

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Repeal Obsolete Rules

I.D. No. AAM-53-13-00004-P

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

Proposed Action: This is a consensus rule making to repeal Parts 128, 129, 131 and 137 of Title I NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 163, 164 and 167

Subject: To repeal obsolete rules.

Purpose: To repeal regulations governing quarantine of gypsy moth, pine shoot beetle and pear root stock/seed.

Text of proposed rule: Parts 128, 129, 131, and 137 of 1NYCRR are repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Margaret Kelly, Interim Director of Plant Industry, 10B Airline Drive, Albany, NY 12235, (518) 457-2087, email: Margaret.Kelly@agriculture.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 Department has considered the proposed amendment which would repeal Parts 128, 129, 131, and 137 of 1NYCRR and has determined that

this proposed rulemaking is a consensus rulemaking within the meaning of section 102(11) of the State Administrative Procedure Act (SAPA). Section 102(11) of SAPA defines consensus rule to be a rule proposed by an agency for adoption on an expedited basis pursuant to the expectation that no person is likely to object to its adoption because it merely (a) repeals regulatory provisions which are no longer applicable to any person, (b) implements or conforms to non-discretionary statutory provisions, or (c) makes technical changes or is otherwise non-controversial.

Agriculture and Markets Law (AML) Article 14 relates to the Prevention and Control of Disease in Trees and Plants; Insect Pests; Sale of Fruit-Bearing Trees. 1NYCRR Parts 128, 129, 131, and 137 pertain to quarantine and control of gypsy moth, quarantine of pine shoot beetle, and pear root stock/seed.

1NYCRR Part 128 establishes a quarantine for the gypsy moth, a moth in the family *Erebidae* of Eurasian origin. These moth larvae are pests that cause tree damage beginning in early spring and continuing through mid-May. Gypsy moth caterpillars have a preference for the leaves of deciduous hardwood trees such as maple, elm, and particularly oak. Gypsy moths can also feed on apple, alder, birch, poplar and willow trees. As a gypsy moth grows it will also attack evergreens pine and spruce. Depending on the degree of infestation, tree damage ranges from light to almost complete defoliation. The moth was brought to the United States in 1869 in a failed attempt to start a silkworm industry. Escaping soon after, the gypsy moth has become, over the past century, a major pest in the northeastern United States and southeastern Canada.

Part 128 prohibits the intrastate movement of the Gypsy moth in all New York State counties, except Cattaraugus, Chautauqua, Erie, Genesee, Monroe, Niagara, Orleans and Wyoming Counties; and the following towns in Monroe County: Brighton, Henrietta, Irondequoit, Mendon, Penfield, Perinton, Pittsford, Rush, Webster and Wheatland; and in Monroe County the City of Rochester. The quarantine regulates the intrastate movement of live gypsy moths in any stage of development, trees, shrubs, plants and vines, both deciduous and evergreen, having persistent woody stems, and parts thereof, including Christmas trees, timber products, stone and quarry products and any other commodities or articles when found on inspection to be infested with the gypsy moth in any of its stages.

Part 129 of Title One of NYCRR regulates the control of gypsy moths and the conditions by which items that may contain living gypsy moths at any stage of development are inspected, moved, and regulated. The Department may issue certificates or limited permits allowing the intrastate movement of woody materials, stone and quarry products and any other articles found on inspection by the Department to be free from infestation of the moth. Certificates and limited permits may be canceled or withdrawn by the Department whenever their further use might result in the dissemination of infestation. Moreover, when articles are found to be moving or have been moved intrastate that contain the moth, the Department may take whatever action is necessary to eliminate the danger of dissemination.

These rules were adopted to help control and prevent the spread of the gypsy moth within New York State by imposing a quarantine and controlling the movement of the gypsy moth. However, despite this effort, the gypsy moth is now endemic throughout New York State. Consequently, there is no longer any basis for the quarantine or the control of movement of the moth within New York State.

1NYCRR Part 131 establishes a quarantine for the Pine Shoot Beetle, a beetle in the family *Curculionidae* of Eurasian origin. These beetles are shoot-feeding pests that feed through the autumn and winter on the pith in strong apical shoots of healthy young trees, killing the bored-out shoots. This does not kill the tree, but causes damage to the growth form, reducing the economic value of the timber by reducing growth rates and stem straightness. The first known occurrence in North America was found in 1992 at a Christmas tree farm near Cleveland, Ohio, from where it has spread.

Part 131 prohibits the movement of pine Christmas trees, pine nursery

stock and pine logs and lumber with bark attached within Albany, Allegany, Broome, Cattaraugus, Cayuga, Chautauque, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Monroe, Montgomery, Niagara, Oneida, Onondaga, Oswego, Ontario, Orleans, Otsego, Rensselaer, Saratoga, Schoharie, Schoharie, St. Lawrence, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Warren, Washington, Wayne, Wyoming and Yates Counties to any point outside of said counties except in accordance with 7 CFR sections 301.50 through 301.50-10.

The rule was adopted to help control and prevent the spread of the pine shoot beetles within New York State by imposing a quarantine and controlling the movement of the beetle. However, despite this effort, the beetle is now endemic throughout New York State. Consequently, there is no longer any basis for the quarantine or the control of movement of the beetle within New York State.

Part 137 was adopted to regulate the shipments of pear roots and seeds from out of state markets. The rule also prohibits specific pyrus root and seed species. The rule requires that out of state pear root stock and pear seed shipped to New York State receive an inspection certificate and valid affidavit from an authorized official in the roots' and seeds' State of origin certifying the variety of pear root or seed. Further, the rule prohibits specific pyrus pear root and seed species from being shipped into New York State. These species include: calleryana, ussuriensis, nivalis, serotina and betulifolia. The rule provides exceptions to the entry of the above-named species when using them for scientific research purposes. Possession of the prohibited species for research purposes requires confinement of the species and written permission. The disease (pear decline) that was of concern when this regulation was promulgated has not proven to be a significant problem in any pear growing areas in the United States. The perceived need for this regulation no longer exists, rendering the regulation of these pyrus root and seeds obsolete.

Accordingly, for the reasons set forth above, Parts 128, 129, 131, and 137 no longer apply to any person and no person is likely to object to the repeal of these rules since the repeal of these Parts is noncontroversial. As such, the repeal of Parts 128, 129, 131, and 137 is a consensus rule making within the meaning of SAPA § 102(11)(a) and (c).

Job Impact Statement

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent from the nature of the proposed amendments, which repeal obsolete rules, that they will have no adverse affect on jobs and employment opportunities.

Department of Corrections and Community Supervision

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Shock Incarceration Program

I.D. No. CCS-53-13-00002-P

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

Proposed Action: This is a consensus rule making to amend sections 1800.2, 1800.4, 1800.5, 1800.8(a), 1800.9(b)(1), (3), (10) and 1800.10(e) of Title 7 NYCRR.

Statutory authority: Corrections Law, sections 112 and 866

Subject: Shock Incarceration Program.

Purpose: Update eligibility requirements, transfer procedure, grooming standards, the agency name, and clarify impact of refusal/removal.

Text of proposed rule: Amend Section 1800.2 of 7 NYCRR, as follows:

There is a present need to provide to selected [young] inmates a special six-month program of shock incarceration, stressing a highly structured routine of discipline, intensive regimentation, exercise and work therapy, together with substance abuse workshops, education, prerelease counseling and self-improvement counseling. If an inmate successfully completes the shock incarceration program, he or she will be eligible for parole release and will be awarded a certificate of earned eligibility pursuant to Correction Law, sections 805 and 807.

Amend Sections 1800.4(a)(1) through (a)(5) of 7 NYCRR, as follows:

(a) An inmate sentenced to an indeterminate or determinate term of

imprisonment may apply for participation in the shock incarceration program if the inmate meets all of the following requirements:

(1) has not reached [40]50 years of age;

(2) will become eligible for release on parole within three years for inmates with indeterminate sentences, or will be eligible for release to Post Release Supervision within 3 years of his/her conditional release date for inmates with determinate sentences;

(3) unless already provided, has agreed to provide a DNA sample for forensic analysis; and

[(4) has not previously been convicted of a felony upon which an indeterminate term of imprisonment was imposed; and]

(4)[(5)] was at least 16 but less than [40]50 years of age at the time of commission of the crime upon which his or her present sentence was based.

Amend Section 1800.5 of 7 NYCRR, as follows:

Inmates will be given [preliminary]Shock Incarceration screening at reception centers to determine if they meet the selection and statutory eligibility criteria for participation in the shock incarceration program. Selected inmates may then be transferred to designated shock incarceration facilities [for final screening and approval for] to await entry into the program[participation].

Amend Section (a) of 1800.8 of 7 NYCRR, as follows:

(a) All incoming shock inmates will have a haircut [on]within the first week of arrival[day] in the facility. Haircuts will be military style, 1/4" in length and completely trimmed around the ears.

Amend Sections (b)(1), (b)(3), and (b)(10) of 1800.9 of 7 NYCRR, as follows:

- (b) Memo of agreement.
- Shock Incarceration Program
- Memo of Agreement
- Name
- Facility
- DIN

1. As authorized pursuant to Correction Law, article 26-A, I agree to participate in the Department of [Correctional Services]Corrections and Community Supervision Shock Incarceration Program. This agreement is made voluntarily and without coercion.

3. I promise that I shall abide by all the conditions specified in this agreement and all other conditions and instructions given to me by any representative of the Department of [Correctional Services]Corrections and Community Supervision and will be subject to removal from the program for failure to do so.

10. If additional criminal charges are lodged against me, I agree that I may be removed from the program in the discretion of the Department of [Correctional Services]Corrections and Community Supervision.

I accept the foregoing program and agree to be bound by the terms and conditions thereof. I understand that my participation in the program is a privilege that may be revoked at any time at the sole discretion of the Commissioner. I understand that I must successfully complete the entire program to obtain a certificate of earned eligibility upon the completion of said program, and in the event that I do not successfully complete said program, for any reason, I will be returned to a nonshock incarceration correctional facility to continue service of my sentence.

I have read and understand the above Memo of Agreement, and I agree to fully abide by the terms of the memo.

Inmate Signature

Date

Witness

Date
cc: [Inmate
Central Office File]
Institutional File
[Parole Institutional File]

Amend Section (e) of 1800.10 of 7 NYCRR, as follows:

(e) Any inmate who is eligible for the shock incarceration program who chooses not to participate in [it]shock at the reception center while in reception status, or who is removed from the program will be considered ineligible for participation in the temporary release program, unless the reason for the removal was due to an intervening circumstance beyond the control of the inmate.

Text of proposed rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, NYS Dept. of Corrections and Community Supervision, Harriman State Campus - Building 2, 1220 Washington Avenue, Albany, NY 12226-2050, (518) 457-4951, email: Rules@Dcccs.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 Department of Correctional and Community Supervision has determined that no person is likely to object to the proposed action. This proposal updates eligibility requirements, transfer procedure, grooming standards, the agency name, and clarifies the impact of program refusal/removal. See SAPA Section 102(11)(a).

The Department's authority resides in section 70 of Correction Law, which mandates that each correctional facility must be designated in the rules and regulations of the Department and assigns the Commissioner the duty to classify each facility with respect to the type of security maintained and the function as specified. See Correction Law § 70(6).

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. This proposal updates eligibility requirements, transfer procedure, grooming standards, the agency name, and clarifies the impact of program refusal/removal.

Education Department

EMERGENCY RULE MAKING

Academic Intervention Services (AIS)

I.D. No. EDU-40-13-00005-E

Filing No. 1200

Filing Date: 2013-12-16

Effective Date: 2013-12-16

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

Action taken: Amendment of section 100.2(ee) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), 308(not subdivided), 309(not subdivided) and 3204(3)

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

Specific reasons underlying the finding of necessity: The proposed amendment modifies the test cut scores for the required provision of Academic Intervention Services (AIS) to students during the 2013-2014 school year. Under the present rule, those students scoring at or below a scale score of 650 must be provided with AIS. The proposed rule would establish, for the 2013-2014 school year only, specific scale scores for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8 that would require the provision of AIS to students scoring below such scale scores.

The proposed amendment was adopted as an emergency action at the September 16-17, 2013 Regents meeting, effective September 17, 2013. Because the Board of Regents meets at monthly intervals, the earliest the proposed amendment could be adopted by regular action after publication of a Notice of Proposed Rule Making and expiration of the 45-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202 would be the December 16-17, 2013 Regents meeting. Furthermore, because SAPA section 203(1) provides that an adopted rule may not become effective until a Notice of Adoption is published in the State Register, the earliest the proposed amendment could become effective if adopted at the December Regents meeting, is January 1, 2014.

However, the September emergency rule will expire on December 15, 2013, 90 days after its filing with the Department of State on September 17, 2012. A lapse in the rule's effective date could disrupt implementation of Academic Intervention Services during the 2013-2014 school year. Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed rule adopted by emergency action at the September Regents meeting remains continuously in effect until the effective date of its permanent adoption.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the December 16-17, 2013 Regents meeting, which is the first scheduled Regents meeting after publication of the proposed rule in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

Subject: Academic Intervention Services (AIS).

Purpose: To establish modified requirements for AIS during the 2013-2014 school year.

Text of emergency rule: Paragraph (2) of subdivision (ee) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective December 16, 2013, as follows:

(2) Requirements for providing academic intervention services in grade three to grade eight. Schools shall provide academic intervention services when students:

(i) score below:

(a) the State designated performance level on one or more of the State elementary assessments in English language arts, mathematics or science, provided that for the [2010-2011] 2013-2014 school year only, the following shall apply:

(1) those students scoring [at or] below a scale score [of 650] specified in subclause (3) of this clause shall receive academic intervention instructional services; and

(2) those students scoring at or above a scale score [of 650] specified in subclause (3) of this clause but below level 3/proficient shall not be required to receive academic intervention instructional and/or student support services unless the school district, in its discretion, deems it necessary. Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the [2010-2011] 2013-2014 school year to students who scored above a scale score [of 650] specified in subclause (3) of this clause but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in [2009-2010] 2012-2013, and shall no later than [the commencement of the first day of instruction] November 1, 2013 either post to its Website or distribute to parents in writing a description of such process;

(3) The following scale scores shall be used to determine which students shall receive academic intervention services as specified in subclauses (1) and (2) of this clause:

Grade 3 English language arts, a scale score of 299

Grade 4 English language arts, a scale score of 296

Grade 5 English language arts, a scale score of 297

Grade 6 English language arts, a scale score of 297

Grade 7 English language arts, a scale score of 301

Grade 8 English language arts, a scale score of 302

Grade 3 mathematics, a scale score of 293

Grade 4 mathematics, a scale score of 284

Grade 5 mathematics, a scale score of 289

Grade 6 mathematics, a scale score of 289

Grade 7 mathematics, a scale score of 290

Grade 8 mathematics, a scale score of 293

and/or

(b) the State designated performance level on a State elementary assessment in social studies administered prior to the 2010-2011 school year; provided that beginning in the 2010-2011 school year, at which time a State elementary assessment in social studies shall no longer be administered, a school shall provide academic intervention services when students are determined to be at risk of not achieving State learning standards in social studies pursuant to subparagraph (iii) of this paragraph;

(ii) . . .

(iii) . . .

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-40-13-00005-EP, Issue of October 2, 2013. The emergency rule will expire February 13, 2014.

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department, with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges the Department with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 empowers the Board of Regents and the Commissioner to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the Department by law.

Education Law section 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education.

