

RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

Species of Ash Trees, Parts Thereof and Debris Therefrom Which Are at Risk for Infestation by the Emerald Ash Borer

I.D. No. AAM-14-13-00001-A

Filing No. 693

Filing Date: 2013-06-28

Effective Date: 2013-07-17

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

Action taken: Amendment of section 141.2 of Title 1 NYCRR.

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

Subject: Species of ash trees, parts thereof and debris therefrom which are at risk for infestation by the emerald ash borer.

Purpose: To extend the emerald ash borer quarantine to prevent the further spread of the beetle to other areas.

Text or summary was published in the April 3, 2013 issue of the Register, I.D. No. AAM-14-13-00001-EP.

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

Text of rule and any required statements and analyses may be obtained from: Kevin King, Director, Division of Plant Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2087, email: kevin.king@agriculture.ny.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

Incorporation by Reference of the 2011 Edition of the Grade A Pasteurized Milk Ordinance (“PMO”)

I.D. No. AAM-29-13-00013-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 section 2.1 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18, 46, 46-a, 50-k, 71-a, 71-n and 214-b

Subject: Incorporation by reference of the 2011 edition of the Grade A Pasteurized Milk Ordinance (“PMO”).

Purpose: To require certain producers, processors and manufacturers of milk and milk products to comply with the 2011 edition of the PMO.

Text of proposed rule: Paragraph (1) of subdivision (b) of section 2.1 of 1 NYCRR is amended to read as follows:

(1) The sanitation provisions of this Part shall not apply to dairy farms or dairy farmers, or to milk plants and persons who operate milk plants, that have a sanitation compliance rating of 90 or better, as set forth in the latest Sanitation Compliance and Enforcement Ratings of interstate milk shippers list (IMS List), except as set forth in paragraph (2) of this subdivision. Dairy farms and dairy farmers, and milk plants and persons who operate milk plants, that have such a sanitation compliance rating shall comply with the sanitation requirements set forth in the Grade A Pasteurized Milk Ordinance, [2009] 2011 [Revision] edition, published by the United States Department of Health and Human Services, Washington, DC (PMO) except to the extent that any provision of the PMO is in conflict with a provision of State and/or Federal law and except as provided in paragraph (2) of this subdivision. A copy of the PMO is available for public inspection at the Division of Milk Control and Dairy Services, Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, and at the Department of State, 41 State Street, Albany, NY 11231.

Subdivision (c) of section 2.1 of 1 NYCRR is amended to read as follows:

(c) Every term used in subdivision (b) of this section that is defined in the Grade A Pasteurized Milk Ordinance, [2009] 2011 edition, shall have the meaning ascribed to such term therein.

Text of proposed rule and any required statements and analyses may be obtained from: Casey McCue, Division of Milk Control & Dairy Services, NYS Dept. of Agriculture & Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-1772, email: Casey.McCue@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 proposed rule will amend 1 NYCRR section 2.1 to incorporate by reference the 2011 edition of the Grade A Pasteurized Milk Ordinance (“the 2011 PMO”) and make the provisions thereof applicable to producers, processors and manufacturers of “Grade A” milk and milk products that have a sanitation compliance rating of ninety or better, as set forth in the latest Sanitation Compliance and Enforcement Ratings of the Interstate Milk Shippers Conference (“IMSC”), and who may, therefore, ship such foods in interstate commerce. The proposed rule is non-controversial. The 2011 PMO is a publication of the Food and Drug Administration (“FDA”) of the United States Department of Health and Human Services

and contains sanitation guidelines for the production of raw milk that will be pasteurized, the processing of such milk for drinking, and the manufacture of milk products such as cottage cheese and yogurt. Pursuant to an agreement between the states, each state causes inspections to be made of the premises of each producer, processor and manufacturer of "Grade A" milk and milk products, located within its borders, that wishes to ship such foods in interstate commerce. After an inspection is conducted, the inspected business is given a "rating" that reflects its adherence to the sanitation guidelines set forth in the 2011 PMO. The states have agreed that no producer, processor or manufacturer of "Grade A" milk and milk products may ship such foods in interstate commerce unless and until it has received a sanitation compliance rating of ninety or better, indicating that it is in substantial compliance with such sanitation guidelines. As a result of this agreement between the states, every producer, processor and manufacturer of "Grade A" milk and milk products located in New York that ships such foods in interstate commerce must, and already does, have a sanitation compliance rating of ninety or better, indicating that it is in substantial compliance with the provisions of the 2011 PMO.

Based upon the preceding, the proposed rule will not have an adverse impact upon New York's producers, processors and manufacturers of "Grade A" milk and milk products because those businesses that ship such foods in interstate commerce are already required to be in substantial compliance with the 2011 PMO. Furthermore, not only will the proposed rule have no adverse impact upon New York's producers, processors and manufacturers of "Grade A" milk and milk products, but such businesses will favor adoption of such proposed rule because the FDA has indicated that New York's ability to give "ratings" to such businesses will be jeopardized unless it adopts the 2011 PMO, which could, in turn, cause such businesses to no longer be able to ship such foods in interstate commerce.

For the preceding reasons, the proposed rule is non-controversial and is a consensus rule, as defined in State Administrative Procedure Act section 102(11).

Job Impact Statement

The proposed rule will not have an adverse impact on jobs or on employment opportunities.

The proposed rule will amend 1 NYCRR Part 2 to incorporate by reference the 2011 edition of the Grade A Pasteurized Milk Ordinance ("the 2011 PMO") and make the provisions thereof applicable to producers, processors and manufacturers of "Grade A" milk and milk products, located in New York, that have a sanitation compliance rating of ninety or better, as set forth in the latest Sanitation and Compliance Enforcement Ratings of the Interstate Milk Shippers Conference ("IMSC"), and that may, therefore, ship such foods in interstate commerce. Such producers, processors and manufacturers are already practically required to substantially comply with the provisions of the 2011 PMO, and setting forth such requirement in regulations places no additional burden upon them. As such, the proposed rule will have no adverse impact upon jobs or employment opportunities.

Office of Alcoholism and Substance Abuse Services

EMERGENCY RULE MAKING

Criminal History Information Reviews

I.D. No. ASA-29-13-00005-E

Filing No. 695

Filing Date: 2013-06-28

Effective Date: 2013-06-30

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

Action taken: Addition of Part 805 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09(b), 19.20, 19.20-a, 19.40, 32.02; Executive Law, section 296(15) and (16); Corrections Law, art. 23-A; Civil Service Law, section 50; Protection of People with Special Needs Act (L. 2012, ch. 501)

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

Specific reasons underlying the finding of necessity: The immediate

adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

In December, 2012 Governor Andrew Cuomo signed the Protection of People with Special Needs Act (PPSNA; chapter 501 of the Laws of 2012); the statute created the Justice Center for the Protection of People with Special Needs (Justice Center) establishing various protections for vulnerable persons, i.e., a new system for incident management in services operated or certified by OASAS; and new requirements for pre-employment background checks in OASAS certified and operated service providers, persons credentialed by the Office, and applicants for new operating certificates.

The addition of Part 805, effective June 30, 2013, is necessary to implement the criminal history background check provisions as this is a new process for OASAS. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals receiving services within the OASAS treatment system. If OASAS did not promulgate regulations on an emergency basis, the process for OASAS and its providers to conduct this new process would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from requirements differing for other agencies covered by the Justice Center.

OASAS was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes.

Subject: Criminal History Information Reviews.

Purpose: To enhance protections for service recipients in the OASAS system.

Substance of emergency rule: CRIMINAL HISTORY INFORMATION REVIEWS

The Proposed Rule would ADD a new Part 805 titled "Criminal History Information Reviews." The new Part incorporates into regulation requirements of sections 19.20 and 19.20-a of the mental hygiene law added by the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) which outlines the process for the Office to conduct such reviews of prospective custodians and applicants for certification or credentialing.

Amendments include:

Section 805.1 sets forth the background and intent consistent with the intent of the Protection of People with Special Needs Act (Chapter 501 of the laws of 2012)

§ 805.2 indicates those persons or "applicants" to whom this regulation is applicable and who is excluded.

§ 805.3 sets for the statutory basis for the regulation in the executive law, mental hygiene law, corrections law, and civil service law.

§ 805.4 defines terms used in this regulation: "applicant", "authorized person", "commissioner", "criminal history information", "designated fingerprinting entity", "Division" of Criminal Justice Services, "Justice Center", "natural person", "prospective employee", "prospective volunteer", "operator", "provider of services", "subject individual."

§ 805.5 sets forth in regulation the process involving the Office, a prospective employee or volunteer, the Justice Center and the Division in relation to acquiring fingerprints necessary for a criminal history information review by the Office; allows for temporary approval of an employment or volunteer applicant in some cases; requires providers to establish policies and procedures consistent with this regulation.

§ 805.6 sets forth in regulation the process involving the Office, an applicant for certification or credentialing, the Justice Center and the Division in relation to acquiring fingerprints necessary for a criminal history information review by the Office; requires providers to establish policies and procedures consistent with this regulation.

§ 805.7 sets forth in regulation the process for the Office's conduct of a criminal history review for purposes of approval or denial of an application for employment, volunteering, certification or credentialing, such review to be consistent with the criteria in Article 23-A of the corrections law.

§ 805.8 sets forth standards for documentation and confidentiality.

§ 805.9 sets forth process for notification to the Office of any subsequent criminal charges or convictions related to a custodian, principal of a certified program, or credentialed person.

§ 805.10 sets forth the responsibilities of providers of services related to recordkeeping, notifications, retention and disposal of information.

A copy of the full text of the regulatory proposal is available on the OASAS website at: <http://www.oasas.ny.gov/regs/index.cfm>

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 September 25, 2013.

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

Regulatory Impact Statement

1. Statutory Authority:

(a) Protection of People with Special Needs Act, Chapter 501 of the Laws of 2012, which added Article 20 to the Executive Law and Article 11 to the Social Services Law as well as amended other laws.

(b) Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

(c) Section 19.20 of the MHL authorizes the Office to receive and review criminal history information related to employees or volunteers of treatment facilities certified, licensed, funded or operated by the Office.

(d) Section 19.20-a of the MHL authorizes the Office to receive and review criminal history information related to persons seeking to be credentialed by the Office or applicants for an operating certificate issued by the Office.

(e) Section 19.40 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for the provision of chemical dependence services.

(f) Subdivisions (15) and (16) of Section 296 of the Executive Law identify unlawful discriminatory practices with regard to the employment and the issuance of licenses.

(h) Civil Service Law § 50 authorizes the Department of Civil Service to request criminal history checks for applicants for state employment.

(i) Article 23-A of the Corrections Law provides the factors to be considered concerning a person's previous criminal convictions in making a determination regarding employment and the issuance of a license.

2. Legislative Objectives:

The legislative objectives are the establishment of comprehensive protections for vulnerable persons against abuse, neglect and other harmful conduct. The Act created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems.

The Justice Center operates a 24/7 hotline for reporting allegations of abuse, neglect and significant incidents in accordance with Chapter 501's provisions for uniform definitions, mandatory reporting and minimum standards for incident management programs. Working in collaboration with the relevant state oversight agencies, the Justice Center is charged with developing and delivering appropriate training for caregivers, their supervisors and investigators.

A vulnerable persons' central register contains the names of individuals found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All persons found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Persons having committed egregious or repeated acts of abuse or neglect are prohibited from future employment caring for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

3. Needs and Benefits:

OASAS is proposing to adopt the following regulation because criminal history information reviews conducted on each prospective treatment provider, operator, employee, contractor, or volunteer of treatment facilities certified by the NYS Office of Alcoholism and Substance Abuse Services ("OASAS" or "Office") who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities and any individual seeking to be credentialed by the Office will be sufficiently screened before such contact with patients, ensuring a safe and therapeutic environment.

The legislation is intended to enable providers of services to persons seeking treatment for substance use disorders to secure appropriate and properly trained individuals to staff their facilities and programs, by verifying criminal history information received for individuals seeking employment or volunteering their services and those credentialed by the Office.

4. Costs:

The Office will require additional staffing to review any criminal history information found to contain convictions. The Office anticipates no fiscal impact on providers or local governments, job creation or loss, because the Office will subsidize the cost of fingerprint production for applicants and prospective employees/volunteers of not-for-profit programs.

5. Paperwork:

The proposed regulation will require some additional information to be reported to the agency by providers regarding potential employees and/or volunteers, and by applicants for certification and/or credentialing. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs.

6. Local Government Mandates:

To the extent local governments already conduct criminal history information reviews on municipal employees, there are no new local government mandates.

7. Duplications:

This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule.

8. Alternatives:

The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires the adoption of this proposed regulation.

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

OASAS services are provided by programs of varying size in every county in New York State; some counties are also certified service providers. The proposed Rule has been reviewed by OASAS in consideration of its impact on service providers of all sizes and on local governments, whether or not they are certified operators; additionally this regulation has been reviewed by the OASAS Advisory Council which consists of providers and stakeholders of all sizes and municipalities.

2. Compliance requirements:

The proposed Rule requires persons who apply to the Office for certification to operate a treatment program, persons who apply to the Office for a credential, and prospective employees and volunteers of certified treatment providers to comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) and complete a criminal history information review prior to certification, credentialing or hiring.

3. Professional services:

Providers will be required to retain documentation of fingerprint requests for employees, contractors of volunteers they ultimately employ; this will not be a significant additional recordkeeping requirement for personnel records they are already required to retain. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost.

4. Compliance costs:

Because every region of the state has resources for gathering fingerprints, and the history information collection is done electronically from a central state or federal database, smaller providers or municipal providers will not be affected in any way. Many municipalities already conduct criminal history information reviews on prospective employees.

Although providers will be required to retain documentation of fingerprint requests for employees, contractors, or volunteers they ultimately employ, this will not be a significant additional recordkeeping requirement because providers are already required to retain records related to such relationships. No additional professional services will be required of as a result of these amendments; nor will the amendments add to the professional service needs of local governments. Because of the electronic nature of the transactions, minimal paperwork will be involved on the part of business or local governments.

The Office will subsidize applicants for all prospective employees or volunteers of not-for-profit providers, regardless of geographic location; there will be no disparate impact on providers based on location, size of business or municipality.

5. Economic and technological feasibility:

Implementation of the rule will require computer and email capability; all providers in all regions of the state, both private and public sector, already have such capability. No upgrades of hardware or software will be required. Also because every region of the state has resources for gathering fingerprints, and the history information collection is done electronically from a central state or federal database, and increasingly communicated electronically any additional recordkeeping will be minimal regardless of geographic location.

6. Minimizing adverse impact:

The application of the rule will not impose additional costs or operating requirements on providers on local governments or small businesses; therefore, it is designed on its face to minimize adverse impact.

7. Small business and local government participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in both public and private sectors, of all sizes and in diverse geographic locations. The Office has prepared webinars and guidance documents for provider use and for training of agency administration.

Rural Area Flexibility Analysis

1. Rural areas in which the rule will apply (types and estimated number of rural areas):

OASAS services are provided in every county in New York State. 44 counties have a population less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schoenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 9 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

The proposed Rule requires persons who apply to the Office for certification to operate a treatment program, persons who apply to the Office for a credential, and prospective employees and volunteers of certified treatment providers to comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) and complete a criminal history information review prior to certification, credentialing or hiring.

Providers will be required to retain documentation of fingerprint requests for employees, contractors of volunteers they ultimately employ; this will not be a significant additional recordkeeping requirement for personnel records they are already required to retain. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost.

3. Costs:

No additional costs will be incurred for implementation by providers because no additional capital investment, personnel or equipment is needed. Also, the Office will subsidize the cost of fingerprinting for all applicants for employment in not-for-profit providers; all other applicants will pay for their own processing regardless of geographic.

4. Minimizing adverse impact:

The application of the rule will not impose additional costs or operating requirements on providers in rural areas; therefore, it is designed on its face to minimize adverse impact.

5. Rural Area participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in diverse geographic locations. The Office has prepared webinars and guidance documents for provider use and for training of agency administration.

Job Impact Statement

OASAS is not submitting a Job Impact Statement for these amendments because OASAS does not anticipate a substantial adverse impact on jobs and employment opportunities.

The proposed regulation implements provisions of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) for the purpose of ensuring persons who receive services from OASAS certified providers are assured of receiving treatment from custodians who have been appropriately trained and screened for any prior abusive behavior. The proposed rule incorporates definitions and procedures for reporting incidents to the Justice Center and highlights the role of investigations and a provider Incident Review Committee to be responsible for quality assurance, implementing corrective action plans related to repetitive incidents or patterns of lack of oversight. It also strengthens the link to program certification through the requirement for staff background checks and record retention and the review by OASAS quality assurance staff.

The Rule sets forth criteria for incident reporting to the Justice Center, investigations, corrective action and penalties for programs and individuals who are not compliant with these, or other applicable, regulations. The proposed regulation requires criminal history information reviews of any employee, contractor, or volunteer in treatment facilities certified by the Office who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities.

OASAS has evaluated this proposal considering its impact on existing jobs or the development of new employment opportunities for New York

residents. It is anticipated that the proposed regulation will not have an adverse impact on existing employees in the field of substance use disorder treatment, nor affect any reduction or increase in the number of positions available in the future. OASAS providers are already required to report incidents, but the role of a new oversight agency will help to consolidate and streamline that process.

The proposed regulation will have no adverse impact on existing jobs or the development of new employment opportunities because programs are already required to report incidents; new regulations will not require any new staff or any reductions in staff. It is not anticipated that the proposed rule will affect the number of persons applying for employment within the OASAS system.

EMERGENCY RULE MAKING

Patient Rights

I.D. No. ASA-29-13-00006-E

Filing No. 696

Filing Date: 2013-06-28

Effective Date: 2013-06-30

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

Action taken: Repeal of Part 815 and addition of new Part 815 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09(b), 19.20, 19.20-a, 19.40, 32.02; Executive Law, section 296(15) and (16); Corrections Law, art. 23-A; Civil Service Law, section 50; Protection of People with Special Needs Act (L. 2012, ch. 501)

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

Specific reasons underlying the finding of necessity: The immediate adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

In December, 2012 Governor Andrew Cuomo signed the Protection of People with Special Needs Act (PPSNA; chapter 501 of the Laws of 2012); the statute created the Justice Center for the Protection of People with Special Needs (Justice Center) establishing various protections for vulnerable persons, i.e., a new system for incident management in services operated or certified by OASAS; and new requirements for pre-employment background checks in OASAS certified and operated service providers, persons credentialed by the Office, and applicants for new operating certificates.

The repeal and addition of Part 815 related to Patient Rights, effective June 30, 2013, is necessary to implement the criminal history background check provisions as this is a new process for OASAS and to make patients aware of additional rights. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals receiving services within the OASAS treatment system. If OASAS did not promulgate regulations on an emergency basis, the processes for OASAS, its providers and service recipients would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from requirements differing for other agencies covered by the Justice Center.

OASAS was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes.

Subject: Patient Rights.

Purpose: To enhance protections for service recipients in the OASAS system.

Substance of emergency rule: PATIENT RIGHTS

The Proposed Rule would Repeal the current Part 815 and Replace it with a new Part 815. The new Part incorporates amendments related to rights and obligations of patients in OASAS certified programs consistent with statutory requirements, definitions and procedures of the Justice Center, pursuant to the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012).

The Proposed Rule also makes technical amendments to standardize formatting and language for all Office regulations. Amendments related to the Justice Center include:

Section 815.1 sets forth the background and intent and adds language consistent with statutory requirements, definitions and procedures of the Justice Center, pursuant to the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012).

§ 815.2 sets forth the statutory authority for the promulgation of the rule by the Office of Alcoholism and Substance Abuse Services (“Office”); adds The Protection of People with Special Needs Act; removes repealed statutes; adds the Vulnerable Persons Central Register in § 492 of the social services law.

§ 815.3 amends applicability of this Part to be consistent with Justice Center statute and regulations.

§ 815.4 adds to “provider requirements” language consistent with statutory requirements, definitions and procedures of the Justice Center, pursuant to the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012; requires posting of the toll-free hotline to the Vulnerable Persons Central Registry; requires policies and procedures for, and implementation of, training for all “custodians” related to requirements of the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) including the Code of Conduct.

§ 815.5 adds language which explicitly requires provider compliance with the amended Patient Rights as a condition of receiving and maintaining an operating certificate to operate an Office service program.

§ 815.10 amends reference to a “strip search” as a reportable incident to be referenced as a “significant incident” pursuant to Justice Center definitions.

A copy of the full text of the regulatory proposal is available on the OASAS website at: <http://www.oasas.ny.gov/regs/index.cfm>

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 September 25, 2013.

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

Regulatory Impact Statement

1. Statutory Authority:

(a) Protection of People with Special Needs Act, Chapter 501 of the Laws of 2012, which added Article 20 to the Executive Law and Article 11 to the Social Services Law as well as amended other laws.

(b) Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

(c) Section 19.20 of the MHL authorizes the Office to receive and review criminal history information related to employees or volunteers of treatment facilities certified, licensed, funded or operated by the Office.

(d) Section 19.20-a of the MHL authorizes the Office to receive and review criminal history information related to persons seeking to be credentialed by the Office or applicants for an operating certificate issued by the Office.

(e) Section 19.40 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for the provision of chemical dependence services.

(f) Subdivisions (15) and (16) of Section 296 of the Executive Law identify unlawful discriminatory practices with regard to the employment and the issuance of licenses.

(h) Civil Service Law § 50 authorizes the Department of Civil Service to request criminal history checks for applicants for state employment.

(i) Article 23-A of the Corrections Law provides the factors to be considered concerning a person’s previous criminal convictions in making a determination regarding employment and the issuance of a license.

2. Legislative Objectives:

The legislative objectives are the establishment of comprehensive protections for vulnerable persons against abuse, neglect and other harmful conduct. The Act created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems.

The Justice Center operates a 24/7 hotline for reporting allegations of abuse, neglect and significant incidents in accordance with Chapter 501’s provisions for uniform definitions, mandatory reporting and minimum standards for incident management programs. Working in collaboration with the relevant state oversight agencies, the Justice Center is charged with developing and delivering appropriate training for caregivers, their supervisors and investigators.

A vulnerable persons’ central register contains the names of individuals found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All persons found to have committed such acts have the right to a hearing before an administrative law judge to

challenge those findings. Persons having committed egregious or repeated acts of abuse or neglect are prohibited from future employment caring for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

3. Needs and Benefits:

This regulation governs the rights and responsibilities of patients in OASAS certified treatment programs. The regulation incorporates provisions of Chapter 501 of the Laws of 2012 to the extent they relate to patients’ rights to report allegations of abuse and neglect or other significant incidents to the Vulnerable Persons Hotline. The requirement for staff, operators, volunteers and contractors, if appropriate, to have completed criminal history information reviews is incorporated as a right of patients to receive treatment in an environment that is therapeutic and free from concerns about harm from staff.

OASAS is proposing to adopt the following regulation because criminal history information reviews conducted on each prospective treatment provider, operator, employee, contractor, or volunteer of treatment facilities certified by the NYS Office of Alcoholism and Substance Abuse Services (“OASAS” or “Office”) who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities and any individual seeking to be credentialed by the Office will be sufficiently screened before such contact with patients, ensuring a safe and therapeutic environment.

The legislation is intended to enable providers of services to persons seeking treatment for substance use disorders to secure appropriate and properly trained individuals to staff their facilities and programs, by verifying criminal history information received for individuals seeking employment or volunteering their services and those credentialed by the Office.

4. Costs:

The Office anticipates no fiscal impact on providers or local governments, job creation or loss, because the Office will subsidize applicants and prospective employees/volunteers in not for profit providers for the cost of fingerprint production.

5. Paperwork:

The proposed regulation will require some additional information to be reported to the agency by applicants for employment or management contractors. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs. No additional paperwork will be required as it applies to patients.

6. Local Government Mandates:

To the extent local governments already conduct criminal history information reviews on municipal employees, there are no new local government mandates if a local government was to apply for certification. Municipalities that are program operators will also need to comply with the same rights of their patients as any other certified operator.

7. Duplications:

This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule.

8. Alternatives:

The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires the adoption of this proposed regulation.

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

OASAS services are provided by programs of varying size in every county in New York State; some counties are also certified service providers. The proposed Rule has been reviewed by OASAS in consideration of its impact on service providers of all sizes and on local governments, whether or not they are certified operators; additionally this regulation has been reviewed by the OASAS Advisory Council which consists of providers and stakeholders of all sizes and municipalities.

2. Compliance requirements:

The proposed regulation implements provisions of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) for the purpose of ensuring persons who receive services from OASAS certified providers are assured of receiving treatment from custodians who have been appropriately trained and screened for any prior abusive behavior. The proposed regulation incorporates provisions from this Act into the OASAS Patient Rights regulation which applies to all programs throughout the state in all geographic locations. Because the regulation applies only to the rights and responsibilities of patients in certified programs, there is no different application in any geographic location.

3. Professional services:

Providers will be required to retain documentation of fingerprint requests for employees, contractors of volunteers they ultimately employ; this will not be a significant additional recordkeeping requirement for personnel records they are already required to retain. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost.

4. Compliance costs:

Because every region of the state has resources for gathering fingerprints, and the history information collection is done electronically from a central state or federal database, smaller providers or municipal providers will not be affected in any way. Many municipalities already conduct criminal history information reviews on prospective employees.

Although providers will be required to retain documentation of fingerprint requests for employees, contractors, or volunteers they ultimately employ, this will not be a significant additional recordkeeping requirement because providers are already required to retain records related to such relationships. No additional professional services will be required of as a result of these amendments; nor will the amendments add to the professional service needs of local governments. Because of the electronic nature of the transactions, minimal paperwork will be involved on the part of business or local governments. The Office will subsidize applicants for all prospective employees or volunteers of not-for-profit providers, regardless of geographic location; there will be no disparate impact on providers based on location, size of business or municipality.

5. Economic and technological feasibility:

Implementation of the rule will require computer and email capability; all providers in all regions of the state, both private and public sector, already have such capability. No upgrades of hardware or software will be required. Also because every region of the state has resources for gathering fingerprints, and the history information collection is done electronically from a central state or federal database, and increasingly communicated electronically any additional recordkeeping will be minimal regardless of geographic location.

6. Minimizing adverse impact:

The application of the rule will not impose additional costs or operating requirements on providers on local governments or small businesses; therefore, it is designed on its face to minimize adverse impact.

7. Small business and local government participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in both public and private sectors, of all sizes and in diverse geographic locations. The Office has prepared webinars and guidance documents for provider use and for training of agency administration.

Rural Area Flexibility Analysis

1. Rural areas in which the rule will apply (types and estimated number of rural areas):

OASAS services are provided in every county in New York State. 44 counties have a population less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schoenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 9 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

The proposed regulation implements provisions of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) for the purpose of ensuring persons who receive services from OASAS certified providers are assured of receiving treatment from custodians who have been appropriately trained and screened for any prior abusive behavior. The proposed regulation incorporates provisions from this Act into the OASAS Patient Rights regulation which applies to all programs throughout the state in all geographic locations. Because the regulation applies only to the rights and responsibilities of patients in certified programs, there is no different application in any geographic location.

3. Costs:

No additional costs will be incurred for implementation by providers because no additional capital investment, personnel or equipment is needed. Also, the Office will subsidize the cost of fingerprinting for all applicants for employment in not-for-profit providers; all other applicants will pay for their own processing regardless of geographic.

4. Minimizing adverse impact:

The application of the rule will not impose additional costs or operating requirements on providers in rural areas; therefore, it is designed on its face to minimize adverse impact.

5. Rural area participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in diverse geographic locations. The Office has prepared webinars and guidance documents for provider use and for training of agency administration.

Job Impact Statement

OASAS is not submitting a Job Impact Statement for these amendments because OASAS does not anticipate a substantial adverse impact on jobs and employment opportunities.

The proposed regulation implements provisions of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) for the purpose of ensuring persons who receive services from OASAS certified providers are assured of receiving treatment from custodians who have been appropriately trained and screened for any prior abusive behavior. This regulation incorporates any relevant provisions into the OASAS Patient Rights regulation.

The proposed regulation will not have an adverse impact on existing jobs or the development of new employment opportunities for New York residents because it is narrowly related to the rights and obligations of patients while they are in OASAS certified programs. It is anticipated that the proposed regulation will not have an adverse impact on existing employees in the field of substance use disorder treatment, nor affect any reduction or increase in the number of positions available in the future.

The proposed regulation does not have an adverse impact on jobs or employment opportunities anywhere in the State, therefore, no region is disproportionately affected by the proposed regulation.

The proposed regulation will have no adverse impact on existing jobs or the development of new employment opportunities. It is not anticipated that the proposed rule will affect the number of persons applying for employment.

EMERGENCY RULE MAKING

Establishment, Incorporation and Certification of Providers of Substance Use Disorder Services

I.D. No. ASA-29-13-00007-E

Filing No. 697

Filing Date: 2013-06-28

Effective Date: 2013-06-30

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

Action taken: Repeal of Part 810 and addition of new Part 810 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09(b), 19.20, 19.20-a, 19.40, 32.02; Executive Law, section 296(15) and (16); Corrections Law, art. 23-A; Civil Service Law, section 50; Protection of People with Special Needs Act (L. 2012, ch. 501)

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

Specific reasons underlying the finding of necessity: The immediate adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

In December, 2012 Governor Andrew Cuomo signed the Protection of People with Special Needs Act (PPSNA; chapter 501 of the Laws of 2012); the statute created the Justice Center for the Protection of People with Special Needs (Justice Center) establishing various protections for vulnerable persons, i.e., a new system for incident management in services operated or certified by OASAS; and new requirements for pre-employment background checks in OASAS certified and operated service providers, persons credentialed by the Office, and applicants for new operating certificates.

The amendments to Part 810, effective June 30, 2013, are necessary to implement the criminal history background check provisions as this is a new process for OASAS. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals receiving services within the OASAS treatment system. If OASAS did not promulgate regulations on an emergency basis, the process for OASAS to conduct of this new process would

not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by insufficient safeguards regarding entities receiving operating certificates from the Office.

OASAS was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes.

Subject: Establishment, Incorporation and Certification of Providers of Substance Use Disorder Services.

Purpose: To enhance protections for service recipients in the OASAS system.

Substance of emergency rule: ESTABLISHMENT, INCORPORATION AND CERTIFICATION OF PROVIDERS OF SUBSTANCE USE DISORDER SERVICES

The Proposed Rule would Repeal the current Part 810 and Replace it with a new Part 810 titled "Establishment, Incorporation and Certification of Providers of Substance Use Disorder Services." The new Part incorporates amendments to the Office's certification and review process consistent with statutory requirements, definitions and procedures of the Justice Center, pursuant to the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012); adds a new requirement that a majority of owners or principals of an applicant must have demonstrated prior experience in substance use disorder services, and that they shall require a criminal history information review prior to any final agency decision regarding certification or re-certification.

The Proposed Rule also makes technical amendments to standardize formatting and language usage for all Office regulations.

Amendments include:

Section 810.1 sets forth the background and intent and updates language referencing "substance use disorder"; removes language no longer applicable which was required to "grandfather" programs certified pursuant to prior regulations.

§ 810.2 sets forth the statutory authority for the promulgation of the rule by the Office of Alcoholism and Substance Abuse Services ("Office"); adds The Protection of People with Special Needs Act and statutes relating to required Criminal History Information reviews for all applicants for certification.

