racing, and adopted by other mid-Atlantic states since the previous rule was promulgated. The plasma thresholds more accurately measure the ongoing effect of administrations of these drugs and the treatment history of a horse for these substances, making them preferable in this case to urine thresholds. The new rule will allow the Board to rely on plasma tests. This will make the anabolic steroid rule, when plasma testing is available, both more effective, which benefits the majority of horsemen and bettors who participate honestly in pari-mutuel racing and wagering, and more accurate, which benefits any person who might otherwise be suspected of racing a horse that was improperly administered an anabolic steroid. The urine thresholds are not retained.

The amendment reiterates that a lawful administration of an anabolic steroid must occur during permitted time frames before the scheduled post time of a race horse.

The proposal also includes amendments to 9 NYCRR 4120.2(9)(e) and 4120.2(i) to more accurately define an injection into a horse's joint as a "joint injection," rather than using the somewhat confusing synonym "joint aspiration." The existing rule has created confusion as to whether fluid is aspirated (removed) during a joint injection. Even though joint injection is assumed to routinely occur with joint aspiration, the amendment is needed to specifically state that the rule addresses each joint injection.

The proposal also removes anabolic steroids from the provisions of Section 4120.2(e)(9) in the harness rules. Subdivision (e) of Section 4120.2 no longer governs the administration of anabolic steroids.

#### 4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: These amendments will not add any new mandated costs to the existing rules.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The plasma thresholds will be applied to plasma samples that are already routinely collected by Board inspectors. There will be no costs to local government because the New York State Racing and Wagering Board is the only governmental entity authorized to regulate pari-mutuel harness racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Board relied on the studies and/or advice provided by its Director of the New York State Racing and Wagering Board's Drug Testing and Research Program, Dr. George A. Maylin.

(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 Board will utilize the existing documents for administrative adjudication to determine whether the suspension of a pre-race detention order is appropriate.

7. Duplication: None.

8. Alternatives: The Board considered and rejected the alternative of not adding plasma thresholds to its previous rule. Plasma thresholds are a better measure of possible administrations of anabolic steroids to a race horse than urine thresholds in almost all circumstances. The Board would have adopted plasma thresholds initially, but the science was not sufficiently developed at the time. The amendment adds the long-anticipated and generally more desirable plasma thresholds to the previous rule.

9. Federal standards: None.

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

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

No revision is necessary because no changes were made to last published text in the February 20, 2103 State Register.

**Assessment of Public Comment**

The agency received no public comment.

Amended to allow operators of approved ADHC programs to elect the hybrid option.

Sections 425.4, 425.5, 425.6, 425.7, 425.8, 425.10, 425.12, 425.14, and 425.16

As part of their responsibility to manage and coordinate the health care needs of their enrollees, MLTC plans and CCMs provide certain services that ADHC programs are also required to provide for their registrants. Amendments are made to these regulatory sections to avoid duplication of services with respect to ADHC registrants who are referred to the ADHC program by an MLTC plan or CCM. In addition, section 425.6 is amended to provide for increasing the approved capacity of an ADHC program that elects the hybrid model.

Section 425.23

A new section 425.23 is added, with respect to payments to ADHC programs, to allow a MLTC plan or CCM to order less than the full range of adult day health care services for a particular enrollee, based on an enrollee's individual medical needs as determined in the comprehensive assessment performed by the MLTC plan or CCM, and to enter into reimbursement arrangements with the ADHC program operator that take into account a registrant's receipt of less than the full range of adult day health care services.

**Text of proposed 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

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

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

**This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the Register.**

**Regulatory Impact Statement**

Statutory Authority:

Section 2803(2)(a)(v) of the Public Health Law authorizes the Public Health and Health Planning Council to adopt and amend rules and regulations, subject to the approval of the Commissioner, that define standards and procedures relating to medical facilities, including nursing homes. Section 201(1)(v) of the Public Health Law and section 363-a of the Social Services Law provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objective:

Chapter 59 of the Laws of 2011 enacted a number of provisions of the Medicaid Redesign Team (MRT). One of these provisions calls for the mandatory enrollment of additional categories of Medicaid recipients into managed long term care (MLTC) plans or other care coordination models (CCMs). The proposed regulations would amend a number of provisions in 10 NYCRR Part 425, governing the operation and payment of adult day health care (ADHC) programs in residential health care facilities, to remove regulatory obstacles to those programs transitioning from being primarily fee-for-service Medicaid providers to being providers that can contract and work effectively with MLTC plans and CCMs.

Needs and Benefits:

The proposed amendments provide that the MLTC plan or CCM that refers an enrollee to an ADHC program will be responsible for meeting certain Part 425 requirements that are currently the responsibility of the ADHC program operator, consistent with the MLTC plan's or CCM's responsibility to manage and coordinate the enrollee's health care needs. This will avoid having the ADHC program operator duplicate services that are required to be provided by MLTC plans and CCMs to their enrollees.

The proposed amendments clarify that the full range of ADHC services are available to MLTC plan and CCM enrollees with a medical need for such services. This ensures that Medicaid-covered ADHC services provided through an MLTC plan or CCM remain equal in amount, duration, and scope to ADHC services available to recipients of fee-for-service Medicaid.

However, the proposed regulations also allow an MLTC plan or CCM, based on an enrollee's individual medical needs, as determined in the comprehensive assessment performed by the MLTC plan or CCM, to order less than the full range of adult day health care services, and to enter into reimbursement arrangements with the ADHC program operator that take into account a program registrant's receipt of less than the full range of adult day health care services. The proposed rule allows MLTC plans and CCMs to order, and ADHC programs to provide, only the needed individualized services identified in the registrant's comprehensive assessment and care plan, at a negotiated price that both the MLTC plan/CCM and the ADHC program can afford.

## Department of Health

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

#### Adult Day Health Care Programs and Managed Long Term Care

I.D. No. HLT-35-13-00003-P

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

**Proposed Action:** Amendment of Part 425 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, sections 201(1)(v) and 2803(2); and Social Services Law, section 363-a(2)

**Subject:** Adult Day Health Care Programs and Managed Long Term Care.

**Purpose:** To create a hybrid model of adult day health care.

**Substance of proposed rule (Full text is posted at the following State website: [www.health.ny.gov](http://www.health.ny.gov)):** The proposed amendments make a number of changes to 10 NYCRR Part 425, governing the operation and payment of adult day health care (ADHC) programs in residential health care facilities. The purpose of the amendments is to enable such programs to contract and work effectively with managed long term care (MLTC) plans and coordinated care models (CCMs) as more Medicaid recipients are required to enroll in MLTC plans and CCMs. The proposed amendments also allow residential health care facilities to offer a hybrid program, in which individuals requiring ADHC services and individuals requiring only social adult day care services can both receive services in the adult day health care program space.

Section 425.1

Amendments are made to the definitions of "Registrant", "Operating hours for an adult day health care program", and "Visit", and new definitions of "Care coordination model", "Comprehensive assessment", "Care plan", "Hybrid option", and "Social adult day level individual" are added.

Section 425.3

Finally, the proposed amendments allow residential health care facilities to offer a hybrid model, in which individuals requiring ADHC services and individuals requiring only social adult day care services can both receive services in the adult day health care program space. Social adult day care services are appropriate for individuals who do not need skilled nursing and medical services, but who are functionally impaired and will benefit from the receipt of services such as socialization, supervision and monitoring, personal care, and nutrition. This will have the effect of increasing the capacity of social adult day care programs, which is currently insufficient to meet the anticipated demands of MLTC plans in certain parts of the state.