Education law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education law section 309 charges the Commissioner with the general supervision of boards of education and their management and conduct of all departments of education.

Education Law section 3204(3) provides for the courses of study in the public schools.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to academic intervention services (AIS).

3. NEEDS AND BENEFITS:

The proposed amendment modifies the test cut scores for the required provision of Academic Intervention Services (AIS) to students during the 2013-2014 school year. Under the present rule, those students scoring at or below a scale score of 650 must be provided with AIS. The proposed rule would establish, for the 2013-2014 school year only, specific scale scores for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8 that would require the provision of AIS to students scoring below such scale scores.

Historically, students who have scored below proficient on State assessments in English language arts or mathematics have been required to receive AIS. However, proficiency standards on the 2012 and the 2013 state assessments cannot be directly compared because the 2012 tests were designed to measure the learning standards established in 2005, which are different than the new Common Core Learning Standards (CCLS) measured on the 2013 tests. Despite the change in scales, the Department can determine the scale scores for each respective year that are associated with students who scored at the same percentile rank on the two assessments. The Department proposes using these percentile ranks as the basis for determining which students must be provided Academic Intervention Services during this transition year as this approach ensures that the change in proficiency rates will not result in a significant increase in the percentage of students who must receive AIS. The cut scores that the Department proposes be used will result in districts being required to provide AIS to approximately the same percentages of students Statewide in the 2013-2014 school year as received AIS in the 2012-2013 school year. This is analogous to the action taken by the Regents in 2010 to address the raising of the cut scores on the 2010 Grade 3-8 English language arts and mathematics assessments (see New York State Register, November 10, 2010; EDU-31-10-00004-A).

Specifically, the proposed amendment provides that for the 2013-2014 school year only:

(1) Students scoring below specific scale scores, as set forth in section 100.2(ee)(2)(i)(a)(3) of the proposed rule, for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8, must receive academic intervention instructional services.

(2) Students scoring at or above such scale scores but below level 3/proficient will not be required to receive academic intervention instructional and/or student support services unless the school district deems it necessary.

(3) Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2013-14 school year to students who scored above such scale scores but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2012-2013, and shall either post to its Website or distribute to parents in writing a description of such process no later than November 1, 2013.

4. COSTS:

(a) Costs to State government: None.

(b) Costs to local government: The proposed amendment establishes modified requirements for the provision of AIS during the 2013-2014 school year to provide flexibility to school districts from the potential impact of an anticipated increase in the number of students required to receive AIS as a result of the transition to the new Common Core Learning Standards. School districts may incur some costs associated with distributing to parents of students a written description of the district's process for determining whether AIS will be offered to students who scored at or above who scored at or above specific scale scores specified in the regulation but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2012-2013. However, the proposed amendment allows school districts to post the description on its Website in lieu of distributing to parents, and it is anticipated that any associated costs would be minimal and can be absorbed using existing district staff and resources. More importantly, any such costs would be more than offset by the reduction in costs to schools districts resulting from implementation of the modified AIS requirements in the 2013-2014 school year.

(c) Costs to private regulated parties: None.

(d) Costs to regulating agency for implementation and continued administration of this rule: None.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments but merely establishes modified requirements for the provision of AIS during the 2013-2014 school year to provide flexibility to school districts from the potential impact of an anticipated increase in the number of students required to receive AIS as a result of the transition to the new Common Core Learning Standards.

6. PAPERWORK:

The proposed amendment requires each school district to develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2013-2014 school year to students who scored at or above specific scale scores, as set forth in section 100.2(ee)(2)(i)(a)(3) of the proposed rule for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8, but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2012-2013, and to either post to its Website or distribute to parents in writing a description of such process no later than November 1, 2013.

7. DUPLICATION:

The proposed amendment does not duplicate existing State or federal regulations.

8. ALTERNATIVES:

There were no significant alternatives and none were considered. The proposed rule is necessary to provide flexibility to school districts in providing AIS during the 2013-2014 school year relating to the potential impact of an anticipated increase in the number of students who would otherwise be required to receive AIS as a result of the transition to the new Common Core Learning Standards.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed rule by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment establishes modified requirements for the provision of Academic Intervention Services (AIS) during the 2013-2014 school year to provide flexibility to school districts from the potential impact of an anticipated increase in the number of students required to receive AIS as a result of the transition to the Common Core Learning Standards. The proposed amendment does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 695 public school districts in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment modifies the test cut scores for the required provision of Academic Intervention Services (AIS) to students during the 2013-2014 school year. Under the present rule, those students scoring at or below a scale score of 650 must be provided with AIS. The proposed rule would establish, for the 2013-2014 school year only, specific scale scores for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8 that would require the provision of AIS to students scoring below such scale scores.

Historically, students who have scored below proficient on State assessments in English language arts or mathematics have been required to receive AIS. However, proficiency standards on the 2012 and the 2013 state assessments cannot be directly compared because the 2012 tests were designed to measure the learning standards established in 2005, which are different than the new Common Core Learning Standards (CCLS) measured on the 2013 tests. Despite the change in scales, the Department can determine the scale scores for each respective year that are associated with students who scored at the same percentile rank on the two assessments. The Department proposes using these percentile ranks as the basis for determining which students must be provided Academic Intervention Services during this transition year as this approach ensures that the change in proficiency rates will not result in a significant increase in the percentage of students who must receive AIS. The cut scores that the Department proposes be used will result in districts being required to provide AIS to approximately the same percentages of students Statewide in the 2013-

2014 school year as received AIS in the 2012-2013 school year. This is analogous to the action taken by the Regents in 2010 to address the raising of the cut scores on the 2010 Grade 3-8 English language arts and mathematics assessments (see New York State Register, November 10, 2010; EDU-31-10-00004-A).

Specifically, the proposed amendment provides that for the 2013-2014 school year only:

(1) Students scoring below specific scale scores, as set forth in section 100.2(ee)(2)(i)(a)(3) of the proposed rule, for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8, must receive academic intervention instructional services.

(2) Students scoring at or above such scale scores but below level 3/proficient will not be required to receive academic intervention instructional and/or student support services unless the school district deems it necessary.

(3) Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2013-14 school year to students who scored above such scale scores but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2012-2013, and shall either post to its Website or distribute to parents in writing a description of such process no later than November 1, 2013.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements on school districts.

4. COMPLIANCE COSTS:

The proposed amendment establishes modified requirements for the provision of AIS during the 2013-2014 school year to provide flexibility to school districts from the potential impact of an anticipated increase in the number of students required to receive AIS as a result of the transition to the new Common Core Learning Standards. School districts may incur some costs associated with distributing to parents of students a written description of the district's process for determining whether AIS will be offered to students who scored at or above who scored at or above specific scale scores, as set forth in section 100.2(ee)(2)(i)(a)(3) of the proposed rule, for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8, but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2012-2013. However, the proposed amendment allows school districts to post the description on its Website in lieu of distributing to parents, and it is anticipated that any associated costs would be minimal and can be absorbed using existing district staff and resources. More importantly, any such costs would be more than offset by the reduction in costs to schools districts resulting from implementation of the modified AIS requirements in the 2013-2014 school year.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any technological requirements on school districts. Economic feasibility is addressed under the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy enacted by the Board of Regents and establishes modified requirements for the provision of AIS during the 2013-2014 school year to provide flexibility to school districts from the potential impact of an anticipated increase in the number of students required to receive AIS as a result of the transition to the new Common Core Learning Standards.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, and from the chief school officers of the five big city school districts.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment modifies the test cut scores for the required provision of Academic Intervention Services (AIS) to students during the 2013-2014 school year. Under the present rule, those students scoring at or below a scale score of 650 must be provided with AIS. The proposed rule would establish, for the 2013-2014 school year only, specific scale scores for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8 that would require the provision of AIS to students scoring below such scale scores.

Historically, students who have scored below proficient on State assessments in English language arts or mathematics have been required to

receive AIS. However, proficiency standards on the 2012 and the 2013 state assessments cannot be directly compared because the 2012 tests were designed to measure the learning standards established in 2005, which are different than the new Common Core Learning Standards (CCLS) measured on the 2013 tests. Despite the change in scales, the Department can determine the scale scores for each respective year that are associated with students who scored at the same percentile rank on the two assessments. The Department proposes using these percentile ranks as the basis for determining which students must be provided Academic Intervention Services during this transition year as this approach ensures that the change in proficiency rates will not result in a significant increase in the percentage of students who must receive AIS. The cut scores that the Department proposes be used will result in districts being required to provide AIS to approximately the same percentages of students Statewide in the 2013-2014 school year as received AIS in the 2012-2013 school year. This is analogous to the action taken by the Regents in 2010 to address the raising of the cut scores on the 2010 Grade 3-8 English language arts and mathematics assessments (see New York State Register, November 10, 2010; EDU-31-10-00004-A).

Specifically, the proposed amendment provides that for the 2013-2014 school year only:

(1) Students scoring below specific scale scores, as set forth in section 100.2(ee)(2)(i)(a)(3) of the proposed rule, for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8, must receive academic intervention instructional services.

(2) Students scoring at or above such scale scores but below level 3/proficient will not be required to receive academic intervention instructional and/or student support services unless the school district deems it necessary.

(3) Each school district shall develop and maintain on file a uniform process by which the district determines whether to offer AIS during the 2013-14 school year to students who scored above such scale scores but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2012-2013, and shall either post to its Website or distribute to parents in writing a description of such process no later than November 1, 2013.

The proposed amendment imposes no additional professional services requirements on school districts in rural areas.

3. COMPLIANCE COSTS:

The proposed amendment establishes modified requirements for the provision of AIS during the 2013-2014 school year to provide flexibility to school districts from the potential impact of an anticipated increase in the number of students required to receive AIS as a result of the transition to the new Common Core Learning Standards. School districts may incur some costs associated with distributing to parents of students a written description of the district's process for determining whether AIS will be offered to students who scored at or above who scored at or above specific scale scores, as set forth in section 100.2(ee)(2)(i)(a)(3) of the proposed rule, for English Language Arts and Mathematics examinations administered in each of the grades 3 through 8, but below level 3/proficient on a grade 3-8 English language arts or mathematics State assessment in 2012-2013. However, the proposed amendment allows school districts to post the description on its Website in lieu of distributing to parents, and it is anticipated that any associated costs would be minimal and can be absorbed using existing district staff and resources. More importantly, any such costs would be more than offset by the reduction in costs to schools districts resulting from implementation of the modified AIS requirements in the 2013-2014 school year.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy enacted by the Board of Regents and establishes modified requirements for the provision of AIS during the 2013-2014 school year to provide flexibility to school districts from the potential impact of an anticipated increase in the number of students required to receive AIS as a result of the transition to the new Common Core Learning Standards. Because the Regents policy upon which the proposed amendment is based applies to all persons seeking a New York State High School Equivalency diploma, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt school districts in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment establishes modified requirements for the provision of AIS during the 2013-2014 school year to provide flexibility to school districts from the potential impact of an anticipated increase in the number of students required to receive AIS as a result of the transition to

the new Common Core Learning Standards. The proposed amendment does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

EMERGENCY RULE MAKING

Duration of Competition in High School Athletics

I.D. No. EDU-40-13-00006-E

Filing No. 1201

Filing Date: 2013-12-16

Effective Date: 2013-12-16

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

Action taken: Amendment of section 135.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), 803(not subdivided), 3204(2) and (3)

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

Specific reasons underlying the finding of necessity: The proposed amendment will eliminate the one additional season restriction in Commissioner's Regulations § 135.4(c)(7)(ii)(d) to allow students with disabilities to participate in a non-contact sport for one or more additional seasons if they meet the criteria for a waiver as specified in the regulation.

The proposed amendment was adopted as an emergency action at the September 16-17, 2013 Regents meeting, effective September 17, 2013. Because the Board of Regents meets at monthly intervals, the earliest the proposed amendment could be adopted by regular action after publication of a Notice of Proposed Rule Making and expiration of the 45-day public comment period prescribed in State Administrative Procedure Act (SAPA) section 202 would be the December 16-17, 2013 Regents meeting. Furthermore, because SAPA section 203(1) provides that an adopted rule may not become effective until a Notice of Adoption is published in the State Register, the earliest the proposed amendment could become effective if adopted at the December Regents meeting, is January 1, 2014. However, the September emergency rule will expire on December 15, 2013, 90 days after its filing with the Department of State on September 17, 2012. A lapse in the rule's effective date could disrupt participation of eligible students with disabilities in senior high school non-contact athletic competition during the 2013-2014 school year.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed rule adopted by emergency action at the September Regents meeting remains continuously in effect until the effective date of its permanent adoption.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the December 16-17, 2013 Regents meeting, which is the first scheduled Regents meeting after publication of the proposed rule in the State Register and expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

Subject: Duration of competition in high school athletics.

Purpose: To eliminate the one additional season limit on waivers for students with disabilities to participate in athletic competition.

Text of emergency rule: Clause (d) of subparagraph (ii) of paragraph (7) of subdivision (c) of section 135.4 of the Regulations of the Commissioner of Education is amended, effective December 16, 2013, as follows:

(d) Waiver from the age requirement and four-year limitation for interschool athletic competition for students with disabilities in senior high school grades 9, 10, 11, and 12. For purposes of this clause, the term non-contact sport shall include swimming and diving, golf, track and field, cross country, rifle, bowling, gymnastics, skiing and archery, and any other such non-contact sport deemed appropriate by the Commissioner. A student with a disability, as defined in section 4401 of the Education Law, who has not yet graduated from high school may be eligible to participate in a senior high school noncontact athletic competition [for a fifth year] under the following limited conditions:

(1) such student must apply for and be granted a waiver to the age requirement and four-year limitation prescribed in subclause (b)(1) of this subparagraph. A waiver shall only be granted upon a determination by the superintendent of schools or chief executive officer of the school or school system, as applicable, that the given student meets the following criteria:

(i) such student has not graduated from high school as a result of his or her disability delaying his or her education for one year or more;

(ii) such student is otherwise qualified to compete in the athletic competition for which he or she is applying for a waiver and the student must have been selected for such competition in the past;

[(iii)] such student has not already participated in an additional season of athletic competition pursuant to a waiver granted under this subclause;]

[(iv)] (iii) such student has undergone a physical evaluation by the school physician, which shall include an assessment of the student's level of physical development and maturity, and the school physician has determined that the student's participation in such competition will not present a safety or health concern for such student; and

[(v)] (iv) the superintendent of schools or chief executive officer of the school or school system has determined that the given student's participation in the athletic competition will not adversely affect the opportunity of the other students competing in the sport to successfully participate in such competition.

(2) Such student's participation in the additional season of such athletic competition shall not be scored for purposes of such competition.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-40-13-00006-EP, Issue of October 2, 2013. The emergency rule will expire February 13, 2014.

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 charges the Department with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 empowers the Board of Regents and the Commissioner to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the Department by law.

Education Law sections 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education.

Education Law section 803 provides the Board of Regents with overall authority over physical education instruction in schools.

Education Law section 3204(2) and (3) relates to compulsory education.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to the age and four-year duration of competition limitations for athletic competition by students with disabilities.

3. NEEDS AND BENEFITS:

Section 135.4(c)(7)(ii)(b)(1), relating to duration of competition, generally provides, with certain exceptions, that a student shall be eligible for athletic competition in a sport during each of four consecutive seasons of such sport commencing with the student's entry into ninth grade and prior to graduation, and shall be eligible for interschool competition in grades 9, 10, 11 and 12 until the last day of the school year in which the student attains the age of 19.