§ 810.4 adds new definitions or amends language to be consistent with the Justice Center: "criminal history information review", updates usage.

§ 810.7 requires a majority of applicants for certification or renewal to have demonstrated prior experience in substance use disorder treatment services; updates language related to corporate structure.

§ 810.8 amends requirements for the full review process of an application for certification to include required criminal history information review as a criteria for Office consideration whether or not to issue or renew and operating certificate; eliminates the "interim operating certificate" as it is not used; consolidates language related to due process for applicants denied certification.

§ 810.9 amends requirements for the administrative review process of an application for certification to include required criminal history information review as a criteria for Office consideration whether or not to issue or renew and operating certificate; eliminates the "interim operating certificate" as it is not used; consolidates language related to due process for applicants denied certification.

§ 810.10 adds requirements for Office prior approval of any changes in programming or corporate structure post certification, including any reduction in the majority of owners or principals with prior substance use disorder treatment experience.

§ 810.11 consolidates language requiring cooperative review of any programs requiring review by both the Office and the Department of Health.

§ 810.12 strengthens Office control of management contracts entered into by providers of services; requires administrators of contractors to complete a criminal history information review; retains in the governing authority to authority to remove any custodian regardless of change in employment status.

§ 810.13 updates language related to the different levels of certification of substance use disorder services.

§ 810.14 adds requirement that staff credentials and employee or contractor compliance with the criminal history information review requirements are part of the inspection and review process for re-certification.

§ 810.16 consolidates language related to voluntary termination of authorized services.

§ 810.18 removes provisions for waiver; adds severability language.

A copy of the full text of the regulatory proposal is available on the OASAS website at: <http://www.oasas.ny.gov/regs/index.cfm>

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 September 25, 2013.

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

Regulatory Impact Statement

1. Statutory Authority:

(a) Protection of People with Special Needs Act, Chapter 501 of the Laws of 2012, which added Article 20 to the Executive Law and Article 11 to the Social Services Law as well as amended other laws.

(b) Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

(c) Section 19.20 of the MHL authorizes the Office to receive and review criminal history information related to employees or volunteers of treatment facilities certified, licensed, funded or operated by the Office.

(d) Section 19.20-a of the MHL authorizes the Office to receive and review criminal history information related to persons seeking to be credentialed by the Office or applicants for an operating certificate issued by the Office.

(e) Section 19.40 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for the provision of chemical dependence services.

(f) Subdivisions (15) and (16) of Section 296 of the Executive Law identify unlawful discriminatory practices with regard to the employment and the issuance of licenses.

(h) Civil Service Law § 50 authorizes the Department of Civil Service to request criminal history checks for applicants for state employment.

(i) Article 23-A of the Corrections Law provides the factors to be considered concerning a person's previous criminal convictions in making a determination regarding employment and the issuance of a license.

2. Legislative Objectives:

The legislative objectives are the establishment of comprehensive protections for vulnerable persons against abuse, neglect and other harmful conduct. The Act created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems.

The Justice Center operates a 24/7 hotline for reporting allegations of abuse, neglect and significant incidents in accordance with Chapter 501's provisions for uniform definitions, mandatory reporting and minimum standards for incident management programs. Working in collaboration with the relevant state oversight agencies, the Justice Center is charged with developing and delivering appropriate training for caregivers, their supervisors and investigators.

A vulnerable persons' central register contains the names of individuals found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All persons found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Persons having committed egregious or repeated acts of abuse or neglect are prohibited from future employment caring for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

3. Needs and Benefits:

OASAS is proposing to adopt the following regulation because The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires that criminal history information reviews be conducted on each prospective treatment provider, operator, employee, contractor, or volunteer of treatment facilities certified by the NYS Office of Alcoholism and Substance Abuse Services ("OASAS" or "Office") who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities and any individual seeking to be credentialed by the Office.

This legislation adds a new requirement that a majority of owners or principals of a provider demonstrate prior experience in substance use disorder treatment and also requires principals or applicants for certification to comply with requirements for a criminal history information review. The legislation is intended to enable providers of services to persons seeking treatment for substance use disorders to secure appropriate and properly trained individuals who own and operate OASAS facilities and programs, by verifying criminal history information received for individuals to operate such programs.

The legislation also makes technical amendments to make language and format consistent throughout OASAS regulations.

4. Costs:

The Office anticipates no fiscal impact on providers or local governments, job creation or loss.

5. Paperwork:

The proposed regulation will require some additional information to be reported to the agency by applicants for certification. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs.

6. Local Government Mandates:

To the extent local governments already conduct criminal history information reviews on municipal employees, there are no new local government mandates if a local government was to apply for certification.

7. Duplications:

This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule.

8. Alternatives:

The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires the adoption of this proposed regulation.

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

OASAS services are provided by programs of varying size in every county in New York State; some counties are also certified service providers. The proposed Rule has been reviewed by OASAS in consideration of its impact on applications for service providers of all sizes and on local governments; additionally this regulation has been reviewed by the OASAS Advisory Council which consists of providers and stakeholders of all sizes and municipalities.

2. Compliance requirements:

The proposed Rule requires persons who apply to the Office for certification to operate a treatment program to comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) and complete a criminal history information review prior to certification.

3. Professional services:

The Office will retain documentation of such applicant review; this will not be an additional recordkeeping requirement for applicants or the Office. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost.

4. Compliance costs:

Because every region of the state has resources for gathering fingerprints, and the history information collection is done electronically from a central state or federal database, individual or municipal applicants will not be affected in any way. Many municipalities already conduct criminal history information reviews on prospective employees.

5. Economic and technological feasibility:

Implementation of the rule will require computer and email capability; all applicants in all regions of the state, both private and public sector, have such capability. No upgrades of hardware or software will be required. Also because every region of the state has resources for gathering fingerprints, and the history information collection is done electronically from a central state or federal database, and increasingly communicated electronically any additional recordkeeping will be minimal regardless of geographic location.

6. Minimizing adverse impact:

The application of the rule will not impose additional costs or operating requirements on applicants, local governments or small businesses; therefore, it is designed on its face to minimize adverse impact.

7. Small business and local government participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in both public and private sectors, of all sizes and in diverse geographic locations. The Office has prepared webinars and guidance documents for applicant use and for training agency administration.

Rural Area Flexibility Analysis

1. Rural areas in which the rule will apply (types and estimated number of rural areas):

OASAS services are provided in every county in New York State. 44 counties have a population less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer,

Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schoenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 9 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

The proposed Rule requires persons who apply to the Office for certification to operate a treatment program to comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) and complete a criminal history information review prior to certification, credentialing or hiring.

The Office will retain documentation of such review; this will not be an additional recordkeeping requirement for applicants or the Office. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost.

3. Costs:

No additional costs will be incurred for implementation by providers because no additional capital investment, personnel or equipment is needed and the Office and applicants are involved, not programs. Applicants will pay for their own processing regardless of geographic.

4. Minimizing adverse impact:

The application of the rule will not impose additional costs or operating requirements on providers in rural areas; therefore, it is designed on its face to minimize adverse impact.

5. Rural area participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in diverse geographic locations. The Office has prepared webinars and guidance documents for provider use and for training of agency administration.

Job Impact Statement

OASAS is not submitting a Job Impact Statement for these amendments because OASAS does not anticipate a substantial adverse impact on jobs and employment opportunities.

The proposed regulation requires persons who apply to the Office for certification to operate a treatment program, or persons who are principals or operators of an entity applying for certification, to comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) and complete a criminal history information review prior to certification. Operating certificates are also issued contingent on compliance with other laws and regulations, including those promulgated by the Justice Center.

The proposed regulation has been presented to the OASAS Advisory Council consisting of providers and other stakeholders from a range of corporate types and municipalities. It is not anticipated that this regulation will have an adverse impact on existing jobs or the development of new employment opportunities for New York residents. It is anticipated that the proposed regulation will not have an adverse impact on existing employees in the field of fingerprinting or history review. The proposed regulations should not impact the number of criminal history information reviews requested via federal and state existing database. The Office is unable to determine what affect the proposed regulation may have on the employment of independent fingerprinting services or Office employees in the future.

The proposed regulation does not have an adverse impact on jobs or employment opportunities anywhere in the State, therefore, no region is disproportionately affected by the proposed regulation. This regulation will not require additional professional staff in existing certified providers; although entities will be required to maintain some records related to staff background, these should be minimal because much of the record exchange will be accomplished electronically.

The proposed regulation will have no adverse impact on existing jobs or the development of new employment opportunities. It is not anticipated that the proposed rule will affect the number of persons or entities applying for certification as operators of treatment service providers.

EMERGENCY RULE MAKING

Patient Rights

I.D. No. ASA-29-13-00008-E

Filing No. 698

Filing Date: 2013-06-28

Effective Date: 2013-06-30

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

Action taken: Repeal of Part 836; and addition of new Part 836 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09(b), 19.20, 19.20-a, 19.40 and 32.02; Executive Law, section 296(15) and (16); Corrections Law, art. 23-A; Civil Service Law, section 50; Protection of People with Special Needs Act (L. 2012, ch. 501)

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

Specific reasons underlying the finding of necessity: The immediate adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

In December, 2012 Governor Andrew Cuomo signed the Protection of People with Special Needs Act (PPSNA; chapter 501 of the Laws of 2012); the statute created the Justice Center for the Protection of People with Special Needs (Justice Center) establishing various protections for vulnerable persons, i.e., a new system for incident management in services operated or certified by OASAS; investigation of allegations of abuse and neglect and significant incidents; and new requirements for pre-employment background checks in OASAS certified and operated service providers, persons credentialed by the Office, and applicants for new operating certificates.

The amendments to Part 836, effective June 30, 2013, are necessary to implement the incident reporting and management provisions required by the statute and to ensure compliance with the criminal history background check provisions to further enhance patient safety.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals receiving services within the OASAS treatment system. If OASAS did not promulgate regulations to report and manage incidents of abuse and neglect or other significant incidents, these requirements would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from similar functions performed but differing among the other agencies covered by the Justice Center.

OASAS was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes.

Subject: Patient Rights.

Purpose: To enhance protections for service recipients in the OASAS system.

Substance of emergency rule: INCIDENT REPORTING IN OASAS CERTIFIED OR FUNDED SERVICES

The Proposed Rule would Repeal the current Part 836 and Replace it with a new Part 836. The new Part incorporates amendments related to incident reporting consistent with statutory requirements, definitions and procedures of the Justice Center, pursuant to the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012).

The Proposed Rule also makes technical amendments to standardize formatting for all Office regulations. Amendments related to the Justice Center include:

Section 836.1 sets forth the background and intent and adds language referencing the purpose for establishing the Justice Center and for coordinating agency incident reviews with the Justice Center.

§ 836.2 sets forth the statutory authority for the promulgation of the rule by the Office of Alcoholism and Substance Abuse Services (“Office”); adds The Protection of People with Special Needs Act; removes repealed statutes; adds the Vulnerable Persons Central Register in § 492 of the social services law.

§ 836.3 amends applicability of this Part to be consistent with Justice Center statute and regulations.

§ 836.4 adds new definitions or amends to be consistent with the Justice Center: “Reportable incident”, “physical abuse”, “psychological abuse”, “deliberate inappropriate use of restraints”, “use of aversive conditioning”, “obstruction of reports of reportable incidents”, “unlawful use or

administration of a controlled substance,” “neglect”, “significant incident”, “custodian”, “facility or provider agency”, “mandated reporter”, “human services professional”, “physical injury”, “delegate investigatory entity”, “Justice Center”, “Person receiving services,” “Personal representative,” “Abuse or neglect”, “subject of the report,” “other persons named in the report,” “Vulnerable Persons Central Register,” “vulnerable person”, “intentionally and recklessly”, “clinical records”, “Incident management programs”, “Incident report”, “Missing client”, “qualified person”, “staff”, “Incident review Committee”.

§ 836.5 adds requirements for providers of services’ policies and procedures related to, and implementation of, an Incident Management Program consistent with the requirements of Chapter 501 of the Laws of 2012.

§ 836.6 adds requirements for incident reporting, notice and investigation to incorporate changes in processes necessitated by Chapter 501 of the Laws of 2012.

§ 836.7 adds requirements for additional notice and reporting requirements for reportable and significant incidents necessitated by Chapter 501 of the Laws of 2012 such as: reporting “immediately” upon discovery of an incident; required reporting to the Justice Center Vulnerable Persons Central Register, Office and regional Field Office; includes all “custodians” as “mandated reporters” for purposes of this regulation.

§ 836.8 adds requirements for configuration of Incident Review Committees consistent with requirements of Chapter 501 of the Laws of 2012.

§ 836.9 adds requirements for recordkeeping and release of records to qualified persons consistent with requirements of Chapter 501 of the Laws of 2012.

§ 836.10 adds to a provider’s duty to cooperate regarding inspection of facilities by permitting the Justice Center access for purposes of an investigation of a reportable or significant incident consistent with requirements of Chapter 501 of the Laws of 2012.

A copy of the full text of the regulatory proposal is available on the OASAS website at: <http://www.oasas.ny.gov/regs/index.cfm>

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 September 25, 2013.

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

Regulatory Impact Statement

1. Statutory Authority:

(a) Protection of People with Special Needs Act, Chapter 501 of the Laws of 2012, which added Article 20 to the Executive Law and Article 11 to the Social Services Law as well as amended other laws.

(b) Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

(c) Section 19.20 of the MHL authorizes the Office to receive and review criminal history information related to employees or volunteers of treatment facilities certified, licensed, funded or operated by the Office.

(d) Section 19.20-a of the MHL authorizes the Office to receive and review criminal history information related to persons seeking to be credentialed by the Office or applicants for an operating certificate issued by the Office.

(e) Section 19.40 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for the provision of chemical dependence services.

(f) Subdivisions (15) and (16) of Section 296 of the Executive Law identify unlawful discriminatory practices with regard to the employment and the issuance of licenses.

(h) Civil Service Law § 50 authorizes the Department of Civil Service to request criminal history checks for applicants for state employment.

(i) Article 23-A of the Corrections Law provides the factors to be considered concerning a person’s previous criminal convictions in making a determination regarding employment and the issuance of a license.

2. Legislative Objectives:

The legislative objectives are the establishment of comprehensive protections for vulnerable persons against abuse, neglect and other harmful conduct. The Act created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems.

The Justice Center operates a 24/7 hotline for reporting allegations of abuse, neglect and significant incidents in accordance with Chapter 501’s provisions for uniform definitions, mandatory reporting and minimum standards for incident management programs. Working in collaboration with the relevant state oversight agencies, the Justice Center is charged

with developing and delivering appropriate training for caregivers, their supervisors and investigators.

A vulnerable persons' central register contains the names of individuals found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All persons found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Persons having committed egregious or repeated acts of abuse or neglect are prohibited from future employment caring for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

3. Needs and Benefits:

OASAS is proposing to adopt the following regulation because The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires that allegations of abuse and neglect, and other significant incidents be reported to the Justice Center Vulnerable Persons Central Register via the toll free hotline. This legislation conforms OASAS regulations to definitions, incident reporting, documentation and review requirements of the Justice Center. The legislation strengthens the role of the Incident Review Committee and links compliance with reporting and investigating incidents to a providers operating certificate renewal. Criminal history information reviews will be conducted on each prospective treatment provider, operator, employee, contractor, or volunteer of treatment facilities certified by the NYS Office of Alcoholism and Substance Abuse Services ("OASAS" or "Office") who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities and any individual seeking to be credentialed by the Office. The cost of fingerprinting will be subsidized by the Office.

This legislation requires patients and staff be notified of the toll free Vulnerable Persons Central Register for purposes of reporting allegations of abuse and neglect in OASAS certified programs and by OASAS custodians, and that staff receive regular training in their obligations as custodians regarding regulatory requirements for prompt and thorough investigations, staff oversight, confidentiality laws, recordkeeping, timing of reporting and investigating, content of reports, and procedures for corrective action plan implementation. Training will be provided by the Office or the Justice Center.

The legislation is intended to enable providers of services to persons seeking treatment for substance use disorders to secure appropriate and properly trained individuals to staff their facilities and programs, by verifying criminal history information received for individuals seeking employment or volunteering their services and those credentialed by the Office.

The legislation also makes technical amendments to make language and format consistent throughout OASAS regulations.

4. Costs:

The Office anticipates no fiscal impact on providers or local governments, job creation or loss, because the process of reporting incidents will not require any additions or reductions in staffing. OASAS will subsidize the fingerprinting process for not-for-profit providers.

5. Paperwork:

The proposed regulatory amendments will require limited additional information to be reported to the Justice Center by mandated reporters and documentation retained by providers. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs.

6. Local Government Mandates:

This regulation imposes no new mandates on local governments operating certified OASAS programs.

7. Duplications:

This proposed rule does not duplicate any State or federal statute or rule.

8. Alternatives:

The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires the adoption of this proposed regulation.

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

OASAS services are provided by programs of varying size in every county in New York State; some counties are also certified service providers. The proposed Rule has been reviewed by OASAS in consideration of its impact on service providers of all sizes and on local governments, whether or not they are certified operators; additionally this regulation has been reviewed by the OASAS Advisory Council which consists of providers and stakeholders of all sizes and municipalities.

2. Compliance requirements:

The proposed regulation implements provisions of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) for the purpose of ensuring persons who receive services from OASAS certified providers are assured of receiving treatment from custodians who have been appropriately trained and screened for any prior abusive behavior. The proposed rule will incorporate the Justice Center incident reporting mechanism and database into the OASAS system so all reporting will be centralized and tracked for patterns and abuse and neglect allegations and other significant incidents. These regulations have been reviewed by the OASAS Advisory council consisting of stakeholders from all regions of the state, providers of all sizes and municipalities.

The Rule sets forth criteria for incident reporting to the Justice Center, investigations, corrective action and penalties for programs and individuals who are not compliant with these, or other applicable, regulations. Incidents will be reported electronically via a toll-free hotline.

3. Professional services:

The proposed Rule has been reviewed by OASAS in consideration of its impact on service providers of all sizes and on local governments, whether or not they are certified operators. OASAS has determined that the new regulations will not require any new staff or any reductions in staff, any new reporting requirements or technology. No additional professional services will be required of as a result of these amendments; nor will the amendments add to the professional service needs of local governments. Because of the electronic nature of the reporting transactions, minimal paperwork will be involved on the part of business or local governments. Because every region of the state has certified programs, and requirements for staffing and training are uniform already, programs will not be affected in any way because of their size or corporate status.

4. Compliance costs:

No additional costs will be incurred for implementation by providers because no additional capital investment, personnel or equipment is needed regardless of size or corporate status.

5. Economic and technological feasibility:

Implementation of the rule will require computer and email capability; all providers in all regions of the state, both private and public sector, already have such capability. No upgrades of hardware or software will be required.

6. Minimizing adverse impact:

The application of the rule will not impose additional costs or operating requirements on providers on local governments or small businesses; therefore, it is designed on its face to minimize adverse impact.

7. Small business and local government participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in both public and private sectors, of all sizes and in diverse geographic locations. The Office has prepared webinars and guidance documents for provider use and for training of agency administration.

Providers will be required to retain documentation of fingerprint requests for employees, contractors of volunteers they ultimately employ; this will not be a significant additional recordkeeping requirement for personnel records they are already required to retain. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost.

Rural Area Flexibility Analysis

1. Rural areas in which the rule will apply (types and estimated number of rural areas):

OASAS services are provided in every county in New York State. 44 counties have a population less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schoenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 9 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

The proposed regulation implements provisions of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) for the purpose of establishing a uniform incident reporting process via a state centralized hotline (Vulnerable Persons Central Register). The proposed regulation incorporates provisions from this Act into the OASAS incident reporting regulation which applies to all programs throughout the state in all geographic locations. Because the regulation applies to incident report-

ing and incident management in OASAS certified, operated, funded or licensed programs, there is no different application in any geographic location. The proposed regulation incorporates the OASAS incident reporting process into a larger oversight and enforcement entity under the Justice Center. These requirements apply to OASAS providers in all geographic regions. Reporting will be done electronically via telephone or other secure means which are not limited by geography. The new rule does not require any additional staff, although training will be required statewide and be largely provided by the Office or the Justice Center.

The Rule sets forth criteria for incident reporting to the Justice Center, investigations, corrective action and penalties for programs and individuals who are not compliant with these, or other applicable, regulations. The proposed Rule has been reviewed by OASAS in consideration of its impact on service providers in rural areas. Because every region of the state has certified programs, and requirements for staffing, training and incident reporting are uniform already, programs will not be affected in any way because of their geographic location in a rural area.

3. Costs:

No additional costs will be incurred for implementation by providers because no additional capital investment, personnel or equipment is needed.

4. Minimizing adverse impact:

The application of the rule will not impose additional costs or operating requirements on providers in rural areas; therefore, it is designed on its face to minimize adverse impact.

5. Rural area participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in diverse geographic locations. The Office has prepared webinars and guidance documents for provider use and for training of agency administration.

Job Impact Statement

OASAS is not submitting a Job Impact Statement for these amendments because OASAS does not anticipate a substantial adverse impact on jobs and employment opportunities.

The proposed regulation implements provisions of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) for the purpose of ensuring persons who receive services from OASAS certified providers are assured of receiving treatment from custodians who have been appropriately trained and screened for any prior abusive behavior. The proposed rule incorporates definitions and procedures for reporting incidents to the Justice Center and highlights the role of investigations and a provider Incident Review Committee to be responsible for quality assurance, implementing corrective action plans related to repetitive incidents or patterns of lack of oversight. It also strengthens the link to program certification through the requirement for staff background checks and record retention and the review by OASAS quality assurance staff.

The Rule sets forth criteria for incident reporting to the Justice Center, investigations, corrective action and penalties for programs and individuals who are not compliant with these, or other applicable, regulations. The proposed regulation requires criminal history information reviews of any employee, contractor, or volunteer in treatment facilities certified by the Office who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities.

OASAS has evaluated this proposal considering its impact on existing jobs or the development of new employment opportunities for New York residents. It is anticipated that the proposed regulation will not have an adverse impact on existing employees in the field of substance use disorder treatment, nor affect any reduction or increase in the number of positions available in the future. OASAS providers are already required to report incidents, but the role of a new oversight agency will help to consolidate and streamline that process.

The proposed regulation will have no adverse impact on existing jobs or the development of new employment opportunities because programs are already required to report incidents; new regulations will not require any new staff or any reductions in staff. It is not anticipated that the proposed rule will affect the number of persons applying for employment within the OASAS system.

EMERGENCY RULE MAKING

Credentialing of Addictions Professionals

I.D. No. ASA-29-13-00009-E

Filing No. 699

Filing Date: 2013-06-28

Effective Date: 2013-06-30

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

Action taken: Repeal of Part 853; and addition of new Part 853 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09(b), 19.20, 19.20-a, 19.40 and 32.02; Executive Law, section 296(15) and (16); Corrections Law, art. 23-A; Civil Service Law, section 50; Protection of People with Special Needs Act (L. 2012, ch. 501)

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

Specific reasons underlying the finding of necessity: The immediate adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

In December, 2012 Governor Andrew Cuomo signed the Protection of People with Special Needs Act (PPSNA; chapter 501 of the Laws of 2012); the statute created the Justice Center for the Protection of People with Special Needs (Justice Center) establishing various protections for vulnerable persons, i.e., a new system for incident management in services operated or certified by OASAS; and new requirements for pre-employment background checks in OASAS certified and operated service providers, persons credentialed by the Office, and applicants for new operating certificates.

The amendments to Part 853, effective June 30, 2013, are necessary to implement the new process of criminal history background checks into the credentialing process for addictions professionals credentialed by OASAS. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification so OASAS will be more involved in credentialing decisions.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals receiving services within the OASAS treatment system. If OASAS did not promulgate regulations on an emergency basis, the process for OASAS to implement this new process would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting inconsistent credentialing standards.

OASAS was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes.

Subject: Credentialing of Addictions Professionals.

Purpose: To enhance protections for service recipients in the OASAS system.

Substance of emergency rule: CREDENTIALING OF ADDICTION PROFESSIONALS

The Proposed Rule would Repeal the current Part 853 and Replace it with a new Part 853. The new Part incorporates amendments related to required Criminal History Information reviews of all applicants for credentials issued by the Office on or after June 30, 2013, such reviews required by the Justice Center, pursuant to the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012).

The Proposed Rule also makes technical amendments to standardize formatting for all Office regulations. Amendments related to the Justice Center include:

Section 853.1 sets forth the statutory authority for the promulgation of the rule by the Office of Alcoholism and Substance Abuse Services ("Office"); adds The Protection of People with Special Needs Act.

§ 853.3 adds new definition of "Criminal history information" and "custodian" as defined in Chapter 501/2012.

§ 853.5 adds requirements for criminal history information reviews of all applicants for new, renewal or reinstated certified alcoholism and substance abuse counselor ("CASAC") credentials; adds requirement for compliance by CASACs with a Code of Conduct for "custodians" in all OASAS service providers; "grandfathers" currently credentialed persons until application for renewal or reinstatement, application for a position or a new position in an Office certified service provider.

§ 853.6 adds requirements for criminal history information reviews of all applicants for new, renewal or reinstated certified alcoholism and substance abuse counselor trainee ("CASAC-T") credentials; adds requirement for compliance by CASAC-Ts with a Code of Conduct for "custodians" in all OASAS service providers.

§ 853.7 adds requirements for criminal history information reviews of all applicants for new, renewal or reinstated credentialed prevention professional ("CPP") credentials; adds requirement for compliance by CPPs with a Code of Conduct for "custodians" in all OASAS service providers.

§ 853.8 adds requirements for criminal history information reviews of all applicants for new, renewal or reinstated credentialed prevention specialist ("CPS") credentials; adds requirement for compliance by CPSs with a Code of Conduct for "custodians" in all OASAS service providers.

§ 853.9 adds requirements for criminal history information reviews of all applicants for new, renewal or reinstated credentialed problem gambling counselor (“CPGC”) credentials; adds requirement for compliance by CPGCs with a Code of Conduct for “custodians” in all OASAS service providers.

§ 853.10 sets forth the application process for all credentials, including required criminal history information reviews and compliance with Justice Center Code of Conduct.

§ 853.17 adds requirements for periodic updates of criminal history information reviews of all persons holding a credential issued by the Office.

§ 853.18 adds requirements for criminal history information reviews of all applicants for new, renewal or reinstated credentials issued by the Office.

§ 853.19 adds requirements for criminal history information reviews and compliance with the Justice Center Code of Conduct of all applicants for credentialing based on reciprocity.

§ 853.20 adds non-compliance with the Justice Center Code of Conduct to the standards for misconduct.

§ 853.22 adds reference to the Justice Center Code of Conduct in relation to penalties for misconduct.

§ 853.23 adds reference to the Justice Center Code of Conduct in relation to complaints filed against credentialed persons.

§ 853.28 adds reference to the Justice Center Code of Conduct in relation to the Affidavit of Ethical Principles.

A copy of the full text of the regulatory proposal is available on the OASAS website at: <http://www.oasas.ny.gov/regs/index.cfm>

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 September 25, 2013.

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

Regulatory Impact Statement

1. Statutory Authority:

(a) Protection of People with Special Needs Act, Chapter 501 of the Laws of 2012, which added Article 20 to the Executive Law and Article 11 to the Social Services Law as well as amended other laws.

(b) Section 19.09(b) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations necessary and proper to implement any matter under his or her jurisdiction.

(c) Section 19.20 of the MHL authorizes the Office to receive and review criminal history information related to employees or volunteers of treatment facilities certified, licensed, funded or operated by the Office.

(d) Section 19.20-a of the MHL authorizes the Office to receive and review criminal history information related to persons seeking to be credentialed by the Office or applicants for an operating certificate issued by the Office.

(e) Section 19.40 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for the provision of chemical dependence services.

(f) Subdivisions (15) and (16) of Section 296 of the Executive Law identify unlawful discriminatory practices with regard to the employment and the issuance of licenses.

(h) Civil Service Law § 50 authorizes the Department of Civil Service to request criminal history checks for applicants for state employment.

(i) Article 23-A of the Corrections Law provides the factors to be considered concerning a person’s previous criminal convictions in making a determination regarding employment and the issuance of a license.

2. Legislative Objectives:

The legislative objectives are the establishment of comprehensive protections for vulnerable persons against abuse, neglect and other harmful conduct. The Act created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems.

The Justice Center operates a 24/7 hotline for reporting allegations of abuse, neglect and significant incidents in accordance with Chapter 501’s provisions for uniform definitions, mandatory reporting and minimum standards for incident management programs. Working in collaboration with the relevant state oversight agencies, the Justice Center is charged with developing and delivering appropriate training for caregivers, their supervisors and investigators.

A vulnerable persons’ central register contains the names of individuals found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All persons found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Persons having committed egregious or repeated

acts of abuse or neglect are prohibited from future employment caring for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

The proposed Rule requires persons who apply to the Office for a credential issued by the Office comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) regarding a criminal history information review prior to certification, credentialing or hiring, and compliance with a Code of Conduct established by the Justice Center.

3. Needs and Benefits:

OASAS is proposing to adopt the following regulation because The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires that allegations of abuse and neglect, and other significant incidents be reported to the Justice Center Vulnerable Persons Central Register via the toll free hotline. OASAS credentials addiction, prevention, and compulsive gambling professionals who will be affected by the Justice Center oversight as they work in OASAS certified facilities. This legislation conforms OASAS regulations to definitions, reporting, documentation and review requirements of the Justice Center. The legislation strengthens the role of the Incident Review Committee and links compliance with reporting and investigating incidents to a providers operating certificate renewal. Criminal history information reviews will be conducted on each prospective treatment provider, operator, employee, contractor, or volunteer of treatment facilities certified by the NYS Office of Alcoholism and Substance Abuse Services (“OASAS” or “Office”) who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities and any individual seeking to be credentialed by the Office. This will include OASAS credentialed professionals who will also be required to comply to an additional Code of Conduct of the Justice Center which could subject those persons to additional reasons for limitation or loss of their credential or their future employment in other covered agencies throughout New York State.

The legislation is intended to enable the Office to more thoroughly and efficiently monitor the quality and competency of its credentialed professionals and enable providers of services to persons seeking treatment for substance use disorders to secure appropriate and properly trained individuals to staff their facilities and programs, by verifying criminal history information received for individuals seeking employment or volunteering their services and those credentialed by the Office.

The legislation also makes technical amendments to make language and format consistent throughout OASAS regulations.

4. Costs:

The Office anticipates no fiscal impact on providers, or local governments, job creation or loss.

5. Paperwork:

The proposed regulatory amendments will require limited additional information to be reported to the Justice Center by applicants and mandated reporters and documentation retained by providers. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs.

6. Local Government Mandates:

This regulation imposes no new mandates on local governments operating certified OASAS programs even if they employ OASAS credentialed professionals.

7. Duplications:

This proposed rule does not duplicate any State or federal statute or rule.

8. Alternatives:

The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires the adoption of this proposed regulation.

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

OASAS credentials persons in the areas of substance use disorder counseling, problem gambling counseling, and prevention counseling to work in OASAS certified programs. Services are provided by programs of varying size in every county in New York State; some counties are also certified service providers. The proposed Rule has been reviewed by OASAS in consideration of its impact on applications for credentialed professionals, on local governments; additionally this regulation has been reviewed by the OASAS Advisory Council which consists of providers and stakeholders of all sizes and municipalities.