Costs to the Department, the State, and Local Government:

The proposed rule will not increase costs to the State or local governments.

Local Government Mandates:

This proposed rule will not impose any program, service, duty, additional cost or responsibility on any county, city, town, village school district, fire district or other special district.

Paperwork:

This proposed rule will not impose any additional paperwork for ADHC programs.

Duplication:

There are no duplicative or conflicting rules identified.

Alternative:

No alternatives were proposed to the Department or considered.

Federal Standards:

The proposed regulations do not exceed any minimum federal standards.

Compliance Schedule:

ADHC programs should be able to comply with the proposed regulations when they become effective.

#### **Regulatory Flexibility Analysis**

Effect of Rule:

The proposed rule can potentially affect 165 adult day health care (ADHC) programs across the state. It will not affect any local government entities. The proposed rule allows an ADHC program approved to operate by the State of New York to elect the hybrid option, thus permitting the program to admit and serve social adult day level and ADHC level individuals during the same period of time, in the same physical space. It also allows these programs flexibility in their operations and permits them to more effectively contract with managed long term care (MLTC) plans. Since selecting this hybrid option is voluntary on the part of any ADHC program, it is impossible to know how many of the 165 programs will be affected. They may exercise this option as MLTC is expanded across the state and their decision to do so will be based on individual program experience, the location of the program and other community-based services available in their geographic area.

Compliance Requirements:

In order to exercise the hybrid option, the ADHC program will have to notify the Department in writing, thirty days in advance of implementation that they plan to exercise this option. ADHC programs are currently required by regulation to meet certain reporting and recordkeeping requirements, and these activities will not be increased for a program that elects the hybrid option.

Professional Services:

ADHC programs currently employ, either directly or through a contract, nurses; social workers; physical, occupational and speech therapists; certified nursing assistants; activities and dietary staff. These same types of individuals will continue to be employed since any ADHC program must have a full range of services available based on the needs of the population they serve. However, programs will be able to adjust their staffing based on the mix of social level and ADHC level registrants they serve on any given day.

Compliance Costs:

There are no direct or increased compliance costs as a result of this proposed rule.

Economic and Technological Feasibility:

This proposed rule will not change how ADHC providers serve or bill for registrants for whom they receive a fee-for-service Medicaid payment. Therefore, it will not have an impact on the program's technological needs for these registrants. The number of individuals for whom a fee-for-service payment is received is likely to decrease as individuals are enrolled in MLTC plans, and thus the number of direct billings attributable to ADHC to the State will also decrease. The decrease in the number of fee-for-service registrants will have a negative economic impact on ADHC providers. This proposal will permit ADHC programs to address this by allowing them to offer social level adult day services and more effectively contract with MLTC plans. ADHC providers may have to improve their technology in order to bill and effectively communicate with the MLTC plans that they contract with, but these changes are not the result of this proposal. Any need to increase their technology, in this instance, is the

result of the changes in the long term care market in general and the expansion of MLTC plans.

Minimizing Adverse Impact:

There will be no adverse impact on local government. The proposed rule is designed to allow ADHC program operations to be more flexible. Further, it will allow ADHC programs and the registrants they serve to more effectively adjust to the statutory mandate requiring the expansion of MLTC.

Small Business and Local Government Participation:

The proposal reflects the Department's collaboration with the Adult Day Health Care Council, which is a trade association representing more than 90 percent of the ADHC programs operating in New York State. Members of the Council helped develop the concept of a hybrid option and had the opportunity to contribute to and comment on the concepts presented in this proposed rule.

#### **Rural Area Flexibility Analysis**

Types and Estimated Numbers of Rural Areas:

All rural areas of the state in which adult day health care (ADHC) programs are located will be equally affected by this proposal. There are approximately 41 programs operating in rural counties.

Reporting, Recordkeeping and Other Compliance Requirements; Professional Services:

For ADHC programs, no new reporting, recordkeeping or other compliance requirements are being imposed as a result of this rule. The only new requirement, should an ADHC program opt to utilize the hybrid option, will be to notify the Department of that decision in writing.

Costs:

No direct costs will be imposed as a result of this rule.

Minimizing Adverse Impact:

There will be no adverse impact on rural areas. Implementation of this rule will benefit managed long term care plans expanding to rural areas that will need to include medical and social model programs in the benefit package. The rule will allow programs to increase capacity with social level registrants and serve a larger population. Implementation of the rule may prevent program closures and displacement of registrants to nursing facilities. The rule will allow for continuity of care as registrants will receive different levels of treatment in one setting.

Rural Area Participation:

The Department participated in multiple meetings with the Adult Day Health Care Council which represents more than 90 percent of the ADHC programs in the state, including the 41 programs operating in rural areas.

#### **Job Impact Statement**

Nature of Impact:

The statutory mandate requiring the expansion of Managed Long Term Care (MLTC) will likely have a negative impact on adult day health care (ADHC) programs. As MLTC expands, enrollment in ADHC programs as currently structured may significantly decrease. This could result in the downsizing of programs and staff, closures and displacement of the registrants. The proposed rule was designed to mitigate such an impact by providing ADHC programs flexibility in their operations and permitting them to more effectively contract with MLTC plans. The proposed rule, therefore, could prevent job loss that might otherwise occur if it is not adopted.

Categories and Numbers Affected:

The staff affected by the proposal include: nurses; certified nursing assistants; physical, occupational and speech therapists; social workers; dietary/food service workers; housekeeping and activity professionals.

Regions of Adverse Impact:

Adoption of the proposed rule will not result in an adverse impact on jobs or employment. The proposed rule permits ADHC programs to select a hybrid option through which they deliver their services. Selection of this option is voluntary, and will be based on individual program experience and choice. Therefore, it is impossible to know how many programs or which regions of the state would be affected.

Minimizing Adverse Impact:

One of the reasons the Department wishes to adopt this proposed rule is to minimize any adverse impact on ADHC registrants and programs which may result from the mandatory expansion of MLTC plans.

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

### **Statewide Planning and Research Cooperative System (SPARCS)**

**I.D. No. HLT-35-13-00004-P**

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

**Proposed Action:** Amendment of section 400.18 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 2816

**Subject:** Statewide Planning and Research Cooperative System (SPARCS).

**Purpose:** Delete obsolete language, realign to current practice, add new provisions, including mandated outpatient clinic data collection.

**Text of proposed rule:** A new title of Section 400.18 is added and a new Section 400.18 is added to read as follows:

10 NYCRR § 400.18 *Statewide Planning and Research Cooperative System (SPARCS).*

(a) *Definitions. For the purposes of this section, these terms shall have the following meanings:*

(1) *Health care facilities shall mean facilities licensed under Article 28 of the Public Health Law.*

(2) *Identifying data elements shall mean those SPARCS and PRI data elements that, if disclosed without any restrictions on use or re-disclosure would constitute an unwarranted invasion of personal privacy. A list of identifying data elements shall be specified by the Commissioner and will be made available publicly.*

(3) *Inpatient hospitalization data shall mean SPARCS data submitted by hospitals for patients receiving inpatient services at a general hospital that is licensed under Article 28 of the Public Health Law and that provides inpatient medical services.*

(4) *Outpatient data shall mean emergency department data, ambulatory surgery data, and outpatient services data.*

(i) *Emergency department data shall mean SPARCS data submitted by a facility licensed to provide emergency department services under Article 28 of the Public Health Law.*

(ii) *Ambulatory surgery data shall mean SPARCS data submitted by a facility licensed to provide ambulatory surgery services under Article 28 of the Public Health Law.*