Section 135.4(c)(7)(ii)(d) currently provides a process for obtaining a waiver from the age requirement and four-year limitation for athletic competition to allow students with disabilities, who would otherwise not be able to participate in interscholastic athletic competition due to their age and/or years in school, to participate in a non-contact athletic sport for an additional season.

The proposed amendment will eliminate the one additional season restriction by allowing students with disabilities to participate in a non-contact sport for one or more additional seasons if they meet all the other specified criteria for this waiver. This amendment will advance initiatives of inclusion by offering students with disabilities continued socialization with teammates and continued opportunity to develop the skills and abilities associated with such students' participation in such sports.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: It is anticipated that the waiver(s) provided by the proposed amendment will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific

circumstances the proposed amendment is intended to address, and that any costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

(c) Costs to private regulated parties: For the same reasons as discussed in (b) above, it is anticipated that costs to private schools will be minimal and capable of being absorbed using existing staff and resources.

(d) Costs to the regulating agency for implementation and administration of this rule: It is anticipated that costs to the State Education Department to implement and enforce the regulations will be minimal and capable of being absorbed by existing staff.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments, but merely eliminates the one additional season restriction for participation in a non-contact sport by students with disabilities pursuant to a waiver, to allow such students to participate for one or more additional seasons.

6. PAPERWORK:

This proposed amendment does not impose any additional paperwork requirements, but merely eliminates the one additional season restriction for participation in a non-contact sport by students with disabilities pursuant to a waiver, to allow such students to participate for one or more additional seasons.

7. DUPLICATION:

The proposed amendment does not duplicate existing State or federal regulations.

8. ALTERNATIVES:

There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the proposed rule by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment is necessary to implement educational policy as determined by the Board of Regents by permitting, under certain specified circumstances, a waiver from the age requirement and four-year limitation for interschool athletic competition to students with disabilities in senior high school grades 9, 10, 11, and 12 who seek to participate in one or more additional seasons of interschool non-contact sport competition. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Government:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 695 school districts within the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements, but merely eliminates the additional season restriction for participation in a non-contact athletic sport by students with disabilities pursuant to a waiver, to allow such students to participate for one or more additional seasons.

3. PROFESSIONAL SERVICES:

The proposed amendment imposes no additional professional service requirements.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any significant costs, but merely eliminates the one additional season restriction for participation in a non-contact sport by students with disabilities pursuant to a waiver, to allow such students to participate for one or more additional seasons. It is anticipated that the waiver provided by the proposed amendment will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any technological requirements on school districts. Economic feasibility is addressed under the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement educational policy

as determined by the Board of Regents by permitting, under certain specified circumstances, a waiver from the age requirement and four-year limitation for interschool athletic competition to students with disabilities who seek to participate in one or more additional seasons of non-contact athletic competition.

The proposed amendment has been carefully drafted to address the specific circumstances for granting a waiver and it is anticipated that the waiver will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any compliance requirements and costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to the chief school officers of the five big city school districts.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements, but merely eliminates the one additional season restriction for participation in non-contact athletic competition by students with disabilities pursuant to a waiver, to allow such students to participate for one or more additional seasons.

The proposed amendment imposes no additional professional service requirements.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any significant costs, but merely eliminates the one additional season restriction for participation in non-contact athletic competition by students with disabilities pursuant to a waiver, to allow such students to participate for one or more additional seasons. It is anticipated that the waiver provided by the proposed amendment will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement educational policy as determined by the Board of Regents by permitting, under certain specified circumstances, a waiver from the age requirement and four-year limitation for interschool athletic competition to students with disabilities who seek to participate in one or more additional seasons of non-contact athletic competition. The proposed amendment does not directly impose any additional compliance requirements or costs on school districts in rural areas.

The proposed amendment has been carefully drafted to address the specific circumstances for granting a waiver and it is anticipated that the waiver will be exercised in limited circumstances, given the restrictions on eligibility for such waiver and the specific circumstances the proposed amendment is intended to address, and that any compliance requirements and costs associated with the proposed amendment will be minimal and capable of being absorbed by existing staff, who currently are responsible for making similar decisions under existing regulations relating to a student's ability to participate in a sport. Because the Regents policy upon which the proposed amendment is based applies to all school districts in the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment is necessary to implement educational policy as determined by the Board of Regents by permitting, under certain specified circumstances, a waiver from the age requirement and four-year limitation for interschool athletic competition to students with disabilities in senior

high school grades 9, 10, 11, and 12 who seek to participate in one or more additional seasons of interschool non-contact sport competition. The proposed amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have no impact on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY RULE MAKING

Advisory Committee on Long-Term Clinical Clerkships

I.D. No. EDU-41-13-00009-E

Filing No. 1224

Filing Date: 2013-12-17

Effective Date: 2013-12-23

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

Action taken: Amendment of section 60.2 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6501 (not subdivided), 6504 (not subdivided) and 6507(2)(a)

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

Specific reasons underlying the finding of necessity: The proposed amendment would increase from one to two the number of Regents sitting on the Advisory Committee on Long-Term Clinical Clerkships and would authorize the Chancellor of the Board of Regents to appoint additional Advisory Committee members, upon consultation with the Board of Regents, and to remove and replace members who have been absent for three or more consecutive Committee meetings.

The proposed amendment was adopted as an emergency action at the September 16-17, 2013 Regents meeting, effective September 24, 2013, and has now been adopted as a permanent rule at the December 16-17, 2013 Regents meeting. Pursuant to SAPA § 203(1), the earliest effective date of the permanent rule is December 31, 2013, the date a Notice of Adoption will be published in the State Register. However, the September emergency rule will expire on December 22, 2013, 90 days after its filing with the Department of State on September 24, 2013. A lapse in the rule's effective date could disrupt the functioning of the Advisory Committee on Long-Term Clinical Clerkships, as it is important to ensure the uninterrupted authority of all Advisory Committee members to participate in the work of the Committee.

Emergency action is therefore necessary for the preservation of the public health and general welfare to ensure that the proposed rule adopted by emergency action at the September Regents meeting, and adopted as a permanent rule at the December Regents meeting, remains continuously in effect until the effective date of its permanent adoption.

Subject: Advisory Committee on Long-Term Clinical Clerkships.

Purpose: To increase from one to two the number of Regents sitting on the Advisory Committee and would authorize the Regents Chancellor to appoint additional Committee members, upon consultation with the Board.

Text of emergency rule: Paragraph (2) of subdivision (f) of section 60.2 of the Regulations of the Commissioner of Education is amended, effective December 23, 2013, as follows:

(2) Composition of the committee. The committee shall consist of:

(i) [one member] *two members* of the Board of Regents, [who will] *one of whom shall be designated by the chancellor to serve as co-chair of the committee along with the chairperson of the State Board for Medicine;*

(ii) ...

(iii) ...

(iv) ...

(v) ...

(vi) ...

(vii) two representatives of medical schools registered in New York State; [and]

(viii) two representatives from hospitals that serve as sites for clinical clerkships in New York State;

(ix) *such other members as the chancellor, upon consultation with the Board of Regents, may appoint; and*

(x) *the chancellor may remove a member who fails to attend three or more consecutive meetings, and upon such removal shall appoint a replacement member.*

This notice is intended to serve only as a notice of emergency adoption.

This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-41-13-00009-EP, Issue of October 9, 2013. The emergency rule will expire February 14, 2014.

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet requirements prescribed in the article of the Education Law that pertains to the particular profession.

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

Paragraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations relating to the professions.

2. LEGISLATIVE OBJECTIVES:

Subdivision (f) of section 60.2 of the Regulations of the Commissioner created the Advisory Committee on Long-Term Clinical Clerkships, established the composition of the Committee, set the terms of the Committee members, defined the duties of the Committee, and established the procedure for consideration of the Committee's recommendations by the Department and the Board of Regents. The duties of the Committee include:

- recommending standards and procedures for the approval of international medical schools to place students in long-term clinical clerkships;
- appointing appropriate site review teams in connection with applications for such approval; and
- issuing reports and recommendations on such applications.

Paragraph (2) of subdivision (f) of section 60.2 of the Commissioner's regulations specifies the composition of the Advisory Committee to include:

- one member of the Board of Regents;
- the Chairperson and the Executive Secretary of the State Board for Medicine;
- two physicians experienced in the evaluation of medical education programs; and
- representatives of;
 - the Department of Health;
 - international medical schools that have been approved to place students in New York clinical clerkships;
 - New York State registered medical schools; and
 - hospitals that serve as clinical clerkship sites.

The members of the Committee are appointed by the Chancellor of the Board of Regents, upon consultation with the Board.

The proposed amendment would increase from one to two the number of Regents sitting on the Committee and would authorize the Chancellor to appoint additional Committee members, upon consultation with the Board, and to remove and replace members who have been absent for three or more consecutive Committee meetings.

3. NEEDS AND BENEFITS:

As the Board of Regents makes the final determinations regarding the standards and processes to be followed in reviewing applications for approval to place students in long-term clinical clerkships and also makes the final determinations on such applications, the process would benefit from having an additional Regent serving on the Committee. Authorizing the Chancellor to appoint additional appropriate Committee members, and to remove and replace members who have been absent for three or more consecutive Committee meetings, would create greater flexibility in providing the Committee with the expertise needed to address issues that arise in its work or that are assigned to it by the Department or the Board of Regents.

4. COSTS:

(a) Costs to State government: The estimated cost to State government would be minimal and would depend on whether additional members are appointed and, if so, how many. It is estimated that for each of the Committee's two annual meetings, each Committee member would be reimbursed on average \$200 for travel and \$200 for lodging. These costs will be recovered through fees charged to the schools applying for approval to place students in long-term clinical clerkships in New York State.

(b) Cost to local government: The proposed amendment relates to the committee that evaluates international medical schools that seek authorization to place students in long-term clinical clerkships. Local governments play no role in the process of evaluating international medical schools. As such, there will be no cost to local government.

(c) Cost to private regulated parties: The proposed regulation will not impose any new costs on applicants for approval to place students in long-term clinical clerkships.

(d) Cost to the regulatory agency: See Cost to State Government above.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment to the Regulations of the Commissioner of Education is applicable to international medical schools only and does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment to the Regulations of the Commissioner does not impose any additional reporting or recordkeeping requirements beyond those already required to be submitted by international medical schools seeking approval to place students in long-term clinical clerkships in New York State.

7. DUPLICATION:

The proposed amendment to the Regulations of the Commissioner does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment.

9. FEDERAL STANDARDS:

There are no Federal standards applicable to approval of international medical schools to place students in long-term clinical clerkships.

10. COMPLIANCE SCHEDULE:

It is anticipated that an additional member of the Board of Regents will be added to the Advisory Committee on Long-Term Clinical Clerkships upon approval of the proposed amendment. There are no plans at present for the appointment of any other Committee members.

Regulatory Flexibility Analysis

The purposes of the proposed amendment are to increase from one to two the number of Regents sitting on the Advisory Committee on Long-Term Clinical Clerkships and to authorize the Chancellor of the Board of Regents to appoint additional Committee members, upon consultation with the Board, and to remove and replace members who have been absent for three or more consecutive Committee meetings.

The amendment is applicable to international medical schools only. Small businesses and local governments will not be impacted by the proposed amendment. Accordingly, no further steps were needed to ascertain the impact on small businesses and local governments.

Rural Area Flexibility Analysis

The purposes of the proposed amendment are to increase from one to two the number of Regents sitting on the Advisory Committee on Long-Term Clinical Clerkships and to authorize the Chancellor of the Board of Regents to appoint additional Committee members, upon consultation with the Board, and to remove and replace members who have been absent for three or more consecutive Committee meetings.

The amendment is applicable to international medical schools only and does not impact entities in rural areas of New York State. Accordingly, no further steps were needed to ascertain the impact of the proposed amendment on entities in rural areas.

Job Impact Statement

The purposes of the proposed amendment are to increase from one to two the number of Regents sitting on the Advisory Committee on Long-Term Clinical Clerkships and to authorize the Chancellor of the Board of Regents to appoint additional Committee members, upon consultation with the Board, and to remove and replace members who have been absent for three or more consecutive Committee meetings.

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

Assessment of Public Comment

The agency received no public comment since publication of the last assessment of public comment.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Duration of Limited Permits for Applicants Seeking Licensure as Mental Health Practitioners

I.D. No. EDU-53-13-00006-EP

Filing No. 1226

Filing Date: 2013-12-17

Effective Date: 2013-12-17

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

Proposed Action: Amendment of sections 79-9.4, 79-10.4, 79-11.4 and 79-12.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6501 (not subdivided), 6504 (not subdivided), 6507(2)(a), 6508(1), 8409(2); and L. 2013, ch. 485

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

Specific reasons underlying the finding of necessity: The purpose of the proposed amendment is to implement Chapter 485 of the Laws of 2013, which took effect on November 13, 2013. This amendment to the Education Law provides limited permit holders a total of four years to meet the requirements for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst. Prior to the enactment of Chapter 485, the law authorized a maximum duration of three years for a limited permit in mental health counseling and a maximum of two years for a limited permit in marriage and family therapy, creative arts therapy and psychoanalysis. For some applicants, this has been an insufficient time period for them to complete the supervised experience and examination requirements for licensure in these professions. When the limited permit expires, the applicant may no longer practice any of the aforementioned professions or use the restricted title, making it difficult, if not impossible for the applicant to ever qualify for licensure in New York State.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for adoption on a non-emergency basis, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the March 10-11, 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the March meeting, would be March 26, 2014, the date a Notice of Adoption would be published in the State Register. However, the provisions of Chapter 485 of the Laws of 2013 became effective November 13, 2013.

Emergency action is necessary for the preservation of the public health and general welfare in order to enable the State Education Department to immediately establish requirements to timely implement Chapter 485 of the Laws of 2013, so that applicants for licensure have the ability to obtain additional time to meet the experience and examination requirements for licensure, which will increase the number of licensed professionals qualified to practice mental health counseling, marriage and family therapy, creative arts therapy and psychoanalysis.

Subject: Duration of limited permits for applicants seeking licensure as mental health practitioners.

Purpose: To conform to the Regulations of the Commissioner of Education to chapter 485 of the Laws of 2013.

Text of emergency/proposed rule: 1. Subdivision (c) of section 79-9.4 of the Regulations of the Commissioner of Education is amended, effective December 17, 2013, as follows:

(c) The limited permit in mental health counseling shall be valid for a period of not more than 24 months, provided that the limited permit may be extended for [an] *no more than two* additional 12 [months] *month periods* at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements [within the first 24 months] but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement [within the first 24 months], and provided further that the time authorized by such limited permit and subsequent [extension] *extensions* shall not exceed [36] 48 months total.

2. Subdivision (c) of section 79-10.4 of the Regulations of the Commissioner of Education is amended, effective December 17, 2013, as follows:

(c) The limited permit in marriage and family therapy shall be valid for a period of not more than [12] 24 months, provided that the limited permit may be extended for [an] *no more than two* additional 12 [months] *month periods* at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements [within the first 12 months] but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement [within the first 12 months], and provided further that the time authorized by such limited permit and subsequent [extension] *extensions* shall not exceed [24] 48 months total.