2. Compliance requirements:

The proposed Rule requires persons who apply to the Office for a credential issued by the Office comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) regarding a criminal history information review prior to certification, credentialing or hiring, and compliance with a Code of Conduct established by the Justice Center. The Office will retain documentation of such review; this will not be an additional recordkeeping requirement for applicants or the Office. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost. Credentialed persons must already comply with a code of ethics; it is not anticipated that additional character and competence requirements will increase or decrease the number of applicants or have an impact on the number of employment opportunities regardless of geographic location. Because these changes are statewide no region will experience any adverse impact because of population density or geography.

3. Professional services:

The Office will retain documentation of such applicant review; this will not be an additional recordkeeping requirement for applicants or the Office. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost.

4. Compliance costs:

Because every region of the state has resources for gathering fingerprints, and the history information collection is done electronically from a central state or federal database, individual or municipal applicants will not be affected in any way. Many municipalities already conduct criminal history information reviews on prospective employees. Applicants for certification and re-certification will pay for their own processing.

5. Economic and technological feasibility:

Implementation of the rule will require computer and email capability; all applicants in all regions of the state, both private and public sector, have such capability. No upgrades of hardware or software will be required. Also because every region of the state has resources for gathering fingerprints, and the history information collection is done electronically from a central state or federal database, and increasingly communicated electronically any additional recordkeeping will be minimal regardless of geographic location.

6. Minimizing adverse impact:

The application of the rule will not impose additional costs or operating requirements on applicants, local governments or small businesses; therefore, it is designed on its face to minimize adverse impact.

7. Small business and local government participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in both public and private sectors, of all sizes and in diverse geographic locations. The Office has prepared webinars and guidance documents for applicant use and for training agency administration.

Rural Area Flexibility Analysis

1. Rural areas in which the rule will apply (types and estimated number of rural areas):

OASAS services are provided in every county in New York State. 44 counties have a population less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schoenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 9 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

The proposed Rule requires persons who apply to the Office for a credential issued by the Office comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) regarding a criminal history information review prior to certification, credentialing or hiring, and compliance with a Code of Conduct established by the Justice Center. The Office will retain documentation of such review; this will not be an additional recordkeeping requirement for applicants or the Office. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically,

so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost. Credentialed persons must already comply with a code of ethics; it is not anticipated that additional character and competence requirements will increase or decrease the number of applicants or have an impact on the number of employment opportunities regardless of geographic location. Because these changes are statewide no region will experience any adverse impact because of population density or geography.

3. Costs:

No additional costs will be incurred for implementation by providers because no additional capital investment, personnel or equipment is needed because the Office and applicants are involved, not programs. Applicants will pay for their own processing regardless of geographic location.

4. Minimizing adverse impact:

The application of the rule will not impose additional costs or operating requirements on providers in rural areas; therefore, it is designed on its face to minimize adverse impact. Credentialed persons must already comply with a code of ethics; it is not anticipated that additional character and competence requirements will increase or decrease the number of applicants or have an impact on the number of employment opportunities regardless of geographic location. Because these changes are statewide no region will experience any adverse impact because of population density or geography.

5. Rural area participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in diverse geographic locations. The Office has prepared webinars and guidance documents for provider use and for training of agency administration.

Job Impact Statement

OASAS is not submitting a Job Impact Statement for these amendments because OASAS does not anticipate a substantial adverse impact on jobs and employment opportunities.

The proposed regulation requires persons who apply to the Office for any credential issued by the Office to comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) and complete a criminal history information review prior to certification, credentialing or hiring. The proposed Rule also requires compliance with a Code of Conduct established by the Justice Center.

The proposed regulation will not have an adverse impact on existing jobs or the development of new employment opportunities for New York residents. It is anticipated that the proposed regulation will not have an adverse impact on existing employees in the field of substance use disorder treatment (certified alcoholism and substance abuse counselors and trainees), substance use disorder prevention counseling (prevention professionals and specialists), or problem gambling counseling. The proposed regulations should not impact the number of criminal history information reviews requested via federal and state existing database. The Office is unable to determine what effect the proposed regulation may have on the employment of independent fingerprinting services or Office employees in the future, but does not anticipate that the proposed rule will increase or decrease the number of applicants for certification.

The proposed regulation does not have an adverse impact on jobs or employment opportunities anywhere in the State; therefore, no region is disproportionately affected by the proposed regulation.

The proposed regulation will have no adverse impact on existing jobs or the development of new employment opportunities.

Office of Children and Family Services

EMERGENCY RULE MAKING

Protection of Vulnerable Persons

I.D. No. CFS-29-13-00004-E

Filing No. 694

Filing Date: 2013-06-28

Effective Date: 2013-06-30

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

Action taken: Amendment of Subparts 166-1, 182-1, 182-2 and Part 180

of Title 9 NYCRR; and amendment of Parts 402, 414, 416, 417, 421, 433, 435, 441, 442, 447, 448, 449, 476, 477, 489 and Subparts 418-1 and 418-2 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f); Executive Law, section 501(5); and L. 2012, ch. 501

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

Specific reasons underlying the finding of necessity: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"). The Justice Center will oversee and improve consistency in responses to incidents of abuse and neglect of vulnerable people. The Justice Center has been tasked with establishing standards for tracking and investigating complaints and enforcement against those who commit substantiated acts of abuse and neglect. The legislation requires the Office of Children and Family Services, as a state oversight agency of vulnerable persons, to develop standards consistent with the Justice Center. These standards are to protect vulnerable people against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, and to provide fair treatment and notice to the employees. The Office of Children and Family Services must promulgate regulations to provide notice, guidance and standards to all facilities, provider agencies and employees who are affected by the legislation. The Justice Center takes effect June 30, 2013.

Facilities and provider agencies covered by the legislation include voluntary agencies that operate residential programs that are licensed or certified by the Office of Children and Family Services, runaway and homeless youth programs, family type homes for adults, detention programs, juvenile justice programs, institutions, group residences, group homes, agency operated boarding homes including supervised independent living programs and any local department of social services that runs a detention program or has a contract with an authorized agency for detention services or has a contract(s) for care of foster children in out of state facilities.

As of June 30, 2013 reports of suspected child abuse or neglect in a residential program will no longer be part of the jurisdiction of the Statewide Central Register of Child Abuse and Maltreatment (SCR). Any concerns regarding abuse or neglect of a child in residential care must be reported to the Vulnerable Persons Central Register (VPCR). The VPCR will also register reports of suspected abuse or neglect of persons residing in Family Type Homes for Adults (FTHA). Reports registered by the VPCR will be forwarded to Justice Center investigative staff or to investigative staff at the State Agency that licenses, certifies or operates the facility or provider agency. Regulations are required to provide direction to facilities, provider agencies, employees, local government staff and the public. It is imperative that rules be in place for the June 30, 2013 implementation of the Justice Center legislation.

Promulgating emergency regulations will ensure compliance with legislative requirements and provide the necessary guidance to affected persons. Absent the filing of emergency regulations, guidance, protections and processes will not be available to the aforementioned listed facilities and agencies.

Subject: Protection of Vulnerable Persons.

Purpose: Create a durable set of consistent safeguards for vulnerable persons that protect them against abuse, neglect and other conduct.

Substance of emergency rule: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"). The legislation requires the Office of Children and Family Services ("OCFS") to promulgate regulations consistent with the Justice Center oversight, regulations and enforcement. These regulations enact changes in line with the legislation to protect vulnerable people against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, and to provide fair treatment and notice to the employees. The included additions and amendments allow OCFS to comply with the statutory requirements that become effective June 30, 2013.

Facilities and provider agencies that operate residential programs for children or adults that are affected are the following: runaway and homeless youth programs, family type homes for adults, detention programs, juvenile justice programs, institutions, group residences, group homes, agency operated boarding homes including supervised independent living programs and any local department of social services that runs a detention program or has a contract with an authorized agency for detention services or has a contract(s) for care of foster children in out-of-state facilities. Regulations were added or amended to incorporate reporting, investigative, recordkeeping, record production, administrative, and personnel requirements, among others.

The first category of regulations added or amended address jurisdictional of the newly created Vulnerable Persons Central Register (VPCR). Regulations will now reflect that reports of suspected abuse or neglect of persons receiving services in OCFS licensed, certified or operated resi-

dential care programs will be reported to the VPCR. Additionally reports regarding significant incidents that harm or put a service recipient at risk of harm at those same programs will be reported to the VPCR.

The second category of regulations added or amended addresses requirements of mandated reporters and what mandated reporters will be required to report to the VPCR. Acts of abuse/neglect and significant incidents are defined and procedures regarding making a report to the VPCR are outlined.

The third category of regulations added or amended provides for the requirement of data collection by the facility or provider agencies in response to requests by the Justice Center and standards for release of that information by the Justice Center.

The fourth category of regulations added or amended provides for the creation of incident review committees to affected facilities and provider agencies.

Lastly, among other areas, criminal history background checks and checks of the Justice Center's list of substantiated category one reports of abuse and neglect prior to hiring certain employees, use of volunteers or contracts with certain entities have been added or amended.

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 September 25, 2013.

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

Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Children and Family Services (OCFS) to establish rules and regulations to carry out its powers and duties pursuant to the provisions of the SSL.

Section 34(3)(f) of the SSL requires the Commissioner of OCFS to establish regulations for the administration of public assistance and care within the State.

Section 490 of the SSL as found in Chapter 501 of the Laws of 2012 requires the Commissioner of OCFS to promulgate regulations that contain procedures and requirements consistent with guidelines and standards developed by the justice center and addressing incident management programs required by the Chapter Law.

2. Legislative objectives:

The proposed change to the regulations concerning vulnerable persons in programs licensed, certified or operated by OCFS is necessary to further the legislative objective that vulnerable persons be safe and afforded appropriate care.

3. Needs and benefits:

The proposed change to the regulations concerning vulnerable persons in programs licensed, certified or operated by OCFS provides are in response to the recognized need to strengthen and standardize the safety net for vulnerable persons, adults and children alike, who are receiving care from New York's human service agencies and programs. The Protection of People with Special Needs Act creates a set of uniform safeguards, to be implemented by a justice center whose primary focus will be on the protection of vulnerable persons. Accordingly, the benefit of this legislation is to create a durable set of consistent safeguards for all vulnerable persons that will protect them against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, and to provide fair treatment to the employees upon whom they depend.

4. Costs:

The proposed regulatory changes are not expected to have an adverse fiscal impact on authorized agencies, family type homes for adults, or on the social services districts with regard to reporting and recordkeeping requirements. Current laws and regulations impose levels of reporting and recordkeeping. Authorized agencies in confirming and complying with the new statutory and regulatory requirements will necessarily have to reconfigure current utilization of staff and duties. The enhancement of services for the protections of Vulnerable Persons will incur additional costs.

5. Local government mandates:

The proposed regulations will not impose any additional mandates on social services districts. Local Districts will be provided with an amended model contract for use in securing out of state residential services for children in foster care. This will replace a model contract already in existence and used by Local Districts.

6. Paperwork:

The proposed regulations do not require any additional paperwork. Requirements regarding documentation are currently in regulation. These regulations will require sharing such documentation with the Justice Center.

7. Duplication:

The proposed regulations do not duplicate any other State or federal requirements.

8. Alternatives:

These regulations are required to comply with Chapter 501 of the Laws of 2012.

9. Federal standards:

The regulatory amendments do not conflict with any federal standards.

10. Compliance schedule:

The regulations will be effective on June 30, 2013 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Types and estimated number of small businesses and local governments:

Social services districts and voluntary authorized agencies contracting with such social services districts to provide residential foster care services to children, authorized agencies providing juvenile detention services, runaway and homeless youth shelters and adult family type homes will be affected by the proposed regulations, as well as state operated juvenile justice facilities.

2. Reporting, recordkeeping and compliance requirements and professional services:

Authorized agencies, facilities and mandated reporters currently report suspected child abuse or maltreatment to the New York Statewide Central Register of Child Abuse and Maltreatment. Requirements in Social Services Law Section 490 and 491 now require mandated reporters to report all reportable incidents, which include but are not limited to those things currently falling within the definitions of abuse and neglect, to the Vulnerable Persons Central Register. Authorized agencies and facilities will maintain a current level of recordkeeping as it relates to prevention and remediation plans. Authorized agencies and facilities will have to comply with investigations and information requests as required by the Justice Center for the Protection of People with Special Needs, as defined in Executive Law Article 20.

3. Costs:

The proposed regulatory changes will require authorized agencies and facilities are currently subjected to reporting and recordkeeping requirements, costs would not be added to these current obligations. The statutory enhancements provided for by the Protection of People with Special Needs Act will create uniform standards across systems. There will be added costs with the implementation of standardization of responses and needs.

4. Economic and technological feasibility:

The proposed regulatory changes would not require any additional technology and should not have any adverse economic consequences for regulated parties.

5. Minimizing adverse impact:

The proposed changes to the regulations will require authorized agencies and facilities to conform to new reporting and recordkeeping requirements, however inconsistent and duplicative measures have been addressed by the regulations to minimize the impact. Trainings will be taking place across systems, as well as the dissemination of guidance documentation in advance of the effective date of the regulations.

6. Small business and local government participation:

Potential changes to the regulations governing the protection of people with special needs will be thoroughly addressed through statewide trainings and guidance documentation distributed to local representatives of social services, authorized agencies and facilities.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

Social services districts in rural areas and voluntary authorized agencies contracting with such social services districts to provide residential foster care services to children, authorized agencies providing juvenile detention services, runaway and homeless youth shelters and adult family type homes will be affected by the proposed regulations, as well as state operated juvenile justice facilities.

2. Reporting, recordkeeping and compliance requirements and professional services:

Authorized agencies, facilities and mandated reporters employed by the same are currently required to report suspected child abuse or maltreatment to the New York Statewide Central Register of Child Abuse and Maltreatment. Pursuant to the statutory requirements of Social Services Law Sections 490 and 491, mandated reporters will be required to report all reportable incidents, which will include but not be limited to those things currently falling within the definitions of abuse and neglect, to the Vulnerable Persons Central Register. Authorized Agencies and facilities will be required to maintain the same level of practice as it relates to recordkeeping, and prevention and remediation plans. Authorized agencies and facilities will be required to comply with investigations and information requests as required by the Justice Center for the Protection of People with Special Needs, as defined in Article 20 of the Executive Law.

The proposed regulations and amendments conform current practice to meet statutory obligations set forth in Chapter 501 of the Laws of 2012.

3. Costs:

An authorized agency or facility is currently subject to requirements governing reporting, recordkeeping, management of approved procedures and policies, so the proposed regulations should not impose any additional costs associated with those functions. The statutory and regulatory requirements will necessarily require a reconfiguration of the current utilization of administrative costs to conform and comply with the requirements of the new law and conforming regulations. The statutory scheme provides for the enhancement of services for the protections of Vulnerable Persons, which will have added costs.

4. Minimizing adverse impact:

The proposed changes to the regulations require authorized agencies and facilities approved, licensed, certified or operated by the Office of Children and Family Services to protect Vulnerable Persons as defined by Social Services Law Section 488. The regulations are in direct response to the need to strengthen and standardize the protection of vulnerable people in residential care. The Protection of People with Special Needs Act creates uniform standards across systems to be implemented and monitored by the Justice Center.

5. Rural area participation:

Potential changes to the regulations governing implementation of the statutes and regulations governing the protection of people with special needs will be addressed through trainings and guidance documentation distributed to representatives of social services districts, authorized agencies, including those that serve rural communities.

Job Impact Statement

The proposed regulations are not expected to have a negative impact on jobs or employment opportunities in either public or private sector service providers. A full job statement has not been prepared for the proposed regulations as it is not anticipated that the proposed regulations will have any adverse impact on jobs or employment opportunities.

Division of Criminal Justice Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

NYS Accreditation, and Y-STRs and Other Testing

I.D. No. CJS-29-13-00025-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 6190.1, 6190.3, 6190.4, 6190.5, 6190.6 and 6192.3 of Title 9 NYCRR.

Statutory authority: Executive Law, sections 837(13), 995-b(1), (9) and (12)

Subject: NYS Accreditation, and Y-STRs and other testing.

Purpose: Require labs to use mock cases and notify the Division after change in management, and clarify the use and timing of Y-STRs etc.

Text of proposed rule:

1. Paragraph (1) of subdivision (a) of section 6190.1 of Title 9 NYCRR is amended to read as follows:

(1) The term forensic laboratory shall have the same meaning as set forth in Executive Law (EL) section 995(1) [.] and shall include a forensic DNA laboratory which shall have the same meaning as set forth in EL section 995(2).

2. Paragraph (2) of subdivision (a) of section 6190.1 of Title 9 NYCRR is repealed and paragraphs (3) – (11) are renumbered to be paragraphs (2) – (10).

3. Three new paragraphs (11), (12) and (13) are added to subdivision (a) of section 6190.1 of Title 9 NYCRR to read as follows:

(11) The terms disciplines, sub-disciplines, or categories of testing refer to the type of forensic examination being conducted by the forensic laboratory.

(12) The term scope of accreditation refers to the disciplines, sub-disciplines, or categories of testing for which the forensic laboratory has been granted accreditation.

Note: ASCLD/LAB offers accreditation in disciplines, sub-disciplines (ASCLD/LAB – Legacy), and categories of testing (ASCLD/LAB – International). ABFT offers accreditation only in the discipline of forensic toxicology.

(13) *The term mock cases means simulated cases instead of actual or real cases.*

4. Section 6190.3 of Title 9 NYCRR is amended to read as follows:

a) [Except as provided below in subdivision (c) of this section, the] *The* commission has determined that all forensic laboratories must meet the following standards to receive NYS accreditation in disciplines other than forensic DNA testing: (1) the laboratory must be accredited by ASCLD/LAB; or (2) if the laboratory is performing only toxicology analysis, it must be accredited by either ASCLD/LAB or ABFT.

(b) [Except as provided below in subdivision (c) of this section, the] *The* commission has further determined, upon the binding recommendation of the DNA subcommittee, that any forensic laboratory performing forensic DNA testing must be accredited by ASCLD/LAB to include forensic DNA testing, and must comply with all conditions of the *FBI's* Quality Assurance Standards [for Forensic DNA Testing Laboratories].

[(c) A forensic laboratory that has not satisfied the requirements of subdivision (a) or (b) of this section may apply to the commission for provisional NYS accreditation. Such provisional accreditation shall be granted for an interim period (1) to any forensic laboratory that has submitted an application which has been accepted by ASCLD/LAB and is awaiting ASCLD/LAB accreditation; or (2) to any forensic laboratory performing only toxicology analysis that has submitted an application which has been accepted by ASCLD/LAB or ABFT and is awaiting such accreditation; or (3) to any forensic DNA laboratory that has submitted an application which has been accepted by ASCLD/LAB and is awaiting ASCLD/LAB accreditation and that complies with all conditions of the Quality Assurance Standards for Forensic DNA Testing Laboratories.

(d) Notwithstanding the provisions of this Part, a forensic laboratory that has not satisfied the requirements of subdivision (a) or (b) of this section may request that it be permitted to perform forensic testing on evidence in a criminal investigation or proceeding or for purposes of identification to the extent necessary to satisfy ASCLD/LAB or ABFT accreditation requirements. A forensic laboratory requesting to perform such testing must demonstrate to the satisfaction of the commission (and in any instance involving DNA testing upon the binding recommendation of the DNA subcommittee) through the use of an external audit by an inspector approved by the commission (and in any instance involving DNA testing upon the binding recommendation of the DNA subcommittee) that all aspects of preparation for ASCLD/LAB or ABFT accreditation other than that requiring such testing have been completed.]

(c) *Once a forensic laboratory has been accredited by ASCLD/LAB or ABFT using mock cases, the commission may receive and review the results of the mock cases.*

5. Subdivisions (a) and (b) of section 6190.4 of Title 9 NYCRR are amended to read as follows:

(a) A forensic laboratory seeking NYS accreditation must [file a formal application with] *apply* to the division in a form prescribed by the division. [An application] *A forensic laboratory* seeking accreditation shall [include] *provide* the following supporting documentation, access thereto or authorization for ASCLD/LAB or ABFT, as appropriate, to release:

(1) documentation or accreditation by ASCLD/LAB or ABFT, if obtained;

(2) all documentation submitted to ASCLD/LAB or ABFT, as part of such accreditation application process, the continuing compliance requirements, if any, and any other related matters; and

(3) all documentation received by the laboratory from ASCLD/LAB or ABFT, which may include, but not be limited to any of the following, if appropriate: information pertaining to the application process; the accreditation inspection; the summation conference; the final inspection report; and disciplinary actions or proceedings.

(b) Upon receipt of such materials, the division shall conduct an initial review to ensure that all necessary documents have been submitted. Thereafter, the division shall forward [that application and supporting] *the* documents to the DNA subcommittee for its review and binding recommendation regarding NYS accreditation to perform DNA testing. The DNA subcommittee shall forward its binding recommendation to the commission, which shall make a final determination as to whether NYS accreditation in forensic DNA testing should be granted. For a forensic laboratory seeking accreditation in disciplines other than DNA testing, the division shall forward the [application and supporting] documentation directly to the commission for its determination.

6. Subdivision (a) of section 6190.5 of Title 9 NYCRR is amended to read as follows:

a) A forensic laboratory that is accredited [to perform DNA testing] will retain its NYS accreditation for the same period as its ASCLD/LAB or ABFT accreditation, unless such NYS accreditation is revoked pursuant to section 6190.6 of this Part. To retain NYS accredited status, such laboratory shall continue to meet the standards under which it was accredited and shall participate in any proficiency testing mandated by *the commission or, with respect to forensic DNA laboratories, the DNA*

subcommittee. Such laboratory must submit to the division a copy of any documentation submitted to ASCLD/LAB or ABFT or received from it as part of the continuing compliance requirements, including any notification of disciplinary action taken by ASCLD/LAB or ABFT against such laboratory. Such documentation shall be reviewed by *the commission, or with respect to forensic DNA laboratories, the DNA subcommittee, and appropriate action may be taken against such laboratory, if necessary.*

7. Subdivision (b) of section 6190.5 of Title 9 NYCRR is repealed and a new subdivision (b) is added to read as follows:

(b) *A forensic laboratory that has received NYS accreditation shall notify the division, in writing, no later than three business days after any significant change in the management or management structure of such laboratory.*

8. Subdivision (a) of section 6190.6 of Title 9 NYCRR is amended to read as follows:

(a) In accordance with Executive Law, section 995-b(3)(e), the commission (and with respect to forensic DNA laboratories, upon the binding recommendation of the DNA subcommittee to the commission) may revoke, suspend or otherwise limit the NYS accreditation of a forensic laboratory, if the commission, or where appropriate, the DNA subcommittee determines that [the] *a* forensic laboratory or one or more persons in its employ:

(1) is guilty of misrepresentation in obtaining a forensic laboratory NYS accreditation;

(2) rendered a report on laboratory work actually performed in another forensic laboratory without disclosing the fact that the examination or procedure was performed by such other forensic laboratory;

(3) showed unacceptable error or errors in the performance of forensic laboratory examination procedures;

(4) failed to file any report required to be submitted pursuant to EL article 49-B or violated in a material respect any provision of that article;

(5) violated in a material respect any provision of this Part, including the continuing compliance requirements of ASCLD/LAB or ABFT; [or]

(6) failed to participate in or to meet the standards of any proficiency test required by the DNA subcommittee and/or the commission[.]; or

(7) *failed to notify the division, in writing, of any significant change in the management or management structure of such laboratory within the time period provided for in subdivision (b) of section 6190.5 of this Part. A forensic laboratory found to be in violation of this paragraph shall be subject to a warning for the first violation.*

9. Paragraphs (1), (2) and (3) of subdivision (b) of section 6190.6 of Title 9 NYCRR are renumbered (2), (3) and (4) and a new paragraph (1) is added to read as follows:

(b) A forensic [DNA] laboratory found to be in violation of the provisions of subdivision (a) of this section shall be subject to the following sanctions:

(1) *Notice of Violation: On its own initiative or, with respect to forensic DNA laboratories, at the request of the chair of the DNA subcommittee, the commission, by its chair, shall serve written notice of the alleged violation, which notice shall be mailed by certified mail to the holder of the NYS accreditation at the address of such holder. Within five days of receipt of such notice, a NYS accredited laboratory must file a written answer to the charges with the commission and, where appropriate, the DNA subcommittee.*

10. Subdivision (c) of section 6190.6 of Title 9 NYCRR is amended to read as follows:

(c) No forensic laboratory NYS accreditation shall be revoked, suspended, or otherwise limited without a hearing. On its own initiative or, with respect to forensic DNA laboratories, at the request of the *chair* of the DNA subcommittee, the *chair* of the commission shall serve written notice of the alleged violation, together with written notice of the time and place of the hearing, which notice shall be mailed by certified mail to the holder of the NYS accreditation at the address of such holder at least 21 days prior to the date fixed for such hearing. A NYS accredited laboratory may file a written answer to the charges with the commission and, where appropriate, the DNA subcommittee, not less than five days prior to the hearing. The hearing shall be conducted by the commission or where appropriate, the DNA subcommittee. The laboratory director shall be allowed to appear in person and present relevant testimony. If the DNA subcommittee conducts such hearing, it shall make a binding recommendation to the commission with respect to the appropriate sanction, if any.

11. Subdivisions (e) and (f) of section 6192.3 of Title 9 NYCRR are renumbered subdivision (f) and (g) and a new subdivision (e) is added to read as follows:

(e) *In the event of a potential indirect association, laboratories should use Y-STR and/or mtDNA testing to help determine if the indirect association should be pursued further.*

12. Paragraph (4) of newly renumbered subdivision (g) of section 6192.3 of Title 9 NYCRR is amended to read as follows:

(4) Upon receiving a completed application from the local participat-

ing CODIS laboratory and confirmation from the databank that the appropriate statistical threshold has been met, the division will release the name of the offender and supporting statistical data to the submitting laboratory. If the appropriate statistical threshold value is not supported by the available data, then [testing of] additional [loci of the offender sample] testing may be required [and may include Y-STR and/or mtDNA analysis]. If the subsequent testing does not meet the appropriate threshold, the databank will notify the division and the offender's name will not be released.

Text of proposed rule and any required statements and analyses may be obtained from: Natasha M. Harvin, Esq., NYS Division of Criminal Justice Services, Alfred E. Smith Office Building, South Swan Street, Albany, NY 12210, (518) 457-8413, email: natasha.harvin@dcjs.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority:

Executive Law §§ 837(13) and 995-b(1), (9) and (12). Executive Law § 837(13) authorizes the Division of Criminal Justice Services (Division) to adopt, amend or rescind regulations "as may be necessary or convenient to the performance of the functions, powers and duties of the [D]ivision." Executive Law § 995-b(1) requires the development of minimum standards and a program of accreditation for all forensic laboratories in New York State. Thus, the Legislature clearly intended that accreditation standards be established. In addition, Executive Law § 995-b(9) and Executive Law § 995-b(12), respectively, require the promulgation of: (1) a policy for the establishment and operation of the State DNA Databank; and (2) standards for a determination of a match between the DNA records contained in the State DNA Identification Index and a DNA record of a person submitted for comparison.

2. Legislative objectives:

Executive Law § 995-b requires forensic laboratories to obtain New York State (NYS) accreditation. Part 6190 of Title 9 of the New York Codes, Rules and Regulations (NYCRR) requires a forensic laboratory to be accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) or the American Board of Forensic Toxicology, Inc. (ABFT) in order to obtain NYS accreditation.

Since its inception, the policy for the establishment and operation of a DNA Identification Index required pursuant to Executive Law § 995-b(9) has been promulgated by the Division in 9 NYCRR Part 6192. Section 6192.3 establishes a partial match policy which provides guidance to forensic laboratories in the event of an inadvertent match between a casework evidence DNA profile and an offender DNA profile. The proposed regulations amend 9 NYCRR 6192.3 to clarify and provide guidance on the use and timing of Y-STRs and other testing relating to cases of indirect associations.

3. Needs and benefits:

The DNA Subcommittee of the Commission on Forensic Science (Commission) reviewed the proposed regulations and made a binding recommendation to endorse the regulations to the Commission on March 15, 2013. The Commission formally endorsed the regulations on April 10, 2013.

A forensic laboratory seeking NYS accreditation must apply with the Division in a format prescribed by the Division. In addition, to retain NYS accredited status, such laboratory must continue to meet the standards under which it was accredited. The proposed revisions will ensure that the Division is aware of any changes or modifications to the information filed with the application for accreditation.

Under existing regulations, a forensic laboratory that has not been accredited by ASCLD/LAB, or a laboratory that is performing only toxicology analysis and has not been accredited by either ASCLD/LAB or ABFT, may apply to the Commission for provisional NYS accreditation which would allow the laboratory to perform casework without being first accredited by ASCLD/LAB or ABFT. Such provisional accreditation is granted for an interim period: (1) to any forensic laboratory that has submitted an application which has been accepted by ASCLD/LAB and is awaiting ASCLD/LAB accreditation; or (2) to any forensic laboratory performing only toxicology analysis that has submitted an application which has been accepted by ASCLD/LAB or ABFT and is awaiting such accreditation; or (3) to any forensic DNA laboratory that has submitted an application which has been accepted by ASCLD/LAB and is awaiting ASCLD/LAB accreditation and that complies with all conditions of the Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing Laboratories.

The New York Crime Laboratory Advisory Committee (NYCLAC) is comprised of representatives of the public forensic laboratories in New York that are subject to the Commission's accreditation requirements. NYCLAC requested the removal of provisional accreditation. ASCLD/

LAB and ABFT offer a one year accreditation program that will allow laboratories required to achieve accreditation prior to providing services in criminal cases an opportunity to apply for accreditation using mock or simulated criminal evidence or casework in lieu of actual evidence. Since ASCLD/LAB and ABFT will allow the use of mock cases and accredit a laboratory for one year, and then assess a laboratory's processing of actual cases, there is no longer a need for provisional accreditation pending final action on a laboratory's application.

The current regulations also address the rare case where a routine search of the DNA Databank results in an inadvertent near hit that could greatly limit the pool of potential suspects. The proposed regulations will merely clarify and provide guidance on the use and timing of Y-STRs and other testing relating to cases of indirect associations to further exclude potential suspects. Therefore, there are no costs or new mandates associated with this aspect of the proposal. In addition, the amendments will have no adverse impact on small businesses or local governments, or on jobs or employment opportunities, and there will be no adverse reporting, recordkeeping and other compliance requirements on rural areas. The DNA Subcommittee discussed encouraging DNA laboratories to use Y-STR testing at two meetings. After discussing the proposed amendments, the Subcommittee unanimously recommended that the changes be approved as they relate to DNA laboratories. The Commission also discussed the changes at length. Through a majority vote, the Commission recommended that the amendments be approved. The Commission members that dissented expressed concern about the existing partial match policy. The Commission took action only after the matter was acted upon by the DNA Subcommittee and thoroughly debated by its members.