(iii) *Outpatient services data shall mean all data submitted by licensed Article 28 facilities excluding inpatient hospitalization data, emergency department data, and ambulatory surgery data.*

(5) *Patient Review Instrument (PRI) data shall mean the data submitted on PRI forms by residential health care facilities, pursuant to section 86-2.30 of this Title.*

(6) *SPARCS Administrator shall mean a person in the SPARCS program designated by the Commissioner to act as administrator for all SPARCS activities.*

(7) *SPARCS data shall mean the data collected by the Commissioner under section 2816 of the Public Health Law and this section, including inpatient hospitalization data and outpatient data.*

(8) *SPARCS program shall mean the program in the New York State Department of Health (NYSDOH) that collects and maintains SPARCS data and discloses SPARCS and Patient Review Instrument (PRI) data.*

(b) *Reporting SPARCS data.*

(1) *Health care facilities shall report data as follows:*

(i) *Health care facilities shall submit, or cause to have submitted, SPARCS data in an electronic, computer-readable format through NYSDOH's secure electronic network according to the requirements of section 400.10 of this Part and the specifications provided by the Commissioner.*

(ii) *All SPARCS data must be supported by documentation in the patient's medical and billing records.*

(iii) *Health care facilities must submit on a monthly basis to the SPARCS program, or cause to have submitted on a monthly basis to the SPARCS program, data for all inpatient discharges and outpatient visits. Health care facilities must submit, or cause to have submitted, at least 95 percent of data for all inpatient discharges and outpatient visits within sixty (60) days from the end of the month of a patient's discharge or visit. Health care facilities must submit, or cause to have submitted, 100 percent of data for all inpatient discharges and outpatient visits within one hundred eighty (180) days from the end of the month of a patient's discharge or visit.*

(iv) *The SPARCS program may conduct an audit evaluating the quality of submitted SPARCS data and issue an audit report to a health care facility listing any inadequacies or inconsistencies in the data. Any health care facility so audited must submit corrected data to the SPARCS program within 90 days.*

(v) *An annual notarized statement, attesting to the accuracy of the submitted SPARCS data, shall be required from the health care facility's Chief Executive Officer (CEO) or, if designated by the CEO, the Chief Information Officer or the Chief Financial Officer.*

(2) *Content of the SPARCS data.*

(i) *Health care facilities shall submit, or cause to have submitted, such uniform bill data elements as are required by the Commissioner. The data elements required by the Commissioner shall be based on those approved by the National Uniform Billing Committee (NUBC) or required under national electronic data interchange (EDI) standards for health care transactions.*

(ii) *Health care facilities shall submit, or cause to have submitted, such additional data elements as are required by the Commissioner. Such additional data elements shall be from medical records or demographic information maintained by the health care facilities.*

(iii) *The list of specific SPARCS data elements and their definitions shall be maintained by the Commissioner, will be made available publicly, and may be modified by the Commissioner.*

(c) *Maintenance of SPARCS data.*

*The Commissioner shall be responsible for protecting the privacy and security of the health care information reported to the SPARCS program.*

(d) *Requests for SPARCS and PRI data.*

(1) *SPARCS and PRI data may be used for medical or scientific research or statistical or epidemiological purposes approved by the Commissioner.*

(2) *The Commissioner may determine that additional purposes are proper uses of SPARCS and PRI data.*

(3) *In determining the purpose of a request for SPARCS and PRI data, the SPARCS Program shall not be limited to information contained in the data request form and may request supplemental information from the applicant.*

(4) *The Commissioner shall charge a reasonable fee to all persons and organizations receiving SPARCS and PRI data based upon costs incurred and recurring for data processing, platform/data center and software. The Commissioner may discount the base fee or waive the fee upon request to the SPARCS program. The fee may be waived in the following circumstances:*

(i) *Use by a health care facility of the data it submitted to the SPARCS program.*

(ii) *Use by a health care facility that is licensed under Article 28 of the Public Health Law for the purpose of rate determinations or rate appeals and for health care-related research.*

(iii) *Use by a Federal, New York State, county or local agency for health care-related purposes.*

(5) *The SPARCS program shall follow applicable federal and state laws when determining whether SPARCS and PRI data contain identifying data elements may be shared and whether a disclosure of SPARCS and PRI data constitutes an unwarranted invasion of personal privacy.*

(6) *All entities seeking SPARCS and PRI data must submit a request to the SPARCS program using standard data request forms specified by the SPARCS program. Data users shall take all necessary precautions to prevent unwarranted invasions of personal privacy resulting from any data analysis or release. Data users may not release any information that could be used, alone or in combination with other reasonably available information, to identify an individual who is a subject of the information. Data users bear full responsibility for breaches or unauthorized disclosures of personal information resulting from use of SPARCS or PRI data. Applications for SPARCS or PRI data must provide an explicit plan for preventing breaches or unauthorized disclosures of personal information of any individual who is a subject of the information.*

(7) *Each data request form must include signed, notarized, and complete data use agreements in a form prescribed by the SPARCS program. Data use agreements are required of: a representative of the requesting organization; a representative of each other organization associated with the project; and all individuals who will have access to any data including identifying data elements.*

(8) *The SPARCS program may publish and make publicly available the name of the project director, the organization, and the title of approved projects except for those projects that use SPARCS or PRI data to perform public health or health oversight activities specifically authorized by law or regulation.*

(9) *The SPARCS Administrator shall review and make recommendations to the Commissioner on requests for access to SPARCS data containing identifying data elements. Requests will be granted only upon formal, written approval for access by the Commissioner of Health. Requests for identifying data elements shall be approved only if:*

(i) *the purpose of the request is consistent with the purposes for which SPARCS and PRI data may be used;*

(ii) *the applicant is qualified to undertake the project; and*

(iii) *The applicant requires such identifying data elements for the intended project and is able to ensure that patient privacy will be protected.*

(10) *The SPARCS Administrator may recommend approval of a request in which future SPARCS data is to be supplied on a periodic basis under the following conditions:*

(i) *SPARCS data may be requested for a predetermined time not to exceed three years beyond the current year provided that the uses of the data remain as indicated in the data request form submitted to the SPARCS program.*

(ii) *During the period of retention of SPARCS or PRI data, no additional individuals may access SPARCS or PRI data without a signed,*

notarized, and complete data use agreement on file with the SPARCS program.

(11) The Commissioner may rescind for cause, at any time, approval of a data request.

(e) Penalties.

(1) Any person or entity that violates the provisions of this section or any data use agreement may be liable pursuant to the provisions of the Public Health Law, including, but not limited to, sections 12 and 12-d of the Public Health Law.

(2) Any person or entity that violates the provisions of this section or any data use agreement may be denied access to SPARCS or PRI data.

Appendix C-2 is repealed.

Appendix C-3 is repealed.

Appendix C-4 is repealed.

Appendix C-5 is repealed.

Section 755.10 is repealed.

Section 405.27 is repealed.

Section 400.14(b) is amended to read as follows:

(b) All requests for [deniable individual or aggregate] PRI data shall be processed pursuant to section 400.18 [(e)] of this [Title] Part.

Section 407.5(g) is amended to read as follows:

(g) Information policy and other reporting requirements.

PCHs/CAHs shall comply with the provision of section [405.27] 86-1.2, 86-1.3 and 400.18 of this Title regarding information policy and other reporting requirements.

**Text of proposed 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

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

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

#### Summary of Regulatory Impact Statement

There are five objectives for the revision of 10 NYCRR Section 400.18: 1) deleting obsolete language; 2) realigning the regulation to reflect current practices; 3) adding new provisions, including provisions for the mandated outpatient services data collection; 4) adding provisions to assure data completeness and quality; and 5) improving access to data. The first two objectives are the main reasons for the extensive and substantial changes to the regulations. The third objective is necessitated by the 2006 revision to Section 2816 requiring a new type of data to be collected.