3. Subdivision (c) of section 79-11.4 of the Regulations of the Commissioner of Education is amended, effective December 17, 2013, as follows:

(c) The limited permit in creative arts therapy shall be valid for a period of not more than [12] 24 months, provided that the limited permit may be extended for [an] *no more than two* additional 12 [months] *month periods*

at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements [within the first 12 months] but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement [within the first 12 months], and provided further that the time authorized by such limited permit and subsequent [extension] *extensions* shall not exceed [24] 48 months total.

4. Subdivision (c) of section 79-12.4 of the Regulations of the Commissioner of Education is amended, effective December 17, 2013, as follows:

(c) The limited permit in psychoanalysis shall be valid for a period of not more than [12] 24 months, provided that the limited permit may be extended for [an] *no more than two* additional 12 [months] *month periods* at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements [within the first 12 months] but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement [within the first 12 months], and provided further that the time authorized by such limited permit and subsequent [extension] *extensions* shall not exceed [24] 48 months total.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 16, 2014.

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Office of the Professions, Office of the Deputy Commissioner, State Education Department, State Education Building, 2M, 89 Washington Ave., Albany, NY 12234, (518) 486-1765, email: opdepcom@mail.nysed.gov

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

1. STATUTORY AUTHORITY:

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

Section 6501 of the Education Law provides that, to qualify for admission to a profession, an applicant must meet the requirements prescribed in the article of the Education Law that pertains to the particular profession.

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

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

Subdivision (1) of section 6508 of the Education Law authorizes the state boards for the professions to assist the Board of Regents and the State Education Department on matters of professional licensing, practice, and conduct.

Subdivision (2) of section 8409 of the Education Law, as amended by Chapter 485 of the Laws of 2013, standardizes the duration of limited permits for applicants seeking licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst at two years for the initial permit with the possibility of up to two one-year extensions, at the discretion of the Department.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the intent of, and conforms the Regulations of the Commissioner of Education to, Chapter 485 of the Laws of 2013 that amended Article 163 of the Education Law by standardizing the duration of limited permits for applicants seeking licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst at two years for the initial permit with the possibility of two one-year extensions, at the discretion of the Department.

3. NEEDS AND BENEFITS:

An individual seeking license in New York State as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst must meet requirements for education, supervised experience and examination, acceptable to the State Education Department. In order to provide clinical services in New York State to meet the experience requirements, an applicant for licensure in each of the above-referenced professions needs a limited permit from the State Education Department.

When Article 163 was enacted in 2002, the law authorized the State

Education Department to issue a two-year limited permit to an applicant in mental health counseling and a one-year limited permit to an applicant in marriage and family therapy, creative arts therapy, and psychoanalysis, to practice under a qualified supervisor in an authorized setting while meeting the experience and examination requirements. The law and implementing regulations allowed the State Education Department to grant a one-year extension, upon application and payment of fee, to an applicant in any of these professions, if the applicant had made good faith efforts to meet the experience and examination requirements during the initial permit period.

While many applicants were able to complete the required experience in the time periods specified in law, there have been a number of applicants who could not do so. On November 13, 2013, the Governor signed Chapter 485 of the Laws of 2013, which provides applicants in each of these professions a total of four years under a limited permit to meet the experience and examination requirements for licensure. The initial permit will be valid for two years, and the Department may renew the permit for up to two additional one-year periods. The applicant/limited permit holder will continue to practice in a setting that is authorized to provide professional services under a supervisor who is licensed and registered to practice under the Education Law. This will protect the citizens who receive services from these applicants/limited permit holders, while providing additional time for those applicants/limited permit holders to meet the experience and examination requirements for entry into the profession. The new law became effective immediately. The proposed amendment is necessary to conform the Commissioner's Regulations with Education Law section 8409, as amended by Chapter 485 of the Laws of 2013.

4. COSTS:

(a) Costs to State government: The proposed amendment will not impose any additional cost on State government, including the State Education Department, over and above the costs imposed by Article 163 of the Education Law for administering these professions.

(b) Cost to local government: The proposed amendment relates to meeting requirements for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst. The regulation will not impose additional costs on local government.

(c) Cost to private regulated parties: The proposed amendment will not impose any other costs on applicants for the licenses over and above those imposed by Article 163 of the Education Law, as amended by Chapter 485 of the Laws of 2013.

(d) Cost to the regulatory agency: As stated above in Costs to State government, the proposed regulation does not impose costs on the State Education Department beyond those imposed by statute.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment implements the requirements of Chapter 485 that amended Article 163 of the Education Law in regard to the duration of limited permits that may be issued to an applicant for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst. The proposed amendment does not impose any program, service, duty or responsibility upon local governments.

6. PAPERWORK:

The proposed amendment imposes no additional reporting or record-keeping requirements beyond those imposed by Article 163 of the Education Law. In accordance with Article 163, applicants for licensure will be required to submit to the State Education Department an application and fee for the initial, two-year limited permit and, if appropriate, up to two one-year extensions.

7. DUPLICATION:

The proposed amendment does not duplicate other existing State or Federal requirements, and is necessary to implement Chapter 485 of the Laws of 2013.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 485 of the Laws of 2013 in regard to the duration of limited permits available to an applicant for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst who is practicing in an authorized setting under a supervisor who is licensed and registered to practice under the Education Law, while meeting the experience and/or examination requirements for licensure. There are no significant alternatives to the proposed amendment that would be consistent with Chapter 485 and none were considered.

9. FEDERAL STANDARDS:

Since there are no applicable federal standards for the licensure of mental health counselors, marriage and family therapists, creative arts therapists or psychoanalysts, the proposed amendment does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to conform the Regulations of the Commissioner of Education to Chapter 485 of the Laws of 2013. The

effective date of Chapter 485 of the Laws of 2013 is November 13, 2013. The proposed amendment was adopted by the Board of Regents on an emergency basis effective December 17, 2013 and is expected to be presented for permanent adoption at the March 10-11, 2014 Regents meeting, with an effective date of March 26, 2014. It is anticipated that applicants for licensure or certification will be able to comply with the proposed amendment by the effective date.

Regulatory Flexibility Analysis

The proposed amendment to the Regulations of the Commissioner of Education implements the provisions of Chapter 485 of the Laws of 2013, which amended Article 163 of the Education Law in regard to the duration of limited permits issued by the State Education Department to individuals seeking licensure as mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts. The amendment will not impose any new reporting, recordkeeping, or other compliance requirements, or have any adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it will not adversely affect small businesses or local governments, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required, and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to applicants seeking licensure as mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts in New York State. The proposed amendment implements the provisions of Chapter 485 of the Laws of 2013 that, effective November 13, 2013, changed the duration of limited permits that authorize the applicant to practice the profession under the supervision of a qualified supervisor, while meeting the experience and/or examination requirements for licensure. Applicants for licensure in these fields include individuals located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

An individual seeking license in New York State as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst must meet requirements for education, supervised experience and examination, acceptable to the State Education Department. In order to provide clinical services in New York State to meet the experience requirements, an applicant for licensure in each of the above-referenced professions needs a limited permit from the State Education Department.

When Article 163 was enacted in 2002, the law authorized the State Education Department to issue a two-year limited permit to an applicant in mental health counseling and a one-year limited permit to an applicant in marriage and family therapy, creative arts therapy, and psychoanalysis, to practice under a qualified supervisor in an authorized setting while meeting the experience and examination requirements. The law and implementing regulations allowed the State Education Department to grant a one-year extension, upon application and payment of fee, to an applicant in any of these professions, if the applicant had made good faith efforts to meet the experience and examination requirements during the initial permit period.

While many applicants were able to complete the required experience in the time periods specified in law, there have been a number of applicants who could not do so. On November 13, 2013, the Governor signed Chapter 485 of the Laws of 2013, which provides applicants in each of these professions up to a possible total of four years under a limited permit to meet the experience and examination requirements for licensure. The initial permit will be valid for two years, and the Department may renew the permit for up to two additional one-year periods. The applicant/limited permit holder will continue to practice in a setting that is authorized to provide professional services under a supervisor who is licensed and registered to practice under the Education Law. This will protect the citizens who receive services from these applicants/limited permit holders, while providing additional time for those applicants/limited permit holders to meet the experience and examination requirements for entry into the profession. The new law became effective immediately.

The proposed amendment is necessary to conform the Commissioner's Regulations with Education Law section 8409, as amended by Chapter 485 of the Laws of 2013. The proposed amendment does not impose any additional reporting, recordkeeping, or other compliance requirements on licensees, including those located in rural areas, beyond those currently imposed by regulation. In addition, the proposed amendment does not require regulated parties to hire professional services in order to comply.

3. COSTS:

The proposed amendment does not impose any additional costs on regulated parties, including those in rural areas, beyond those currently required to comply with statutory and regulatory requirements for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations with Education Law section 8409, as amended by Chapter 485 of the Laws of 2013. The proposed amendment extends to up to a possible total of four years the amount of time available to an applicant for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst in New York State to meet the supervised experience and examination requirements. These requirements are in place to ensure competency of licensed professionals and thereby safeguard the public. Due to the nature of the proposed amendment, the State Education Department does not believe it to be warranted to establish different requirements for applicants located in rural areas.

5. RURAL AREAS PARTICIPATION:

Comments on the proposed amendment were solicited from the State Board for Mental Health Practitioners and from statewide professional associations whose memberships include individuals who live or work in rural areas.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement statutory requirements in Chapter 485 of the Laws of 2013 and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The State Education Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

Article 163 of the Education Law establishes a requirement that mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts be licensed to practice in New York State. The proposed amendment to the Regulations of the Commissioner of Education implements the requirements of Chapter 485 of the Laws of 2013 that amended Article 163 of the Education Law in regard to the duration of limited permits issued by the State Education Department. The limited permit allows an applicant for licensure as a mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst to practice their respective professions, in an authorized setting under a supervisor who is licensed and registered to practice under the Education Law, while meeting the experience and/or examination requirements for licensure in New York State. Chapter 485 of the Laws of 2013 provides applicants in each of these professions up to a possible total of four years under a limited permit to meet the experience and/or examination requirements for licensure. The amendment will not have a substantial adverse impact on jobs and employment opportunities. Because it is evident from the nature of the proposed amendment that it will not affect job and employment opportunities, no affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required, and one has not been prepared.

**NOTICE OF EMERGENCY
ADOPTION
AND REVISED RULE MAKING
NO HEARING(S) SCHEDULED**

State High School Equivalency Diploma

I.D. No. EDU-41-13-00010-ERP

Filing No. 1228

Filing Date: 2013-12-17

Effective Date: 2014-01-01

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

Action Taken: Amendment of section 100.7(a)(2) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1), (2), 308(not subdivided) and 3204(3)

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

Specific reasons underlying the finding of necessity: Currently, the GED® examination is the primary method to achieve a New York State High School Equivalency Diploma. However, with the changes in the administration and content of the GED® examination beginning in January 2014, as well as the increased cost of the exam that was announced by GEDTS (the company that owns and administers the GED® examination), on March 7, 2013, after issuance of a competitive Request for Proposal, Commissioner King announced a new examination called Test Assessing Secondary Completion (TASC), to be first administered beginning January 1, 2014.

As part of its overall transition plan, the State Education Department (SED) has been active in alerting the public to the changes to the GED® examination and notifying those students who have passed parts but not the entire GED® examination that they have until December 31, 2013 to finish taking the exam or they will have to retake the entire new exam. As expected, there has been a surge in the number of people taking the GED® examination. The first nine months of 2013 has seen a 22.6% increase in GED® examination administrations from the previous year.

The increased surge has resulted in a number of test centers in New York City filling all their seats for exam dates through the end of the year. In anticipation of this surge, NYC DOE was provided additional funding in the city budget to provide additional test dates in 2013. Consequently, NYC DOE scheduled new examination dates (including Sundays) providing over 6,000 additional seats. Test centers operated by CUNY also scheduling additional exam dates to add over 3,000 additional seats.

The anticipated surge in test takers has been significant and is expected to continue through the end of 2013. SED has worked closely with all involved to assure that test takers are aware of the changes, are receiving the guidance and instructional support needed to make informed decisions and can access the GED® exam before the end of the year. We have monitored the availability of test seats at our 269 approved test centers and collaborated with test centers in the New York Metropolitan area, where demand is heaviest, to expand the capacity including significant financial support from New York City Department of Education (DoE). Nonetheless, it is unlikely that we have reached everyone impacted by these changes.

Out-of-school youth and adults have a limited time and opportunity to earn a HSE diploma to support their post-secondary and employment goals. Unfortunately the systems supporting these individuals lack the capacity and resources to effect CCSS level curriculum and instruction at a pace needed to support full and final transition from the GED® exam to the TASC even with a phased-in approach to increased rigor.

To better assure a seamless transition to the new exam, the proposed amendment would allow, for a limited time, a passing score on up to four sub-tests of the 2002 GED® exam to be accepted as a passing score for the corresponding sub-test(s) on the Test Assessment of Secondary Completion (TASC). Specifically, passing sub-test scores earned by taking the 2002 edition of the GED® exam would be accepted as a passing score on the corresponding sub-tests of the TASC from 2014 through 2015.

Since publication of a Notice of Proposed Rule Making in the State Register on October 9, 2013, the proposed amendment has been revised to clarify that the passing scores on no more than four sub-tests of the 2002 GED® exam may be accepted as passing scores for the corresponding sub-tests of TASC. Currently, in order to receive a High School Equivalency Diploma, a candidate must pass all five sub-tests and also achieve a cumulative score of 2250 on the sub-tests. Since a sub-test passing score is currently set at a score of at least 410, it is possible for a candidate to pass all five sub-tests and still not achieve a 2250 cumulative score ($410 \times 5 = 2050$). However, the proposed amendment as currently drafted establishes no limits on the number of sub-test scores that may be used and therefore would allow all five sub-test scores on the old GED® test to be accepted as a passing score on the sub-tests of the new TASC test. This could have the unintended effect of allowing a candidate who would not pass the GED® exam under current requirements to assert the right to substitute passing scores on all five sub-tests. Therefore, the proposed amendment has been revised to clarify that the passing scores on no more than four-sub tests may be accepted.

Because the Board of Regents meets at scheduled intervals the earliest the revised proposed amendment could be presented for regular (non-emergency) adoption, after publication of a Notice of Revised Rule Making in the State Register and expiration of the 30-day public comment period for revised rule makings prescribed in State Administrative Procedure Act (SAPA) section 202(4-a), is the February 10-11, 2014 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest ef-

fective date of the revised proposed amendment, if adopted at the February meeting, would be February 26, 2014, the date a Notice of Adoption would be published in the State Register. However, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare to timely provide candidates for a high school equivalency diploma with the ability to use their passing scores on up to four sub-tests on examination(s) taken in calendar years 2002 through 2013 for the English version of the examination (and 2003 through 2013 for the Spanish version) as passing scores on the corresponding sub-tests of the new examination prescribed for the program and to be administered on or after January 1, 2014 and before January 1, 2016.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the February 10-11, 2014 Regents meeting, which is the first scheduled meeting after expiration of the 30-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.

Subject: State High School Equivalency diploma.

Purpose: To permit, for a limited time, acceptance of partial passing scores on up to four sub-tests of the current GED® examination for the corresponding sub-test on the new State High School Equivalency examination (the Test Assessing Secondary Completion – TASC).