4. Costs:

a. Costs to the regulated parties for the implementation of and continuing compliance with the rule:

The applicant laboratory must arrange for and obtain a sufficient number of mock casework, as determined by ASCLD/LAB or ABFT, to be reviewed and assessed. The laboratory also must pay any application and other applicable program fees as established by ASCLD/LAB, examples of which are indicated below.

The application fee structure:

- One thousand dollars (\$1,000) for laboratories having ten (10) or less proficiency tested personnel (including vacancies), at the time of the application.
- Two thousand dollars (\$2,000) for laboratories having between eleven (11) and twenty-five (25) proficiency tested personnel (including vacancies), at the time of the application.
- Three thousand dollars (\$3,000) for laboratories having between twenty-six (26) and fifty (50) proficiency tested personnel (including vacancies), at the time of the application.
- Four thousand dollars (\$4,000) for laboratories having greater than fifty (50) proficiency tested personnel (including vacancies), at the time of the application.

Optional Pre-Assessment Visit Fee:

Generally, the fee for this service will be about \$2,000, but the actual amount may vary slightly if the visit takes longer than three days (including travels days).

Annual Fee:

All accredited laboratories pay an annual fee to support the administrative and compliance monitoring operations of ASCLD/LAB. The annual fee is based on a "share cost" approved by the ASCLD/LAB Delegate Assembly. The current share cost is \$154 per proficiency tested position, with a minimum annual fee of \$1,000. The maximum annual fee for a single lab or system is \$35,000.

Surveillance Visit Fee:

The fee for this service is \$2,000 per laboratory, except that in laboratory systems the fee will vary based upon the surveillance schedule agreed to between ASCLD/LAB and the customer's primary representative.

With regard to ABFT accreditation, a non-refundable fee of \$500 is required for the initial application. There are also additional costs for the on-site inspection, which is currently \$4,000, and the mid-cycle review, which is \$500. The fees for the reaccreditation application and onsite inspection are the same as the fees for the initial application and inspection.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. Regulatory oversight will be accomplished using existing resources.

c. The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The cost analysis is based on the current fee structure used by ASCLD/LAB and ABFT.

5. Local government mandates:

New forensic laboratories must use mock cases to be accredited and all other forensic laboratories must use mock cases to expand their scope of accreditation. Also, forensic laboratories that receive NYS accreditation must notify the Division, in writing, no later than three business days after any significant change in the management or management structure of such laboratory.

6. Paperwork:

Within nine months of the date that the one year accreditation is granted, the forensic laboratory must apply for a full-term accreditation. Forensic laboratories that receive NYS accreditation must notify the Division, in writing, no later than three business days after any significant change in the management or management structure of such laboratory.

7. Duplication:

The Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing Laboratories describes the quality assurance requirements that laboratories must follow to ensure the quality and integrity of the data generated by the laboratory. A laboratory is required to comply with these Standards and the accreditation requirements of federal law, which requires DNA laboratories to be accredited by a nationally recognized accreditation board.

8. Alternatives:

No alternatives were considered.

A forensic laboratory seeking NYS accreditation must apply with the Division in a format prescribed by the Division. In addition, to retain NYS accredited status, such laboratory must continue to meet the standards under which it was accredited. The proposed revisions will ensure that the Division is aware of any changes or modifications to the information filed with the application for accreditation.

NYCLAC is comprised of laboratory directors from all of the public forensic laboratories in New York that are subject to the Commission's accreditation requirements. NYCLAC requested the removal of provisional accreditation. ASCLD/LAB and ABFT offer a one year accreditation program that will allow laboratories required to achieve accreditation prior to providing services in criminal cases an opportunity to apply for accreditation using mock or simulated criminal evidence or casework in lieu of actual evidence. Since ASCLD/LAB and ABFT will allow the use of mock cases and accredit a laboratory for one year, and then assess a laboratory's processing of actual cases, there is no longer a need for provisional accreditation pending final action on a laboratory's application.

9. Federal standards:

The Federal Bureau of Investigation's Quality Assurance Standards for Forensic DNA Testing Laboratories describes the quality assurance requirements that laboratories must follow to ensure the quality and integrity of the data generated by the laboratory. A laboratory is required to comply with these Standards and the accreditation requirements of federal law, which requires DNA laboratories to be accredited by a nationally recognized accreditation board.

10. Compliance schedule:

Regulated parties are expected to immediately achieve compliance with the proposed rule.

Regulatory Flexibility Analysis

1. Effect of rule: The proposed rule applies to American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) and American Board of Forensic Toxicology, Inc. (ABFT) accredited laboratories. There are currently 22 State or municipal laboratories. The proposed rule does not apply to small businesses.

2. Compliance requirements: The proposed rule requires new forensic laboratories to use mock cases in order to be accredited and all other forensic laboratories to use mock cases to expand their scope of accreditation. The proposed rule also requires forensic laboratories that receive New York State (NYS) accreditation to notify the Division of Criminal Justice Services (Division), in writing, no later than three business days after any significant change in the management or management structure of such laboratory.

3. Professional services: No professional services not already being utilized by a laboratory will be needed to comply with the proposed rule.

4. Compliance costs: The applicant laboratory must arrange for and obtain a sufficient number of mock cases, as determined by ASCLD/LAB or ABFT, to be reviewed and assessed. The laboratory also must pay any application and other applicable program fees as established by ASCLD/LAB, examples of which are indicated below.

The application fee structure:

- One thousand dollars (\$1,000) for laboratories having ten (10) or less proficiency tested personnel (including vacancies), at the time of the application.
- Two thousand dollars (\$2,000) for laboratories having between eleven (11) and twenty-five (25) proficiency tested personnel (including vacancies), at the time of the application.
- Three thousand dollars (\$3,000) for laboratories having between twenty-six (26) and fifty (50) proficiency tested personnel (including vacancies), at the time of the application.
- Four thousand dollars (\$4,000) for laboratories having greater than fifty (50) proficiency tested personnel (including vacancies), at the time of the application.

Optional Pre-Assessment Visit Fee:

Generally, the fee for this service will be about \$2,000, but the actual

amount may vary slightly if the visit takes longer than three days (including travels days).

Annual Fee:

All accredited laboratories pay an annual fee to support the administrative and compliance monitoring operations of ASCLD/LAB. The annual fee is based on a "share cost" approved by the ASCLD/LAB Delegate Assembly. The current share cost is \$154 per proficiency tested position, with a minimum annual fee of \$1,000. The maximum annual fee for a single lab or system is \$35,000.

Surveillance Visit Fee:

The fee for this service is \$2,000 per laboratory, except that in laboratory systems the fee will vary based upon the surveillance schedule agreed to between ASCLD/LAB and the customer's primary representative.

With regard to ABFT accreditation, a non-refundable fee of \$500 is required for the initial application. There are also additional costs for the on-site inspection, which is currently \$4,000, and the mid-cycle review, which is \$500. The fees for the reaccreditation application and onsite inspection are the same as the fees for the initial application and inspection.

5. Economic and technological feasibility: No economic or technological impediments to compliance have been identified.

6. Minimizing adverse impact: No alternatives were considered.

A forensic laboratory seeking NYS accreditation must apply with the Division in a format prescribed by the Division. In addition, to retain NYS accredited status, such laboratory must continue to meet the standards under which it was accredited. The proposed revisions will ensure that the Division is aware of any changes or modifications to the information filed with the application for accreditation.

The New York Crime Laboratory Advisory Committee (NYCLAC) is comprised of laboratory directors from all of the public forensic laboratories in New York that are subject to the Commission on Forensic Science's (Commission) accreditation requirements. NYCLAC requested the removal of provisional accreditation. ASCLD/LAB and ABFT offer a one year accreditation program that will allow laboratories required to achieve accreditation prior to providing services in criminal cases an opportunity to apply for accreditation using mock or simulated criminal evidence or casework in lieu of actual evidence. Since ASCLD/LAB and ABFT will allow the use of mock cases and accredit a laboratory for one year, and then assess a laboratory's processing of actual cases, there is no longer a need for provisional accreditation pending final action on a laboratory's application.

7. Small business and local government participation: NYCLAC is comprised of laboratory directors from all of the public forensic laboratories in New York that are subject to the Commission's accreditation requirements. NYCLAC requested the removal of provisional accreditation.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: The proposed rule applies to American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) and American Board of Forensic Toxicology, Inc. (ABFT) accredited laboratories. There are currently 22 State, county and municipal laboratories, an undetermined number of which may be located in a rural area.

2. Reporting, recordkeeping and other compliance requirements and professional services: No professional services will be needed to comply with the proposed rule.

3. Costs: The applicant laboratory must arrange for and obtain a sufficient number of mock cases, as determined by ASCLD/LAB or ABFT, to be reviewed and assessed. The laboratory also must pay any application and other applicable program fees as established by ASCLD/LAB or ABFT, examples of which are indicated below.

The application fee structure:

- One thousand dollars (\$1,000) for laboratories having ten (10) or less proficiency tested personnel (including vacancies), at the time of the application.
- Two thousand dollars (\$2,000) for laboratories having between eleven (11) and twenty-five (25) proficiency tested personnel (including vacancies), at the time of the application.
- Three thousand dollars (\$3,000) for laboratories having between twenty-six (26) and fifty (50) proficiency tested personnel (including vacancies), at the time of the application.
- Four thousand dollars (\$4,000) for laboratories having greater than fifty (50) proficiency tested personnel including vacancies), at the time of the application.

Optional Pre-Assessment Visit Fee:

Generally, the fee for this service will be about \$2,000, but the actual amount may vary slightly if the visit takes longer than three days (including travels days).

Annual Fee:

All accredited laboratories pay an annual fee to support the administrative and compliance monitoring operations of ASCLD/LAB. The annual

fee is based on a "share cost" approved by the ASCLD/LAB Delegate Assembly. The current share cost is \$154 per proficiency tested position, with a minimum annual fee of \$1,000. The maximum annual fee for a single lab or system is \$35,000.

Surveillance Visit Fee:

The fee for this service is \$2,000 per laboratory, except that in laboratory systems the fee will vary based upon the surveillance schedule agreed to between ASCLD/LAB and the customer's primary representative.

With regard to ABFT accreditation, a non-refundable fee of \$500 is required for the initial application. There are also additional costs for the on-site inspection, which is currently \$4,000, and the mid-cycle review, which is \$500. The fees for the reaccreditation application and onsite inspection are the same as the fees for the initial application and inspection.

4. Minimizing adverse impact: No alternatives were considered.

A forensic laboratory seeking New York State (NYS) accreditation must apply with the Division of Criminal Justice Services (Division) in a format prescribed by the Division. In addition, to retain NYS accredited status, such laboratory must continue to meet the standards under which it was accredited. The proposed revisions will ensure that the Division is aware of any changes or modifications to the information filed with the application for accreditation.

The New York Crime Laboratory Advisory Committee (NYCLAC) is comprised of laboratory directors from all of the public forensic laboratories in New York that are subject to the Commission on Forensic Science's (Commission) accreditation requirements. NYCLAC requested the removal of provisional accreditation. ASCLD/LAB and ABFT offer a one year accreditation program that will allow laboratories required to achieve accreditation prior to providing services in criminal cases an opportunity to apply for accreditation using mock or simulated criminal evidence or casework in lieu of actual evidence. Since ASCLD/LAB and ABFT will allow the use of mock cases and accredit a laboratory for one year, and then assess a laboratory's processing of actual cases, there is no longer a need for provisional accreditation pending final action on a laboratory's application.

5. Rural area participation: NYCLAC is comprised of laboratory directors from all of the public forensic laboratories in New York that are subject to the Commission's accreditation requirements. NYCLAC requested the removal of provisional accreditation.

Job Impact Statement

The proposed rule requires new forensic laboratories to use mock cases to be accredited and all other forensic laboratories to use mock cases to expand their scope of accreditation. The New York Crime Laboratory Advisory Committee (NYCLAC) is comprised of laboratory directors from all of the public forensic laboratories in New York that are subject to the Commission on Forensic Science's accreditation requirements. NYCLAC requested the removal of provisional accreditation. The American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) and the American Board of Forensic Toxicology, Inc. (ABFT) offer a one year accreditation program that will allow laboratories required to achieve accreditation prior to providing services in criminal cases an opportunity to apply for accreditation using mock or simulated criminal evidence or casework in lieu of actual evidence. Since ASCLD/LAB and ABFT will allow the use of mock cases and accredit a laboratory for one year, and then assess a laboratory's processing of actual cases, there is no longer a need for provisional accreditation pending final action on a laboratory's application.

The proposed rule also requires forensic laboratories that receive New York State (NYS) accreditation to notify the Division of Criminal Justice Services (Division), in writing, no later than three business days after any significant change in the management or management structure of such laboratory. A forensic laboratory seeking NYS accreditation must apply with the Division in a format prescribed by the Division. In addition, to retain NYS accredited status, such laboratory must continue to meet the standards under which it was accredited. The proposed revisions will ensure that the Division is aware of any changes or modifications to the information filed with the application for accreditation.

As such, it is apparent from the nature and purpose of the proposal that it will have no impact on jobs and employment opportunities.

Department of Environmental Conservation

NOTICE OF ADOPTION

New York State Falconry Regulations

I.D. No. ENV-12-13-00006-A

Filing No. 704

Filing Date: 2013-07-01

Effective Date: 2013-07-17

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

Action taken: Amendment of Part 173 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-1001, 11-1003, 11-1007 and 11-1009

Subject: New York State Falconry Regulations.

Purpose: To implement changes to New York State's falconry regulations.

Text or summary was published in the March 20, 2013 issue of the Register, I.D. No. ENV-12-13-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Joseph E Therrien, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4752, (518) 402-8985, email: jetherri@gw.dec.state.ny.us

Additional matter required by statute: A programmatic environmental impact statement is on file with the Department of Environmental Conservation.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, 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:

Assessment of Public Comment

The Department of Environmental Conservation (department) received comments from 14 individuals on the proposed amendments to the New York State falconry regulations during the 45-day public comment period (March 20 – May 6, 2013). All individuals who provided comments were in support of the proposed regulation with ten individuals in full support of adopting the regulations with no further changes. The amended regulations will bring the state falconry regulations into compliance with the changes incorporated in the Federal regulations thereby allowing New York to continue falconry in the state under the new Federal falconry standards.

Several individuals commented on allowing falconers to fly golden eagles (*Aquila chrysaetos*) in New York State. However, golden eagles are specifically excluded from the definition of "raptor" - birds that can be flown for falconry, in Environmental Conservation Law § 11-1001. Golden eagles are also listed as endangered in New York State and therefore are further excluded from the statutory definition of raptor and as such, the department cannot authorize their use in the sport of falconry through regulation.

Several comments were submitted addressing the licensing of apprentice falconers. One comment suggested that the minimum age to be licensed as an apprentice falconer should be lowered to 12 years of age – the limit set by the USFWS in the federal regulations. The department and the falconry advisory board (board) agreed to leave the minimum age at 14 which is the current limit in state regulations. It was also suggested that apprentice falconers be allowed to possess and fly any species of hawk authorized by the USFWS including captive bred Harris' hawks (*Parabuteo unicinctus*). The department and board discussed this as well but agreed that an apprentice falconer should gain experience in trapping and flying wild raptors native to New York so that they could later train other apprentices they may sponsor in the trapping of wild raptors for use in falconry. The board and the department agreed that the red-tailed hawk (*Buteo jamaicensis*) and American kestrel (*Falco sparverius*), the two raptors allowed to be possessed and flown by apprentice falconers, were ideal birds for the beginning falconer. After completion of training as an apprentice, the falconer can then qualify for the general falconry license and the wider range of raptors available at that level.

One comment was received which suggested removing the requirement that a sponsor has to be present with their apprentice for at least the first two times that the apprentice flies his or her first raptor. The department and board disagree with this suggestion and instead favor the oversight and guidance of the sponsor for apprentices who are acquiring the beginning skills in the sport of falconry especially when the apprentice is flying his or her raptor for the first time in the wild.

Several comments were submitted addressing master falconers. One comment addressed the 13 raptor maximum for master falconers stating that this limit was too high and suggested that 5 to 7 birds was enough for a falconer to maintain. The department and board set this limit to provide falconers who had the means, time and ability to possess, train and fly this number of raptors the opportunity to do so and to allow master falconers to use multiple captive bred raptors held under the authority of their falconry license for authorized abatement activities.

A comment was received stating that master falconers should not be required to train captive bred raptors, held under the authority of their falconry license, in pursuit of wild game and use the raptors in hunting. The department contends that the intent and purpose of issuing a falconry license to individuals authorizing the possession of regulated species is specifically for the purposes of training and using raptors for these activities.

One comment was received which disagreed that general falconers must, along with submitting three letters of reference from master falconers, be approved by the board prior to receiving a master falconry license. The falconry advisory board is a commissioner appointed board qualified by reason of their association with state or national organizations or institutions with primary interest in ornithology, falconry or wildlife conservation. Among the board's duties are reviewing and screening applications for falconry licenses and, recommending action to be taken on each application. The knowledge and experience of the board serve well in the review and screening of upgrades to the master falconry license ensuring that applicants have the skills and care techniques required of a master falconer.

One additional comment was received questioning the language of the regulation as it pertains to use of raptors for abatement activities. The regulation as written allows master falconers to use raptors held under the authority of their falconry license for abatement activities. The concern was raised that the regulation would limit abatement activities only to raptors held under the authority of a falconry license. The regulation clarifies that master falconers may use falconry raptors for abatement activities as an additional authority under their falconry license without having to obtain a separate license from the department. Any captive bred raptor held under the authority of a USFWS Abatement license will be allowed to be used for abatement activities in New York State regardless of whether the raptor is held under the authority of a falconry license.

Department of Financial Services

EMERGENCY RULE MAKING

Confidentiality Protocols for Victims of Domestic Violence and Endangered Individuals

I.D. No. DFS-29-13-00001-E

Filing No. 690

Filing Date: 2013-06-26

Effective Date: 2013-06-26

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

Action taken: Addition of Part 244 (Regulation 168) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301 and 2612

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

Specific reasons underlying the finding of necessity: This regulation governs confidentiality protocols for domestic violence victims and endangered individuals. Insurance Law § 2612 states that if any person covered by an insurance policy issued to another person who is the policyholder or if any person covered under a group policy delivers to the insurer that issued the policy, a valid order of protection against the policyholder or other person, then the insurer is prohibited for the duration of the order from disclosing to the policyholder or other person the ad-

dress and telephone number of the insured, or of any person or entity providing covered services to the insured.

In addition, on October 25, 2012, Governor Andrew M. Cuomo signed into law Chapter 491 of the Laws of 2012, effective January 1, 2013, Part E of which amends Insurance Law § 2612 to require a health insurer to accommodate a reasonable request made by a person covered by an insurance policy or contract issued by the health insurer to receive communications of claim related information from the health insurer by alternative means or at alternative locations if the person clearly states that disclosure of all or part of the information could endanger the person. Except with the express consent of the person making the request, the amendment prohibits a health insurer from disclosing to the policyholder: (1) the address, telephone number, or any other personally identifying information of the person who made the request or child for whose benefit a request was made; (2) the nature of the health care services provided; or (3) the name or address of the provider of the covered services.

Insurance Law § 2612 requires the Superintendent, in consultation with the Commissioner of Health, Office of Children and Family Services, and Office for the Prevention of Domestic Violence, to promulgate rules to guide and enable insurers to guard against the disclosure of the confidential information protected by § 2612. Section 2612 provides important protections to persons who may be subject to domestic violence.

For the reasons stated above, emergency action is necessary for the general welfare.

Subject: Confidentiality Protocols for Victims of Domestic Violence and Endangered Individuals.

Purpose: Establish requirements for insurers to effectively respond to certain requests to keep records and information confidential.

Text of emergency rule: Section 244.0 Preamble.

Individuals experiencing actual or threatened violence frequently establish new addresses and telephone numbers to protect their health and safety. Insurance Law section 2612 requires the Superintendent of Financial Services, in consultation with the Commissioner of Health, Office of Children and Family Services, and Office for the Prevention of Domestic Violence, to promulgate rules to guide and enable insurers to guard against the disclosure of information protected by Insurance Law section 2612. This Part establishes requirements with which insurers shall comply to enable them to effectively respond to requests to keep records and information confidential in conformance with Insurance Law section 2612.

Section 244.1 Applicability.

(a) *This Part shall apply to a policy issued pursuant to the Insurance Law.*

(b) *With respect to an insurer authorized to write kinds of insurance in addition to accident and health insurance or salary protection insurance, any section of this Part that establishes rules with regard to a requestor or covered individual shall apply only with respect to a policy of accident and health insurance or a policy of salary protection insurance.*

Section 244.2 Definitions.

As used in this Part:

(a) *Accident and health insurance shall have the meaning set forth in Insurance Law section 1113(a)(3) and with regard to a fraternal benefit society, also shall have the meaning set forth in Insurance Law section 4501(i)-(k), (m), (o), and (p).*

(b) *Address means a street address, mailing address, or e-mail address.*

(c) *Claim related information shall have the meaning set forth in Insurance Law section 2612(h)(1)(A).*

(d) *Covered individual means an individual covered under a policy issued by a health insurer who could be endangered by the disclosure of all or part of claim related information by the health insurer.*

(e) *Fraternal benefit society shall have the meaning set forth in Insurance Law section 4501(a).*

(f) *Health insurer shall have the meaning set forth in Insurance Law section 2612(h)(1)(B).*

(g) *Insured means an individual who is covered under an individual or a group policy.*

(h) *Insurer shall have the meaning set forth in Insurance Law section 2612(c)(2) and shall include a fraternal benefit society.*

(i) *Person means an individual or legal entity, including a partnership, limited liability company, association, trust, or corporation.*

(j) *Policy means a policy, contract, or certificate of insurance, an annuity contract, a child health insurance plan issued pursuant to Title 1-A of Public Health Law Article 25, medical assistance or health care services provided pursuant to Title 11 or 11-D of Social Services Law Article 5, or any certificate issued under any of the foregoing.*

(k) *Policyholder means a person to whom a policy has been issued.*

(l) *Reasonable request means a request that contains a statement that disclosure of all or part of the claim related information to which the request pertains could endanger an individual, and the specification of an alternative address, telephone number, or other method of contact.*

(m) *Requestor* means a covered individual, or the individual's legal representative, or with regard to a covered individual who is a child, the child's parent or guardian, who makes a reasonable request to the health insurer.

(n) Salary protection insurance shall have the meaning set forth in Insurance Law section 1113(a)(31).

(o) *Victim of domestic violence or victim* shall have the meaning set forth in Social Services Law section 459-a(1).

Section 244.3 Confidentiality protocol.

(a) An insurer shall develop and implement a confidentiality protocol whereby, except with the express consent of the individual who delivers to the insurer a valid order of protection, the insurer shall keep confidential and shall not disclose the address and telephone number of the victim of domestic violence, or any child residing with the victim, and the name, address, and telephone number of a person providing covered services to the victim, to a policyholder or another insured covered under the policy against whom the victim has a valid order of protection, if the victim, the victim's legal representative, or if the victim is a child, the child's parent or guardian, delivers to the insurer at its home office a valid order of protection pursuant to Insurance Law section 2612(f) and (g).

(b) A health insurer shall develop and implement a confidentiality protocol whereby the health insurer shall accommodate a reasonable request made by a requestor for a covered individual to receive communications of claim related information from the health insurer by alternative means or at alternative locations. Except with the express consent of the requestor, a health insurer shall not disclose to the policyholder or another insured covered under the policy:

(1) the address, telephone number, or any other personally identifying information of the covered individual or any child residing with the covered individual;

(2) the nature of the health care services provided to the covered individual;

(3) the name, address, and telephone number of the provider of the covered health care services; or

(4) any other information from which there is a reasonable basis to believe the foregoing information could be obtained.

(c) The insurer's confidentiality protocol shall include written procedures that its employees, agents, representatives, or any other persons with whom the insurer contracts or who has gained access to the information from the insurer, with regard to the solicitation, negotiation, or sale of insurance or the adjustment or administration of insurance claims, shall follow. The written procedures shall include:

(1) the procedure by which a requestor may make a reasonable request, provided that the procedure shall not require a justification as part of the reasonable request;

(2) the procedure by which a victim of domestic violence or a covered individual may provide an alternative address, telephone number, or other method of contact;

(3) procedures for limiting access to personally identifying information, such as the name, address, telephone number, and social security number of a victim or covered individual and any other information from which there is a reasonable basis to believe the foregoing information could be obtained;

(4) procedures for limiting or removing personal identifiers before information is used or disclosed, where possible;

(5) a system of internal control procedures, which the insurer shall review at least annually, to ensure the confidentiality of:

(i) addresses, telephone numbers, or other methods of contact;

(ii) the fact that a requestor made a reasonable request or that an order of protection was delivered to the insurer, and any information contained therein; and

(iii) any other information from which there is a reasonable basis to believe the foregoing information could be obtained; and

(6) with regard to a health insurer, the procedure by which a requestor may revoke a reasonable request, provided, however, that the health insurer may require the requestor to submit a sworn statement revoking the request.

(d)(1) An insurer shall notify its employees, agents, representatives, or any other persons with whom the insurer contracts or who has gained access to the information from the insurer, with regard to the solicitation, negotiation, or sale of insurance or the adjustment or administration of insurance claims, that the insurer's protocol is to be followed for the specified victim of domestic violence or covered individual, within three business days of:

(i) receipt of a valid order of protection and an alternative address, telephone number, or other method of contact; or

(ii) receipt of a reasonable request, with regard to a health insurer.

(2) Upon receipt of a valid order of protection or a reasonable request, an insurer shall inform the individual who delivered the order of protection or the requestor that the insurer has up to three business days to implement paragraph (1) of this subdivision.

(e) A health insurer may require a requestor to make a reasonable request in writing pursuant to Insurance Law section 2612(h)(3). However, a health insurer shall not require a requestor to provide a justification for the reasonable request.

(f)(1) Prior to releasing any information pursuant to a warrant, subpoena, or court order, an insurer shall notify the individual who delivered the order of protection or the requestor, as soon as reasonably practicable, that it intends to release information and specify what type of information it intends to release, unless prohibited by the warrant, subpoena, or court order.

(2) Upon release of information pursuant to a warrant, subpoena, or court order, an insurer shall advise the person to whom the insurer is releasing the information that the information is confidential and that the person should continue to maintain the confidentiality of the information to the extent possible.

(g) An insurer shall comply with Parts 420 and 421 of this Title (Insurance Regulations 169 and 173) and where applicable, the federal Health Insurance Portability and Accountability Act of 1996, as amended, with respect to any information submitted pursuant to Insurance Law section 2612 or this Part.

(h) An insurer or any person subject to the Insurance Law shall not engage in any practice that would prevent or hamper the orderly working of this Part in accomplishing its intended purpose of protecting victims of domestic violence and covered individuals.

(i) An agent, representative, or designee of an insurer, a corporation organized pursuant to Insurance Law Article 43, a health maintenance organization certified pursuant to Public Health Law Article 44, or a provider issued a special certificate of authority pursuant to Public Health Law section 4403-a, who is regulated pursuant to the Insurance Law, need not develop its own confidentiality protocol pursuant to this section if the agent, representative, or designee follows the protocol of the insurer, corporation, health maintenance organization, or provider.

Section 244.4 Notice.

(a) By July 1, 2013, an insurer shall post conspicuously on its website, and with regard to a health insurer, also annually provide all its participating health service providers with:

(1) a description of Insurance Law section 2612;

(2) the information required by section 244.3(c)(1), (2), and (6); and

(3) the phone number for the New York State Domestic and Sexual Violence Hotline.

(b) An insurer shall post conspicuously on its website the information set forth in paragraphs (1) and (3) of subdivision (a) of this section in a format suitable for printing and posting. A health insurer shall recommend to its participating health service providers that the providers print and post the information in their offices.

(c) This section shall not apply to an agent, representative, or designee of an insurer, a corporation organized pursuant to Insurance Law Article 43, a health maintenance organization certified pursuant to Public Health Law Article 44, or a provider issued a special certificate of authority pursuant to Public Health Law section 4403-a, who is regulated pursuant to the Insurance Law, if the agent, representative, or designee follows the protocol of the insurer, corporation, health maintenance organization, or provider.

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 September 23, 2013.

Text of rule and any required statements and analyses may be obtained from: Joana Lucashuk, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-2125, email: oana.lucashuk@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: Financial Services Law §§ 202 and 302 and Insurance Law §§ 301 and 2612. Insurance Law § 301 and Financial Services Law §§ 202 and 302 authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law. Insurance Law § 2612 requires the Superintendent to promulgate rules to guide and enable insurers (as § 2612 defines that term, which includes health maintenance organizations as well as agents, representatives, and designees of the insurers that are regulated under the Insurance Law) to guard against the disclosure of the confidential information protected by Insurance Law § 2612.

2. Legislative objectives: Insurance Law § 2612, with respect to every insurer regulated under the Insurance Law, provides in relevant part that if any person covered by an insurance policy delivers to the insurer a valid order of protection against the policyholder or other covered person, then the insurer cannot, for the duration of the order, disclose to the policyholder

or other person the address and telephone number of the insured, or of any person or entity providing covered services to the insured. Section 2612 also requires a health insurer, as defined in that section, to accommodate a reasonable request made by a person covered by an insurance policy or contract to receive communications of claim-related information by alternative means or at alternative locations if the person clearly states that disclosure of the information could endanger the person. This section further prohibits a health insurer from disclosing certain information to the policyholder.

The Legislature enacted Insurance Law § 2612, and amendments thereto, to protect domestic violence victims and to ensure that an abuser has one less record that the abuser may use to track down the victim. This rule is consistent with the public policy objectives the Legislature sought to advance by enacting § 2612, because the rule helps to protect domestic violence victims by guiding and enabling insurers to guard against the disclosure of the confidential information protected by § 2612.

3. Needs and benefits: Insurance Law § 2612 requires the Superintendent, in consultation with the Commissioner of Health, Office of Children and Family Services, and Office for the Prevention of Domestic Violence, to promulgate rules to guide and enable insurers to guard against the disclosure of the confidential information protected by Insurance Law § 2612. Therefore, after consultation with the Commissioner of Health, the Office of Children and Family Services, and the Office for the Prevention of Domestic Violence, the Superintendent drafted this rule to guide and enable insurers to guard against disclosure.

4. Costs: The rule may impose compliance costs on insurers because it requires insurers to develop confidentiality protocols and provide certain notices. However, such costs are difficult to estimate and will vary depending upon a number of factors, including the size of the insurer. In fact, insurers already should be complying with the existing requirements of the statute. Moreover, the rule is designed to provide flexibility to insurers and does not prescribe the way in which an insurer must provide the notices, but rather leaves the method up to each insurer. In addition, an agent, representative, or designee of an insurer that is regulated pursuant to the Insurance Law need not establish its own protocol or give certain notices, provided that it follows the protocol of the insurer. In any event, the requirement that insurers may not disclose the information protected by Insurance Law § 2612 is mandated by the statute itself, not the rule.

The Department does not anticipate significant additional costs to the Department to implement the rule. The Department will monitor compliance with the rule as part of its market conduct examinations of insurers and consumer complaint handling procedures.

The regulation does not impose compliance costs on state or local governments because it is not applicable to them.