The fourth and fifth objectives support Statewide initiatives to promote access to data (consistent with all applicable privacy laws and regulations) including the Governor's Open Data Portal, an initiative that both supports and promotes greater data transparency and health department data promotion efforts such as METRIX, a new health open data site -- health.data.ny.gov.

Statutory Authority:

The Statewide Planning and Research Cooperative System (SPARCS) has been in existence for over thirty years as a nationally recognized health information dataset. From its start in 1979, the authority to collect the data from health facilities was established in Section 405.30 of Title 10 (Health) of the Official Compilation of Codes, Rules, and Regulations of the State of New York. This Section, repealed in 1988 and replaced with the current Section 400.18, specifies the procedures for the collection and disclosure of SPARCS and Patient Review Instrument (PRI) data.

In 1985, Section 97-x of the State Finance Law was established to fund SPARCS with fees collected from hospitals. In 2001, SPARCS was established in Section 2816 of the Public Health Law (PHL). At the same time, the stipulation was added that emergency department data was to be collected from general hospitals. Section 97-x of the State Finance Law was also amended to refer to PHL Section 2816.

On April 12, 2006, Section 2816(2)(a)(iv) was added to authorize the collection of outpatient services data from all licensed Article 28 general hospitals and diagnostic and treatment centers (D&TCs) operating in New York State. With the 2006 revision to Section 2816, the Commissioner of the New York State Department of Health (NYSDOH) is authorized to promulgate regulations to implement the collection of outpatient services data.

Legislative Objectives:

The proposed regulations are required to assure compliance with laws that mandate collection of outpatient services visit data in order to support the accuracy and completeness of Medicaid claims data. Collection of this information is necessary to comply with federal requirements for disproportionate share hospital (DSH) payments (\$3.2 billion program, see, 42 USC § 1396r-4) and provide benchmarking capabilities for the State's ambulatory care reimbursement system (enhanced ambulatory patient groups or EAPGs) and benchmarking of outpatient pricing methodologies. This new data will assist in updating procedure weights, assist in creating

procedure base rates, and potentially recalculating provider-specific payments for blend in the outpatient setting.

In addition these regulations support timeliness and completeness and assure that the data collected support open government initiatives and transparency while continuing to assure confidentiality and security. The regulations reflect a move to assign responsibility for review and approval of data requests, including assuring that appropriate privacy standards are met, to the Department and the Commissioner rather than an external body. This change is recommended to promote, streamline and facilitate timely access to requested data in a manner that ensures data privacy and confidentiality consistent with all applicable State and Federal laws and regulations (laws such as HIPAA that were not in place at the time SPARCS was first initiated).

Needs and Benefits:

There are five objectives for revising the regulation:

1) Deleting obsolete language (out of date lists of data elements collected by SPARCS);

2) Realigning regulation to reflect current practices (In 1996, HIPAA established national standards for health data reporting. SPARCS' current input data format, ANSI X12-837, is a HIPAA-compliant data set, which is a subset of data elements as found in the national reporting standard;

3) Adding new provisions, including provisions for the mandated outpatient services data collection;

4) Adding new language to promote data completeness and accuracy. The revised Section 400.18 contains two provisions to increase the quality and timeliness of the SPARCS data. The first provides that a health care facility's Chief Executive Officer or his/her designee, the Chief Information Officer, or the Chief Financial Officer, submit an annual, notarized statement attesting to the accuracy of the SPARCS data submitted. The second provision allows audits of SPARCS data to be conducted to determine the accuracy of the data submitted. If an audit is conducted, an audit report will be generated outlining any deficiencies. Health care facilities will have 90 days to replace any data found to be incorrect; and

5) Refining language to facilitate sharing of data consistent with HIPAA privacy protections in a manner that promotes transparency and use of Department data to further the health and well-being of all New Yorkers.

Costs:

For the past thirty years, for SPARCS purposes, regulated entities have been Article 28 hospitals and D&TCs licensed to perform ambulatory surgery. The success of SPARCS has been due to the close alignment of the claim format that facilities must employ in their financial environment and SPARCS reporting requirements.

The Legislature mandated, in PHL 2816(2)(a)(iv) the collection of outpatient services data, as an existing "type of data" that facilities have already been reporting through their financial/billing systems. While these regulations permit collection of all outpatient data consistent with PHL, SPARCS does not now request any data beyond outpatient services data from those facilities that are physically on the hospital grounds. It is expected that costs associated with these regulations will be minimal as this claim data is already sent to payers.

Local Government Mandates:

Article 28 facilities operated by local governments will be required to submit SPARCS data in the same manner as other Article 28 facilities.

Paperwork:

Paperwork associated with the new data-reporting requirement is expected to be minimal.

Duplication:

The regulation will not duplicate, overlap, or conflict with federal or state statutes or regulations. All other state systems collecting health care facility data are payer or disease-specific. SPARCS data differ in that the data are collected from all payers and for all diseases and procedures.

Alternatives:

Refinements made to assure consistency with HIPAA are required. The collection of outpatient services data is mandated by law. There are no timely alternatives for the collection of these data.

Federal Standards:

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

Compliance Schedule:

Article 28, Section 2816(2) (a) (iv) became effective in April 2006. SPARCS required an upgrade from the mainframe-based system to store and process the additional outpatient data expected as a result of this legislative change. SPARCS began to collect outpatient services data for the discharge/visit year 2011.

There are other sections of Title 10 repealed or amended to conform to the revision of Section 400.18:

Section 755.10 will be repealed. The content of this section has been incorporated into the proposed Section 400.18.

Section 405.27 will be repealed. The content of this section has been incorporated into the proposed Section 400.18 and Section 86-1.2, and Section 86-1.3.

Section 400.14(b) will be amended to conform to the revised Section 400.18.

Section 407.5(g) will be amended to add citations to Section 86-1.2 and Section 86-1.3 in place of the repealed Section 405.27.

**Regulatory Flexibility Analysis**

**Effect of Rule:**

The State Administrative Procedure Act (SAPA 202-b) defines a small business as “being resident in this State, having fewer than 100 employees, independently owned and operated.” The primary purpose of the revision of section 400.18 is to delete obsolete language; to realign regulation to reflect current practices; and to add new provisions, including rules and regulations for the mandated, outpatient services data collection. Of these modifications, the collection of the outpatient services data, mandated in the April 2006 modifications to Public Health Law Article 28 Section 2816(2) (a) (iv), may impact small businesses.

The collection of outpatient services data will impact two categories of small businesses in New York State:

- 1) Small Health Care Facilities, which will be required to submit data; and
- 2) Software vendor companies, which will need to make modifications to existing programs.

There are a number of small facilities in NYS. They will be defined in terms of: the small number of visits per year and their level of information technology (IT) support within the facility. Some smaller facilities may be impacted depending upon their current electronic billing and thus reporting capabilities. Some may need to contract with an external vendor to assist with data submission.

The second small business category affected is small software vendors (computer companies). These companies will be used as consultants/contractors to modify existing billing systems to produce the SPARCS file. This group will benefit from increased revenue generated by the request for improved systems.

**Compliance Requirements:**

As the SPARCS file is generated from the existing health care facilities’ records, all facilities with electronic billing programs should incur minimal or no increased reporting costs.

**Professional Services:**

The outpatient services data collection is expected to increase opportunity for professional computer services due to the modifications of the billing programs required to create the SPARCS file. Once the outpatient services data set has been collected, there will be an increase in employment opportunities for health care researchers, policy makers, and other professionals involved in the use of the health care data.