Text of emergency/revised rule: Paragraph (2) of subdivision (a) of section 100.7 of the Regulations of the Commissioner of Education is amended, effective January 1, 2014, as follows:

(2)(i) In order to receive a high school equivalency diploma, candidates shall:

[(i)] (a) take [the] a general comprehensive examination prescribed for the program, in English, and achieve a standing designated as satisfactory by the Commissioner of Education; or

[(ii)] (b) take [the] a general comprehensive examination prescribed for the program in a language other than English and for those taking the examination on or after July 1, 1986, an English language proficiency examination designed by the commissioner, and achieve a standing designated as satisfactory by the commissioner in each examination, except that candidates who achieve a satisfactory standing only on [the] a general comprehensive examination may receive a high school equivalency diploma that bears an inscription indicating the language in which the general comprehensive examination was taken, and may exchange such diploma for a diploma not containing such inscription upon achievement of a satisfactory standing on the designated English language proficiency examination; or

[(iii)] (c) provide satisfactory evidence that they have successfully completed 24 semester hours or the equivalent as a recognized candidate for a college-level degree or certificate at an approved institution. Beginning with applications made on or after September 1, 2000 and before September 30, 2004, the 24 semester hours shall be distributed as follows: six semester hours or the equivalent in English language arts including writing, speaking and reading (literature); six semester hours or the equivalent in mathematics; three semester hours or the equivalent in natural sciences; three semester hours or the equivalent in social sciences; three semester hours or the equivalent in humanities; and three semester hours or the equivalent in career and technical education and/or foreign languages. Beginning with applications made on or after September 30, 2004, the 24 semester hours shall be distributed as follows: six semester hours or the equivalent in English language arts including writing, speaking and reading (literature); three semester hours or the equivalent in mathematics; three semester hours or the equivalent in natural sciences; three semester hours or the equivalent in social sciences; three semester hours or the equivalent in humanities; and six semester hours or the equivalent in any other courses within the registered degree or certificate program.

(ii) Notwithstanding the provisions of clauses (a) and (b) of subparagraph (i) of this paragraph and subdivision (d) of this section, a passing score or scores on at least one but not more than four of the sub-tests of such examination or examinations taken in calendar years 2002 through 2013 for the English version of the exam and 2003 through 2013 for the Spanish version of the examination may be accepted as a passing score on the corresponding sub-test or sub-tests of any general comprehensive examination prescribed for the program and administered on or after January 1, 2014 and before January 1, 2016.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on October 9, 2013, I.D. No. EDU-41-13-00010-P. The emergency rule will expire March 16, 2014.

Emergency rule compared with proposed rule: Substantial revisions were made in section 100.7(a)(2).

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Mark Leinung, Director Adult Education Programs and Policy, Office of Adult Career and Continuing Education Services, 99 Washington Ave., Room 1622 OCP, Albany, NY 12234, (518) 474-8892, email: mleinung@mail.nysed.gov

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

Revised Regulatory Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on October 9, 2013, the proposed amendment has been revised as follows.

Subparagraph (ii) of paragraph (2) of subdivision (a) of section 100.7 of the Regulations of the Commissioner of Education has been revised to clarify that the passing scores on no more than four sub-tests on the High School Equivalency examination(s) taken in calendar years 2002 through 2013 for the English version of the examination (and 2003 through 2013 for the Spanish version) may be accepted as passing scores on the corresponding sub-tests of the new examination prescribed for the program and administered on or after January 1, 2014 and before January 1, 2016.

Currently, in order to receive a High School Equivalency Diploma through the GED® test, a candidate must pass all five sub-tests and also achieve a cumulative score of 2250 on the sub-tests. Since a sub-test passing score is currently set at a score of at least 410, it is possible for a candidate to pass all five sub-tests and still not achieve a 2250 cumulative score ($410 \times 5 = 2050$). However, the proposed amendment as currently drafted establishes no limits on the number of sub-test scores that may be used and therefore would allow all five sub-test scores on the old GED® test to be accepted as a passing score on the sub-tests of the new TASC test. This could have the unintended effect of allowing a candidate who would not pass the GED® exam under current requirements to assert the right to substitute passing scores on all five sub-tests. Therefore, the proposed amendment has been revised to clarify that the passing scores on no more than four-sub tests may be accepted.

The above revision requires that the Needs and Benefits, Costs and Paperwork sections of the previously published Regulatory Impact Statement be revised to read as follows.

NEEDS AND BENEFITS:

Currently, the GED® examination is the primary method to achieve a New York State High School Equivalency Diploma. However, with the changes in the administration and content of the GED® examination beginning in January 2014, as well as the increased cost of the exam that was announced by GEDTS (the company that owns and administers the GED® examination), the Board of Regents decided at its September 2012 meeting that the State should issue a competitive Request for Proposal (RFP) in order to meet state procurement standards and identify an appropriately rigorous assessment for a High School Equivalency (HSE) Diploma at the most reasonable price. On March 7, 2013, Commissioner King announced that the winning bidder was CTB/McGraw Hill with a new examination called Test Assessing Secondary Completion (TASC).

TASC will be similar to the present GED® examination. The exam will be composed of the same five subtest sections that comprise the current GED® test: English Language Arts -Reading, English Language Arts - Writing, Mathematics, Science and Social Studies. The examination will be aligned to the Common Core State Standards (CCSS) over a three year period (2014-2016), which will support a natural, gradual, and fair transition to CCSS. In 2015 and 2016, CTB will introduce more rigorous item types (e.g. constructed-responses). This allows for a transition from less rigorous CCSS aligned assessment in 2014 to more rigorous and deeply aligned CCSS assessment in 2015 and 2016. Transitioning to full CCSS alignment will also be accomplished by gradually increasing the rigor of the content each year.

Out-of-school youth and adults have a limited time and opportunity to earn a HSE diploma to support their post-secondary and employment goals. Unfortunately the systems supporting these individuals lack the capacity and resources to effect CCSS level curriculum and instruction at a pace needed to support full transition to the TASC even with a phased-in approach to increased rigor. To better assure a seamless transition, the proposed amendment would allow, for a limited time, a passing score on up to four sub-tests of the 2002 edition of the GED® exam (2003 edition for Spanish language versions) to be accepted as a passing score for the corresponding sub-test on any general comprehensive examination prescribed for the HSE diploma. For example, a passing score on up to four sub-tests earned by taking the 2002 edition of the GED® exam would be accepted as a passing score on the corresponding sub-tests of the TASC administered on or after January 1, 2014 and before January 1, 2016.

COSTS:

- (a) Costs to State government: None.
- (b) Costs to local government: None.
- (c) Costs to private regulated parties: None.
- (d) Costs to regulating agency for implementation and continued

administration of this rule: The proposed amendment does not impose any direct costs on the State Education Department. The amendment would allow a passing score on up to four sub-tests of the current GED® examination taken in calendar years 2002 through 2013 for the English version of the exam (and 2003 through 2013 for the Spanish version of the exam) to be accepted as a passing score on the corresponding sub-test of any general comprehensive examination prescribed for the HSE diploma (e.g. the Test Assessing Secondary Completion -TASC) and administered on or after January 1, 2014 and before January 1, 2016. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing SED staff and resources.

PAPERWORK:

The proposed amendment does not impose any additional paperwork or recordkeeping requirements. The amendment would allow a passing score on up to four sub-tests of the current GED® examination taken in calendar years 2002 through 2013 for the English version of the exam (and 2003 through 2013 for the Spanish version of the exam) to be accepted as a passing score on the corresponding sub-test of any general comprehensive examination prescribed for the HSE diploma (e.g. the Test Assessing Secondary Completion -TASC) and administered on or after January 1, 2014 and before January 1, 2016. It is anticipated that any additional paperwork associated with the proposed amendment will be minimal and capable of being absorbed using existing SED staff and resources.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on October 9, 2013, the proposed amendment has been revised as set forth in the Revised Regulatory Impact Statement.

The proposed amendment, as revised, applies to individuals who seek to obtain a New York State High School Equivalency Diploma and does not impose any adverse economic impact, reporting, recordkeeping or any other compliance requirements or other costs on small businesses and local governments. Because it is evident from the nature of the revised proposed amendment that it does not affect small businesses and local governments, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Proposed Rule Making in the State Register on October 9, 2013, the proposed amendment has been revised as set forth in the Revised Regulatory Impact Statement.

The above revision requires that the Reporting, Recordkeeping and Other Compliance Requirements and Professional Services Requirement, the Compliance Costs and the Minimizing Adverse Impact sections of the previously published Rural Area Flexibility Analysis be revised to read as follows.

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

The proposed amendment does not impose any additional compliance requirements on persons in rural areas. The amendment would allow a passing score on up to four sub-tests of the current GED® examination taken in calendar years 2002 through 2013 for the English version of the exam (and 2003 through 2013 for the Spanish version of the exam) to be accepted as a passing score on the corresponding sub-test of any general comprehensive examination prescribed for the HSE diploma (e.g. the Test Assessing Secondary Completion -TASC) and administered on or after January 1, 2014 and before January 1, 2016.

The proposed amendment does not impose any additional professional services requirements.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any costs on persons in rural areas. The amendment would allow a passing score on up to four sub-tests of the current GED® examination taken in calendar years 2002 through 2013 for the English version of the exam and 2003 through 2013 for the Spanish version of the exam to be accepted as a passing score on the corresponding sub-test of any general comprehensive examination prescribed for the HSE diploma (e.g. the Test Assessing Secondary Completion -TASC) and administered on or after January 1, 2014 and before January 1, 2016.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy enacted by the Board of Regents relating to examination requirements for a high school equivalency diploma and does not impose any additional compliance requirements or costs on persons in rural areas. The amendment would allow a passing score on up to four sub-tests of the current GED® examination taken in calendar years 2002 through 2013 for the English version of the exam and 2003 through 2013 for the Spanish version of the exam to be accepted as a passing score on the corresponding sub-test of any general comprehensive examination prescribed for the HSE diploma

(e.g. the Test Assessing Secondary Completion -TASC) and administered on or after January 1, 2014 and before January 1, 2016. Because the Regents policy upon which the proposed amendment is based applies to all persons seeking a New York State High School Equivalency diploma, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt persons in rural areas from coverage by the proposed amendment.

Revised Job Impact Statement

Since publication of a Notice of Proposed Rule Making in the State Register on October 9, 2013, the proposed amendment has been revised as set forth in the Revised Regulatory Impact Statement.

The proposed amendment, as revised, is necessary to implement policy enacted by the Board of Regents relating to examination requirements for a high school equivalency diploma. The proposed revised amendment will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the revised amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Assessment of Public Comment

The following comments were submitted with respect to the proposed rulemaking, which was published in the State Register on October 9, 2013.

COMMENT:

The Department received over fifty comments, all of which supported the proposed rule to allow a passing score on one or more of the sub-tests of the current GED® examination to be accepted as a passing score for high school equivalency (HSE) tests administered in 2014 and 2015.

Some stated that there has not yet been adequate time for students to prepare for the TASC exam, which will replace the GED in New York as of January 2014. In addition, teachers have only just begun to participate in professional development familiarizing them with the new high school equivalency exam, and many educators are still waiting for curriculum and materials aligned to the Common Core State Standards, on which the TASC is based. The proposed amendment will significantly ease the transition to the TASC exam, and will best serve the needs of students who have achieved success in some HSE subject areas by not penalizing them for the changes to the testing that are beyond their control. Most of those taking the HSE examination are adults who have added responsibilities, and allowing them to focus on the one or two subjects failed will assist them in passing these examinations. To make individuals begin the entire testing process again would negatively impact the rate of HSE obtained in NYS, and many of these adults would become discouraged and decide not to continue attempting to obtain their HSE. Obtaining a GED increases an individual's odds of finding gainful employment, and this will help to improve the local economy in the long-term.

DEPARTMENT RESPONSE:

The Department concurs with the comments.

NOTICE OF ADOPTION

Academic Intervention Services (AIS)

I.D. No. EDU-40-13-00005-A

Filing No. 1227

Filing Date: 2013-12-17

Effective Date: 2013-12-31

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

Action taken: Amendment of section 100.2(ee) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1) and (2), 308(not subdivided), 309(not subdivided) and 3204(3)

Subject: Academic Intervention Services (AIS).

Purpose: To establish modified requirements for AIS during the 2013-2014 school year.

Text or summary was published in the October 2, 2013 issue of the Register, I.D. No. EDU-40-13-00005-EP.

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

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.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 agency received no public comment.

NOTICE OF ADOPTION

Duration of Competition in High School Athletics

I.D. No. EDU-40-13-00006-A

Filing No. 1229

Filing Date: 2013-12-17

Effective Date: 2013-12-31

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

Action taken: Amendment of section 135.4 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), 803(not subdivided), 3204(2) and (3)

Subject: Duration of competition in high school athletics.

Purpose: To eliminate the one additional season limit on waivers for students with disabilities to participate in athletic competition.

Text or summary was published in the October 2, 2013 issue of the Register, I.D. No. EDU-40-13-00006-EP.

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

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.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

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on October 2, 2013, the State Education Department received the following comment.

COMMENT:

The comment supported adoption of the proposed amendment as a means to ensure that students with disabilities are provided equal access to the athletic activities that non-disabled students enjoy, without reducing the opportunities for non-disabled or younger students to participate. As a society, we recognize the role that athletics can play in any student's education, and yet students with disabilities are disproportionately missing out on the many health, social and other benefits of such participation. Since students with disabilities are entitled to a free appropriate education through the school year in which they turn 21 if they have not yet obtained a high school diploma, it makes no sense to provide such students with the full array of activities and services available through their school system through age 20 and then deprive them of this one thing - athletics, their final year. Beyond the benefits to students with disabilities, the proposed amendment also provides benefits to non-disabled students, coaches, spectators and everyone else involved in the activity.

DEPARTMENT RESPONSE:

The Department concurs with the comments.

NOTICE OF ADOPTION

Advisory Committee on Long-Term Clinical Clerkships

I.D. No. EDU-41-13-00009-A

Filing No. 1225

Filing Date: 2013-12-17

Effective Date: 2013-12-31

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

Action taken: Amendment of section 60.2 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 6501 (not subdivided), 6504 (not subdivided) and 6507(2)(a)

Subject: Advisory Committee on Long-Term Clinical Clerkships.

Purpose: To increase from one to two the number of Regents sitting on the Advisory Committee and would authorize the Regents Chancellor to appoint additional Committee members, upon consultation with the Board.

Text or summary was published in the October 9, 2013 issue of the Register, I.D. No. EDU-41-13-00009-EP.

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

Text of rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

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

Teacher Certification Requirements for Career and Technical Education Titles

I.D. No. EDU-53-13-00005-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 52.21(b)(1)(xv), 80-1.1(b)(42) and 80-3.5; and addition of section 80-3.3(c)(3) to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), 3001(2), 3004(1), 3006(1)(b) and 3009(1)

Subject: Teacher certification requirements for career and technical education titles.

Purpose: To extend the availability of a Transitional A certificate to the technical titles within the career and technical education (CTE) titles and the Family and Consumer Science CTE subjects.

Text of proposed rule: 1. Subparagraph (xv) of paragraph (1) of subdivision (b) of section 52.21 of the Regulations of the Commissioner of Education shall be amended, effective March 26, 2014, to read as follows:

(xv) Transitional A certificate means the first teaching certificate obtained by a candidate that qualifies that individual to teach a specific career and technical subject [within the field of agriculture, health, or a trade] in the public schools of New York State, subject to the requirements and limitations of Part 80 of this Title, and excluding the [provisional certificate.] initial certificate, [temporary license,] transitional B certificate, and transitional C certificate.