5. Local government mandates: This rule does not impose any program, service, duty, or responsibility upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: The rule requires an insurer to notify its employees, agents, representatives, or other persons with whom the insurer contracts or who have gained access to the information from the insurer, with regard to the solicitation, negotiation, or sale of insurance or the adjustment or administration of insurance claims, that the insurer's confidentiality protocol is to be followed for the specified victim of domestic violence or covered individual, within three business days of receipt of a valid order of protection and an alternative address, telephone number, or other method of contact, or receipt of a reasonable request with regard to a health insurer.

The rule also requires a health insurer to annually provide all its participating health service providers with a description of Insurance Law § 2612, certain information contained within the insurer's confidentiality protocol, and the phone number of the New York State Domestic and Sexual Violence Hotline.

7. Duplication: The rule does not duplicate, overlap, or conflict with any state rules or other legal requirements. The rule may overlap with the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended, and may impose additional requirements that are not set forth in HIPAA. However, the rule does not conflict with HIPAA.

8. Alternatives: There were no significant alternatives to consider.

9. Federal standards: HIPAA sets forth rules for restricting the use and disclosure of certain health information and permits an individual to make a request to a health plan to receive communications of protected health information from the health plan by alternative means or at alternative locations if the individual clearly states that the disclosure of all or part of the information could endanger the individual. Insurance Law § 2612, as amended by Chapter 491, and this rule, are consistent with HIPAA. However, § 2612 and the rule may impose additional requirements that are not set forth in HIPAA. For example, the rule sets forth required elements of a confidentiality protocol and requires insurers to provide notice of their confidentiality protocols and of Insurance Law § 2612 by posting certain information on their websites.

10. Compliance schedule: The existing statute already requires an insurer to protect certain information when a person provides the insurer with an order of protection. The new requirements of Insurance Law § 2612 took effect on January 1, 2013. By July 1, 2013, an insurer must post certain information on its website. Accordingly, this emergency rule takes effect upon filing with the Secretary of State.

Regulatory Flexibility Analysis

1. Effect of rule: The rule will not affect any local governments. It will affect regulated insurers, most of which do not come within the definition of "small business" as set forth in State Administrative Procedure Act § 102(8), because they are not independently owned and operated and employ less than one hundred individuals. The rule also would affect insurance producers and independent insurance adjusters, the vast majority of which are small businesses, because they are independently owned and operated and employ one hundred or less individuals. There are over 200,000 licensed resident and non-resident insurance producers and over 15,000 licensed resident and non-resident independent insurance adjusters in New York that the rule will affect. The Department does not have a record of the exact number of small businesses included in that group. The Department has designed the regulation to place the least burden possible on insurance producers and independent insurance adjusters, as discussed below.

2. Compliance requirements: Insurance Law § 2612(c)(2) and (h)(1)(A) define "insurer" and "health insurer," respectively, to include an agent, representative, or designee of an insurer, a corporation organized pursuant to Insurance Law Article 43, a health maintenance organization ("HMO"), a municipal cooperative health benefit plan, or a provider issued a special certificate of authority pursuant to Public Health Law § 4403-a, who is regulated pursuant to the Insurance Law. The rule requires insurers (including health insurers) to develop and implement confidentiality protocols that include written procedures that their employees, agents, representatives, or any other persons with whom the insurers contract or who have gained access to the information from the insurers, with regard to the solicitation, negotiation, or sale of insurance or the adjustment or administration of insurance claims, must follow. The rule also requires insurers to post certain information on their websites. Since, an agent, representative, or designee who is regulated pursuant to the Insurance Law is included in the definitions of "insurer" and "health insurer," these requirements apply to insurance agents and independent insurance adjusters. In certain cases, insurance brokers may act on behalf of insurers, such as when they administer insurance programs for the insurers, and thus the rule would apply to brokers as well. Furthermore, the rule prohibits any person subject to the Insurance Law from engaging in any practice that would prevent or hamper the orderly working of the rule in accomplishing its intended purpose of protecting victims of domestic violence and covered individuals.

However, the Department has attempted to minimize the impact of the rule on insurance producers and independent insurance adjusters by including language that states that an agent, representative, or designee of an insurer, a corporation, an HMO, or a provider, who is regulated pursuant to the Insurance Law, need not develop its own confidentiality protocol if the agent, representative, or designee follows the protocol of the insurer, corporation, HMO, or provider. Nor does a producer or an adjuster who follows the protocol of the insurer, corporation, HMO, or provider need to post certain information on its website.

3. Professional services: The rule would not require an insurance producer or independent insurance adjuster to use professional services.

4. Compliance costs: The rule will not impose any compliance costs on local governments. Insurance producers and independent insurance adjusters, many of whom are small businesses, may incur additional costs of compliance, but they should be minimal. The cost to a producer or an adjuster will be associated primarily with developing and implementing a confidentiality protocol, unless the producer or adjuster chooses to follow the protocol of the insurer, corporation, HMO, or provider.

5. Economic and technological feasibility: Local governments will not incur an economic or technological impact as a result of this rule. Insurance producers and independent insurance adjusters, many of whom are small businesses, will not have to purchase any new technology to comply with the rule.

6. Minimizing adverse impact: The rule applies to the insurance market throughout New York State. In accordance with Insurance Law § 2612, the same requirements will apply to all insurance producers and independent insurance adjusters, so the rule does not impose any adverse or disparate impact on small businesses. Further, the Department has designed the regulation to place the least burden possible on an insurance producer or insurance adjuster by allowing the producer or adjuster to follow the protocol of the insurer, corporation, HMO, or provider, rather than develop its own protocol.

7. Small business and local government participation: Small businesses and local governments will have an opportunity to participate in the rule making process when the rule is published in the State Register.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurers, insurance producers, and independent insurance adjusters affected by this rule operate in every county in this state, including rural areas as defined under State Administrative Procedure Act (“SAPA”) § 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule requires insurers located in rural areas (as Insurance Law § 2612 defines that term, which includes health maintenance organizations as well as agents, representatives, and designees of the insurers who are regulated under the Insurance Law) to develop and implement confidentiality protocols that include written procedures that their employees, agents, representatives, or any other persons with whom the insurers contract or who have gained access to the information from the insurers, with regard to the solicitation, negotiation, or sale of insurance or the adjustment or administration of insurance claims, must follow. The rule also requires insurers to post certain information on their websites.

However, the Department has attempted to minimize the impact of the rule on insurance producers and independent insurance adjusters located in rural areas by including language that states that an agent, representative, or designee of an insurer, a corporation, an HMO, or a provider, who is regulated pursuant to the Insurance Law, need not develop its own confidentiality protocol if the agent, representative, or designee follows the protocol of the insurer, corporation, HMO, or provider. Nor does a producer or an adjuster who follows the protocol of the insurer, corporation, HMO, or provider need to post certain information on its website.

The rule would not require an insurer, insurance producer, or independent insurance adjuster located in a rural area to use professional services.

3. Costs: Insurers, insurance producers, and independent insurance adjusters located in rural areas may incur additional costs of compliance, but they should be minimal. The cost to an insurer, producer, or adjuster located in rural areas will be associated primarily with developing and implementing a confidentiality protocol. However, a producer or adjuster may choose to follow the protocol of the insurer, corporation, HMO, or provider.

4. Minimizing adverse impact: The rule applies to the insurance market throughout New York State. In accordance with Insurance Law § 2612, the same requirements will apply to all insurers, insurance producers, and independent insurance adjusters, so the rule does not impose any adverse or disparate impact on insurers, insurance producers, or independent insurance adjusters in rural areas.

5. Rural area participation: Insurers, insurance producers, and independent insurance adjusters located in rural areas will have an opportunity to participate in the rule making process when the rule is published in the State Register.

Job Impact Statement

The Department of Financial Services finds that this rule should have no impact on jobs and employment opportunities. As required by Insurance Law § 2612, the rule establishes certain limited requirements to guide and enable insurers to guard against the disclosure of the confidential information protected by § 2612.

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

Supplementary Uninsured/Underinsured Motorist Insurance

I.D. No. DFS-29-13-00015-EP

Filing No. 705

Filing Date: 2013-07-02

Effective Date: 2013-07-02

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

Proposed Action: Amendment of Subpart 60-2 of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301 and 3420; L. 2012, ch. 496; L. 2013, ch. 11

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

Specific reasons underlying the finding of necessity: Insurance Law Section 3420 sets forth standard provisions that must be included in all liability policies issued in this state. Insurance Law Section 3420(f)(2) requires motor vehicle liability insurers to provide, at the option of the insured, supplementary uninsured/underinsured motorists (“SUM”) insurance coverage to all policyholders in New York State. This regulation implements Insurance Law Section 3420(f)(2) by establishing a standard policy form for SUM coverage.

On December 17, 2012, Governor Andrew Cuomo signed into law Chapter 496 of the Laws of 2012, which took effect on April 16, 2013, amending Insurance Law Section 3420(f) with respect to SUM coverage for ambulance services, volunteer fire departments, and voluntary ambulance services. Subsequently, on March 15, 2013, Governor Cuomo signed into law Chapter 11 of the Laws of 2013, which also took effect on April 16, 2013, amending Chapter 496. The law now requires that all policies providing SUM coverage that are issued or renewed on or after April 16, 2013 include such coverage for members and employees of fire departments, fire companies, ambulance services, or voluntary ambulance services when the policy insures the fire department, fire company, ambulance service, or voluntary ambulance service.

Insurers must amend their policy forms in accordance with the regulations with respect to new and renewal policies. Accordingly, Insurance Regulation 35-D must remain in effect on an emergency basis until a permanent regulation can be promulgated, so that insurers can continue to issue policy forms in accordance with the regulation.

For the reasons stated above, emergency action is necessary for the general welfare.

Subject: Supplementary Uninsured/Underinsured Motorist Insurance.

Purpose: To implement chapter 11 of the Laws of 2013 requiring SUM coverage for employees of fire departments and ambulance services.

Text of emergency/proposed rule: Section 60-2.3(f), INSURING AGREEMENTS I. Definitions: definition (a) is hereby amended to read as follows:

(f) Prescribed SUM endorsement:

SUPPLEMENTARY UNINSURED/UNDERINSURED MOTORISTS ENDORSEMENT--NEW YORK

We, the company, agree with you, as the named insured, in return for payment of the premium for this coverage, to provide Supplementary Uninsured/Underinsured Motorists (SUM) coverage, subject to the following terms and conditions:

INSURING AGREEMENTS

I. Definitions:

For purposes of this SUM endorsement, the following terms have the following meanings.

(a) Insured. The unqualified term “insured” means:

(1) you, as the named insured and, while residents of the same household, your spouse and the relatives of either you or your spouse;

(2) any person while acting in the scope of that person’s duties for you, except with respect to the use and operation by such person of a motor vehicle not covered under this policy, where such person is:¹

(i) your employee and you are a fire department;

(ii) your member and you are a fire company, as defined in General Municipal Law section 100;

(iii) your employee and you are an ambulance service, as defined in Public Health Law section 3001; or

(iv) your member and you are a voluntary ambulance service, as defined in Public Health Law section 3001;

(3) any other person while occupying:

(i) a motor vehicle insured for SUM under this policy; or

(ii) any other motor vehicle while being operated by you or your spouse; and

[(3)] (4) any person, with respect to damages such person is entitled to recover, because of bodily injury to which this coverage applies sustained by an insured under paragraph (1)[or], (2) or (3) above.

Subdivision 60-2.3(f), CONDITIONS, conditions (1) and (6) are hereby amended to read as follows:

CONDITIONS

1. Policy Provisions. None of the Insuring Agreements, Exclusions or Conditions of the policy shall apply to the SUM coverage except: “Duties After an Accident or Loss”; “Fraud”; and “Termination” if applicable.[*]²

6. Maximum SUM Payments: Regardless of the number of insureds, our maximum payment under this SUM endorsement shall be the difference between:

(a) the SUM limits; and

(b) the motor vehicle bodily injury liability insurance or bond payments received by the insured or the insured’s legal representative, from or on behalf of all persons that may be legally liable for the bodily injury sustained by the insured.

The SUM limit shown on the Declarations is the amount of coverage for all damages due to bodily injury in any one accident.[¹]³ (The SUM limit shown on the Declarations for “Each Person” is the amount of coverage for all damages due to bodily injury to one person. The SUM limit shown under “Each Accident” is, subject to the limit for each person, the total amount of coverage for all damages due to bodily injury to two or more persons in the same accident.[²]⁷

¹ Language in paragraph (2) may be deleted for covered policies as defined in Section 3425(a)(1) of the New York Insurance Law.

[*]² Appropriate terms may be substituted to conform with terms used in the policy.

[1]³ Language in this sentence should be used for SUM endorsements issued with a combined single limit, in which case Condition 5 should speak throughout in terms of a singular limit, rather than plural limits.

[2]⁴ Language in parentheses should be used for SUM endorsements issued with split limits.

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 September 29, 2013.

Text of rule and any required statements and analyses may be obtained from: Hoda Nairooz, Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5595, email: hoda.nairooz@dfs.ny.gov

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

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

Regulatory Impact Statement

1. Statutory authority: Sections 202 and 302 of the Financial Services Law and Sections 301 and 3420 of the Insurance Law, Chapter 496 of the Laws of 2012 and Chapter 11 of the Laws of 2013. Financial Services Law Sections 202 and 302 and Insurance Law Section 301 authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law.

Insurance Law Section 3420 sets forth standard provisions that must be included in all liability policies issued in this state. Insurance Law Section 3420(f)(2) requires motor vehicle liability insurers to provide, at the option of the insured, supplementary uninsured/underinsured motorists ("SUM") insurance coverage to all policyholders in New York State.

Chapter 496 of the Laws of 2012 and Chapter 11 of the Laws of 2013 amended Insurance Law Section 3420 in relation to SUM coverage for fire departments, fire companies, ambulance services, and voluntary ambulance services.

2. Legislative objectives: Insurance Law Section 3420 sets forth the minimum provisions that must be included in all liability policies issued in this state to protect the rights of injured persons. On December 17, 2012, Governor Andrew Cuomo signed Chapter 496 of the Laws of 2012, which took effect on April 16, 2013. This bill amended Insurance Law Section 3420(f) with respect to SUM coverage for fire companies, ambulance services, and voluntary ambulance services. Subsequently, Chapter 11 of the Laws of 2013 was enacted on March 15, 2013, which also took effect on April 16, 2013. It amended Chapter 496 to further clarify the SUM coverage for employees and members of a fire department, fire company, ambulance service or voluntary ambulance service. The law now requires that policies providing SUM coverage that are issued or renewed on or after April 16, 2013 include such coverage for members and employees of fire departments, fire companies, ambulance services or voluntary ambulance services when the policy insures the fire department, fire company, ambulance service or voluntary ambulance service.

3. Needs and benefits: Insurance Regulation 35-D implements Insurance Law section 3420(f), which requires motor vehicle liability insurers to provide, at the option of the insured, SUM coverage to all policyholders in New York State. This amendment implements the provisions and purposes of Chapter 496 of the Laws of 2012 and Chapter 11 of the Laws of 2013 by amending the definition of "insured" in the prescribed SUM endorsement contained in Insurance Law Section 60-2.3(f) to include members and employees of a fire department, fire company, ambulance service or voluntary ambulance service when the policy insures the fire department, fire company, ambulance service or voluntary ambulance service.

4. Costs: Motor vehicle insurers will incur some costs because they will have to revise policy forms and send them to their insureds. However, this is mandated by Chapter 496 of the Laws of 2012 and Chapter 11 of the Laws of 2013.

This rule does not impose compliance costs on state or local governments. The Department of Financial Services does not anticipate that it will incur additional costs, although there will be an increased number of filings. However, insurers must use the language prescribed in the regulation and may not deviate from it.

5. Local government mandates: This rule does not impose any program, service, duty or responsibility upon a city, town, village, school district or fire district.

6. Paperwork: Insurance companies will have to submit appropriate filings.

7. Duplication: This rule will not duplicate any existing state or federal rule, but rather implement and conform to the federal requirements.

8. Alternatives: There are no alternatives to this amendment. The changes to the rule are mandated by Chapter 496 of the Laws of 2012 and Chapter 11 of the Laws of 2013.

9. Federal standards: There are no federal standards.

10. Compliance schedule: Pursuant to Chapter 496 of the Laws of 2012 and Chapter 11 of the Laws of 2013, all policies issued or renewed on or after April 16, 2013 covering fire departments, fire companies, ambulance services or voluntary ambulance services providing SUM coverage must include the coverage for such employees and members. This rule initially was promulgated on an emergency basis on April 4, 2013 to take effect on April 16, 2013.

Regulatory Flexibility Analysis

1. Small businesses: The Department of Financial Services ("Department") finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at property/casualty insurance companies licensed to do business in New York State, none of which falls within the definition of "small business" as found in State Administrative Procedure Act Section 102(8). Specifically, the Department has monitored annual statements and reports on examination of authorized property/casualty insurers subject to this rule and believes that none of the insurers falls within the definition of "small business", because there are none that are both independently owned and have fewer than one hundred employees.

2. Local governments: The rule does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at property/casualty insurance companies, none of which are local governments.

Rural Area Flexibility Analysis

The Department of Financial Services ("Department") finds that this rule does not impose any additional burden on persons located in rural areas, and the Department finds that it will not have an adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.

Job Impact Statement

The Department of Financial Services finds that this rule should have no impact on jobs and employment opportunities. The rule implements the provisions and purposes of Chapter 496 of the Laws of 2012 and Chapter 11 of the Laws of 2013 amending the definition of "insured" to provide coverage for members and employees of a fire department, fire company, ambulance service or voluntary ambulance service when the named insured is the fire department, fire company, ambulance service or voluntary ambulance service.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Excess Line Placements Governing Standards

I.D. No. DFS-29-13-00002-P

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

Proposed Action: Amendment of Part 27 (Regulation 41) of Title 11 NYCRR.

Statutory authority: Insurance Law, sections 301, 316, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 3103, 5907, 5909, 5911 and 9102; and arts. 21 and 59; and Financial Services Law, sections 202 and 302; and L. 1997, ch. 225; L. 2002, ch. 587; L. 2011, ch. 61

Subject: Excess Line Placements Governing Standards.

Purpose: To implement chapter 61 of the Laws of 2011, conforming to the federal Nonadmitted and Reinsurance Reform Act of 2010.

Substance of proposed rule (Full text is posted at the following State website: <http://dfs.ny.gov>): On July 21, 2010, President Obama signed into law the federal Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), which contains the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRRA"). The NRRRA prohibits any state, other than the home state of an insured, from requiring a premium tax payment for excess (or "surplus") line insurance. The NRRRA also subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured's home state, and declares that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to such insured.

In addition, the NRRRA provides that an excess line broker seeking to procure or place excess line insurance for an exempt commercial purchaser ("ECP") need not satisfy any state requirement to make a due diligence search to determine whether the full amount or type of insurance sought by the ECP may be obtained from admitted insurers if: (1) the broker procuring or placing the excess line insurance has disclosed to the ECP that the insurance may be available from the admitted market, which may provide greater protection with more regulatory oversight; and (2) the ECP has subsequently requested in writing that the broker procure the insurance from or place the insurance with an excess line insurer.

On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amended the Insurance Law to conform to the NRRRA.

Insurance Regulation 41 (11 NYCRR Part 27) currently consists of 24 sections and one appendix addressing the regulation of excess line insurance placements.

The Department of Financial Services ("Department") amended Section 27.0 to discuss the NRRRA and Chapter 61 of the Laws of 2011.

The Department amended Section 27.1 to delete language in the definition of "eligible", delete "qualified United States financial institution" and "letter of credit" as defined terms, and to add three new defined terms: "exempt commercial purchaser," "insured's home state," and "United States."

The Department amended Section 27.2(a) to change a reference from "Insurance Department" to "Department of Financial Services."

The Department amended Section 27.3 to provide an exception for an ECP consistent with Insurance Law Section 2118(b)(3)(F), clarify that the requirements set forth in this section apply when the insured's home state is New York, and change a reference from "Insurance Department" to "Department of Financial Services."

The Department amended Section 27.4 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.5 to: (1) clarify that the requirements set forth in this section apply when the insured's home state is New York; (2) with regard to an ECP, require an excess line broker or the producing broker to affirm in part A or part C of the affidavit that the ECP was specifically advised in writing, prior to placement, that insurance may or may not be available from the authorized market that may provide greater protection with more regulatory oversight; (3) require an excess line broker to identify the insured's home state in part A of the affidavit; and (4) clarify that the premium tax is to be allocated in accordance with Section 27.9 of Insurance Regulation 41 for insurance contracts that have an effective date prior to July 21, 2011.

The Department amended Section 27.6 to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department amended Section 27.7(b) to revise the address to which reports required by Section 27.7 should be submitted and to change a reference from "Insurance Department" to "Department of Financial Services."

The Department amended Section 27.8 to: (1) require a licensed excess line broker to file electronically an annual premium tax statement, unless the Superintendent of Financial Services (the "Superintendent") grants the broker an exemption pursuant to Section 27.21 of Insurance Regulation 41; (2) acknowledge that payment of the premium tax may be made electronically; and (3) change a reference to "Superintendent of Insurance" to "Superintendent of Financial Services."

The Department amended Section 27.9 to clarify how an excess line broker must calculate the taxable portion of the premium for: (1) insurance contracts that have an effective date prior to July 21, 2011; and (2) insurance contracts that have an effective date on or after July 21, 2011 and that cover property or risks located both inside and outside the United States.

The Department amended Sections 27.10, 27.11, and 27.12 to clarify that the requirements set forth in these sections apply when the insured's home state is New York. The Department also amended Section 27.11 to prohibit an unauthorized insurer from providing coverage if the coverage is prohibited by law, when the insured's home state is New York.

The Department amended Section 27.13 to: (1) clarify that the requirements set forth in this section apply when the insured's home state is New York; (2) remove certain information from the list of information that an excess line broker must obtain and review prior to placing insurance with an unauthorized insurer; and (3) delete the prohibition against an excess line broker placing business with an excess line insurer unless the insurer has filed with the Superintendent a current listing that sets forth certain individual policy details.

The Department repealed current Section 27.14 and added a new Section 27.14 entitled, "Duty of Unauthorized Insurers," which would affirmatively require an excess line insurer to file electronically with the Superintendent a current listing that sets forth certain individual policy details.

The Department repealed Sections 27.15 and 27.16.

The Department renumbered Sections 27.17, 27.18, 27.19, 27.20, and 27.21 as Sections 27.15, 27.16, 27.17, 27.18, and 27.19, and amended these sections to clarify that the requirements set forth in this section apply when the insured's home state is New York.

The Department renumbered Section 27.22 as Section 27.20.

The Department repealed current Section 27.23 and added a new Section 27.21 entitled, "Exemptions from electronic filing and submission requirements."

The Department renumbered Section 27.24 as Section 27.22.

The Department amended the excess line premium tax allocation schedule set forth in appendix four to apply to insurance contracts that have an effective date prior to July 21, 2011.

The Department added a new appendix five, which sets forth an excess line premium tax allocation schedule to apply to insurance contracts that have an effective date on or after July 21, 2011 and that cover property and risks located both inside and outside the United States.

Text of proposed rule and any required statements and analyses may be obtained from: Sally Geisel, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5287, email: sally.geisel@dfs.ny.gov

Data, views or arguments may be submitted to: Joana Lucashuk, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-2125, email: joana.lucashuk@dfs.ny.gov

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

Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the promulgation of the Fourteenth Amendment to Insurance Regulation 41 (11 NYCRR Part 27) derives from Sections 301, 316, 2101, 2104, 2105, 2110, 2116, 2117, 2118, 2121, 2122, 2130, 9102, and Article 21 of the Insurance Law, Sections 202 and 302 of the Financial Services Law, Chapter 225 of the Laws of 1997, Chapter 587 of the Laws of 2002, and Chapter 61 of the Laws of 2011.

The federal Nonadmitted and Reinsurance Reform Act of 2010 (the "NRRRA") significantly changed the paradigm for excess line insurance placements in the United States. Chapter 61 of the Laws of 2011 amended the Insurance Law and the Tax Law to conform to the NRRRA.

Insurance Law Section 301 and Financial Services Law Sections 202 and 302 authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law, and effectuate any power granted to the Superintendent under the Insurance Law. Insurance Law Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the Superintendent's approval.

Insurance Law Article 21 sets forth the duties and obligations of insurance brokers and excess line brokers. Insurance Law Section 2101 sets forth relevant definitions. Insurance Law Section 2104 governs the licensing of insurance brokers. Insurance Law Section 2105 sets forth licensing requirements for excess line brokers. Insurance Law Section 2110 provides grounds for the Superintendent to discipline licensees by revoking or suspending licenses or, pursuant to Insurance Law Section 2127, imposing a monetary penalty in lieu of revocation or suspension. Insurance Law Section 2116 permits payment of commissions to brokers and prohibits compensation to unlicensed persons. Insurance Law Section 2117 prohibits the aiding of an unauthorized insurer, with exceptions. Insurance Law Section 2118 sets forth the duties of excess line brokers, with regard to the placement of insurance with eligible foreign and alien excess line insurers, including the responsibility to ascertain and verify the financial condition of an unauthorized insurer before placing business with that insurer. Insurance Law Section 2121 provides that brokers have an agency relationship with insurers for the collection of premiums. Insurance Law Section 2122 imposes limitations on advertising by producers. Insurance Law Section 2130 establishes the Excess Line Association of New York ("ELANY").

Insurance Law Section 9102 establishes rules regarding the allocation of direct premiums taxable in New York, where insurance covers risks located both in and out of New York.

2. Legislative objectives: Generally, unauthorized insurers may not do an insurance business in New York. In permitting a limited exception for licensed excess line brokers to procure insurance policies in New York from excess line insurers, the Legislature established statutory requirements to protect persons seeking insurance in New York. The NRRRA significantly changed the paradigm for excess (or "surplus") line insur-

ance placements in the United States. The NRRRA prohibits any state, other than the insured's home state, from requiring a premium tax payment for excess line insurance. Further, the NRRRA subjects the placement of excess line insurance solely to the statutory and regulatory requirements of the insured's home state and declares that only an insured's home state may require an excess line broker to be licensed to sell, solicit, or negotiate excess line insurance with respect to the insured. In addition, the NRRRA establishes uniform eligibility standards for excess line insurers. A state may not impose additional eligibility conditions.

Under the new NRRRA paradigm, an excess line broker now must ascertain an insured's home state before placing any property/casualty excess line business. Thus, if the insured's home state is not New York, even though the insured goes to the broker's office in New York, the excess line broker must be licensed in the insured's home state in order for the broker to procure the excess line coverage for that insured. Conversely, a person who is approached by an insured outside of New York must be licensed as an excess line broker in New York in order to procure excess line coverage for an insured whose home state is New York.

On March 31, 2011, Governor Andrew M. Cuomo signed into law Chapter 61 of the Laws of 2011, Part I of which amended the Insurance Law to conform to the NRRRA. This rule accords with the public policy objectives Congress and the Legislature sought to advance in enacting the NRRRA and Chapter 61 by making conforming changes so that the rule does not conflict with them.

3. Needs and benefits: Insurance Regulation 41 governs the placement of excess line insurance. The purpose of the excess line law is to enable consumers who are unable to obtain insurance from authorized insurers to obtain coverage from eligible excess line insurers. This rule implements the provisions and purposes of Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the NRRRA. The NRRRA and Chapter 61 took effect on July 21, 2011 and have been impacting excess line placements since that date.

Prior to the enactment of the NRRRA, Insurance Regulation 41 prohibited an excess line broker from placing coverage with an excess line insurer unless the insurer had established and maintained a trust fund. However, the new NRRRA eligibility requirements do not include a trust fund with respect to foreign insurers (alien insurers, however, must maintain a trust fund that satisfies the International Insurers Department ("IID") of the National Association of Insurance Commissioners ("NAIC")). As such, New York no longer is requiring a trust fund with respect to foreign insurers.

In addition, Insurance Regulation 41 currently states that when the insured's home state is New York, an excess line broker may not place coverage with an unauthorized insurer unless the insurer has filed with the Superintendent a current listing that sets forth certain individual policy details. Such a requirement could be construed as an eligibility requirement not permitted under the NRRRA. Accordingly, Insurance Regulation 41 is being amended to instead impose an affirmative requirement on an excess line insurer to file certain individual policy details when the insured's home state is New York, rather than prohibiting an excess line broker from placing coverage if the insurer has not filed these details.

Insurance Regulation 41 also currently requires an excess line broker to obtain and review certain information before placing insurance with an unauthorized insurer. The Department recognizes that certain of the required information is not publicly available and that as a result of the NRRRA, an unauthorized insurer may not provide the information voluntarily to an excess line broker. Therefore, the Department is amending Insurance Regulation 41 to remove from the list certain information that an excess line broker must obtain and review.

Insurance Law Section 316 authorizes the Superintendent to promulgate regulations to require an insurer or other person or entity making a filing or submission with the Superintendent to submit the filing or submission to the Superintendent by electronic means, provided that the insurer or other person or entity affected thereby may submit a request to the Superintendent for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the approval of the Superintendent. The amendment requires excess line brokers to file annual premium tax statements electronically, and requires excess line insurers to file electronically listings that set forth certain individual policy details. In addition, the Department is amending Insurance Regulation 41 to allow excess line brokers or insurers to apply for a "hardship" exception to any electronic filing or submission requirement.

4. Costs: The rule is not expected to impose costs on excess line brokers, and it merely conforms the requirements regarding placement of coverage with excess line insurers to the requirements in Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the NRRRA. While new Section 27.14 imposes an affirmative requirement on an excess line insurer to file certain individual policy details when the insured's home state is New York, this section should not impose any additional costs on

excess line insurers, because excess line insurers have already been filing this information. Although the amended rule will require excess line brokers to file annual premium tax statements and will require excess line insurers to file listings that set forth certain individual policy details electronically, most brokers and insurers already do business electronically. In fact, ELANY already requires documents to be filed electronically. Moreover, the regulation also provides a method whereby excess line brokers and insurers may apply for an exemption from any electronic filing or submission requirement.

Costs to the Department also should be minimal, as existing personnel are available to review any modified filings necessitated by the rule. In fact, filing forms electronically may produce a cost savings for the Department.

This rule does not impose compliance costs on any state or local governments.

5. Local government mandates: This rule does not impose any program, service, duty, or responsibility upon any county, city, town, village, school district, fire district, or other special district.

6. Paperwork: The rule does not impose any new reporting requirements on regulated parties. While new Section 27.14 imposes an affirmative requirement on an excess line insurer to file certain individual policy details when the insured's home state is New York, this section does not impose any new reporting requirements on excess line insurers, because excess line insurers already are filing this information.

7. Duplication: The regulation will not duplicate any existing state or federal rule, but rather will implement and conform to the federal requirements.

8. Alternatives: Originally, when the Department promulgated this amendment on an emergency basis, it made an excess line insurer subject to Insurance Law Section 1213 (service of process on Superintendent as attorney for unauthorized insurers) if the insurer chooses not to maintain a trust fund. However, after further discussion with industry representatives, the Department has decided to eliminate the trust fund section altogether in order to achieve uniformity with other states in a manner consistent with the goals of the NRRRA.

In addition, the Department considered continuing the requirement that when the insured's home state is New York, an excess line broker may not place coverage with an unauthorized insurer unless the insurer had filed with the Superintendent a current listing that sets forth certain individual policy details. However, after discussion with industry representatives, the Department decided to instead impose an affirmative requirement on an excess line insurer to file certain individual policy details when the insured's home state is New York.