**Compliance Costs:**

As the SPARCS file is generated from the existing health care facilities’ records, all facilities with electronic billing programs should incur minimal or no increased costs associated with reporting.

Following initial costs for system enhancements annual costs to maintain compliance with the proposed rule are expected to be minimal. NYS SDOH staff is available to provide assistance to health care facilities with reporting as needed. In addition, the Health Department’s Health Commerce System (HCS) provides for the secure transmission of the SPARCS file to the Department of Health at no cost to the facility.

**Economic and Technological Feasibility:**

It should be technologically feasible for small businesses to comply with the proposed regulations. Most facilities should not need to hire additional professional or administrative staff to comply with these regulations, as the computer program to create the SPARCS file should be very similar to other electronic billing systems. All facilities must use the Health Commerce System to submit the data in a secure environment, and facilities must maintain internet connectivity.

**Minimizing Adverse Impact:**

A significant impact of this regulatory change is the collection of the outpatient services data for health care facilities that have never submitted data to the Department of Health.

Adverse impact can be minimized through the availability of training. There was a focused effort on training prior to the commencement of data collection. SPARCS provided training for SPARCS coordinators to assist them in reporting the data.

SPARCS will defer collection of data from dental clinics to sometime in the future because dental clinics use a different electronic claim form than the Institutional format of the ANSI X12-837 that SPARCS currently requires. Furthermore, smaller facilities that are self-funded or grant-funded will be excluded from the requirement to submit SPARCS data.

**Small Business and Local Government Participation:**

SPARCS is dedicated to maintaining a cooperative system. To do this, SPARCS holds regional meetings to elicit comments directly from health care facilities, and SPARCS attends meetings with health care associations New York Health Information Management Association (NYHIMA), Community Health Care Association of New York State (CHCANYS),

and Healthcare Association of New York State (HANYS)). In addition, SPARCS is dedicated to continuing training and providing educational material for the purpose of submitting and correcting SPARCS data.

Data submission is a requirement for Article 28 health care facilities, but there are benefits also for the facilities, themselves, and for the local governments with which they are associated. A small query database containing aggregated data is available free of charge to all facilities and local government personnel that have an active account on the HCS. This access provides basic health care information for all HCS users. In addition, facilities can always download their own patient level records at any time thru the secure feature on the HCS.

**Rural Area Flexibility Analysis**

**Types and Estimated Numbers of Rural Areas:**

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2010 (<http://quickfacts.census.gov>). Approximately 17% of small health care facilities are located in rural areas.

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

The following counties have a population of 200,000 or greater and towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2010.

Albany County	Monroe County	Orange County
Broome County	Niagara County	Saratoga County
Dutchess County	Oneida County	Suffolk County
Erie County	Onondaga County	

**Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:**

The majority of the revisions of Section 400.18, i.e., address deletion of obsolete language and update the regulation to reflect current practices, and will not adversely impact health care facilities in rural areas. The addition of the provision to collect a new data type, outpatient services data, was addressed through training initially provided during 2011 and that will be provided in the future via a web based environment.

In addition, SPARCS will provide a specialized time schedule for any facility that is upgrading their system or undergoing a system transition to electronic medical records.

The greatest impact in a rural area would occur if a small facility continued to maintain paper medical and billing records. The 2009 survey found most small health care facilities have some electronic form of recordkeeping due to the requirements of most insurance companies that bills be submitted electronically which should alleviate any additional costs and support effective submission of the required outpatient data.

**Costs:**

The cost of compliance with the new outpatient services data collection requirement for rural-area facilities should be minimal. As the SPARCS file is generated from the existing health care facilities’ records, all facilities with electronic billing programs should incur minimal or no increased reporting costs.

Facilities currently submitting data to SPARCS will have little increased capital costs except for minor changes to their existing billing systems.

For new submitters that need to improve their electronic billing capabilities, they may incur custom computer additions to their existing billing programs from a private vendor ranging from \$10,000 to \$15,000.

**Minimizing Adverse Impact:**

There was a focused effort on training prior to the commencement of data collection. SPARCS will continue to provide training for SPARCS coordinators to assist them in reporting the data. In addition, training will be provided to the vendors who will be involved in data submission.

Hospitals have been submitting data to SPARCS for over thirty years. Most hospital outpatient departments have computer systems that are already integrated into the main hospital system or are in the process of being integrated. Thus, the computer program logic has been created, and the additional flow of information should be of minimal impact.

**Rural Area Participation:**

Regional meetings were held to inform and obtain comments from health care facilities located in all areas of the state.

Although some may view this reporting requirement as an additional burden, there are also benefits for the facilities. A facility's own data will be available free of charge for that facility. In addition, SPARCS allows access to health care information that all can use.

**Job Impact Statement**

**Nature of Impact:**

Very little impact on jobs is expected. To the extent that there is an impact, the addition of the outpatient data submission requirement will positively impact jobs and employment opportunities. For those reporting health care facilities requiring a custom computer program to create the SPARCS file, either their existing billing program will need modification by internal IT staff, or an external vendor will be required to create a custom program. For those health care facilities that will switch to electronic records, there will be increased business in sales and customization of the billing programs.

**Categories and Numbers Affected:**

The jobs created will be computer programming positions, sales positions, and technical training positions. SPARCS conducted two brief outreach questionnaires of the health care facilities impacted by this mandate. In 2007, 574 hospital-affiliated health clinics responded to a questionnaire regarding their ability to submit data electronically. Of those, 96% reported that they submit some or all of their claims electronically.

**Regions of Adverse Impact:**

The revised section 400.18 will have no adverse impact on jobs or employment opportunities.

**Minimizing Adverse Impact:**

As the revised section 400.18 has no adverse impact on jobs or employment opportunities, there is no need to minimize adverse impacts.

**Self-Employment Opportunities:**

In very few instances, health care facilities may rely on self-employed programmers to develop the needed programming to submit and correct SPARCS data. To date, we have had only one instance of this over SPARCS' 30-year, data-collection history.

**Substance of proposed rule (Full text is posted at the following State website: [www.justicecenter.ny.gov](http://www.justicecenter.ny.gov)):** Section 710.1 sets forth the background and intent of the rule;

Section 710.2 defines the following terms: attending physician, best interest, Justice Center, committee, committee chairperson, committee of the person, conflict of interest, conservator, correspondent, declarant, developmental disability, lack of ability to consent to or refuse major medical treatment, legal guardian, life-sustaining treatment, major medical treatment, mental hygiene facility, Mental Hygiene Legal Service, minor, panel, panel chairperson, patient and providers of health services;

Section 710.3 sets forth the procedure for preparing and filing the declaration on behalf of a patient who is believed to be in need of a major medical treatment decision;

Section 710.4 sets forth the procedures of the committee and panel in the review of the declaration and determination;

Section 710.6 sets forth notices concerning the schedule of panel hearing;

Section 710.7 sets for the removal of committee members for failure to attend meetings and their status as public officers;

Section 710.8 requires a quarterly report by the committee chairperson to the Justice Center.

**Changes made:**

In sections 710.1, 710.2, 710.3, 710.4, 710.6, 710.7 and 710.8 the following changes are made: 1) the Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD) is changed to the Justice Center for the Protection of People with Special Needs (Justice Center); and 2) the Office of Mental Retardation and Developmental Disabilities (OMRDD) is changed to the Office for Persons with Developmental Disabilities (OPWDD).