2. Paragraph 42 of subdivision (b) of section 80-1.1 of the Regulations of the Commissioner of Education shall be amended, effective March 26, 2014, to read as follows:

(42) Transitional A certificate means the first teaching certificate obtained by a candidate that qualifies that individual to teach a specific career and technical subject [within the field of agriculture, health, or a trade] in the public schools of New York State, subject to the requirements and limitations of this Part, and excluding the [provisional certificate.] initial certificate, [temporary license,] transitional B certificate, and transitional C certificate.

3. A new paragraph (3) of subdivision (c) of section 80-3.3 of the Regulations of the Commissioner of Education shall be added, effective March 26, 2014, to read as follows:

(3) *Option C. The requirements of this paragraph are applicable to candidates who seek an initial certificate through completion of an associate degree program or its equivalent. The candidate shall meet the requirements in each of the following subparagraphs:*

(i) *Education. The candidate shall meet the education requirement through satisfactory completion of an associate degree program registered pursuant to section 52.21(b)(3)(xiii) of this Title as leading to the initial certificate under option A, or its equivalent.*

(ii) *Examination. The candidate shall meet the examination requirement by meeting the requirements in one of the following clauses:*

(a)(1) *A candidate who has completed all requirements for initial certification on or before April 30, 2014 and who applies for certification on or before April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination written assessment of teaching skills on or before April 30, 2014 or achieve a satisfactory level of performance on the teacher performance assessment and the educating all students test.*

(2) *A candidate who applies for certification on or after May 1, 2014 or a candidate who applies for certification on or before April 30, 2014 but does not meet all the requirements for an initial certificate on or before April 30, 2014, shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Ex-*

amination teacher performance assessment and the educating all students test.

(b) *Examination requirement for an additional certificate. A candidate who has one or more provisional certificates, permanent certificates, initial certificates, or professional certificates in a title in the classroom teaching service may meet the examination requirements for an initial certificate for a certificate title prescribed under this option, by having achieved a satisfactory level of performance on the New York State Teacher Certification Examination content specialty test(s) in the area of the certificate for which application is made, if required for the initial certificate pursuant to clause (a) of this subparagraph.*

(iii) *Experience. The candidate shall have at least two years of satisfactory teaching experience, excluding experience as a teaching assistant, at the post-secondary level in the certificate area to be taught or in a closely related subject area acceptable to the department.*

4. The title of section 80-3.5 of the Regulations of the Commissioner of Education shall be amended, effective March 26, 2014, to read as follows:

§ 80-3.5 Requirements for the transitional A certificate in a specific career and technical subject [within the field of agriculture, health or a trade (grades 7 through 12)].

5. Paragraph (3) of subdivision (a) of section 80-3.5 of the Regulations of the Commissioner of Education shall be repealed, effective March 26, 2014.

6. Subparagraph (iii) of paragraph (1) of subdivision (b) of section 80-3.5 of the Regulations of the Commissioner of Education shall be amended, effective March 26, 2014, to read as follows:

(3) *Option C: The requirements of this paragraph are applicable to candidates who will seek an initial certificate and who possess an associate degree or its equivalent in the career and technical field in which a certificate is sought. The candidate shall meet the requirements in each of the following subparagraphs:*

(i) *Education. The candidate shall complete at least two clock hours of course work or training regarding the identification and reporting suspected child abuse or maltreatment, in accordance with requirements of section 3004 of the Education Law. In addition, the candidate who applies for the certificate on or after February 2, 2001, shall complete at least two clock hours of coursework or training in school violence prevention and intervention, as required by section 3004 of the Education Law, which is provided by a provider approved or deemed approved by the department pursuant to Subpart 57-2 of this Title. A candidate who applies for the certificate on or after July 1, 2013, shall also complete at least six clock hours, of which at least three hours must be conducted through face-to-face instruction, of coursework or training in harassment, bullying and discrimination prevention and intervention, as required by section 14 of the Education Law.*

(ii) *Examination. The candidate shall submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination content specialty test(s) in the area of the certificate.*

(iii) *Experience. The candidate shall have at least two years of satisfactory teaching experience, excluding experience as a teaching assistant, at the post-secondary level in the certificate area to be taught or in a closely related subject area acceptable to the department.*

(iv) *Employment and support commitment. The candidate shall submit evidence of having a commitment for three years of employment as a teacher in grades 7 through 12 in a public or nonpublic school or BOCES, which shall include a mentored experience for the first year that will consist of daily supervision by an experienced teacher during the first 20 days of teaching, except that such mentoring shall not be required if the candidate has two years of satisfactory employment as a teacher of students in grades 7 through 12 in a public or nonpublic school or BOCES.*

Text of proposed rule and any required statements and analyses may be obtained from: Mary Gammon, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, State Education Department, Office of Higher Education, Room 979, Washington Avenue, 89 Washington Ave., Albany, NY 12234, (518) 486-3633, email: privers@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 207 grants general rule-making authority to the Regents to carry into effect State educational laws and policies.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and authorizes the Commissioner to execute educational policies determined by the Regents.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the State's public schools.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in the public schools of the State.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

Subdivision (1) of section 3009 of the Education Law provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or part thereof, be collected by a district tax except as provided in the Education Law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the legislative objectives of the above-referenced statutes, which establish certification requirements by the State Education Department as a qualification to teach in the State's public schools and which authorize the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in the public schools of the State.

3. NEEDS AND BENEFITS:

Over the past two years, the Board of Regents has discussed the expansion of Career and Technical Education (CTE) programs in school districts and boards of cooperative educational services (BOCES) generally and of integrated credit allowance which will, in turn, create a greater demand for teachers certified in career and technical titles. At its November 2013 meeting, the Board or Regents was presented with recommendations that would support existing and anticipated demand for teachers certified in CTE titles.

The first recommendation presented to the Board of Regents at its November meeting was to expand the availability of the existing Transitional A certificate, which is currently available only for the trade subjects, to the technical titles. The technical titles are: Mechanical Technology 7-12, Electrical-Electronic Technology 7-12 and Computer Technology 7-12, as well as Family and Consumer Science CTE subjects (Food and Nutrition, Textile and Design, Human Services and Family studies).

A second recommendation presented to the Board of Regents was to add an additional pathway for college professors with two years of satisfactory postsecondary teaching experience in the CTE certificate area to be substituted for two years of work experience in the CTE certificate area sought. This change will provide an additional pathway for college professors teaching in a CTE related field at the college level to receive a Transitional A certificate, an Initial Certificate and a Professional Certificate provided they meet all other requirements.

Currently, the Transitional A certificate allows a person with an associate's degree and two years of satisfactory experience in the career and technical education subject area for which a certificate is sought, or a candidate with at least four years of satisfactory work experience in the career and technical subject, to teach for three years while completing the requirements for an initial certificate. The candidate must also have completed the required workshops, a fingerprint clearance and must have a three-year employment commitment with a New York State public or nonpublic school or a BOCES.

Adopting these two recommendations will provide opportunities for individuals with specific technical and career experience to obtain a teaching certificate in their area of expertise. This will help to increase the supply of qualified, certified teachers in the career and technical education field to satisfy the increasing demand for those teachers.

The proposed amendment also makes several technical amendments within the definition of a Transitional A certificate in regulations to eliminate references to outdated certificate titles (temporary license, provisional license).

4. COSTS:

- (a) Costs to State government: None.
- (b) Costs to local governments: None.
- (c) Cost to private regulated parties: None.

(d) Costs to regulating agency for implementing and continued administration of the rule: None.

The proposed amendment does not impose any additional costs on the State, local governments, private regulated parties or the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES.

6. PAPERWORK:

There are no additional paperwork requirements beyond those currently imposed.

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no significant alternatives and none were considered. The proposed amendment is necessary to implement Regents policy to provide opportunities for individuals with specific technical and career experience to obtain a teaching certificate in their area of expertise, and thereby increase the supply of qualified, certified teachers in the career and technical education field to satisfy the increasing demand for those teachers.

9. FEDERAL STANDARDS:

There are no Federal standards that establish requirements for the certification of teachers for service in the State's public schools.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date.

Regulatory Flexibility Analysis

The proposed amendment concerns pathways to certification of individuals by the State Education Department to teach in the public schools of New York State. The proposed amendment will provide opportunities for individuals with specific technical and career experience to obtain a teaching certificate in their area of expertise by: (1) extending the availability of a Transitional A certificate to the technical titles within the career and technical education (CTE) titles and the Family and Consumer Science CTE subjects, and (2) allowing an option for college professors to use postsecondary teaching experience in lieu of work experience to gain certification in CTE subjects.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect candidates seeking teacher certification in certain Career and Technical Education (CTE) subject areas, residing in all parts of the State, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The proposed amendment provides opportunities for individuals with specific technical and career experience to obtain a teaching certificate in their area of expertise by extending the availability of a Transitional A certificate to the technical titles within the career and technical education (CTE) titles and the Family and Consumer Science CTE subjects. The technical titles are: Mechanical Technology 7-12, Electrical-Electronic Technology 7-12 and Computer Technology 7-12, as well as Family and Consumer Science CTE subjects (Food and Nutrition, Textile and Design, Human Services and Family studies).

The proposed amendment would also provide an additional pathway for college professors with two years of satisfactory postsecondary teaching experience in the CTE certificate area to be substituted for two years of work experience in the CTE certificate area sought. This change will provide an additional pathway for college professors teaching in a CTE related field at the college level to receive a Transitional A certificate, an Initial Certificate and a Professional Certificate provided they meet all other requirements.

The proposed amendment does not impose any reporting requirements or additional professional services requirements.

3. COSTS:

The proposed amendment does not impose any additional costs on entities in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment applies to individuals who seek certification by the State Education Department to teach in the public school and does not impose any additional compliance or cost mandates on entities in rural areas. The proposed amendment is necessary to implement Regents policy to provide opportunities for individuals with specific technical and career experience to obtain a teaching certificate in their area of expertise, and thereby increase the supply of qualified, certified teachers in the career and technical education field to satisfy the increasing demand for those teachers. In order to ensure that only qualified individuals are certified to teach in the career and technical education field, the Regents policy upon which the proposed amendment is based must uniformly apply to all individuals in the State who seek CTE certification. Therefore, it is not possible to establish differing compliance or reporting requirements or

timetables or to exempt certification candidates in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

The State Education Department has sent the proposed amendment to the Rural Advisory Committee, which has members who live or work in rural areas across the State.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy to provide alternative pathways for individuals with specific career and technical education (CTE) experience to obtain a teaching certificate in their area of expertise, and thereby increase the supply of qualified, certified teachers in the CTE field to satisfy the increasing demand for those teachers. The proposed amendment does not impose any additional compliance or cost mandates, but instead provides additional flexibility for individuals seeking certification in CTE subjects.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment applies to individuals who seek certification by the State Education Department to teach in the public schools. The proposed amendment will provide opportunities for individuals with specific technical and career experience to obtain a teaching certificate in their area of expertise by: (1) extending the availability of a Transitional A certificate to the technical titles within the career and technical education (CTE) titles and the Family and Consumer Science CTE subjects, and (2) allowing an option for college professors to use postsecondary teaching experience in lieu of work experience to gain certification in CTE subjects.

Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Health

EMERGENCY RULE MAKING

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

I.D. No. HLT-53-13-00003-E

Filing No. 1202

Filing Date: 2013-12-16

Effective Date: 2013-12-16

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

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

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

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

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

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

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

Text of emergency rule: Pursuant to the authority vested in the Commissioner of Health by sections 363-a(2), 365-a(2)(e) and 365-f of the Social

Services Law and section 201(1)(v) of the Public Health Law, sections 505.14 and 505.28 of Title 18 of the Official Compilation of Codes, Rules and Regulations of the State of New York, are amended to read as follows effective upon filing with the Secretary of State:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subparagraph (iii) of paragraph (2) of subdivision (d) of section 505.28 is amended, and new subparagraphs (iv) and (v) of such paragraph are added, to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 15, 2014.

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

Regulatory Impact Statement

Statutory Authority:

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

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

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

Legislative Objectives:

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

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

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

Needs and Benefits:

The regulations have two general purposes: to conform the Department's personal care services and consumer directed personal assistance

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

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

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

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

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

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

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

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

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

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

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

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

Costs:

Costs to Regulated Parties:

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

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

Costs to State Government:

The regulations impose no additional costs on State government.

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

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

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

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

Costs to Local Government:

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

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

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

promulgate further regulatory controls regarding the provision and management of continuous services, rather than repeal such services in their entirety.

Federal Standards:

This rule does not exceed any minimum federal standards.

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect of Rule:

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

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

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

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

Compliance Requirements:

Social services districts currently assess whether Medicaid recipients are eligible for personal care services and the CDPAP. When 24 hour continuous care is indicated, districts are currently required to refer such cases to the local professional director or designee for final determination. The regulations would require districts to refer additional continuous care cases to the local professional director or designee; namely, those cases in which continuous care for more than 16 hours a day is indicated would also be referred to the local professional director or designee. The local professional director or designee would be required to consult with the recipient's treating physician before approving continuous care for more than 16 hours per day.

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

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

Small businesses providing Level I personal care services and consumer

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

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

Small Business and Local Government Participation:

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

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

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not necessary.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

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

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

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

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

Costs:

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

Minimizing Adverse Impact:

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

Rural Area Participation:

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

Job Impact Statement

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

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

Medicaid Managed Care Programs

I.D. No. HLT-53-13-00001-EP

Filing No. 1199

Filing Date: 2013-12-11

Effective Date: 2013-12-11

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

Proposed Action: Repeal of Subparts 360-10 and 360-11; sections 300.12 and 360-6.7; and addition of new Subpart 360-10 to Title 18 NYCRR.

Statutory authority: Public Health Law, sections 201 and 206; and Social Services Law, sections 363-a, 364-j and 369-ee

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

Specific reasons underlying the finding of necessity: Chapter 59 of the laws of 2011 enacted a number of proposals recommended by the Medicaid Redesign Team established by the Governor to reduce costs and increase quality and efficiency in the Medicaid program. The changes to Social Services Law section 364-j to expand mandatory enrollment into Medicaid managed care by eliminating many of the prior exemptions and exclusions from enrollment began to be phased in as of April 1, 2011. Paragraph (t) of section 111 of Part H of Chapter 59 authorizes the Commissioner to promulgate, on an emergency basis, any regulations needed to implement such law. The Commissioner has determined it necessary to file these regulations on an emergency basis to achieve the savings intended to be realized by the Chapter 59 provisions regarding expansion of Medicaid managed care enrollment.

Subject: Medicaid Managed Care Programs.

Purpose: To repeal old and outdated regulations and to consolidate all managed care regulations to make them consistent with statute.

Substance of emergency/proposed rule (Full text is posted at the following State website: www.health.ny.gov): The proposed rule repeals various sections of Title 18 NYCRR that contain managed care regulations and replaces them with a new Subpart 360-10 that consolidates these managed care regulations in one place and makes the regulations consistent with Section 364-j of the Social Services Law (SSL). Section 364-j of the SSL contains the Medicaid managed care program standards. The new Subpart 360-10 will also apply to the Family Health Plus (FHP) program authorized in Section 369-ee of the Social Services Law. FHP-eligible individuals must enroll in a managed care organization (MCO) to receive services

and FHP MCOs must comply with most of the programmatic requirements of Section 364-j of the SSL.

The new Subpart 360-10 identifies the Medicaid populations required to enroll and those that are exempt or excluded from enrollment, defines good cause reasons for changing/disenrolling from an MCO, or changing primary care providers (PCPs), adds enrollee fair hearing rights, adds marketing/outreach and enrollment guidelines, and identifies unacceptable practices and the actions to be taken by the State when an MCO commits an unacceptable practice.