The Department also considered continuing the requirement that an excess line broker obtain and review certain information before placing insurance with an unauthorized insurer. However, after discussion with ELANY, the Department decided to remove from the list certain information that an excess line broker must obtain and review because the Department recognized that certain information is not publicly available and that an excess line broker likely could not otherwise obtain it from an unauthorized insurer.

9. Federal standards: This regulation does not exceed any minimum standards of the federal government for the same or similar subject areas. Rather, the rule implements the provisions and purposes of Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the NRRRA.

10. Compliance schedule: Pursuant to Chapter 61 of the Laws of 2011, this amendment, which has been previously promulgated on an emergency basis, impacts excess line insurance placements effective on and after July 21, 2011 and thus the permanent adoption will take effect upon publication of the rule in the State Register.

Regulatory Flexibility Analysis

This rule is directed at excess line brokers and excess line insurers.

Many excess line brokers are independently owned and have fewer than 100 employees, and therefore are small businesses as defined in State Administrative Procedure Act Section 102(8). However, the rule is not expected to have an adverse impact on these small businesses because it conforms the requirements regarding placement of coverage with excess line insurers to Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010.

In addition, the Insurance Law and Insurance Regulation 41 already require excess line brokers to file annual premium tax statements. The rule merely requires that such filings be made electronically, and thus does not establish any new reporting or compliance requirements on them. However, an excess line broker may submit a request to the Superintendent of Financial Services ("Superintendent") for an exemption from the electronic filing requirement upon a demonstration of undue hardship, impracticability, or good cause, subject to the Superintendent's approval.

Further, the Department of Financial Services ("Department") has

monitored annual statements of excess line insurers subject to this rule, and believes that none of them fall within the definition of “small business,” because there are none that are both independently owned and have fewer than 100 employees.

Accordingly, the Department finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses.

The rule does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements, on any local governments.

Rural Area Flexibility Analysis

The Department of Financial Services (“Department”) finds that this rule does not impose any additional burden on persons located in rural areas, and the Department finds that it will not have an adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.

Job Impact Statement

The Department of Financial Services finds that this rule should not have any impact on jobs and employment opportunities. The rule conforms the requirements regarding placement of coverage with excess line insurers to Chapter 61 of the Laws of 2011, which amended the Insurance Law to conform to the federal Nonadmitted and Reinsurance Reform Act of 2010.

Department of Health

EMERGENCY RULE MAKING

Standards for Adult Homes and Adult Care Facilities Standards for Enriched Housing

I.D. No. HLT-29-13-00003-E

Filing No. 692

Filing Date: 2013-06-27

Effective Date: 2013-06-30

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

Action taken: Amendment of Parts 487 and 488 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20, 20(3)(d), 34, 34(3)(f), 131-o, 460, 460-a-460-g, 461 and 461-a-461-h

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

Specific reasons underlying the finding of necessity: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs (“Justice Center”), in order to coordinate and improve the State’s ability to protect those persons having various physical, developmental, or mental disabilities and who are receiving services from various facilities or provider agencies. The Department must promulgate regulations, as a “state oversight agency” of some of the covered facilities, in order to assure proper coordination with the efforts of the Justice Center once Chapter 501 takes effect on June 30, 2013, and the Justice Center becomes operational.

Among the facilities covered by Chapter 501 are adult homes and enriched housing programs having a capacity of eighty or more beds, and in which at least 25% (twenty-five percent) of the residents are persons with serious mental illness as defined by section 1.03(52) of the mental hygiene law, but not including an adult home which is authorized to operate 55% (fifty-five percent) or more of its total licensed capacity of beds as assisted living program beds. Given the effective date of Chapter 501, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such adult homes and enriched housing programs for an additional period likely extending several months. Absent emergency promulgation, such persons would be denied initial coordinated protections for several additional months, creating an unacceptable risk to residents. Promulgating these regulations on an emergency basis will provide such protection, while still providing a full opportunity for comment and input as part of a formal rulemaking process which will be implemented subsequently, as required by the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to Sections 20, 34, 131-o, 460, 460-a-460-g, 461, 461-a-461-h of the Social Services Law; and L. 1997, ch.436; and and L. 2012, ch. 501.

Subject: Standards for Adult Homes and Adult Care Facilities Standards for Enriched Housing.

Purpose: Revisions to Parts 487 and 488 in regards to the establishment of the Justice Center for Protection of People with Special Needs.

Substance of emergency rule: The Department proposes to amend 18 NYCRR Parts 487 and 488 to address the creation of the Justice Center for the Protection of Persons with Special Needs (Justice Center) pursuant to Chapter 501 of the Laws of 2012, and to conform the Department’s regulations to requirements added or modified as a result of that Chapter Law. Specifically, the amendments:

- add new definitions of “abuse,” “mistreatment,” “neglect,” “misappropriation of property,” “reasonable cause,” “reportable incident,” “Justice Center,” “significant incident,” “custodian” “facility subject to the Justice Center” and “psychological abuse” to sections 487.2 and 488.2
- amend sections 487.5 and 488.5 to add occurrences which would constitute a reportable incident to the list of occurrences which residents should not experience, and to require the operator of certain facilities to conspicuously post the number of the Justice Center incident reporting hotline
- amend sections 487.7 and 488.7 to clarify a facility’s obligations regarding what incidents must be investigated, how they must be investigated and who must investigate them
- amend sections 487.7 and 488.7 to replace outdated references to the State Commission on Quality of Care for the Mentally Disabled with references to the Justice Center
- amend sections 487.7 and 488.7 to add a requirement addressing when reports must be provided to the Justice Center, and requiring such reports to conform to the requirements of the Justice Center
- amend sections 487.9 and 488.9 to add a requirement for staff training in the identification of reportable incidents and facility reporting procedures, and to add a requirement for certain facilities regarding the provision of a code of conduct to employees, volunteers, and others providing services at the facility who could be expected to have resident contact
- amend sections 487.9 and 488.9 to add a requirement that certain facilities consult the Justice Center’s staff exclusion list with regard to prospective employees, volunteers, and others, and that when such person is not on the staff exclusion list, that such facilities also consult the State Central Registry, with regard to such persons. The facility must maintain documentation of such consultation. The amendments also address the hiring consequences associated with the outcome of those consultations.
- amend sections 487.9 and 488.9 to specifically include investigation of reportable incidents to the administrative obligations of facilities, and to the duties of a case manager
- amend sections 487.9 and 488.9 to require the operator of a facility to designate an additional employee to be a designated reporter
- amend sections 487.10 and 488.10 to add a new requirement that certain facilities provide certain information to the Justice Center, and make certain information public, at the request of the Justice Center, and to allow sharing of information between the department and the Justice Center
- add new sections 487.14 and 488.13 to address reporting of certain incidents
- add new sections 487.15 and 488.14 to address the investigation of reportable incidents involving facilities subject to the Justice Center

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 September 24, 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

Summary of Regulatory Impact Statement

The Department believes that the proposed regulatory amendments enhance the health and safety of those served by adult homes and enriched housing programs.

Adult homes and enriched housing programs subject to the Justice Center will be required to consult the Justice Center’s register of substantiated category one cases of abuse or neglect as established pursuant to section 495 of the Social Services Law prior to hiring certain employees, and where the person is not on that list, the facility will also be required to check the Office of Children and Family Services’ Statewide Central Registry of Child Abuse and Maltreatment. The facility could not hire a person on the Justice Center’s list, but would have the discretion to hire a person who was only on Office of Children and Family Services’ list. Reporting and investigation obligations for all facilities would be expanded to cover “reportable incidents” which, are slightly more inclusive than what is covered by current reporting and investigation obligations. The amendments also add specific provisions addressing reporting and investigation

procedures, to require the posting the telephone number of the Justice Center's reporting hotline, and to require the case manager to be capable of reporting and investigating incidents. Those amendments should not require any significant change in current practice or impose anything beyond nominal additional expense to facilities. Requirements imposed on facilities generally are limited to an obligation to train staff in the identification and reporting of reportable incidents. With regard to facilities subject to the Justice Center, that obligation, as well as the others imposed by the regulations, are required by virtue of Chapter 501 of the Laws of 2012. The costs imposed by the amendments are expected to be minimal. In many cases, particularly with regard to the investigation requirements, the amendments generally reflect existing practice, so should neither impose any significant new costs or require any significant change in practice.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

This rule imposes some new obligations and administrative costs on regulated parties (adult homes and enriched housing programs). Some of the changes to Sections 487 and 488 apply to all adult home and enriched housing facilities; other only apply to those adult homes and enriched housing facilities which fall under the purview of the Justice Center. None of the requirements imposed by the amendments would impose different, or unique, burdens on small businesses or local governments; the requirements apply equally statewide. The costs and obligations associated with the amendments are fully described in the "Costs to Regulated Parties" section of the Regulatory Impact Statement.

Most of the five-hundred twenty-two (522) certified adult homes in New York State, including the forty-seven (47) which fall under the purview of the Justice Center, are operated by small businesses as defined in Section 102 of the State Administrative Procedure Act. Those entities would be subject to all of the above additional requirements.

Of the six (6) facilities operated by local governments, two (2) are scheduled to close within the next year. Of the four (4) remaining homes, none fall within the scope of the Justice Department required reporting facilities. Accordingly, the only additional cost imposed on those four (4) homes would be those nominal costs associated with obligations applicable to all adult homes and enriched housing facilities, as described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Compliance Requirements:

As the facilities operated by local governments are not among those within the purview of the Justice Center for the Protection of Persons with Special Needs (Justice Center), the only impact upon facilities operated by local governments will be those resulting from obligations applicable to all adult homes and enriched housing facilities, as described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

The four (4) affected facilities run by local governments will experience minimal additional regulatory burdens in complying with the amendment's requirements, as functions related to Justice Center activities will not cause a need for additional staff or equipment.

Those facilities which constitute small businesses would be subject to additional requirements, as they include facilities both subject to, and not subject to, the purview of the Justice Center. The scope of the impact upon any given facility depends on whether it falls within the Justice Center's purview. Such obligations and impacts are fully described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. The amendments are not expected to create a need for any additional staff or equipment for those facilities.

The Department expects that regulated parties will be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

Professional Services:

No need for additional professional services is anticipated. Existing professional staff are expected to be able to assume any increase in workload resulting from the additional requirements.

Compliance Costs:

This rule imposes limited new administrative costs on regulated parties (adult homes and enriched housing programs), as described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. The changes to Sections 487 and 488 add additional administrative responsibilities for those adult home and enriched housing facilities within the Justice Center's jurisdiction. None of the requirements imposed by the amendments would impose different, or unique, burdens on small businesses or local governments; the requirements apply equally statewide.

Economic and Technological Feasibility:

The proposed regulation would present no economic or technological difficulties to any small businesses and local governments affected by this amendment. The infrastructure for contacting the Justice Center, and establishing an Incident Review Committee, are already in place.

Minimizing Adverse Impact:

Department efforts to consider minimizing the impact of the amendments, and its consideration of alternatives to the amendments, are discussed in the "Alternatives" section of the Regulatory Impact Statement.

These amendments will not have an adverse impact on the ability of small businesses or local governments to comply with Department requirements, as full compliance would require minimal enhancements to present hiring and follow-up practices.

Consideration was given to including a cure period to afford adult home and enriched housing programs an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations for violations could expose this already vulnerable population to greater risk to their health and safety.

Small Business and Local Government Participation:

The Department will notify all New York State certified ACFs by a Dear Administrator Letter (DAL) informing them of this Justice Center expansion of the protection of vulnerable people. Regulated parties that are small businesses and local governments are expected to be prepared to participate in required Justice Center activities on the effective date of this amendment because the staff and infrastructure needed for performance of these are already in place.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Of the forty-seven (47) current facilities that will fall under the purview of the Justice Center for the Protection of People with Special Needs (Justice Center), six (6) are located in rural counties, as follows: Allegany County, Cayuga County, Greene County, Genesee County, Monroe County and Rensselaer County. Of the 522 adult homes and enriched housing programs statewide, including those not under the purview of the Justice Center, 160 are in rural areas.

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

Reporting, recordkeeping and other compliance requirements are addressed in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Other Compliance Requirements:

Compliance requirements are discussed in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Professional Services:

There are no additional professional services required to comply with the proposed amendments.

Compliance Costs:

Cost to Regulated Parties:

Compliance requirements and associated costs are discussed in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Economic and Technological Feasibility:

There are no changes requiring the use of technology. The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

Minimizing Adverse Economic Impact on Rural Area:

Department efforts to consider minimizing the impact of the amendments, and its consideration of alternatives to the amendments, are discussed in the "Alternatives" section of the Regulatory Impact Statement.

Rural Area Participation:

Of the forty-seven (47) current facilities that will fall under the purview of the Justice Center, six (6) are located in rural counties, as follows: Allegany County, Cayuga County, Greene County, Genesee County, Monroe County and Rensselaer County. The Department will notify all New York State-certified adult care facilities (ACFs) by a Dear Administrator Letter (DAL) informing them of this expansion of requirements to protect people with special needs. Regulated parties in rural areas are expected to be able to participate in requirements of the Justice Center on the effective date of this amendment.

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 have no impact on jobs and employment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types, reporting to the Justice Center for the Protection of People with Special Needs (Justice Center), as opposed to the Commission on the Quality of Care and Advocacy for People with Disabilities, making public certain information as directed by the Justice Center and assisting with the investigation of new reportable incidents are expected to be completed by existing facility staff. Similarly, the need for a medical examination of the patient in the course of investigating reportable incidents is similarly not appreciably different from the current practice of obtaining such examination under such circumstances. Accordingly, the amendments should not have any appreciable effect on employment as compared to current requirements.

Long Island Power Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Service Classification No. 11—Buyback Service of the Authority's Tariff

I.D. No. LPA-29-13-00022-P

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

Proposed Action: The Long Island Power Authority is considering a proposal to modify its Tariff for Electric Service ("Tariff"), Service Classification No. 11—Buyback Service, to purchase 100 MW of solar photovoltaic renewable resources.

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

Subject: Service Classification No. 11—Buyback Service of the Authority's Tariff.

Purpose: To modify the Tariff, Service Classification No. 11—Buyback Service.

Public hearing(s) will be held at: 10:00 a.m., Sept. 3, 2013 at H. Lee Denison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; 2:00 p.m., Sept. 3, 2013 at 333 Earle Ovington Blvd., 4th Fl., Uniondale, NY.

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

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

Substance of proposed rule: The Long Island Power Authority ("Authority") is considering a proposal to modify its Tariff for Electric Service ("Tariff") to authorize the purchase 100 MW of solar photovoltaic renewable resources under Service Classification No. 11 – Buyback Service, including all environmental attributes from customers for a fixed term of 20 years at a fixed price (¢ per kWh) for the entire term to be determined through a competitive auction process. In addition, a size limit of 2 MW for eligible projects and a premium price for projects located within the proximity of specific substations within the LIPA system east of the Canal Substation on the South Fork, as well as a modified Feed-in Tariff Solar Power Purchase Agreement that reflects the program modifications, are proposed. The Authority may approve, modify, or reject, in whole or part, the proposal.

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

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

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

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

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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Submetering Provisions of the Authority's Tariff

I.D. No. LPA-29-13-00023-P

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

Proposed Action: The Long Island Power Authority is considering a proposal to modify and add to its Tariff for Electric Service ("Tariff") with regard to residential submetering.

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

Subject: Submetering provisions of the Authority's Tariff.

Purpose: To modify and add to the Tariff with regard to residential electric submetering.

Public hearing(s) will be held at: 10:00 a.m., Sept. 3, 2013 at H. Lee Denison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; 2:00 p.m., Sept. 3, 2013 at 333 Earle Ovington Blvd., 4th Fl., Uniondale, NY.

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

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

Substance of proposed rule: The Long Island Power Authority ("Authority") is considering a proposal to modify and add to its Tariff for Electric Service ("Tariff") to authorize submetering of LIPA's electric service for new or existing residential purposes and adopt requirements for submetering for residential purposes consistent with the New York Public Service Commission's regulations, adopted as 16 NYCRR Part 96, which define how customers seeking to submeter electricity for residential purposes would meet the legislative requirements of the Home Energy Fair Practices Act. The Authority may approve, modify, or reject, in whole or part, the proposal.

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

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

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

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

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

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Authority's Tariff Regarding the Charge for Historical Customer Bill Information

I.D. No. LPA-29-13-00024-P

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

Proposed Action: The Long Island Power Authority is considering a proposal to modify its Tariff for Electric Service ("Tariff") with regard to the charge for historical customer bill information.

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

Subject: Authority's Tariff regarding the charge for historical customer bill information.

Purpose: To modify and add to the Tariff with regard to the charge for historical customer bill information.

Public hearing(s) will be held at: 10:00 a.m., Sept. 3, 2013 at H. Lee Denison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; 2:00 p.m., Sept. 3, 2013 at 333 Earle Ovington Blvd., 4th Fl., Uniondale, NY.

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

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

Substance of proposed rule: The Long Island Power Authority (“Authority”) is considering a proposal to modify and add to its Tariff for Electric Service (“Tariff”) to authorize a modification to the charge for the provision of historical customer bill information to forty dollars (\$40) for all available information for historical periods beyond twenty-four (24) months and up to seventy-two (72) months. The Authority may approve, modify, or reject, in whole or part, the proposal.

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

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

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

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

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

Office of Mental Health

EMERGENCY RULE MAKING

Implementation of the Protection of People with Special Needs Act and Reforms to Incident Management

I.D. No. OMH-29-13-00011-E

Filing No. 701

Filing Date: 2013-06-28

Effective Date: 2013-06-30

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

Action taken: Amendment of Parts 501 and 550; repeal of Part 524; and addition of new Part 524 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.07, 7.09 and 31.04

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

Specific reasons underlying the finding of necessity: The immediate adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

Last December, the Governor signed the Protection of People with Special Needs Act (PPSNA). This new law created the Justice Center for the Protection of People with Special Needs (Justice Center) and established many new protections for vulnerable persons, including a new system for incident management in services operated or licensed by OMH and new requirements for more comprehensive and coordinated pre-employment background checks.

The amendment of OMH regulations, effective June 30, 2013, is necessary to implement many of the provisions contained in the PPSNA.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals with mental illness who receive services in the OMH system. If OMH did not promulgate regulations on an emergency basis, many of the protections established by the PPSNA vital to the health, safety and welfare of individuals with mental illness would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from inconsistent requirements. For example, the emergency regulations change the categories of incidents to conform to the categories established by the PPSNA. Without the promulgation of these amendments, agencies would be required to report incidents based on one set of definitions to the Justice Center and incidents based on a different set of definitions to OMH. Requirements for the management of incidents would also be inconsistent. Especially concerning regulatory requirements related to incident management and pre-employment background checks, it is crucial that OMH regulations be changed to support the new requirements in the PPSNA so that this initiative is implemented in a coordinated fashion.

OMH was not able to use the regular rule making process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes. Therefore, this rule is being adopted on an Emergency basis until such time as it has been formally adopted through the SAPA rule promulgation process.

Subject: Implementation of the Protection of People with Special Needs Act and reforms to incident management.

Purpose: To enhance protections for people with mental illness served in the OMH system.

Substance of emergency rule: The emergency regulations are intended to conform regulations of the Office of Mental Health (OMH) to Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act or PPSNA). The primary changes include:

- 14 NYCRR Part 501 is amended by adding a new Section 501.5, entitled “Obsolete References,” and then replaces any reference throughout OMH regulations to the Commission on Quality of Care and Advocacy for Persons with Disabilities with a reference to the Justice Center for the Protection of People with Special Needs.

- 14 NYCRR Part 524 (Incident Management) has been repealed and revised to incorporate categories of “reportable incidents” as established by the PPSNA and includes enhanced provisions regarding incident investigations. The amendments make changes related to definitions, reporting, investigation, notification and committee review of events and situations that occur in providers of mental health services licensed or operated by OMH. It is OMH’s expectation that implementation of these amendments will enhance safeguards for persons with mental illness, which, in turn, will allow individuals to focus on their recovery. The amendments also require distribution of the Code of Conduct, developed by the Justice Center, to all employees. Providers must maintain signed documentation from such employees, indicating that they have received, and understand, the Code.

- Revisions to 14 NYCRR Part 550 are intended to facilitate and implement the consolidation of the criminal background check function in the Justice Center, and to make other conforming changes to the criminal background check function established by the PPSNA.

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 September 25, 2013.

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

Regulatory Impact Statement

Statutory authority: Chapter 501 of the Laws of 2012, i.e., “The Protection of People with Special Needs Act,” establishes Article 20 of the Executive Law, Article 11 of the Social Services Law, and makes a number of amendments in other statutes, including the Mental Hygiene Law.

Section 7.07 of the Mental Hygiene Law, charges the Office of Mental Health with the responsibility for seeing that persons with mental illness are provided with care and treatment, that such care, treatment, and rehabilitation are of high quality and effectiveness, and that the personal and civil rights of persons with mental illness receiving care and treatment are adequately protected.

Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

2. Legislative objectives: These new amendments further the legislative objectives embodied in Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act) and sections 7.07, 7.09, and 31.04 of the Mental Hygiene Law. The amendments incorporate a number of reforms to regulations of the Office of Mental Health (OMH) in order to increase protections and improve the quality of services provided to persons receiving services from mental health providers operated or licensed by OMH.

3. Needs and benefits: The amendments include new and modified requirements for OMH regulations in 14 NYCRR Part 524 pertaining to incident management. Additional amendments are designed to add and revise requirements in Parts 501 and 550 to implement Chapter 501 of the Laws of 2012. Known as “The Protection of People with Special Needs Act,” this new law requires the establishment of comprehensive protections for vulnerable persons, including persons with mental illness, against abuse, neglect and other harmful conduct.

The Act created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems. The Justice Center operates a 24/7 hotline for reporting allegations of abuse, neglect and significant incidents in accordance with Chapter 501’s provisions for uniform definitions, manda-

tory reporting and minimum standards for incident management programs. In collaboration with OMH, the Justice Center is also charged with developing and delivering appropriate training for caregivers, their supervisors and investigators. Additionally, the Justice Center is responsible for conducting criminal background checks for applicants, including those who will be working in the OMH system.

Chapter 501 of the Laws of 2012 also creates a Vulnerable Persons' Central Register (VPCR). This register will contain the names of custodians found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All custodians found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Custodians having committed egregious or repeated acts of abuse or neglect are prohibited from future employment in providing services for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Job applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

Pursuant to Chapter 501 of the Laws of 2012, the Justice Center is charged with recommending policies and procedures to OMH for the protection of persons with mental illness. This effort involves the development of requirements and guidelines in areas including but not limited to incident management, rights of people receiving services, criminal background checks, and training of custodians. In accordance with Chapter 501, these requirements and guidelines must be reflected, wherever appropriate, in OMH's regulations. Consequently, the amendments incorporate the requirements in regulations and guidelines recently developed by the Justice Center.

The amendments make changes to OMH's incident management process to strengthen the process and to provide further protection to people receiving services from harm and abuse. For example, the amendments make changes related to definitions, reporting, investigation, notification, and committee review of events and situations that occur in providers of mental health services licensed or operated by OMH. It is OMH's expectation that implementation of the amendments will enhance safeguards for persons with mental illness, which will in turn allow individuals to focus on their recovery.

4. Costs:

(a) Costs to the Agency and to the State and its local governments: OMH will not incur significant additional costs as a provider of services. While the regulations impose some new requirements on providers, OMH expects that it will comply with the new requirements with no additional staff. There may be minimal one-time costs associated with notification and training of staff.

Chapter 501 creates the Justice Center, which will assume some designated functions which are now performed by OMH. The Justice Center will manage the criminal background check process and will conduct some investigations that had previously been conducted by OMH. OMH will experience savings associated with the reduction in staff performing these functions; however, the staff will be shifting to the Justice Center so the net effect will be cost neutral.

There may be some minor costs associated with necessary modifications to NIMRS (the New York Incident Management Reporting System developed by OMH) to reflect Justice Center requirements.

Any costs or savings will have no impact on Medicaid rates, prices or fees. Therefore, there is no impact on New York State in its role paying for Medicaid services.

There are no costs to local governments as there are no changes to Medicaid reimbursement.

(b) Costs to private regulated parties: It is difficult to estimate the cost impact on private regulated parties; however, OMH expects that costs to providers will be minimal. OMH already requires the reporting and investigation of incidents. The implementation of these reforms in general will not result in costs. There may also be additional costs associated with the need for medical examinations in cases of alleged physical abuse or clinical assessments needed to substantiate a finding of psychological abuse. Again, OMH is not able to estimate these cost impacts. There are no costs associated with a check of the Staff Exclusion List. Other amendments made in the rule making merely clarify existing requirements or interpretive guidance, or can be implemented without cost to the provider.

OMH anticipates that generally any potential costs incurred will be mitigated by savings that the provider will realize from the improvements to the incident management process. OMH expects that in the long term, the amendments will ultimately reduce incidents and abuse in its system and increase efficiency and quality in the reporting, investigation, notification, and review of such events. OMH is not able to quantify the minor potential costs or the savings that might be realized by the promulgation of these amendments.

5. Local government mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: The new regulations require additional paperwork to be completed by providers. Examples of additional paperwork are found in new requirements pertaining to reporting reportable incidents to the Justice Center and making additional notifications. However, the Justice Center will likely predominantly utilize electronic format for incident reporting.

7. Duplication: The amendments do not duplicate any existing State or Federal requirements that are applicable to services for persons with mental illness. In some instances, the regulations reiterate current requirements in New York State law.

8. Alternatives: Current definitions of incidents in OMH regulations that require reporting and investigation exceed the criteria in the new statutory definitions in Chapter 501. OMH considered reducing or eliminating requirements applying to events and situations that do not meet the criteria in the statutory definitions for "reportable incidents." However, OMH chose to propose the continuation of protections associated with these events and situations.

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

10. Compliance schedule: The regulations will be effective on June 30, 2013 to ensure compliance with Chapter 501 of the Laws of 2012. OMH intends thereafter to continue to develop and transmit implementation guidance to regulated parties to assist them with compliance.

Regulatory Flexibility Analysis

1. Effect on small business: OMH has determined, through its Bureau of Inspection and Certification, that approximately 732 agencies provide services which are certified or licensed by OMH. OMH is unable to estimate the portion of these providers that may be considered to be small businesses (under 100 employees).

However, the amendments have been reviewed by OMH in light of their impact on small businesses. The regulations make revisions to OMH's requirements for incident management which will necessitate some changes in compliance activities and may result in additional costs and savings to providers, including small business providers. However, OMH is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, these changes are required by statute and OMH considers that the improvements in protections for people served in the OMH system will help safeguard individuals from harm and abuse; thus, the benefits more than outweigh any potential negative impact on providers.

2. Compliance requirements: The regulations add several new requirements with which providers must comply. Amendments associated with the implementation of Chapter 501 include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries; however, OMH anticipates that providers are already obtaining examinations of physical injuries. While Chapter 501 also establishes an obligation to obtain a clinical assessment to substantiate a charge of psychological abuse, it is not immediately clear who will be responsible for obtaining, and paying for, that assessment.

Current OMH regulations require reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate some changes and reforms, the basic requirements are conceptually unchanged. OMH, therefore, expects that additional compliance activities (except as noted above) will be minimal. There is no associated cost with checking the Staff Exclusion List. The cost to check the Statewide Register of Child Abuse and Maltreatment is \$25 per check; providers serving children are already incurring this cost. However, this would represent a new cost for providers who previously did not request such checks, though this cost could be passed by the provider to the applicant.

Providers subject to these regulations are already responsible for complying with incident management regulations. The regulations enhance some of these requirements, e.g., providers must comply with the new requirement to complete investigations within a 50-day timeframe, to enable OMH to submit results to the Justice Center within 60 days. Providers must also comply with new requirements to enhance the independence of investigators and incident review committees. However, OMH expects that additional compliance activities associated with these enhanced requirements will be minimal.

3. Professional services: There may be additional professional services required for small business providers as a result of these amendments. The definition of psychological abuse references a need to determine specific impacts on an individual receiving services by means of a clinical assessment, but it is not immediately clear at what stage in the process that assessment must be maintained or who is responsible for obtaining and paying for it. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There may be modest costs for small business providers associated with these amendments. There may be nominal costs for providers to comply with the expanded notification requirements, but

OMH is unable to determine the cost impact. Furthermore, providers may experience savings if the Justice Center or OMH assumes responsibility for investigations that were previously conducted by provider staff. In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Economic and technological feasibility: The amendments may impose the use of new technological processes on small business providers. Providers have already been reporting incidents and abuse in NIMRS, and that technology will continue to be used. However, statutory requirements to report reportable incidents to the Justice Center in the manner specified by the Justice Center may impose new technology requirements if that is the manner specified by the Justice Center. However, this is not a direct impact caused by the regulations.

6. Minimizing adverse economic impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OMH expects that compliance with these new regulations will result in savings in the long term and there may be some short term savings as a result of the conduct of investigations by the Justice Center.

OMH has reviewed the regulations to determine if there were any viable approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act; none were readily identified. However, OMH did not consider the exemption of small businesses from these amendments or the establishment of differing compliance or reporting requirements since OMH considers compliance with the amendments to be crucial for the health, safety, and welfare of the individuals served by small business providers.

7. Small business participation: Chapter 501 of the Laws of 2012 was originally a Governor's Program Bill which received extensive media attention. Providers have had the opportunity to become familiar with its provisions since it was made available on various government websites last June. Furthermore, in accordance with statutory requirements, the rule was presented to the Mental Health Services Council for review and recommendations.

8. For rules that either establish or modify a violation or penalties associated with a violation: The amendments include a penalty for violating the regulations of a fine not to exceed \$1,000 per day or \$15,000 per violation in accordance with section 31.16 of the Mental Hygiene Law and/or may suspend, revoke, or limit an operating certificate or take any other appropriate action, in accordance with applicable law and regulations. However, due process is available to a provider via 14 NYCRR Part 503.

Rural Area Flexibility Analysis

1. Description of the types and estimation of the number of rural areas in which the rule will apply: OMH services are provided in every county in New York State. Forty-three counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. Additionally, 10 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

The amendments have been reviewed by OMH in light of their impact on rural areas. The regulations make revisions and in some cases enhance OMH's current requirements for incident management programs, which will necessitate some changes in compliance activities and result in additional costs and savings to providers, including those in rural areas. However, OMH is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, OMH considers that the improvements in protections for people served in the OMH system will help safeguard individuals from harm and abuse and that the benefits more than outweigh any potential negative impacts on all providers.

The geographic location of any given program (urban or rural) will not be a contributing factor to any additional costs to providers.

2. Compliance requirements: The regulations add some new requirements with which providers must comply. Amendments associated with the implementation of Chapter 501 include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries, and there is a requirement that, for a finding of psychological abuse to be substantiated, a clinical assessment is needed in order to demonstrate the impact of the conduct on the individual receiving services.

Current OMH regulations require reporting and investigation of

incidents, and that providers request criminal background checks. While the amendments incorporate some changes, the basic requirements are conceptually unchanged. OMH therefore expects that additional compliance activities associated with these changes will be minimal. However, there will be additional compliance activities associated with checking the Staff Exclusion List.