In section 710.3 the address and the phone number of the Justice Center are substituted for those of the former CQCAPD. In section 710.4 a reference to section 558 of the Executive Law is added.

**Text of proposed rule and any required statements and analyses may be obtained from:** Stephan Haimowitz, Justice Center for Protection of People with Special Needs, 161 Delaware Avenue, Delmar, New York 12054-1310, (518) 549-0244, email: [stephan.haimowitz@justicecenter.ny.gov](mailto:stephan.haimowitz@justicecenter.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 Justice Center for the Protection of People with Special Needs determined that the changes to the text are not substantial and do not change the meaning of any provision. Specifically, the changes are to references to two state agencies as follows: 1) the Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD) is changed to the Justice Center for the Protection of People with Special Needs (Justice Center); and 2) reference to the Office of Mental Retardation and Developmental Disabilities (OMRDD) is changed to the Office for Persons with Developmental Disabilities (OPWDD). Based on the foregoing, no person is likely to object to the rule as written.

**Job Impact Statement**

The Justice Center for the Protection of People with Special Needs determined that a revised Job Impact Statement is not required because the changes to the text are not substantial and do not change the meaning of any provision. Specifically, the changes are to references to two state agencies as follows: 1) the Commission on Quality of Care and Advocacy for Persons with Disabilities (CQCAPD) is changed to the Justice Center for the Protection of People with Special Needs (Justice Center); and 2) the Office of Mental Retardation and Developmental Disabilities (OMRDD) is changed to the Office for Persons with Developmental Disabilities (OPWDD). Based on foregoing, the rule will have no impact on jobs and employment opportunities.

---



---

## Justice Center for the Protection of People with Special Needs

---



---

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

**Procedures of the Surrogate Decision-Making Committees of the  
NYS Justice Center for the Protection of People with Special  
Needs**

**I.D. No.** JCP-35-13-00005-P

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

**Proposed Action:** This is a consensus rule making to amend sections 710.1, 710.2, 710.3, 710.4, 710.6, 710.7 and 710.8 of Title 14 NYCRR.

**Statutory authority:** Protection of People with Special Needs Act, section 12 (L. 2012, ch. 501)

**Subject:** Procedures of the Surrogate Decision-Making Committees of the NYS Justice Center for the Protection of People with Special Needs.

**Purpose:** Administer a procedure to consent or refuse a nonemergency major medical treatment on behalf of person with mental disabilities.

---



---

## Office of Mental Health

---



---

### NOTICE OF ADOPTION

#### Definitions Pertaining to This Chapter

**I.D. No.** OMH-24-13-00001-A

**Filing No.** 822

**Filing Date:** 2013-08-07

**Effective Date:** 2013-08-28

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

**Action taken:** Repeal of Part 72 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, section 7.09

**Subject:** Definitions pertaining to this chapter.

**Purpose:** Repeal of an outdated Part in Title 14 NYCRR.

**Text or summary was published** in the June 12, 2013 issue of the Register, I.D. No. OMH-24-13-00001-P.

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

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

**Assessment of Public Comment**

The agency received no public comment.

---



---

## Office for People with Developmental Disabilities

---



---

### NOTICE OF ADOPTION

#### Repeal of Definitions Pertaining to This Chapter

**I.D. No.** PDD-24-13-00006-A

**Filing No.** 824

**Filing Date:** 2013-08-08

**Effective Date:** 2013-08-28

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

**Action taken:** Repeal of Part 72 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, section 13.09(b)

**Subject:** Repeal of Definitions Pertaining to this Chapter.

**Purpose:** To repeal an outdated Part in Title 14 NYCRR which contains definitions that are no longer used.

**Text or summary was published** in the June 12, 2013 issue of the Register, I.D. No. PDD-24-13-00006-P.

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

**Text of rule and any required statements and analyses may be obtained from:** Barbara Brundage, Director, Regulatory Affairs Unit, OPWDD, 44 Holland Ave., Albany, NY 12229, (518) 474-1830, email: RAU.Unit@opwdd.ny.gov

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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

#### Amendments to Person-Centered Behavioral Intervention

**I.D. No.** PDD-25-13-00002-A

**Filing No.** 831

**Filing Date:** 2013-08-12

**Effective Date:** 2013-08-28

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

**Action taken:** Amendment of section 633.16 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

**Subject:** Amendments to Person-Centered Behavioral Intervention.

**Purpose:** To expand minimum qualifications of parties authorized to develop and monitor behavior support plans and make technical changes.

**Text or summary was published** in the June 19, 2013 issue of the Register, I.D. No. PDD-25-13-00002-EP.

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

**Text of rule and any required statements and analyses may be obtained from:** Barbara Brundage, Director, Regulatory Affairs Unit, OPWDD, 44 Holland Avenue, Albany, NY 12229, (518) 474-1830, email: barbara.brundage@opwdd.ny.gov

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

**Assessment of Public Comment**

The agency received no public comment.

---



---

## Public Service Commission

---



---

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

#### Acquisition by Fortis, Inc., Through Subsidiaries, of CH Energy Group, Inc. and, Indirectly, Central Hudson Gas & Electric Corp

**I.D. No.** PSC-35-13-00007-P

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

**Proposed Action:** The Commission is considering what action to take on the Public Utility Law Project of N.Y., Inc.'s "objection" to GSS Holdings (CHGE), Inc. as holder of a golden share pursuant to the June 26, 2013 order approving acquisition of CH Energy Group, Inc.

**Statutory authority:** Public Service Law, sections 4, 5 and 70

**Subject:** Acquisition by Fortis, Inc., through subsidiaries, of CH Energy Group, Inc. and, indirectly, Central Hudson Gas & Electric Corp.

**Purpose:** Determine the holder of the golden share required by the Commission's June 26, 2013 order approving the acquisition.

**Substance of proposed rule:** The Public Service Commission is considering what action to take regarding an "Objection" filed July 18, 2013 in which Public Utility Law Project of New York, Inc. challenges the nomination of GSS Holdings (CHGE) to be appointed holder of a "golden share." In a June 26, 2013 order in Case 12-M-0192, the Commission approved the acquisition by Fortis, Inc., through subsidiaries, of CH Energy Group, Inc. and, indirectly, Central Hudson Gas & Electric Corp. (CHGE). The Commission's approval was conditioned on the creation of the golden share as a special class of CHGE preferred stock, to be held by a trustee whose consent is required before CHGE can enter into voluntary bankruptcy.

**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.ny.gov/f96dir.htm>. For questions, contact:** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

**Data, views or arguments may be submitted to:** Kathleen H. Burgess,

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-M-0192SP4)

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

**Acquisition by Fortis, Inc., Through Subsidiaries, of CH Energy Group, Inc. and, Indirectly, Central Hudson Gas & Electric Corp**

**I.D. No.** PSC-35-13-00008-P

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

**Proposed Action:** The Commission is considering whether to grant petitions in which Assembly Member Kevin A. Cahill, Citizens for Local Power et al., and Public Utility Law Project of N.Y. seek rehearing of the Commission's June 26, 2013 order approving a merger.

**Statutory authority:** Public Service Law, sections 4, 5 and 70

**Subject:** Acquisition by Fortis, Inc., through subsidiaries, of CH Energy Group, Inc. and, indirectly, Central Hudson Gas & Electric Corp.

**Purpose:** Resolve issues raised in petitions for rehearing.

**Substance of proposed rule:** The Public Service Commission is considering what action to take regarding three petitions filed July 26, 2013 in Case 12-M-0192 by, respectively, (1) N.Y.S. Assembly Member Kevin A. Cahill, (2) Public Utility Law Project of N.Y., Inc., and (3) Citizens for Local Power and Consortium in Opposition to the Acquisition. The petitions seek rehearing of the Commission's June 26, 2013 order approving the acquisition by Fortis, Inc., through subsidiaries, of CH Energy Group, Inc. and, indirectly, Central Hudson Gas & Electric Corp.