The proposed rule repeals the existing Subparts 360-10 and 360-11 and Sections 300.12 and 360-6.7 of Title 18 NYCRR. Section 300.12 applied to the Monroe County Medicaid program, a managed care demonstration project that was undertaken in the mid-1980s and that no longer exists. Section 360-6.7 addresses processes and timeframes for disenrollment from the various types of MCOs and these provisions are included in the new Subpart 360-10. Subpart 360-11 implemented provisions relating to special care plans formerly contained in SSL Section 364-j; these provisions were added by Chapter 165 of the Laws of 1991 and later removed by Chapter 649 of the Laws of 1996.

360-10.1 Introduction

This section provides an introduction to the managed care program. Section 364-j of Social Services Law provides the framework for the Statewide Medicaid managed care program. Certain Medicaid recipients are required to receive services from Medicaid managed care organizations. Section 369-ee added the Family Health Plus (FHP) program to Social Services Law. Individuals eligible for FHP are required to receive services from a managed care plan unless they are participating in the Family Health Plus premium assistance program.

360-10.2 Scope

This section identifies the topics addressed by the Subpart.

360-10.3 Definitions

This section includes definitions necessary to understand the regulations.

360-10.4 Individuals required to enroll in a Medicaid managed care organization

This section identifies the individuals who will be required to enroll in an MCO.

360-10.5 Individuals exempt or excluded from enrolling in a Medicaid mandatory managed care organization

This section identifies the circumstances in which a Medicaid recipient is exempt or excluded from enrollment in a mandatory managed care program. The section also includes the procedures for requesting an exemption or exclusion and the timeframes for processing the request. This section also describes the notices that must be provided to a Medicaid recipient if his/her request is denied.

360-10.6 Good cause for changing or disenrolling from an MCO

This section describes the good cause reasons for an enrollee to change MCOs and the process for requesting a change or disenrollment. This section also identifies the timeframes for processing the request and the notices that must be provided to the enrollee regarding his/her request.

360-10.7 Good cause for changing primary care providers

This section describes the good cause reasons for a managed care enrollee to change primary care providers, the process through which the enrollee may request such a change and the timeframes for processing the request.

360-10.8 Fair Hearing Rights

This section identifies the circumstances in which a Medicaid or FHP enrollee may request a fair hearing. Enrollees may request a fair hearing for enrollment decisions made by the local social services district and decisions made by an MCO or its management contractor about services. The section describes the notices that must be sent to advise the enrollee of his/her of her fair hearing rights. The section also explains when aid continuing is available for managed care issues and how the enrollee requests it when requesting a fair hearing.

360-10.9 Marketing/Outreach

This section defines marketing/outreach and establishes marketing/outreach guidelines for MCOs including requiring MCOs to submit a marketing/outreach plan, requiring MCOs to get approval of materials before distribution, and establishing limits for marketing/outreach representative reimbursement.

360-10.10 MCO unacceptable practices

This section identifies additional unacceptable practices for MCOs. These are generally related to marketing/outreach.

360-10.11 MCO sanctions and due process

This section identifies the actions the Department is authorized to take when an MCO commits an infraction.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 10, 2014.

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

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:

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department of Health 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 Objectives:

Section 364-j of the SSL governs the Medicaid managed care program, under which certain Medicaid recipients are required or allowed to enroll in and receive services through managed care organizations (MCOs). Section 369-ee of Social Services Law authorized the State to implement the Family Health Plus (FHP) program, a managed care program for individuals aged 19 to 64 who have income too high to qualify for Medicaid. The intent of the Legislature in enacting these programs was to assure that low-income citizens of the State receive quality health care and that they obtain necessary medical services in the most effective and efficient manner.

Chapter 59 of the Laws of 2011 amended SSL section 364-j to expand mandatory enrollment into Medicaid managed care by eliminating many of the exemptions and exclusions from enrollment previously contained in the statute.

Needs and Benefits:

The proposed regulations reflect current program practices and requirements, consolidate all managed care regulations in one place, and conform the regulations to the provisions of SSL section 364-j, including the amendments made by Chapter 59 of the Laws of 2011. The proposed regulations identify the individuals required to enroll in Medicaid managed care and identify the populations who are exempt or excluded from enrollment.

The proposed regulations also contain provisions, which apply to both the Medicaid managed care and the FHP programs: specifying good cause criteria for an enrollee to change MCOs or to change their primary care provider; explaining enrollees' rights to challenge actions of their MCO or social services district through the fair hearing process; establishing marketing/outreach guidelines for MCOs; and identifying unacceptable practices and sanctions for MCOs that engage in them.

Costs:

The proposed regulations do not impose any additional costs on local social services districts beyond those imposed by law. The current managed care program operates under a federal Medicaid waiver pursuant to section 1115 of the Social Security Act. Through the waiver, the State receives federal dollars for its Safety Net and FHP populations. Administrative costs associated with implementation of the managed care program incurred at start-up were covered by planning grants. Since 2005, administrative costs for the managed care program have been included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap.

Local Government Mandates:

The proposed regulations do not create any additional burden to local social services districts beyond those imposed by law.

Paperwork:

Social Services Law requires that Medicaid recipients be advised in writing regarding enrollment, benefits and fair hearing rights. In compliance with the law, the proposed regulations describe the circumstances under which a Medicaid managed care participant should be provided with such notices, who is responsible for sending the notice and what should be included in the notice. Medicaid managed care program reporting requirements for social service districts and MCOs have been in place since 1997 when the mandatory Medicaid managed care program began. The social services district is required to report on exemptions granted, complaints received and other enrollment issues. MCOs must submit network data, complaint reports, financial reports and quality data. There are no new requirements for the social services districts or the MCOs in the proposed regulations.

Duplication:

The proposed regulations do not duplicate any State or federal requirements unless necessary for clarity.

Alternative Approaches:

The Department is required by SSL section 364-j to promulgate regulations to implement a statewide managed care program. The proposed regulations implement the provisions of SSL section 364-j in a way which balances the needs of MA recipients, managed care providers and local social services districts. No alternatives were considered.

Federal Standards:

Federal managed care regulations are in 42 CFR 438. The proposed regulations do not exceed any minimum standards of the federal government.

Compliance Schedule:

The mandatory Medicaid managed care program has been in operation since 1997. As a result, all counties in the State have some form of managed care. The requirements in the proposed rules have been implemented through the contract between the State and participating MCOs.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

Section 364-j of Social Services Law (SSL) authorizes a Statewide Medicaid managed care program that includes mandatory enrollment of most Medicaid beneficiaries. In 1997, the State applied for and received approval of a Federal waiver under Section 1115 of the Social Security Act to implement mandatory enrollment. Section 369-ee of SSL authorizes the Family Health Plus (FHP) program and requires eligible persons to receive services through managed care organizations (MCOs). Counties with a choice of MCOs were eligible to run a mandatory Medicaid managed care program, while counties with only one MCO ran a voluntary program until such time as at least one additional MCO began operating in the county. As of November 2012, all sixty-two counties operate a mandatory Medicaid managed care program. All counties also operate a FHP program.

As a result of the implementation of the Medicaid managed care and FHP programs, most Medicaid recipients and all FHP eligible persons are required to enroll and receive services from providers who contract with a managed care organization (MCO). MCOs must have a provider network that includes a sufficient array and number of providers to serve enrollees, but they are not required to contract with any willing provider. Consequently, local providers may lose some of their patients. However, this loss may be offset by an increase in business as a result of the implementation of FHP.

The proposed regulations do not impose any additional requirements beyond those in law and the benefits of the program outweigh any adverse impact.

Compliance Requirements:

No new requirements are imposed on local governments beyond those included in law and there are no requirements for small businesses.

Professional Services:

No professional services will be necessitated as a result of this rule. However, the services of a professional enrollment broker will be available to counties that choose to access them. The costs of these services are shared by the State and the local districts.

Compliance Costs:

No additional costs for compliance will be incurred as a result of this rule beyond those imposed by law. Administrative costs associated with implementation of the managed care program incurred at start-up were covered by planning grants. Since 2005, administrative costs for the managed care program have been included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap. Additionally, the 1115 waiver reduced local government costs by authorizing Federal participation for the Safety Net and Family Health Plus (FHP) populations.

Economic and Technological Feasibility:

Administrative costs incurred at program start-up were covered by planning grants. Since 2005, administrative costs for the managed care program are included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap.

The Medicaid managed care program utilizes existing state systems for operation (Welfare Management System, eMedNY, etc.).

The Department provides ongoing technical assistance to counties to assist in all aspects of planning, implementing and operating the local program.

Minimizing Adverse Impact:

The mandatory Medicaid managed care program is implemented only when there are adequate resources available in a local district to support the program. No new requirements are imposed beyond those included in law.

The benefits of the managed care program outweigh any adverse effects. Managed care programs are designed to improve the relationship between individuals and their health care providers and to ensure the proper delivery of preventive medical care. Such programs help avoid the problem of individuals not receiving needed medical care until the onset of advanced stages of illness, at which time the individual would require higher levels of medical care such as emergency room care or inpatient hospital care. The State has many years of Quality Data that demonstrate that Medicaid beneficiaries enrolled in managed care receive better quality care than those in fee-for-service Medicaid.

Small Business and Local Government Participation:

The regulations do not introduce a new program. Rather, they codify current program policies and requirements and make the regulations consistent with section 364-j of SSL. During the development of the 1115 waiver application and the design of the managed care program, input was obtained from many interested parties.

Rural Area Flexibility Analysis

Effect on Rural Areas:

All rural counties with managed care programs will be affected by this rule. As of April 2011, all rural counties have a Medicaid managed care and Family Health Plus (FHP) program.

Compliance Requirements:

This rule imposes no additional compliance requirements other than those already contained in Section 364-j of the Social Services Law (SSL).

Professional Services:

No professional services will be necessitated as a result of this rule. However, the services of a professional enrollment broker will be available to counties that choose to access them. The costs of these services are shared by the State and the local districts.

Compliance Costs:

No additional costs for compliance will be incurred as a result of this rule beyond those imposed by law. The administrative costs incurred by local governments for implementing the Statewide managed care program are included with all other Medicaid administrative costs and beginning in 2005, there was no local share for administrative costs over and above the administrative cost base of the Medicaid administrative cap. Additionally, the Federal Section 1115 waiver which allowed the State to implement mandatory enrollment, reduced local government costs by authorizing Federal participation for the Safety Net and FHP populations.

Minimizing Adverse Impact:

The benefits of the managed care program outweigh any adverse effects. Managed care programs are designed to improve the relationship between individuals and their health care providers and to ensure the proper delivery of preventive medical care. Such programs help avoid the problem of individuals not receiving needed medical care until the onset of advanced stages of illness, at which time the individual would require higher levels of medical care such as emergency room care or inpatient hospital care. The State has many years of Quality Data that demonstrate that Medicaid beneficiaries enrolled in managed care receive better quality care than those in fee-for-service Medicaid.

Feasibility Assessment:

Administrative costs incurred at program start-up were covered by planning grants. Since 2005, administrative costs for the managed care program are included with all other Medicaid administrative costs and there is no local share for administrative costs over and above the Medicaid administrative cap.

The Medicaid managed care program utilizes existing state systems for operation (Welfare Management System, eMedNY, etc.).

The Department provides ongoing technical assistance to counties to assist in all aspects of planning, implementing and operating the local program.

Rural Area Participation:

The proposed regulations do not reflect new policy. Rather, they codify current program policies and requirements and make the regulations consistent with section 364-j of the SSL. During the development of the 1115 waiver application and the design of the managed care program, input was obtained from many interested parties.

Job Impact Statement

Nature of Impact:

The rule will have no negative impact on jobs and employment opportunities. The mandatory Medicaid managed care program authorized by Section 364-j of the Social Services Law (SSL) will expand job opportunities by encouraging managed care plans to locate and expand in New York State.

Categories and Numbers Affected:

Not applicable.

Regions of Adverse Impact:

None.

Minimizing Adverse Impact:

Not applicable.

Self-Employment Opportunities:

Not applicable.

NOTICE OF ADOPTION

Hospital Pediatric Care

I.D. No. HLT-07-13-00021-A

Filing No. 1223

Filing Date: 2013-12-17

Effective Date: 2013-12-31

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

Action taken: Amendment of Part 405 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2800 and 2803(2)

Subject: Hospital Pediatric Care.

Purpose: To amend pediatric provisions and update various provisions to reflect current practice.

Text or summary was published in the February 13, 2013 issue of the Register, I.D. No. HLT-07-13-00021-P.

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

Revised rule making(s) were previously published in the State Register on October 16, 2013.

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

Assessment of Public Comment

The Department received one comment. This comment period was in response to a revised rule proposal.

COMMENT

The comment was received by the Healthcare Association of New York State (HANYS). HANYS indicated that it supports the intent of the regulatory changes and appreciates that many of the prior comments received by the Department during the initial comment period were considered and incorporated into this revised proposal. HANYS stated, however, that one area of concern that remains relates to the language surrounding "critical value results." It believes that the requirement to not discharge inpatient or emergency room patients until critical value test results are reviewed and communicated is not well defined. Further, HANYS states that there are a number of tests that take hours, even days to complete. HANYS states that some tests are appropriately done to inform the patient's future plan of care, and may not necessarily need to be complete before the patient can be safely discharged.

RESPONSE

It is the expectation that hospitals will each develop an appropriate policy and procedure to determine the process to guide the review of critical value results as defined in Sections 405.7 and 405.19 in order to implement these provisions in their facilities. The definition requires the results to be reviewed by a physician, physician assistant and/or nurse practitioner and communicated to the patient, his or her parents or other decision makers as appropriate. It is also the expectation that the clinician's professional judgment and interpretation within the context of each patient's presenting clinical condition and treatment plan will be reflected in this process to determine whether discharge should be delayed pending completion of certain test results.

Department of Labor

NOTICE OF ADOPTION

Work Search Requirement for Unemployment Insurance (UI) Claimants

I.D. No. LAB-38-13-00009-A

Filing No. 1233

Filing Date: 2013-12-17

Effective Date: 2014-01-01

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

Action taken: Renumbering of section 473.4 to 473.5; and addition of new section 473.4 to Title 12 NYCRR.

Statutory authority: Labor Law, sections 21(11), 530(1) and section 591(2) as amended by L. 2013, ch. 57

Subject: Work search requirement for unemployment insurance (UI) claimants.

Purpose: To comply with requirement in Labor Law section 591.2 that the Commissioner promulgate work search regulations for those receiving UI.

Text or summary was published in the September 18, 2013 issue of the Register, I.D. No. LAB-38-13-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: Teresa Stoklosa, Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-4385, email: regulations@labor.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 New York State Department of Labor received nine (9) sets of comments from groups in response to published work search regulations. The New York State Department of Labor reviewed these comments. The substance of the comments in all nine sets was essentially identical.

In this Summary of Comments and Assessment and Response to Comments, the comments are summarized and an assessment and response to these comment follows.

Comment 1: A concern that the work search regulations are a possible violation of Americans with Disabilities Act Title II is raised. More specifically it is stated that the work search regulations tend to screen claimants with intellectual impairments and low literacy levels.

Assessment and Response to Comment 1: The comments reference the “required interactive process to develop reasonable modifications” under Title II of the ADA. These requirements are discussed, for example, in *Vinson v. Thomas*, 288 F.3d 1145 (9th Cir. 2002) at III [4]-[6].