Providers must comply with the new requirement to complete investigations within a 50-day timeframe, to enable OMH to submit results to the Justice Center within 60 days. Providers must also comply with new requirements to enhance the independence of investigators and incident review committees. However, OMH expects that additional compliance activities will be minimal since providers are already required to comply with existing incident management program requirements; these revisions primarily enhance current requirements.

3. Professional services: There may be additional professional services required for rural providers as a result of these amendments. The amendments will not add to the professional service needs of rural providers.

4. Compliance costs: There may be modest costs for rural providers associated with the amendments. There also may be nominal costs for rural providers to comply with the expanded notification requirements. However, all providers may experience savings if the Justice Center or OMH assumes responsibility for investigations that were previously conducted by provider staff.

In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for both urban and rural area providers as well as benefits to the wellbeing of individuals receiving services.

5. Minimizing adverse impact: The amendments may result in an adverse economic impact for rural providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OMH expects that compliance with these enhanced regulations will result in savings in the long term and there may be some short-term savings as a result of the conduct of investigations by the Justice Center.

OMH has reviewed the regulations to determine if there were any viable approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act; none were readily identified. However, OMH did not consider the exemption of rural area providers from the amendments or the establishment of differing compliance or reporting requirements, since OMH considers compliance with the amendments to be crucial for the health, safety, and welfare of the individuals served by rural area providers.

6. Participation of public and private interests in rural areas: Chapter 501 of the Laws of 2012 was originally a Governor's Program Bill which received extensive media attention. Providers have had the opportunity to become familiar with its provisions since it was made available on various government websites last June. Furthermore, in accordance with statutory requirements, the rule was presented to the Mental Health Services Council for review and recommendations.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because OMH does not anticipate a substantial adverse impact on jobs and employment opportunities.

The amendments incorporate a number of reforms to improve the quality and consistency of incident management activities throughout the OMH system. However, it is not anticipated that these reforms will negatively impact jobs or employment opportunities. The amendments that impose new requirements on providers, such as additional reporting requirements and the timeframe for completion of investigations, will not result in an adverse impact on jobs. OMH anticipates that there will be no effect on jobs as agencies will utilize current staff to perform the required compliance activities.

Chapter 501 of the Laws of 2012 and these implementing regulations will also mean that some functions that are currently performed by OMH staff will instead be performed by the staff of the Justice Center. OMH expects that the volume of incidents and occurrences investigated will be roughly similar. To the extent that the Justice Center performs investigations, oversees the management of reportable incidents, and manages requests for criminal history record checks, the result is expected to be neutral in that positions lost by OMH will be gained by the Justice Center.

It is therefore apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

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

Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth

I.D. No. OMH-29-13-00010-EP

Filing No. 700

Filing Date: 2013-06-28

Effective Date: 2013-06-28

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

Proposed Action: Amendment of Part 578 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 43.02

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

Specific reasons underlying the finding of necessity: The specific reasons underlying the finding of necessity for emergency filing are as follows:

The amendments to 14 NYCRR Part 578 remove the trend factor from the 2013-14 Medicaid rate calculation for residential treatment facilities (RTF) for children and youth, which are identified as a subclass of hospitals under Section 31.26 of the Mental Hygiene Law. As a result, the rate of growth in Medicaid expenditures is slowed, yet the RTF's quality and availability of services are maintained. The amendments also include an adjustment to the imputed occupancy rates, which will mitigate the potential impact of vacant beds caused by reducing the lengths of stay in the program.

The amendments are an Administrative Action consistent with the 2013-2014 enacted State Budget, and with actions taken by the Department of Health for other inpatient services. They reflect the serious fiscal condition of the State. It is estimated that this action will result in an annual reduction in Medicaid growth of approximately \$1.0 million State share of Medicaid (\$2.0 million gross Medicaid). Existing regulations provide for a trend factor effective July 1, 2013; therefore, it is imperative that this rule be adopted on an Emergency basis until such time as it has been formally adopted through the SAPA rule promulgation process.

Subject: Medical Assistance Rates of Payment for Residential Treatment Facilities for Children and Youth.

Purpose: To remove the trend factor from the 2013-14 Medicaid rate calculation and adjust the occupancy rates.

Text of emergency/proposed rule: 1. Paragraph (4) of subdivision (a) of Section 578.8 of Title 14 NYCRR is amended to read as follows:

(4) The allowable costs, as set forth in paragraph (1) of this subdivision, that meet the requirements stated in paragraphs (2) and (3) of this subdivision, shall be trended by the applicable Medicare inflation factor for hospitals and units excluded from the prospective payment system except for the rate periods effective July 1, 1996 through June 30, 1997, and July 1, 2009 through June 30, 2010, where the inflation factor used to trend costs will be limited to the inflation factor for the first year of the two-year period. *No trend shall be applied to allowable costs for the rate period effective July 1, 2013 through June 30, 2014.*

2. Subdivision (d) of Section 578.9 of Title 14 NYCRR is amended to read as follows:

(d) For a currently certified residential treatment facility decreasing certified bed capacity by 20 percent or more, the rate of payment may be computed using the facility's existing reimbursement adjusted by the budgeted variable costs associated with the decrease in certified capacity. Rate(s) of payment may be calculated to reflect a phase down period, and a budget based period thereafter. Each period may not exceed 12 months.

(1) Rates of payment calculated for the phase down period shall be developed from the residential treatment facility's existing reimbursement, adjusted by any variable cost decreases or extraordinary cost increases, and adjusted by the phase down utilization. More than one rate of payment may be calculated to coincide with the facility's phase down period, which shall be determined at the commissioner's discretion.

(i) The existing rate of payment is multiplied by the patient days used in the calculation of that rate of payment, resulting in a dollar amount of reimbursement.

(ii) The amount of reimbursement is adjusted by the applicable amount of variable cost decrease and the amount of any extraordinary cost associated with the phase down.

(iii) The total reimbursement is then divided by the product of the targeted certified capacity for the applicable period of the phase down, multiplied by the number of days in the period and by a minimum utilization of [97] 96 percent.

(2) The rate of payment for the subsequent budget based period shall be developed from the residential treatment facility's existing reimbursement, adjusted by any variable cost decreases or extraordinary cost increases, adjusted for inflation as appropriate, and adjusted to the staffing standards for medical/clinical and nursing categories, as approved by the commissioner.

(i) The existing rate of payment is multiplied by the patient days used in the calculation of that rate of payment, resulting in a dollar amount of reimbursement. The reimbursement is then increased by an appropriate inflation factor, as determined by the commissioner.

(ii) The amount of reimbursement is adjusted by the applicable amount of variable cost decrease and the amount of any extraordinary cost associated with the phase down.

(iii) Costs for the medical/clinical and nursing categories are deleted, and are substituted as follows. Medical/clinical and nursing costs are computed using the full time equivalent staffing standards, as approved by the commissioner, multiplied by the facility's salary and fringe benefit cost experience. The resulting combined amount is subject to the average salary and fringe benefit screens, as specified in section 578.8(a)(2)(ii) and (iii) of this Part, multiplied by the approved staffing standards. The cost data is made comparable by applying the appropriate trend factors as determined by the commissioner.

(iv) Capital costs shall be updated in accordance with the approved costs as specified in section [578.8(a)(6)] 578.8(a)(5) of this Part.

(v) The total reimbursement (the sum of immediately preceding subparagraphs (i) through (iv) of this paragraph) is then divided by the product of the certified capacity for the phased down budget based period, multiplied by the number of days in the period and by a minimum utilization of [97] 96 percent.

3. Subdivision (a) of Section 578.13 of Title 14 NYCRR is amended to read as follows:

(a) For purposes of determining a rate of payment, allowable patient days shall be computed using the higher of allowable days pursuant to section 578.4(b) of this Part or a minimum utilization of [95] 93 percent of certified bed capacity, provided that the number of allowable days shall not exceed a maximum utilization of [98] 96 percent of certified bed capacity.

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 September 25, 2013.

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

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

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

Regulatory Impact Statement

1. Statutory authority: Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 43.02 of the Mental Hygiene Law provides that the Commissioner has the power to establish standards and methods for determining rates of payment made by government agencies pursuant to Title 11 of Article 5 of the Social Services Law for services provided by facilities, including residential treatment facilities for children and youth licensed by the Office of Mental Health.

2. Legislative objectives: Article 7 of the Mental Hygiene Law reflects the Commissioner's authority to establish regulations regarding mental health programs. The amendments to Part 578 are needed to reduce the growth rate of Medicaid reimbursement associated with residential treatment facilities for children and youth regulated by the Office of Mental Health (OMH) thereby ensuring consistency with the enacted 2013-2014 state budget. The amendments also reflect adjustments to the imputed occupancy rates used to calculate the Medicaid rates, thereby more accurately reflecting the impact of reduced lengths of stay in the programs.

3. Needs and benefits: The amendments remove the trend factor from the 2013-14 Medicaid rate calculation for residential treatment facilities (RTF) for children and youth, which are identified as a subclass of hospitals under Section 31.26 of the Mental Hygiene Law. As a result, the rate of growth in Medicaid expenditures is slowed, yet the RTF's quality and availability of services are maintained. This is an Administrative Action consistent with the 2013-2014 enacted State Budget, and with actions taken by the Department of Health for other inpatient services. It reflects the serious fiscal condition of the State. The amendments also include an adjustment to the imputed occupancy rates, which will mitigate the potential impact of vacant beds caused by reducing the lengths of stay in the program.

4. Costs:

(a) cost to State government: It is estimated that this action will result in an annual reduction in Medicaid growth of approximately \$1.0 million State share of Medicaid (\$2.0 million gross Medicaid).

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

(c) cost to regulated parties: This regulatory amendment will not result in any additional cost to regulated parties, but will reduce the rate of growth in Medicaid payments that the RTF providers receive.

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

6. Paperwork: This rule should not substantially increase the paperwork requirements of affected providers.

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

8. Alternatives: As noted above, this amendment is consistent with the 2013-2014 enacted State Budget and the budgetary constraints included therein. OMH has determined that the elimination of the trend factor for RTFs would not affect the ability of those programs to continue to function and serve the children and youth who are receiving services there, and that the change in the occupancy rates used to impute patient days in the rate calculation will more accurately reflect the operation of the program and the reduced lengths of stay. The only alternative to this rule making would have been to make budgetary cuts to another program which would not have been as sustainable as the residential treatment facilities, and to leave the current occupancy rates unchanged thereby not reflecting the changes observed in lengths of stay. Therefore, that alternative was not considered.

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

10. Compliance schedule: The regulatory amendments would become effective immediately upon adoption.

Regulatory Flexibility Analysis

The proposed rule amending 14 NYCRR Part 578 removes the trend factor from the 2013-2014 Medicaid rate calculation for residential treatment facilities for children and youth, and as a result, slows the rate of growth in Medicaid payments while maintaining the program's quality and availability of services. The amendments are the result of an Administrative Action consistent with the 2013-2014 enacted State Budget and with actions taken by the Department of Health for other inpatient services. In addition, the rule includes an adjustment to the occupancy rates used to impute patient days in the rate calculation to more accurately reflect the operation of the program and the reduced lengths of stay. There will be no adverse economic impact on small business or local governments; therefore a Regulatory Flexibility Analysis for Small Business and Local Governments has not been submitted with this notice.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the amendments will not impose any adverse economic impact on rural areas. The proposed rule removes the trend factor from the 2013-2014 Medicaid rate calculation for residential treatment facilities for children and youth, and as a result, slows the rate of growth in Medicaid payments while maintaining the program's quality and availability of services. In addition, the rule includes an adjustment to the occupancy rates used to impute patient days in the rate calculation to more accurately reflect the operation of the program and the reduced lengths of stay.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the purpose of the rule is to remove the trend factor from the 2013-2014 Medicaid rate calculation for residential treatment facilities for children and youth regulated by the Office of Mental Health. This is an Administrative Action consistent with the 2013-2014 enacted State budget and with actions taken by the Department of Health for other inpatient services. The rule includes an adjustment to the occupancy rates used to impute patient days in the rate calculation to more accurately reflect the operation of the program and the reduced lengths of stay. The result of this rule making is the rate of growth in Medicaid expenditures is slowed, but a program's quality and availability of services is maintained. There will be no adverse impact on jobs and employment opportunities.

Office for People with Developmental Disabilities

EMERGENCY RULE MAKING

Implementation of the Protection of People with Special Needs Act and Reforms to Incident Management

I.D. No. PDD-29-13-00012-E

Filing No. 702

Filing Date: 2013-06-28

Effective Date: 2013-06-30

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

Action taken: Amendment of Parts 624, 633 and 687, and addition of new Part 625 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00; L. 2012, ch. 501

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

Specific reasons underlying the finding of necessity: The immediate adoption of these amendments is necessary for the preservation of the health, safety, and welfare of individuals receiving services.

Last December, the Governor signed the Protection of People with Special Needs Act (PPSNA). This new law created the Justice Center for the Protection of People with Special Needs (Justice Center) and established many new protections for vulnerable persons, including a new system for incident management in services operated or certified by OPWDD and new requirements for more comprehensive and coordinated pre-employment background checks.

The amendment of OPWDD regulations, effective June 30, 2013 is necessary to implement many of the provisions contained in the PPSNA.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals with developmental disabilities who receive services in the OPWDD system. If OPWDD did not promulgate regulations on an emergency basis, many of the protections established by the PPSNA vital to the health, safety and welfare of individuals with developmental disabilities would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from inconsistent requirements. For example, the emergency regulations change the categories of incidents to conform to the categories established by the PPSNA. Without the promulgation of these amendments, agencies would be required to report incidents based on one set of definitions to the Justice Center and incidents based on a different set of definitions to OPWDD. Requirements for the management of incidents would also be inconsistent. Especially concerning regulatory requirements related to incident management and pre-employment background checks, it is crucial that OPWDD regulations be changed to support the new requirements in the PPSNA so that this initiative is implemented in a coordinated fashion.

OPWDD was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes.

Subject: Implementation of the Protection of People with Special Needs Act and reforms to incident management.

Purpose: To enhance protections for people with developmental disabilities served in the OPWDD system.

Substance of emergency rule: The emergency regulations conform OPWDD regulations to Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act or PPSNA) by making a number of revisions. The major changes to OPWDD regulations made to implement the PPSNA are:

- Revisions to 14 NYCRR Part 624 (now titled "Reportable incidents and notable occurrences") to incorporate categories of "reportable incidents" as established by the PPSNA. Programs and facilities certified or operated by OPWDD must report "reportable incidents" to the Vulnerable Persons' Central Register (VPCR), a part of the Justice Center for the Protection of People with Special Needs (Justice Center). Part 624 is amended to incorporate other revisions related to the management of

reportable incidents in conformance with various provisions of the PPSNA.

- Revisions to 14 NYCRR Section 633.7 concern the code of conduct adopted by the Justice Center in accordance with Section 554 of the Executive Law and imposes requirements on programs certified or operated by OPWDD. The code of conduct must be read and signed by custodians who have regular and direct contact with individuals receiving services as specified in the regulations.

- Revisions to 14 NYCRR Section 633.22 reflect the consolidation of the criminal history record check function in the Justice Center. The Justice Center will receive requests for criminal history record checks and will process those requests, instead of OPWDD.

- A new 14 NYCRR Section 633.24 contains requirements for background checks (in addition to criminal history record checks).

- Revisions to Part 687 incorporate changes to criminal history record check and background check requirements in family care homes.

The regulations include numerous changes associated with incident management or the implementation of the PPSNA. These changes include:

- The amendments delete the current categories and definitions of events and situations that must be reported to agencies and OPWDD. The amendments add definitions of “reportable incidents.” Types of reportable incidents are “abuse,” “neglect,” and “significant incidents.” The amendments also add definitions of “notable occurrences.” Part 624 includes requirements for reporting and investigating these types of events.

- The requirements of Part 624 are limited to events and situations that occur under the auspices of an agency.

- A new Part 625 contains requirements that apply to events and situations which are not under the auspices of an agency.

- The amendments mandate the use of OPWDD’s Incident Report and Management Application (IRMA), a secure electronic statewide incident reporting system, for reporting information about specified events and situations, and remove the current requirement to submit a paper based incident report to OPWDD in certain instances.

- The amendments make several changes to requirements for investigations. The amendments require that investigations of specified events and situations be initiated immediately following occurrence or discovery (with limitations when it is anticipated that the Justice Center or the Central Office of OPWDD will conduct the investigation). Investigations conducted by agencies must be completed no later than thirty days after the initiation of an investigation, unless the agency documents an acceptable justification for an extension of the thirty-day time frame. The amendments also add new requirements to enhance the independence of investigators, and require agency investigators to use a standardized investigation report format that contains elements specified by OPWDD.

- The amendments made several changes regarding Incident Review Committees (IRC). The amendments change requirements concerning membership of the IRC and include specific provisions concerning shared committees, using another agency’s committee or making alternative arrangements for IRC review. The amendments also modify the responsibilities of a provider agency’s IRC when an incident is investigated by the Central Office of OPWDD or the Justice Center.

- The amendments expand on requirements for notification to service coordinators.

- The amendments contain an explicit requirement that providers must comply with OPWDD recommendations concerning a specific event or situation or must explain its reasons for not complying with the recommendation within a month of the recommendation being made.

- When the Justice Center makes findings concerning matters referred to its attention and the Justice Center issues a report and recommendations to the agency regarding such matters, the agency is required to make a written response, within ninety days of receipt of such report, of action taken regarding each of the recommendations in the report.

- The amendments add a requirement that agencies retain records pertaining to incidents and allegations of abuse for a minimum time period of seven years. In cases when there is a pending audit or litigation, the pertinent records must be retained throughout the pendency of the audit or litigation. The amendments specify what information must be retained.

- The amendments add requirements that agencies check the “Staff Exclusion List” of the Vulnerable Persons’ Central Register as a part of the background check process.

- The amendments also include requirements concerning background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013. These requirements are added to implement section 16.34 on the Mental Hygiene Law as amended by the PPSNA.

- Definitions are changed in Parts 624 and 633 to conform to PPSNA definitions.

- The amendments include revisions to reflect the restructuring of entities within OPWDD and OPWDD’s name change.

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 September 25, 2013.

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

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

Regulatory Impact Statement

1. Statutory authority:

a. Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act), added Article 20 to the Executive Law and Article 11 to the Social Services Law and amended other laws including the Mental Hygiene Law. Chapter 501 incorporates requirements for implementing regulations by “State Oversight Agencies,” which include OPWDD.

b. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs and services in the area of care, treatment, rehabilitation, education, and training of persons with developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

c. OPWDD has the statutory authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

d. OPWDD has the statutory authority to adopt regulations concerning the operation of programs, provision of services and facilities pursuant to the New York State Mental Hygiene Law Section 16.00.

2. Legislative objectives: These emergency amendments further the legislative objectives embodied in Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act) and sections 13.07, 13.09(b), and 16.00 of the Mental Hygiene Law. The emergency amendments incorporate a number of reforms to OPWDD regulations in order to increase protections and improve the quality of services provided to people with developmental disabilities in OPWDD’s system.

3. Needs and benefits: The majority of the amendments include extensive new and modified requirements for OPWDD regulations in 14 NYCRR Part 624 pertaining to incident management. Additional amendments add and revise requirements in other OPWDD regulations in order to implement the Protection of People with Special Needs Act (PPSNA).

The PPSNA requires the establishment of comprehensive protections for vulnerable persons, including people with developmental disabilities, against abuse, neglect, and other harmful conduct. The PPSNA created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems. The Justice Center operates a 24/7 hotline for reporting allegations of abuse, neglect, and significant incidents in accordance with the PPSNA’s provisions for uniform definitions, mandatory reporting, and minimum standards for incident management programs. In collaboration with OPWDD, the Justice Center is also charged with developing and delivering appropriate training for caregivers, their supervisors, and investigators. Additionally, the Justice Center is responsible for conducting criminal background checks for applicants in the OPWDD system.

The PPSNA creates a Vulnerable Persons’ Central Register (VPCR). This register will contain the names of custodians found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All custodians found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Custodians having committed egregious or repeated acts of abuse or neglect are prohibited from future employment in providing services for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

Pursuant to the PPSNA, the Justice Center is charged with recommending policies and procedures to OPWDD for the protection of people with developmental disabilities; this effort involves the development of requirements and guidelines in areas including but not limited to incident management, rights of people receiving services, criminal background checks, and training of custodians. In accordance with the PPSNA, these requirements and guidelines must be reflected, wherever appropriate, in OPWDD’s regulations. Consequently, these amendments incorporate the requirements in regulations and guidelines recently developed by the Justice Center.

The amendments also make numerous changes to OPWDD’s incident management process to strengthen the process and to provide further

protection to people receiving services from harm and abuse. For example, the amendments make changes related to definitions, reporting, investigation, notification, and committee review of events and situations both under and not under the auspices of OPWDD or a provider agency. It is OPWDD's expectation that implementation of the emergency amendments will enhance safeguards for people with developmental disabilities, which will in turn allow individuals to focus on achieving maximum independence and living richer lives.

The amendments also include requirements addressing background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law. These requirements, applicable to all programs and services operated, certified, approved, and/or funded by OPWDD, will augment the protections provided to people receiving services by the PPSNA.

4. Costs:

a. Costs to the Agency and to the State and its local governments: OPWDD will not incur significant additional costs as a provider of services. While the regulations impose new requirements on providers, OPWDD expects that it will comply with the new requirements with no additional staff. Furthermore, OPWDD has already implemented some of the new requirements contained in the regulations in state-operated services through implementation of policy/procedure changes. There may be minimal one-time costs associated with notification and training of staff.

The PPSNA creates the Justice Center, which will assume designated functions that are now performed by OPWDD. The Justice Center will manage the criminal background check process and will conduct some investigations that had previously been conducted by OPWDD. OPWDD will experience savings associated with the reduction in staff performing these functions; however, the staff will be shifting to the Justice Center so the net effect will be cost neutral. Minimal additional OPWDD staff will be needed to implement some provisions of the PPSNA and implementing regulations, such as staff to coordinate MHL 16.34 background checks.

Any costs or savings will have no impact on Medicaid rates, prices or fees. Therefore, there is no impact on New York State in its role paying for Medicaid services.

There are no costs to local governments as there are no changes to Medicaid reimbursement and even if there were, the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

b. Costs to private regulated parties: It is difficult to estimate the cost impact on private regulated parties, however, OPWDD expects that cost to providers will be minimal. OPWDD already requires the reporting and investigation of incidents. The implementation of these reforms in general will not result in costs. There may be costs associated with the amendment of Section 424-a of the Social Service Law (as reflected in these regulations) which requires background checks of the Statewide Central Register of Child Abuse and Maltreatment (which cost \$25 per check). However, OPWDD cannot estimate how many additional checks will be required. There may also be additional costs associated with the need for clinical assessments needed to demonstrate psychological abuse. Again, OPWDD is not able to estimate these cost impacts. Concerning the reforms to Part 624 that are in addition to the changes needed to implement the PPSNA, most of the amendments have either already been implemented by OPWDD policy directives (e.g. mandate to use IRMA), merely clarify existing requirements or interpretive guidance, or can be implemented without cost to the agency (e.g. restrictions on committee review).

There may be modest costs for some providers associated with imposing a timeframe for the completion of investigations. For providers which may have a current backlog of pending investigations, it may be necessary to hire and train investigators or to contract for outside investigators in order to come into compliance with the specified timeframe requirements. Further, there may be other minor costs as a result of other amendments; however, OPWDD anticipates that generally any potential costs incurred would be mitigated by savings that the provider will realize from the improvements to the incident management process. OPWDD expects that in the long-term the amendments will ultimately reduce incidents and abuse in its system and increase efficiency and quality in the reporting, investigation, notification, and review of such events. OPWDD is not able to quantify the minor potential costs or the savings that might be realized by the promulgation of these amendments.

There are likely to be one-time costs associated with the requirement for all existing and new custodians with regular and direct contact in programs certified or operated by OPWDD to review and sign the new code of conduct adopted by the Justice Center. OPWDD anticipates that many agencies will participate in more extensive training efforts as well. Again, OPWDD is unable to quantify these costs.

5. Local government mandates: There are no new requirements imposed

by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: The new regulations require additional paperwork to be completed by providers. Examples of additional paperwork are found in new requirements pertaining to reporting reportable incidents to the Justice Center and making additional notifications. The regulations require that all custodians with regular and direct contact in programs certified or operated by OPWDD review and sign the Justice Center's code of conduct by June 30, 2013, and annually thereafter. However, the regulations remove paperwork requirements in other ways, such as the deletion of the requirement for the completion of a paper based incident report for specified events or situations.

7. Duplication: The amendments do not duplicate any existing State or Federal requirements that are applicable to services for persons with developmental disabilities. In some instances, the regulations reiterate requirements in NYS law.

8. Alternatives: Current definitions of incidents in OPWDD regulations that require reporting and investigation exceed the criteria in the new statutory definitions in the PPSNA. OPWDD considered reducing or eliminating requirements applying to events and situations that do not meet the criteria in the statutory definitions for "reportable incidents," but OPWDD decided to include the continuation of protections associated with these events and situations as reflected in the definitions of notable occurrences.

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

10. Compliance schedule: The regulations will be effective on June 30, 2013 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect on small business: OPWDD has determined, through a review of the certified cost reports, that most OPWDD-funded services are provided by non-profit agencies that employ more than 100 people overall. However, some smaller agencies that employ fewer than 100 employees overall would be classified as small businesses. Currently, there are approximately 700 agencies providing services which are certified, authorized or funded by OPWDD. OPWDD is unable to estimate the portion of these providers that may be considered to be small businesses.

The amendments have been reviewed by OPWDD in light of their impact on small businesses. The regulations make extensive changes to OPWDD's requirements for incident management that will necessitate significant changes in compliance activities and result in additional costs and savings to providers, including small business providers. However, OPWDD is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, OPWDD considers that the improvements in protections for people served in the OPWDD system will help safeguard individuals from harm and abuse and that the benefits more than outweigh any potential negative impacts on providers.

2. Compliance requirements: The regulations add a number of new requirements with which providers must comply. Amendments associated with the implementation of the PPSNA include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries. For psychological abuse, a clinical assessment could be needed in order to demonstrate the impact of suspected psychological abuse. While OPWDD anticipates that providers are already obtaining examinations of physical injuries, typically clinical assessments of suspected psychological abuse are not generally obtained.

The regulations impose requirements that all existing custodians who have regular and direct contact with individuals receiving services in programs certified or operated by OPWDD must read and sign a code of conduct adopted by the Justice Center by June 30, 2013; that all new custodians with regular and direct contact in such programs must read and sign the code of conduct at the time of employment or affiliation; and that all custodians with regular and direct contact in such programs must read and sign the code of conduct at least annually thereafter.

The PPSNA expanded requirements to obtain background checks of the Statewide Central Register of Child Abuse and Maltreatment to require checks of employees (and others) who have the potential for regular and substantial contact with individuals receiving services in programs that are certified or operated by OPWDD. Prior to June 30, 2013 the statute limited this requirement to employees who have the potential for regular and substantial contact with children. The emergency regulations reflect the statutory changes to section 424-a of the Social Services Law in the PPSNA. While many providers that also serve children have been obtaining these checks, the new requirements clearly expand the pool of employees and others who must be checked. Further, OPWDD regulations require that agencies conduct SCR checks of applicants when the check is permitted by the Social Services Law.

The regulations also include requirements addressing background checks for potential employees and volunteers to determine if an applicant

was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law.

Prior OPWDD regulations already required reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate many changes and reforms, the basic requirements are conceptually unchanged. OPWDD therefore expects that additional compliance activities (except as noted above) will be minimal. Aside from the provisions related to implementation of the PPSNA, and section 16.34 of the Mental Hygiene Law, the amendments have either already been implemented by OPWDD policy directives, clarify existing requirements or interpretive guidance, or can be implemented without cost to the agency.

Agencies must comply with the new requirement to complete investigations within a 30 day timeframe. Agencies must also comply with new requirements to enhance the independence of investigators and agency incident review committees. However, OPWDD expects that additional compliance activities will be minimal since agencies are already required to comply with existing requirements that prohibit situations which compromise the independence of investigators and committee members.

The new requirements pertaining to the dissemination of agency policies and procedures, OPWDD incident management regulations, and written information specified by OPWDD add new compliance activities; however, the regulations minimize compliance activities by requiring that providers offer to provide such information in electronic format (unless paper copies are specifically requested) as opposed to requiring the provision of paper copies only. The amendments require that information be provided in conjunction with training that is mandated by current regulations in order to consolidate efforts, increase efficiency, and reduce compliance activities.

Enhancements in required notification to service coordinators will also add compliance activities for providers because providers will have to make additional notifications and/or provide subsequent information about an incident or occurrence to these parties.

The amendments that add a new requirement that agencies enter minutes of their incident review committee meetings into IRMA within three weeks of the meeting for serious incidents, allegations of abuse, and all deaths, may result in a minimal amount of additional clerical work. OPWDD expects that most agencies have adopted an electronic record-keeping system to maintain their minutes and that these agencies would only have to copy and paste their minutes into IRMA. Agencies that do not have an electronic recordkeeping system and that maintain handwritten or typed minutes will have to assign staff to type the minutes into IRMA. OPWDD expects that these agencies will add this task to the duties of clerical staff who are trained and experienced in data entry and who can perform this function in an efficient manner.

The amendments extend access to information in accordance with Jonathan's Law and add a new requirement that agencies retain records pertaining to incidents and allegations of abuse for a minimum time period of seven years. In cases when there is a pending audit or litigation, the pertinent records must be retained throughout the pendency of the audit or litigation. The amendments specify what information must be retained. OPWDD considers that the new requirements will not add any additional compliance activities for agencies. OPWDD expects that generally most agencies have been implementing agency specific policies on record retention and that the new required record retention schedule merely standardizes existing policies/procedures. The amendments will have no effect on local governments.

3. Professional services: There may be additional professional services required for small business providers as a result of these amendments. The definition of psychological abuse references specific impacts on an individual receiving services that must be supported by a clinical assessment. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There may be modest costs for small business providers associated with the amendments. There may be costs associated with obtaining a clinical assessment in the case of suspected psychological abuse. The requirement that imposes a timeframe for the completion of investigations may result in some initial costs. Some providers may need to hire and train investigators or to contract for outside investigators in order to reduce backlogs to come into compliance with specified timeframes. Additionally, there may be nominal costs for agencies to comply with the expanded notification requirements and requirements for the provision of policies and procedures when it is necessary to provide paper copies of information to the appropriate parties upon request. There are costs associated with the change to Section 424-a of the Social Services Law and OPWDD regulations which will require agencies to obtain additional background checks for employees and other individuals associated with the agencies. These checks cost \$25 per check. However, OPWDD is unable to estimate how many additional checks will be needed and therefore cannot estimate the cost impact.

Providers may experience savings if the Justice Center or OPWDD assumes responsibility for investigations that were previously conducted by provider agency staff.

In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Economic and technological feasibility: The amendments may impose the use of new technological processes on small business providers. Providers have already been reporting incidents and abuse in IRMA in accordance with an existing OPWDD policy directive so the new requirements related to IRMA do not impose the use of new technological processes on small business providers. However, requirements to report reportable incidents to the Justice Center in the manner specified by the Justice Center may impose a requirement to use an electronic reporting system for that purpose, if that is the manner specified by the Justice Center.