**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.ny.gov/f96dir.htm>. For questions, contact:** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

**Data, views or arguments may be submitted to:** Kathleen H. Burgess, 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-M-0192SP3)

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

**Modification of Telephone Corporations Class A and Class B PSC Annual Reports**

**I.D. No.** PSC-35-13-00009-P

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

**Proposed Action:** The Commission is considering revisions to the Telephone Corporations Class A and Class B PSC Annual Reports required under Section 641.1 of the Commission's regulations.

**Statutory authority:** Public Service Law, section 95

**Subject:** Modification of Telephone Corporations Class A and Class B PSC Annual Reports.

**Purpose:** Reduce regulatory burdens on incumbent local exchange carriers.

**Substance of proposed rule:** The Commission is considering whether to

modify the Telephone Corporations Class A and Class B Annual Report to the Public Service Commission. The following fourteen schedules are being considered for modification or deletion:

- 15. TELECOMMUNICATIONS PLANT UNDER CONSTRUCTION
- 16. PROPERTY HELD FOR FUTURE TELECOMMUNICATIONS USE
- 21. TELECOMMUNICATIONS ACCOUNTS RECEIVABLE AND ACCOUNTS RECEIVABLE ALLOWANCE
- 22. ACCOUNTS RECEIVABLE FROM AFFILIATED COMPANIES AND OTHER ACCOUNTS RECEIVABLE
- 23. ACCOUNTS RECEIVABLE ALLOWANCE - AFFILIATED AND OTHER
- 25. INVENTORIES
- 34. ACCOUNTS PAYABLE
- 35. NOTES PAYABLE
- 44. OPERATING EXPENSES BY CATEGORY
- 52. MEMBERSHIP FEES AND DUES
- 60. LIFELINE TELEPHONE SERVICES
- 62. TELEPHONE CALLS
- 63. STATISTICS RELATING TO TELEPHONE SERVICE QUALITY
- 64. PLANT EXTENSIONS TO SERVE NEW RESIDENTIAL SUBDIVISIONS ANNUAL JOINT COST DATA REPORT

The following schedules are being considered for consolidation:

- 36. LONG TERM DEBT
- 37. CAPITAL STOCK AND FUNDED DEBT REACQUIRED OR RETIRED DURING THE YEAR
- 38. OTHER LONG TERM LIABILITIES
- 39. OTHER DEFERRED CREDITS
- 40. CAPITAL STOCK

The following schedules are being considered for modification or subject to new thresholds for reporting materiality:

- 24. NOTES RECEIVABLE AND NOTES RECEIVABLE ALLOWANCE
- 30. INVESTMENTS IN AFFILIATED COMPANIES
- 31. INVESTMENTS
- 32. NONREGULATED INVESTMENTS
- 48. SPECIAL CHARGES
- 50. OTHER NONOPERATING INCOME
- 59. GENERAL SERVICES AND LICENSES, ADVISORY, MANAGEMENT, ENGINEERING, OR PURCHASING SERVICES

**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.ny.gov/f96dir.htm>. For questions, contact:** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

**Data, views or arguments may be submitted to:** Kathleen H. Burgess, 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. (13-C-0349SP1)

---



---

**Workers' Compensation Board**

---



---

**NOTICE OF ADOPTION**

**Electronic Reporting of First Reports of Injury and Subsequent Reports of Injury**

**I.D. No.** WCB-17-13-00002-A

**Filing No.** 832

**Filing Date:** 2013-08-12

**Effective Date:** 2014-04-23

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

**Action taken:** Repeal of section 300.22, addition of new section 300.22 and amendment of sections 300.23 and 300.38 of Title 12 NYCRR.

**Statutory authority:** Workers' Compensation Law, sections 117, 141, 25 and 110

**Subject:** Electronic reporting of first reports of injury and subsequent reports of injury.

**Purpose:** To require electronic reporting of first reports of injury and subsequent reports of injury.

**Substance of final rule:** The proposed regulation repeals Section 300.22 and adds a new 300.22.

Subdivision (a) of Section 300.22 adds definitions of "disability event," "Electronic Trading Partner Agreement," "filed electronically," "Special Fund" and "Third Party Administrator."

Subdivision (b) of Section 300.22 sets forth the process and requirements for mandatory first reports of injury, including medical only cases, notices of controversy and when a carrier acquires responsibility for a claim from another carrier. The subdivision also sets forth the requirements for filing an employer's first report of injury required by Workers' Compensation Law Section 110.

Subdivision (c) of Section 300.22 sets forth the process and requirements for filing mandatory subsequent reports of injury and initial actions including notice of initial controversy, notice that compensation is not controverted and payment has begun, and notice that compensation is not controverted but payment has not begun.

Subdivision (d) of Section 300.22 sets forth the rules for filing a notice of controversy following a notice of indexing as a subsequent report of injury.

Subdivision (e) of Section 300.22 sets forth the notices and rules required when an insurance carrier makes payments pursuant to Workers' Compensation Law Section 21-a because it is unsure of the extent of its liability for a claim for workers' compensation.

Subdivision (f) of Section 300.22 sets forth the rules and process for reporting subsequent reports of injury following certain payments, the reporting of periodic summary of payments, and when to report other types of benefits including penalties paid to the claimant.

Subdivision (g) of Section 300.22 sets forth that the regulation shall be effective on April 20, 2014 and every carrier must complete an Electronic Trading Partner Agreement prior to the effective date.

Subdivision (h) of Section 300.22 states that the date of transmittal shall be the date a notice is actually mailed or transmitted.

Section 300.23 is amended throughout to provide that modification or suspension of claimant's workers' compensation benefits shall be by electronic notice that conforms to the requirements set forth in Section 300.22 and that evidence in support of the modification or suspension shall be mailed or submitted to the Board on the same day.

Subdivision (f) of Section 300.23 is added to state that the date of transmittal shall be the date a notice is actually mailed or transmitted.

Subdivision (a) of Section 300.38 is amended to add that any notice of controversy must be submitted as a first report of injury or subsequent report of injury and transmitted to all other parties within one business day of the date it is filed electronically with the Board.

Subparagraph (2) of subdivision (a) of Section 300.38 is amended to state that the written certification required to be submitted by the carrier with a notice of controversy may be completed at the pre-hearing conference.

Subdivision (d) of Section 300.38 is amended to change "files a form to controvert" to "submits a notice of controversy."

Subparagraph (2)(i) of subdivision (g) of Section 300.38 is amended to add "and notices" and change "filed with" to "submitted to."

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 300.22(a)(3), (b)(1), (f)(2), (g), 300.23(b)(1) and (c)(1).

**Text of rule and any required statements and analyses may be obtained from:** Heather MacMaster, Workers' Compensation Board, 328 State Street, Office of General Counsel, Schenectady, New York 12305-2318, (518) 486-9564, email: regulations@wcb.ny.gov

#### **Revised Regulatory Impact Statement**

A revised Regulatory Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial, do not change the meaning of any provision and therefore do not change any statements in the document. Specifically the changes are to: 1) change the effective date to April 23, 2014; 2) clarify that first reports of injury and subsequent reports of injury that are submitted to the Board before the deadline set forth in the regulation will be considered timely even though they are not acknowledged until after the filing deadline has passed; 3) clarify when a notice of controversy may not be filed as a first report of injury; and 4) clarify that when a carrier files a notice seeking to suspend or modify payments to the claimant and a hearing is required, that these notices are currently filed as paper documents not as a subsequent report

of injury which reports a suspension or modification of payment after it as occurred.