This requirement of Title II of the ADA is described as follows: “This interactive process is triggered upon notification of the disability and the desire for accommodation. *Barnett*, 228 F.3d at 1114. An employer who fails to engage in such an interactive process in good faith may incur liability “if a reasonable accommodation would have been possible.” *Vinson* at 1154.

From the unemployment insurance perspective, when we receive notification from a claimant that a disability is a barrier to certain types of work search activities, at that juncture, we engage a good faith interactive process to reasonably accommodate the disability.

The work search regulations emphasize the need for a work search plan before any denial or reduction of benefits or before a penalty are imposed. This is coupled with the work search plan being an individualized plan that accommodates each person’s unique situation. Every work search plan is individualized. No punitive action takes place without a work search plan. Accordingly, the work search regulations have the “required interactive process to develop reasonable modifications.”

Comment 2: A concern that the work search regulations are a possible violation of the Civil Rights Act Title VI is raised. Based upon this it is requested that NYS DOL track records of racial impact of ineligibility decisions.

Assessment and Response to Comment 2: The comments raise concerns that the work search regulations may violate Title VI of the Civil Rights Act, the comments specifically state that the “provisions will yield a disparate racial impact.”

With respect to any initial inquiry regarding any given practice by a state agency: “To establish discrimination under a disparate impact scheme, the investigating agency must first ascertain whether the recipient utilized a facially neutral practice that had a disproportionate impact on a group protected by Title VI. *Larry P. v. Riles*, 793 F.2d 969, 982; *Elston*, 997 F.2d at 1407 (citing Georgia State Conference of Branches of NAACP v. Georgia, 775 F.2d 1403, 1417 (11th Cir. 1985)). The agency must show a causal connection between the facially neutral policy and the disproportionate and adverse impact on a protected Title VI group.” US Department of Justice website: <http://www.justice.gov/crt/about/cor/coord/vimannual.php#B>. Disparate Impact/Effects

In order for the regulations to have a disparate impact, there would need to be certain protected classes that experience barriers (that are not accommodated) at a disproportionate rate to the population as a whole. As discussed above with respect to the alleged violations of Title II, our provisions for requiring a work search plan before any detrimental action is taken and requiring that each work search plan be individualized should address any disproportionate barriers that arise for any given protected class.

The work search regulations are “facially neutral.” The comments request that “DOL ... maintain records of the racial impact of its ineligibility decisions to monitor compliance with civil rights law.” See following “Comment 3” and “Assessment and Response to Comment 3.”

Comment 3: DOL should maintain records of racial impact of ineligibility decision to monitor compliance with Title VI.

Assessment and Response to Comment 3: The NYS Department of Labor’s Research & Statistics Division will be reviewing all UI Reform applications and eligibility/ineligibility decisions. This review will include work search data. The Research & Statistics Division will review and monitor patterns in those programs.

Comment 4: Low-wage and low-skill claimants are unable to comply with the bureaucratic requirements of the work search regulations.

Assessment and Response to Comment 4: The work search activities in the work search regulations were developed with the interests of all claimants. The requirement of one activity per week from activities 1-5, under section 473.4 (c)(1)-(5) of the regulations, will assist all claimants including low-wage and low-skill claimants as these are common methods of work search. See following “Comments 6 and 7” and “Assessment and Response to Comments 6 and 7”.

Comment 5: Claimants with unstable housing situations will be prevented from complying with the record keeping requirements of the work search regulations.

Assessment and Response to Comment 5: NYS Department of Labor accepts all forms of paper documents. For example, noting an activity on any available piece of paper is acceptable. The online Job Zone resource is especially beneficial to claimants with unstable housing as the record may be maintained without keeping a paper document. Computer and on-line resources are available through the NYS Department of Labor. This online tool provides claimants with a place to document, record and safely store their records in lieu of maintaining handwritten records.

Comment 6: The work search requirements are arbitrary. Specifically, the list of methods of work search is narrow and it does not reflect common successful methods of obtaining work.

Assessment and Response to Comment 6: The work search regulations allow for the employment of a variety of common work search activities. In addition, the work search regulations state that the listed activities include “but are not limited to.” Each claimant must have one activity from activities 1-5 but may engage in any of the activities listed or other unlisted work search activities identified in the claimant’s work search plan in order to comply with work search requirements of three work search activities per week. The work search regulations do not preclude other methods of work search.

Comment 7: Not all work search activities are able to be recorded. Specifically, examples are raised in the comments of word-of-mouth contacts and informal networking.

Assessment and Response to Comment 7: Various networking activities are included in the regulation. The department recognizes the significance of this step in the work search process and has illustrated that recognition by including it as recordable work search activities that meet work search requirements. See proposed 12 NYCRR 473.4(C)(4) “Attending job search seminars, scheduled career networking meetings, job fairs, or employment-related workshops that offer instruction in improving individual skills for obtaining employment” and 12 NYCRR 473.4(8) “Using the telephone, business directories, internet, or online job matching systems to search for jobs, get leads, request referrals, or make appointments for job interviews.”

It is expected that “word-of-mouth contacts and informal networking” lead to work search activities described in 12 NYCRR 473.4 (C) (4) and (8) and that these work search activities lead to work search activities described in 12 NYCRR 473.4(C) (2), (3), and (5) (submitting job applications and interviewing with employers).

Comment 8: NYS Department of Labor resources will be shifted away from assistance for claimant to enforcement of work search activities. This will impact customer service at Career Centers.

Assessment and Response to Comment 8: The primary focus of the regulation is both to establish minimal work search requirements and to provide assistance to those claimants that need help with their job search efforts. Review of work search record is a method to determine which claimants require greater assistance and individualized service for their work search. Individualized work search plans will be developed to assist these claimants.

Comment 9: NYS Department of Labor should develop protocols for providing reasonable modifications to persons with disabilities.

Assessment and Response to Comment 9: The NYS Department of Labor currently serves persons with disabilities and have existing protocols in place to provide reasonable modifications. The individualized work search plan will address needs or accommodations required by all claimants.

Department of Law

NOTICE OF ADOPTION

Private and Public Litigation Under Art. XIII of the State Finance Law

I.D. No. LAW-43-13-00022-A

Filing No. 1230

Filing Date: 2013-12-17

Effective Date: 2013-12-31

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

Action taken: Amendment of section 400.4; and addition of sections 400.5-400.8 to Title 13 NYCRR.

Statutory authority: State Finance Law, section 194

Subject: Private and public litigation under art. XIII of the State Finance Law.

Purpose: To comply with section 1909 of the U.S. Social Security Act, and clarify procedures and applications of art. XIII of the State Finance Law.

Text or summary was published in the October 23, 2013 issue of the Register, I.D. No. LAW-43-13-00022-P.

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

Text of rule and any required statements and analyses may be obtained from: Gregory Krakower, Department of Law, 120 Broadway, New York, NY 10271, (212) 416-8030, email: gregory.krakower@ag.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 2017, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

Proposed Rule to Comply with § 1909 of the U.S. Social Security Act, and Clarify Procedures & Applications of Art. XIII of the State Fin. Law.

A Notice of Proposed Rule Making was published in the State Register for this rule on October 23, 2013 under I.D. No. LAW-43-13-00022-P. The Department of Law received two comments on the rule after a forty-five day comment period. The Department of Law reviewed and evaluated both comments that it received.

Issue: Application of the damage multiplier

Comments: Both comments addressed the proposed addition by the Department of Law ("Department") of 13 N.Y.C.R.R. section 400.6, which addresses the application of the damage multiplier of the New York False Claims Act. The issue is whether the rule requiring the multiplying of a gross damage amount as opposed to a net damage amount should be adopted.

One comment strongly supported this addition, arguing that the proposal: (1) is consistent with the dual purposes of the damage multiplier in the statute, which are to deter companies contemplating committing a fraud and to punish companies that have engaged in fraud; (2) prevents a defendant from escaping liability by simply paying its debt after it is caught; (3) provides the government and whistleblowers with greater compensation, which in turn encourages whistleblowers to report evidence of fraud to the government; and (4) prevents courts from misinterpreting the statutory term. The commenter pointed to federal courts that, for the application of the damage multiplier of the federal False Claims Act, had supported the application proposed by the Department's rule.

The other comment opposed this addition as confusing and troubling as a matter of law and equity. The commenter argued that a defendant that returns disputed funds to the government should not have to also return double or triple the amount returned. The commenter also pointed to federal cases that, for the application of the damage multiplier of the federal False Claims Act, had opposed the application proposed by the Department's rule.

Response: The Department adopts the rule to better achieve the purposes of the New York False Claims Act. The rule will facilitate the recovery of funds or property fraudulently obtained or retained from the state and local governments, and better prevent and deter fraud against the

state and local governments. The Department does not believe that a defendant should be permitted to escape the statutory command of the New York False Claims Act to pay a damage multiplier by simply paying the government an offset or a credit before a judgment of multiplied damages is entered. Also, by increasing the government's recovery, the rule encourages potential qui tam plaintiffs to file valid qui tam complaints and cautions government contractors and large taxpayers against defrauding the government. The rule also resolves the confusion created by inconsistent federal case law, and thus puts the state, local governments, qui tam plaintiffs, and potential defendants on notice of the proper application of the damage multiplier.

Issue: Attorneys' fees awarded to the state

Comment: One comment supported the proposed addition of section 400.8, which clarifies that any costs and attorneys' fees awarded to the state are awarded and paid in the same manner as costs and fees that are awarded to local governments or qui tam plaintiffs.

Response: The Department adopts the proposed rule to clarify how attorneys' fees awarded in favor of the state are paid. The rule will facilitate the recovery of funds or property fraudulently obtained or retained against the state and local governments, and better prevent and deter fraud against the state and local governments.

Issue: Public disclosure bar motions

Comment: one comment opposed the addition of 13 N.Y.C.R.R. section 400.5(b) which requires the state to not seek, and to oppose, the dismissal of a qui tam action pursuant section 190(9)(b) of the New York False Claims Act solely because of an alleged public disclosure in a federal report, hearing, audit, or investigation. The commenter argued the regulation: contradicts section 190(9)(b) of the New York False Claims Act, is an inappropriate exercise of regulatory authority, and would encourage parasitic qui tam actions that burden defendants and public resources. The commenter also questioned the Department's position that the rule is necessary for the state to remain in compliance with the United States Deficit Reduction Act of 2005 ("DRA").

Response: The Department rejects the comment. The rule as proposed merely codifies the exercise of the state's absolute discretion under section 190(9)(b) of the New York False Claims Act to oppose and not seek a dismissal of a qui tam action because of an alleged public disclosure in a federal report, hearing, audit, or investigation. The rule is necessary for the state to remain in compliance with the DRA and retain tens of millions of dollars. Indeed, the federal government recently deemed Virginia out of compliance with the DRA because that state allowed such dismissals. Although the rule might increase the risk of a parasitic qui tam action, it also encourages meritorious qui tam actions to be filed involving undisclosed federal reports that have not resulted in state or local government enforcement actions. The rule will facilitate the recovery of funds or property fraudulently obtained or retained from the state and local governments, and better prevent and deter fraud against the state and local governments.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Minor Rate Filing of Pheasant Hill Water Corporation to Increase Its Annual Revenues by About \$21,466 or 64.20%

I.D. No. PSC-53-13-00007-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 whether to approve or reject, in whole or in part, a request filed by Pheasant Hill Water Corporation to increase its annual revenues by about \$21,466 or 64.20%.

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

Subject: Minor rate filing of Pheasant Hill Water Corporation to increase its annual revenues by about \$21,466 or 64.20%.

Purpose: To approve Pheasant Hill Water Corporation to increase its annual revenues by about \$21,466 or 64.20%.

Substance of proposed rule: On December 11, 2013, Pheasant Hill Water Corporation (Pheasant Hill or the Company) filed, to become effective on April 1, 2014, tariff amendments to its electronic tariff schedule P.S.C. 1 - Water (Leaf 8, Revision 1, Leaf 9, Revision 1, and Leaf 12, Revision 1). The filed amendments reflect new rates to produce additional annual

revenues of approximately \$21,466 or 64.20%, correction of an error in its current tariff that omitted the standard restoration of service charge of \$100 on weekends or public holidays, and revision of returned check fee from \$5.00 to \$25.00.

Pheasant Hill provides water service to approximately 49 customers in the Town of Minisink, Orange County. Public fire protection service is not provided. The Commission may approve or reject, in whole or in part, or modify the Company's request.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.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 Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-4535, 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-W-0547SP1)

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

Water Rates and Charges

I.D. No. PSC-53-13-00008-P

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

Proposed Action: The Public Service Commission is considering a petition by the City of New Rochelle, requesting approval to have costs for infrastructure maintenance and access to be included in the rates charged to all customer classes within the City of New Rochelle.

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

Subject: Water rates and charges.

Purpose: To have costs for infrastructure maintenance and access to be included in the rates charged to all customer classes.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a petition by the City of New Rochelle, requesting approval per the Laws of New York, Chapter 433, requiring the Commission to issue an order to United Water New Rochelle to have costs for infrastructure maintenance and access to be included in the rates charged to all customer classes and apportioned among all customers located within the City of New Rochelle. Although this rate change will have a revenue neutral impact on the utility's annual revenues, it will result in an increase to all customers within the municipality of the City of New Rochelle.

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-W-0548SP1)

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

Approving the 2013 Amended Electric Emergency Response Plans for NYSEG, RG&E, Con Ed, Orange & Rockland, Central Hudson & Grid

I.D. No. PSC-53-13-00009-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 approving, rejecting, or modifying, in whole or in part, the electric utilities' (NYSEG, RG&E, Con Ed, Orange and Rockland, National Grid, and Central Hudson) 2013 amended Electric Emergency Response Plans filed on 12/15/13.

Statutory authority: Public Service Law, sections 5 and 66(21)

Subject: Approving the 2013 amended electric emergency response plans for NYSEG, RG&E, Con Ed, Orange & Rockland, Central Hudson & Grid.

Purpose: To approve the 2013 amended electric emergency response plans for NYSEG, RG&E, Con Ed, Orange & Rockland, Central Hudson & Grid.

Substance of proposed rule: On August 15, 2013, the Public Service Commission issued an order approving the 2013 Electric Emergency Response Plans for Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Central Hudson Gas and Electric Corporation, New York State Electric and Gas Corporation, Rochester Gas and Electric Corporation, and Niagara Mohawk Power Corporation d/b/a National Grid (collectively referred to hereinafter as "Utilities"). The order required the Utilities to amend and refile their 2013 electric emergency response plans within 30 days immediately addressing certain deficiencies in their emergency planning programs and provide a progress report to the Commission by October 1, 2013.

Public Service Law Section 25-a was recently amended and changed the annual electric emergency response plan filing deadline from April 1st to December 15th. In conformance with this statutory requirement, the Utilities filed their electric emergency response plans on December 15, 2013, which contained general emergency planning information and also specifically focused on deficiencies identified in the Commission's August 15, 2013 order for the following areas: (a) communication and coordination between industries; (b) flood restoration procedures; (c) communication with public officials and the media; (d) down wires; (e) Life Support Equipment (LSE) and special needs customers; (f) call center; and (g) Moreland Commission on Utility Storm Preparation and Response report recommendations. The proposed agency action would approve the amended 2013 electric emergency response plans filed on December 15, 2013. The Commission may decide to approve, reject or modify the plans, in whole or in part. The Commission may also address related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.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-E-0550SP1)