#### **Revised Regulatory Flexibility Analysis**

A revised Regulatory Flexibility Analysis for Small Business and Local Governments is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial, do not change the meaning of any provision and therefore do not change any statements in the document. Specifically the changes are to: 1) change the effective date to April 23, 2014; 2) clarify that first reports of injury and subsequent reports of injury that are submitted to the Board before the deadline set forth in the regulation will be considered timely even though they are not acknowledged until after the filing deadline has passed; 3) clarify when a notice of controversy may not be filed as a first report of injury; and 4) clarify that when a carrier files a notice seeking to suspend or modify payments to the claimant and a hearing is required, that these notices are currently filed as paper documents not as a subsequent report of injury which reports a suspension or modification of payment after it as occurred.

#### **Revised Rural Area Flexibility Analysis**

A revised Rural Area Flexibility Analysis is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial, do not change the meaning of any provision and therefore do not change any statements in the document. Specifically the changes are to: 1) change the effective date to April 23, 2014; 2) clarify that first reports of injury and subsequent reports of injury that are submitted to the Board before the deadline set forth in the regulation will be considered timely even though they are not acknowledged until after the filing deadline has passed; 3) clarify when a notice of controversy may not be filed as a first report of injury; and 4) clarify that when a carrier files a notice seeking to suspend or modify payments to the claimant and a hearing is required, that these notices are currently filed as paper documents not as a subsequent report of injury which reports a suspension or modification of payment after it as occurred.

#### **Revised Job Impact Statement**

A revised Statement in Lieu of Job Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text are not substantial, do not change the meaning of any provision and therefore do not change the statement that the rule making will not have an adverse impact on jobs. Specifically the changes are to: 1) change the effective date to April 23, 2014; 2) clarify that first reports of injury and subsequent reports of injury that are submitted to the Board before the deadline set forth in the regulation will be considered timely even though they are not acknowledged until after the filing deadline has passed; 3) clarify when a notice of controversy may not be filed as a first report of injury; and 4) clarify that when a carrier files a notice seeking to suspend or modify payments to the claimant and a hearing is required, that these notices are currently filed as paper documents not as a subsequent report of injury which reports a suspension or modification of payment after it as occurred.

#### **Assessment of Public Comment**

The 45-day public comment period with respect to Proposed Rule I.D. No. WCB171300002 commenced on April 24, 2013, and expired on June 8, 2013. The Chair and the Workers' Compensation Board (Board) received and accepted formal written comments on the proposed rule through June 15, 2013.

The Chair and Board received formal written comments from one entity, the State Insurance Fund (SIF). This Assessment will address each comment made and summarize the minimal clarifying changes to the proposed regulation.

SIF commented that the Board could not limit the statutory grant of discretion permitting the Board to excuse a carrier's late filing of a notice of controversy granted by Workers' Compensation Law (WCL) § 25(2)(b), by prohibiting a carrier's filing of a notice of controversy as a first report of injury when more than 18 days from the date of injury and 10 days from the employer's knowledge have elapsed in proposed 12 NYCRR § 300.22(b)(ii). The Board has not made any changes to the regulation based on this comment because the Board's discretion to excuse a late filed notice of controversy is granted by WCL § 25(2)(b) and is preserved in proposed 12 NYCRR § 300.22 (d). Proposed 12 NYCRR § 300.22(b) and (c) addressed notices of controversy filed pursuant to WCL § 25(2)(a).

SIF also notes that the sentence in 12 NYCRR § 300.22(b)(ii), "A notice of controversy may not be filed as a first report of injury when it is filed more than 18 days after the disability event or more than 10 days after the employer has knowledge of the disability event," fails to state that it should be the greater of 18 days and 10 days. The sentence has been

changed to read “Unless it is filed on or before the greater of 18 days after the disability event or within 10 days after the employer has knowledge of the disability event as required by subdivision (1) herein, a notice of controversy may not be filed as a first report of injury.”

SIF states that a carrier should always be permitted to submit a notice of controversy as a first report of injury because the carrier may not have sufficient information to complete a subsequent report of injury. The circumstances for filing a notice of controversy as a first report of injury and subsequent report of injury are set by the protocols of the International Association of Industrial Accident Boards Commission, a national organization, and are being used successfully by carriers in 39 states. Based upon the successful use of these protocols by all national insurance carriers and many regional carriers, the Board believes that SIF’s concerns are unwarranted and no change is necessary.

SIF also commented that the requirement in subdivision (f) (2) of section 300.22 that requires a carrier to file a subsequent report of injury within 18 days of the resumption of disability should be changed as a carrier may not necessarily know when a disability has resumed, particularly if the claimant has returned to work with a new employer. Based on this comment, the board has clarified that the subsequent report of injury is due within 18 days of the resumption of “payments for” a disability.

Finally, SIF commented that the provisions in section 300.23 that in some instances require the carrier to electronically file a report on a change in payment and simultaneously send documents in support of the change in payment to the Board could result in the supporting documentation being filed prior to the electronically filed report. This is an unlikely scenario for two reasons: 1) the carrier will know almost immediately if a transaction is rejected; and 2) the mailing of supporting documents will take several days and then the scanning of those documents into the Board’s electronic case folder also takes a couple of days.

#### CHANGES TO THE REGULATION:

The Regulation that is being adopted contains the following insubstantial changes from the proposed rule published in the April 24, 2013 *State Register*:

- In section 300.22 (a)(3), the following sentence has been added to clarify that an electronic filing will not be untimely when it is received by the Board on time, but is not processed by the Board until after the expiration of the filing date. The new sentence reads: “For the purpose of determining whether an electronic submission has been timely submitted, any electronic transmission that is submitted to and accepted by the Board within the time required by subdivisions (b), (c), (d) and (f) herein shall be considered timely submitted when such electronic transmission is later acknowledged by the Board even though the acknowledgement by the Board may have occurred after the time required by subdivisions (b), (c), (d) and (f).”

- In section 300.22(b)(1)(ii), the sentence “A notice of controversy may not be filed as a first report of injury when it is filed more than 18 days after the disability event or more than 10 days after the employer has knowledge of the disability event” has been changed, for the purpose of clarification, to “Unless it is filed on or before the greater of 18 days after the disability event or within 10 days after the employer has knowledge of the disability event as required by subdivision (1) herein, a notice of controversy may not be filed as a first report of injury.”

- In section 300.22 (f)(2), in the first sentence, “payments for” has been added and “due to the resumption of disability” removed. The sentence now reads “Within 18 days of a resumption of payments for a disability, the carrier, Special Fund, or TPA shall file electronically with the Board a subsequent report of injury indicating payments made to the claimant.”

- In section 300.22 (g), the effective date has been changed from April 20, 2014 to April 23, 2014 to ensure enough time for implementation by all carriers, self-insured employers and third-party administrators.

- In section 300.23 (b)(1) and (c)(1), “A copy of the notice shall be transmitted to the claimant and his or her attorney or licensed representative, if any, within one business day of the date it is filed electronically with the chair and,” has been changed to “A copy of the notice and supporting evidence shall be transmitted to the claimant and his or her attorney or licensed representative, if any, on the same day it is submitted to the Board or if submitted electronically within one business day of the date it is filed electronically with the Board and,” as service on the next business day is only permitted when a notice is submitted to the Board electronically in order to give the carrier sufficient time to receive an acknowledgement from the Board that the notice was electronically filed.