6. Minimizing adverse economic impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OPWDD expects that compliance with these new regulations will result in savings in the long term and there may be some short term savings as a result of the conduct of investigations by the Justice Center. Further, OPWDD expects that the amendments will provide some relief to providers by the removal of the previous requirement for a paper based incident report for reporting serious reportable incidents, allegations of abuse, and all deaths. OPWDD expects that these provisions will mitigate any adverse economic impact that results from complying with other new requirements.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. OPWDD modified several requirements to minimize adverse economic impact. As noted above, OPWDD eliminated the requirement that agencies complete paper forms when information about incidents is submitted electronically. In addition, the new regulations allow agencies to provide instructions on how to access information on incident management electronically to individuals, families and others, rather than requiring the provision of paper copies in all instances. Agencies are only required to make paper copies available upon request. OPWDD did not consider the exemption of small businesses from the amendments or the establishment of differing compliance or reporting requirements since OPWDD considers compliance with the emergency amendments to be crucial for the health, safety, and welfare of the individuals served by small business providers.

7. Small business participation: The PPSNA was originally a Governor's Program Bill which received extensive media attention. Providers have had opportunities to become familiar with its provisions since it was made available on various government websites last June. Related to the components of the regulations that are unrelated to implementation of the PPSNA, draft regulations containing these components were sent out for review and comment to representatives of providers, including the New York State Association of Community and Residential Agencies (NYSACRA), on March 12, 2012. Some of the members of NYSACRA have fewer than 100 employees. OPWDD carefully considered the comments received and made some suggested changes to the amendments (e.g. eliminated the paper based incident report and allowed for the provision of policies and procedures in electronic format). OPWDD also presented the reforms at a widely-attended provider training in the fall of 2012.

8. (IF APPLICABLE) For rules that either establish or modify a violation or penalties associated with a violation: The emergency amendments do not establish or modify a violation or penalties associated with a violation.

Rural Area Flexibility Analysis

1. Description of the types and estimation of the number of rural areas in which the rule will apply: OPWDD services are provided in every county in New York State. 43 counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. Additionally, 10 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

The amendments have been reviewed by OPWDD in light of their impact on rural areas. The regulations make extensive changes to OPWDD's requirements for incident management that will necessitate significant changes in compliance activities and result in additional costs

and savings to providers, including small business providers. However, OPWDD is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, OPWDD considers that the improvements in protections for people served in the OPWDD system will help safeguard individuals from harm and abuse and that the benefits more than outweigh any potential negative impacts on providers.

The geographic location of any given program (urban or rural) will not be a contributing factor to any additional costs to providers.

2. Compliance requirements: The regulations add a number of new requirements with which providers must comply. Amendments associated with the implementation of the PPSNA include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries. For psychological abuse, a clinical assessment could be needed in order to demonstrate the impact of suspected psychological abuse. While OPWDD anticipates that providers are already obtaining examinations of physical injuries, typically clinical assessments of suspected psychological abuse are not generally obtained.

The regulations impose requirements that all existing custodians who have regular and direct contact with individuals receiving services in programs certified or operated by OPWDD must read and sign a code of conduct adopted by the Justice Center by June 30, 2013; that all new custodians with regular and direct contact in such programs must read and sign the code of conduct at the time of employment or affiliation; and that all custodians with regular and direct contact in such programs must read and sign the code of conduct at least annually thereafter.

The PPSNA expanded requirements to obtain background checks of the Statewide Central Register of Child Abuse and Maltreatment to require checks of employees (and others) who have the potential for regular and substantial contact with individuals receiving services. Prior to June 30, 2013 the statute limited this requirement to employees who have the potential for regular and substantial contact with children. The emergency regulations reflect the statutory changes to section 424-a of the Social Services Law in the PPSNA. While many providers that also serve children have been obtaining these checks, the new requirements clearly expand the pool of employees who must be checked. Further, OPWDD regulations require that agencies conduct SCR checks of applicants when the check is permitted by the Social Services Law.

The regulations also include requirements addressing background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law.

Prior OPWDD regulations already required reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate many changes and reforms, the basic requirements are conceptually unchanged. OPWDD therefore expects that additional compliance activities (except as noted above) will be minimal. Aside from the provisions related to implementation of the PPSNA, and section 16.34 of the Mental Hygiene Law, the amendments have either already been implemented by OPWDD policy directives, clarify existing requirements or interpretive guidance, or can be implemented without cost to the agency.

Agencies must comply with the new requirement to complete investigations within a 30 day timeframe. Agencies must also comply with new requirements to enhance the independence of investigators and agency incident review committees. However, OPWDD expects that additional compliance activities will be minimal since agencies are already required to comply with existing requirements that prohibit situations which compromise the independence of investigators and committee members.

The new requirements pertaining to the dissemination of agency policies and procedures, OPWDD incident management regulations, and written information specified by OPWDD add new compliance activities; however, the regulations minimize compliance activities by requiring that providers offer to provide such information in electronic format (unless paper copies are specifically requested) as opposed to requiring the provision of paper copies only. The amendments require that information be provided in conjunction with training which is mandated by current regulations in order to consolidate efforts, increase efficiency, and reduce compliance activities.

Enhancements in required notification to service coordinators will also add compliance activities for providers because providers will have to make additional notifications and/or provide subsequent information about an incident or occurrence to these parties.

The amendments that add a new requirement that agencies enter minutes of their incident review committee meetings into IRMA within three weeks of the meeting for serious incidents, allegations of abuse, and all deaths, may result in a minimal amount of additional clerical work. OPWDD expects that most agencies have adopted an electronic record-keeping system to maintain their minutes and that these agencies would

only have to copy and paste their minutes into IRMA. Agencies that do not have an electronic recordkeeping system and that maintain handwritten or typed minutes will have to assign staff to type the minutes into IRMA. OPWDD expects that these agencies will add this task to the duties of clerical staff who are trained and experienced in data entry and who can perform this function in an efficient manner.

The amendments extend access to information in accordance with Jonathan's Law and add a requirement that agencies retain records pertaining to incidents and allegations of abuse for a minimum time period of seven years. In cases when there is a pending audit or litigation, the pertinent records must be retained throughout the pendency of the audit or litigation. The amendments specify what information must be retained. OPWDD considers that the new requirements will not add any additional compliance activities for agencies. OPWDD expects that generally most agencies have been implementing agency specific policies on record retention and that the new required record retention schedule merely standardizes existing policies/procedures. The amendments will have no effect on local governments.

3. Professional services: There may be additional professional services required for small business providers as a result of these amendments. The definition of psychological abuse references specific impacts on an individual receiving services that must be supported by a clinical assessment. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There may be modest costs for small business providers associated with the amendments. There may be costs associated with obtaining a clinical assessment in the case of suspected psychological abuse. The requirement that imposes a timeframe for the completion of investigations may result in some initial costs. Some providers may need to hire and train investigators or to contract for outside investigators in order to reduce backlogs to come into compliance with specified timeframes. Additionally, there may be nominal costs for agencies to comply with the expanded notification requirements and requirements for the provision of policies and procedures when it is necessary to provide paper copies of information to the appropriate parties upon request. There are costs associated with the change to Section 424-a of the Social Services Law and OPWDD regulations which will require agencies to obtain additional background checks for employees and other individuals associated with the agencies. These checks cost \$25 per check. However, OPWDD is unable to estimate how many additional checks will be needed and therefore cannot estimate the cost impact.

Providers may experience savings if the Justice Center or OPWDD assumes responsibility for investigations that were previously conducted by provider agency staff.

In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Minimizing adverse impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OPWDD expects that compliance with these new regulations will result in savings in the long term and there may be some short term savings as a result of the conduct of investigations by the Justice Center. Further, OPWDD expects that the amendments will provide some relief to providers by the removal of the previous requirement for a paper based incident report for reporting serious reportable incidents, allegations of abuse, and all deaths. OPWDD expects that these provisions will mitigate any adverse economic impact that results from complying with other new requirements.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act. OPWDD modified several requirements to minimize adverse economic impact. As noted above, OPWDD eliminated the requirement that agencies complete paper forms when information about incidents is submitted electronically. In addition, the new regulations allow agencies to provide instructions on how to access information on incident management electronically to individuals, families and others, rather than requiring the provision of paper copies in all instances. Agencies are only required to make paper copies available upon request. OPWDD did not consider the exemption of small businesses from the emergency amendments or the establishment of differing compliance or reporting requirements since OPWDD considers compliance with the emergency amendments to be crucial for the health, safety, and welfare of the individuals served by providers in rural areas.

6. Participation of public and private interests in rural areas: The PPSNA was originally a Governor's Program Bill that received extensive media attention. Providers have had opportunities to become familiar with its provisions since it was made available on various government websites last June. Related to the components of the regulations that are unrelated

to implementation of the PPSNA, draft regulations containing these components were sent out for review and comment to representatives of providers, including NYSARC, the NYS Association of Community and Residential Agencies, NYS Catholic Conference, and CP Association of NYS, which represent providers in rural areas, on March 12, 2012. OPWDD carefully considered the comments received and made some suggested changes to the amendments (e.g. eliminated the paper based incident report and allowed for the provision of policies and procedures in electronic format). OPWDD also presented the reforms at a widely-attended provider training in the fall of 2012.

Job Impact Statement

OPWDD is not submitting a Job Impact Statement for these amendments because OPWDD does not anticipate a substantial adverse impact on jobs and employment opportunities.

The amendments incorporate a number of reforms to improve the quality and consistency of incident management activities throughout the OPWDD system. Most of these reforms have already been implemented by OPWDD policy directive, such as the mandates to use IRMA and a standardized investigation format. Consequently these amendments will not affect jobs or employment opportunities.

The amendments that impose new requirements on providers, such as additional reporting requirements, the timeframe for completion of investigations, notification to the service coordinator and other parties of subsequent information about incidents and abuse, retention of records, and the provision of policies and procedures to specified parties, will not result in an adverse impact on jobs. OPWDD anticipates that there will be no effect on jobs as agencies will use current staff to perform the required compliance activities.

The PPSNA and these implementing regulations will require that providers request additional checks from the Statewide Central Register of Child Abuse and Maltreatment. The regulations also include requirements addressing background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law. OPWDD anticipates that the requests and checks will be made using current staff.

The PPSNA and these implementing regulations will also mean that some functions that are currently performed by OPWDD staff will instead be performed by the staff of the Justice Center. OPWDD expects that the volume of incidents and occurrences investigated will be roughly similar. To the extent that the Justice Center performs investigations, oversees the management of reportable incidents, and manages requests for criminal history record checks, the result is expected to be neutral in that positions lost by OPWDD will be gained by the Justice Center. OPWDD may add minimal new staff to perform functions required by the regulations, such as the requirements for MHL 16.34 checks.

It is therefore apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Reimbursement of Prevocational Services Delivered in Sheltered Workshops

I.D. No. PDD-29-13-00014-EP

Filing No. 703

Filing Date: 2013-07-01

Effective Date: 2013-07-01

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

Proposed Action: Amendment of section 635-10.5 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 16.00 and 43.02

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

Specific reasons underlying the finding of necessity: The emergency adoption of these amendments, which limit reimbursement of prevocational services delivered in sheltered workshops, is necessary to protect the health, safety, and welfare of individuals receiving services in the OPWDD system.

Working with the Federal government to transform its service delivery system, OPWDD made a number of commitments to the Centers for

Medicare and Medicaid Services (CMS) as outlined in a transformation agreement. In this agreement, OPWDD made a specific commitment to no longer fund new admissions to sheltered workshops effective July 1, 2013. An essential component of fulfilling this commitment is the promulgation of regulations to limit reimbursement of prevocational services in sheltered workshops to only those individuals who were receiving these services before July 1, 2013.

It was not possible to promulgate regulations that achieve the July 1 effective date using the regular rulemaking process established by the State Administrative Procedure Act (SAPA). If OPWDD did not promulgate these regulations on an emergency basis, OPWDD would fail to meet its commitment to CMS and would risk loss of the substantial federal funding that is contingent on this commitment. The loss of this federal funding could jeopardize the health, safety, and welfare of individuals receiving services in the OPWDD system, as without it, individuals would be at risk of receiving services that are inadequate or insufficient in meeting their needs.

Subject: Reimbursement of prevocational services delivered in sheltered workshops.

Purpose: To establish limits on the reimbursement of prevocational services delivered in sheltered workshops.

Text of emergency/proposed rule: Subdivision 635-10.5(e) is amended by the addition of a new paragraph (10) as follows:

(10) *Reimbursement of prevocational services delivered in sheltered workshops.*

(i) *Effective July 1, 2013, reimbursement of prevocational services delivered in a sheltered workshop is limited to those individuals who were receiving prevocational services in a sheltered workshop on a regular basis as of June 30, 2013 and who continuously receive prevocational services in a sheltered workshop on a regular basis on and after July 1, 2013.*

(ii) *Reimbursement of prevocational services delivered in a sheltered workshop is limited to services delivered to the individuals specified in subparagraph (i) of this paragraph either:*

(a) *by the same provider which was providing services for the individual on a regular basis as of June 30, 2013; or*

(b) *by a different provider if the individual's receipt of the services from the different provider is the result of one provider assuming operation or control of the other provider's operations and programs, or is the result of a merger or consolidation of providers.*

Note: Current paragraphs (10) – (13) are renumbered to be paragraphs (11) – (14).

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 September 28, 2013.

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

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

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

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

Regulatory Impact Statement

1. Statutory authority:

a. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs and services in the area of care, treatment, rehabilitation, education and training of persons with developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

b. OPWDD has the authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction, as stated in the New York State Mental Hygiene Law Section 13.09(b).

c. OPWDD has the statutory authority to adopt regulations concerning the operation of programs, provision of services and facilities pursuant to the New York State Mental Hygiene Law Section 16.00.

d. OPWDD has the statutory responsibility for setting Medicaid rates and fees for services in facilities licensed or operated by OPWDD pursuant to the New York State Mental Hygiene Law Section 43.02.

2. Legislative objectives: The emergency/proposed amendments further the legislative objectives embodied in sections 13.07, 13.09, 16.00, and 43.02 of the Mental Hygiene Law. The new amendments concern the reimbursement of prevocational services delivered in sheltered workshops.

3. Needs and benefits: In striving to transform and enhance its service delivery system, OPWDD made a commitment to the Centers for Medicare and Medicaid Services (CMS) in the form of a transformation agreement.

The transformation agreement identifies a series of shared goals between OPWDD and CMS, one of which is the goal to increase the number of individuals in competitive employment by 700 within a one year time period. Toward this goal, OPWDD committed to no longer fund new admissions to sheltered workshops effective July 1, 2013. Consequently, the emergency/proposed amendments limit reimbursement of prevocational services delivered in sheltered workshops to only those individuals who were receiving these services before July 1, 2013. These amendments are necessary for OPWDD to meet its commitment to CMS and to be eligible for federal funding that is critical for appropriate and effective service provision to individuals receiving services.

OPWDD's long-term goal is to eliminate funding for segregated employment settings such as sheltered workshops in order to better prepare individuals for competitive employment. The emergency/proposed amendments are an interim step in achieving its long-term goal. The amendments will prevent OPWDD funding for new individuals admitted into sheltered workshops in order to ensure that there is no growth in segregated employment settings. By not funding new admissions, OPWDD is encouraging people with developmental disabilities, especially students transitioning from high school to adult services, to explore options in more integrated settings. Prevocational services will continue to be funded by OPWDD if they are provided in integrated community services instead of segregated sheltered workshops. Further, OPWDD expects that individuals who might otherwise have been admitted to sheltered workshops will instead be more appropriately served through assistance with obtaining competitive employment or through other customized and more effective and efficient service options (e.g. pre-employment training, individual or group supported employment, volunteerism or retirement services).

Another important reason for the emergency/proposed amendments is that they further implement Governor Andrew M. Cuomo's Olmstead Plan for New York State. The Governor has made serving individuals with disabilities in the most integrated setting a top priority. By integrating individuals receiving services in the OPWDD system into competitive employment settings or customized services within the community, in lieu of serving individuals in segregated sheltered workshops, OPWDD is acting in line with the Governor's goal. Further, by stopping OPWDD funding of new admissions to a service that is not in an integrated setting, the emergency/proposed amendments are facilitating efforts to help individuals to live richer lives.

4. Costs:

a. Costs to the Agency and to the State and its local governments:

The amendments will not result in any additional costs for New York State. Conversely, the promulgation of these regulations on an emergency basis will safeguard federal funding to NYS which is contingent on the satisfaction of commitments that OPWDD made to CMS.

These amendments will not have any fiscal impact on local governments. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

Prohibiting funding for new admissions of individuals into sheltered workshops will ultimately be cost-neutral for OPWDD as a provider of services. The lack of reimbursement for new admissions will be offset by the decrease in costs/expensitures that OPWDD as a provider would typically incur with new admissions.

b. Costs to private regulated parties: There are no initial capital or investment costs. The emergency/proposed amendments will have the same fiscal impact on regulated parties as stated above in this section for state-operated services.

5. Local government mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: No additional paperwork is required by the emergency/proposed amendments.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to these services.

8. Alternatives: OPWDD could have opted to require the closure of all sheltered workshops in its system instead of only ceasing payment for new admissions to sheltered workshops. OPWDD considered that it could best achieve its reform goals in the area of employment by setting smaller objectives and taking incremental steps towards such goals. This approach will help providers make a smoother adjustment to all of the changes that are underway as part of OPWDD's transformation agreement.

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

10. Compliance schedule: The emergency rule is effective July 1, 2013. OPWDD has concurrently filed the rule as a Notice of Proposed Rule Making, and it intends to finalize the rule as soon as possible within the time frames mandated by the State Administrative Procedure Act. These amendments do not impose any new requirements with which regulated

parties are expected to comply as the amendments only concern reimbursement for services provided. However, OPWDD has notified providers of its employment goals and commitment to stop funding new admissions in sheltered workshops (along with other commitments to CMS) in numerous meetings/conferences, mailings to the field, and in materials posted on its website, so that providers would have sufficient lead time to arrange for different services for individuals who may have otherwise been placed in sheltered workshops. OPWDD also specifically informed all providers of the new emergency/proposed amendments around the time of their effective date.

Regulatory Flexibility Analysis

1. Effect on small business: OPWDD has determined, through a review of the certified cost reports, that most OPWDD-funded services are provided by non-profit agencies which employ more than 100 people overall. However, some smaller agencies which employ fewer than 100 employees overall would be classified as small businesses. Currently, there are 95 agencies which operate a total of 126 sheltered workshops and which are required to comply with the emergency/proposed regulations. OPWDD is unable to estimate the portion of these providers that may be considered to be small businesses.

The emergency/proposed amendments have been reviewed by OPWDD in light of their impact on small businesses. These amendments concern the reimbursement of prevocational services delivered in sheltered workshops.

2. Compliance requirements: The emergency/proposed amendments do not impose any additional compliance requirements on providers as the amendments only concern reimbursement for services provided.

The amendments will have no effect on local governments.

3. Professional services: There are no additional professional services required as a result of these amendments and the amendments will not add to the professional service needs of local governments.

4. Compliance costs: There are no compliance costs, as the emergency/proposed amendments will not impose any additional compliance requirements on providers.

5. Economic and technological feasibility: The emergency/proposed amendments do not impose the use of any new technological processes on regulated parties.

6. Minimizing adverse impact: The purpose of these emergency/proposed amendments is to prohibit OPWDD funding for new admissions into sheltered workshops, which are considered to be segregated employment settings. Although OPWDD expects that these amendments will be cost neutral as reimbursement is commensurate with costs/expensitures for services provided, there is a possibility that they may result in a minimal adverse impact on small business providers. Individuals who might otherwise have been admitted to a sheltered workshop operated by one provider may choose to receive other pre-employment services from another provider, or may obtain competitive employment. This will result in a loss of revenue to the sheltered workshop provider. However, OPWDD expects that, in these instances, losses acquired by sheltered workshop providers will be offset by gains acquired by other providers/businesses in the community, so that, overall, any adverse impact on regulated parties would be minimal.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act (SAPA). OPWDD could not establish different compliance timetables for small business providers because these amendments are necessary to fulfill a specific commitment to the Centers for Medicare and Medicaid Services (CMS) to no longer fund new admissions to sheltered workshops effective July 1, 2013. Without these amendments, OPWDD would fail to meet its commitment to CMS and would risk loss of substantial federal funding which could jeopardize the health, safety, and welfare of individuals receiving services in the OPWDD system. Since these amendments require no specific compliance response of regulated parties, the other approaches outlined in SAPA to minimize the adverse impact cannot be effectively applied.

Lastly, OPWDD determined that stopping the funding of new admissions to sheltered workshops would be the most optimal approach in meeting its employment goals for individuals receiving services to obtain competitive employment, and to receive pre-employment services in more integrated settings. OPWDD considered that it could best achieve these goals by setting smaller objectives and taking incremental steps towards such goals. This approach will help providers make a smoother adjustment to all of the changes that are underway as part of OPWDD's transformation agreement, thereby minimizing any adverse impact on providers.

7. Small business participation: The emergency/proposed regulations were discussed with representatives of providers, including those members of the New York State Association of Community and Residential Agencies (NYSACRA) who have fewer than 100 employees, at numerous meetings and conferences. OPWDD has conveyed its employment goals,

including its objective to promulgate these amendments, to providers, at four meetings/conferences in April, six meetings/conferences in May, and four meetings/conferences in June. Further, OPWDD has notified providers of its commitment to stop new admissions in sheltered workshops (along with other commitments to CMS) in materials posted on its website and in mailings to the field, one of which was a mailing of an OPWDD document titled, "OPWDD Employment Transformation: Questions and Answers," sent out on June 10, 2013. OPWDD also specifically informed all providers of the new emergency/proposed amendments around the time of their effective date.

8. For rules that either establish or modify a violation or penalties associated with a violation: The emergency/proposed amendments do not establish or modify a violation or penalties associated with a violation.

Rural Area Flexibility Analysis

1. Description of the types and estimation of the number of rural areas in which the rule will apply: OPWDD services are provided in every county in New York State. 43 counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. Additionally, 10 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

The emergency/proposed amendments have been reviewed by OPWDD in light of their impact on rural areas. These amendments concern the reimbursement of prevocational services delivered in sheltered workshops.

2. Compliance requirements: The emergency/proposed amendments do not impose any additional compliance requirements on providers as the amendments only concern reimbursement for services provided.

The amendments will have no effect on local governments.

3. Professional services: There are no additional professional services required as a result of these amendments and the amendments will not add to the professional service needs of local governments.

4. Compliance costs: There are no compliance costs since the emergency/proposed amendments will not impose any additional compliance requirements on providers or local governments.

5. Minimizing adverse economic impact: The purpose of these emergency/proposed amendments is to prohibit OPWDD funding for new admissions into sheltered workshops, which are considered to be segregated employment settings. Although OPWDD expects that these amendments will be cost neutral as reimbursement is commensurate with costs/expenditures for services provided, there is a possibility that they may result in a minimal adverse impact on providers in rural areas. Individuals who might otherwise have been admitted to a sheltered workshop operated by one provider may choose to receive other pre-employment services from another provider, or may obtain competitive employment. This will result in a loss of revenue to the sheltered workshop provider. However, OPWDD expects that, in these instances, losses acquired by sheltered workshop providers will be offset by gains acquired by other providers in the community, so that, overall, any adverse impact on regulated parties would be minimal.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act (SAPA). OPWDD could not establish different compliance timetables for providers in rural areas because these amendments are necessary to fulfill a specific commitment to the Centers for Medicare and Medicaid Services (CMS) to no longer fund new admissions to sheltered workshops effective July 1, 2013. Without these amendments, OPWDD would fail to meet its commitment to CMS and would risk loss of substantial federal funding which could jeopardize the health, safety, and welfare of individuals receiving services in the OPWDD system. Since these amendments require no specific compliance response of regulated parties, the other approaches outlined in SAPA to minimize the adverse impact cannot be effectively applied.

Lastly, OPWDD determined that ceasing OPWDD funding of new admissions to sheltered workshops would be the most optimal approach in meeting its employment goals for individuals receiving services to obtain competitive employment, and to receive pre-employment services in more integrated settings. OPWDD considered that it could best achieve these goals by setting smaller objectives and taking incremental steps towards such goals. This approach will help providers make a smoother adjustment to all of the changes that are underway as part of OPWDD's transformation agreement, thereby minimizing any adverse impact on providers.

6. Participation of public and private interests in rural areas: The proposed regulations were discussed at meetings with representatives of

providers, including providers in rural areas such as NYSARC, the NYS Association of Community and Residential Agencies, NYS Catholic Conference, and CP Association of NYS, at numerous meetings and conferences. OPWDD has conveyed its employment goals, including its objective to promulgate these amendments, to providers, at four meetings/conferences in April, six meetings/conferences in May, and four meetings/conferences in June. Further, OPWDD has notified providers of its commitment to stop funding new admissions in sheltered workshops (along with other commitments to CMS) in materials posted on its website and in mailings to the field, one of which was a mailing of an OPWDD document titled, "OPWDD Employment Transformation: Questions and Answers," sent out on June 10, 2013. OPWDD also specifically informed all providers of the new emergency/proposed amendments around the time of their effective date.

Job Impact Statement

OPWDD is not submitting a Job Impact Statement for this emergency/proposed rulemaking because this rulemaking will not have a substantial adverse impact on jobs or employment opportunities.

The emergency/proposed amendments establish limits on the reimbursement of prevocational services delivered in sheltered workshops. The amendments limit reimbursement of prevocational services delivered in sheltered workshops to only those individuals who were receiving these services before July 1, 2013, thereby prohibiting OPWDD payment for new admissions to sheltered workshops. OPWDD expects that any losses for sheltered workshop providers as a result of situations in which individuals migrate from sheltered workshop providers to other providers of pre-employment services, or to competitive employment, will be offset by gains for other providers of pre-employment services or businesses in the community. Consequently, overall, these amendments will not have a substantial adverse impact on jobs or employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Approving a Joint Proposal Authorizing Acquisition, Subject to Conditions

I.D. No. PSC-21-12-00009-A

Filing Date: 2013-06-26

Effective Date: 2013-06-26

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

Action taken: On 6/13/13, the PSC adopted an order approving a joint proposal, dated January 25, 2013, authorizing acquisition of CH Energy Group by Fortis, Inc, subject to conditions.

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

Subject: Approving a joint proposal authorizing acquisition, subject to conditions.

Purpose: To approve a joint proposal authorizing acquisition, subject to conditions.

Substance of final rule: The Commission, on June 13, 2013, adopted an order approving, with modifications, the terms set forth in a Joint Proposal dated January 25, 2013, by the Department of Public Service Staff (Staff); the Petitioners, Fortis Inc. (Fortis) and subsidiaries, and CH Energy Group (CHEG) and subsidiaries; the Utility Intervention Unit of the Department of State (UIU); Multiple Intervenors (MI); and the Counties of Dutchess, Orange and Ulster. In doing so, the Commission concludes that the acquisition of CHEG by Fortis will provide a significant net public benefit and is in the public interest as required by § 70 of the Public Service Law (PSL). The approval is subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-M-0192SA1)

NOTICE OF ADOPTION**Approving Waiver of Certain Franchising Procedures****I.D. No.** PSC-17-13-00018-A**Filing Date:** 2013-06-27**Effective Date:** 2013-06-27

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

Action taken: On 6/13/13, the PSC adopted an order approving a petition filed by the Town of Stark, Herkimer County to waive 16 NYCRR requirements 894.1 through 894.4 pertaining to the franchising process.

Statutory authority: Public Service Law, section 216(1)

Subject: Approving waiver of certain franchising procedures.

Purpose: To approve a waiver of certain franchising procedures.

Substance of final rule: The Commission, on June 13, 2013, adopted an order approving the petition filed by the Town of Stark, Herkimer County, to waive 16 NYCRR, Sections 894.1, 894.2, 894.3 and 894.4 regarding franchising procedures, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-V-0158SA1)

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED****Major Electric Rate Increase Filing****I.D. No.** PSC-29-13-00018-P

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

Proposed Action: The Commission is considering a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its Schedules for Electric Service, P.S.C. Nos. 10, 11 and 12—Electricity.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Major electric rate increase filing.

Purpose: To establish rates and practices for electric service.

Public hearing(s) will be held at: 10:30 a.m., July 22, 2013 and continuing daily as needed at Department of Public Service, 90 Church St., 4th Fl. Boardroom, New York, NY. (Evidentiary Hearing)*

*On occasion, there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Cases 13-E-0030, 13-G-0031 and 13-S-0032.

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

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

Substance of proposed rule: The Commission is considering a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison) to increase the Con Edison electric delivery base revenues for the rate year ending December 31, 2014 by approximately \$375 million, which is a 7.2% increase in delivery revenues (or about a 3.3% increase in customers' total bill). In its proposed filing, Con Edison states the need for, among other things, continuing capital investments related to maintaining the safety and reliability of the electric system, and implementing enhanced

storm hardening. The filing also proposes concurrent changes in revenue allocation and rate design, and utility policy matters affecting the electric service and practices of Con Edison. The statutory suspension period for the proposed filing runs through December 23, 2013. The Commission may adopt, in whole or in part, modify or reject terms set forth in Con Edison's proposal or other negotiated proposals.

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: Jeffrey C. Cohen, Acting 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-0030SP2)

**PROPOSED RULE MAKING
HEARING(S) SCHEDULED****Major Gas Rate Increase Filing****I.D. No.** PSC-29-13-00019-P

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

Proposed Action: The Commission is considering a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its Schedule for Gas Service, P.S.C. No. 9—Gas.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Major gas rate increase filing.

Purpose: To establish rates and practices for gas service.

Public hearing(s) will be held at: 10:30 a.m., July 22, 2013 and continuing daily as needed at Department of Public Service, 90 Church St., 4th Fl. Boardroom, New York, NY (Evidentiary Hearing)*

*On occasion, there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS Website (www.dps.ny.gov) under Cases 13-E-0030, 13-G-0031 and 13-S-0032.

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

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

Substance of proposed rule: The Commission is considering a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison) to increase the Con Edison gas delivery base revenues for the rate year ending December 31, 2014 by approximately \$25 million, which is a 2.6% increase in delivery revenues (or about a 1.3% increase in customers' total bill). In its proposed filing, Con Edison states the need for, among other things, continuing capital investments related to maintaining the safety and reliability of the gas system, and implementing enhanced storm hardening. In addition, Con Edison states that its natural gas infrastructure is expected to grow significantly in the coming years due to the rapidly increasing gas usage resulting from oil-to-gas conversions. The filing also proposes concurrent changes in revenue allocation, rate design, and utility policy matters affecting the gas services and practices of Con Edison. The statutory suspension period for the proposed filing runs through December 23, 2013. The Commission may adopt, in whole or in part, modify or reject terms set forth in Con Edison's proposal or other negotiated proposals.

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: Jeffrey C. Cohen, Acting 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-G-0031SP2)

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

Major Steam Rate Change Filing

I.D. No. PSC-29-13-00021-P

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

Proposed Action: The Commission is considering a proposal filed by Consolidated Edison Company of New York, Inc. to make various changes in the rates, charges, rules and regulations contained in its Schedule for Steam Service, P.S.C. No. 4—Steam.

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

Subject: Major steam rate change filing.

Purpose: To establish rates and practices for steam service.

Public hearing(s) will be held at: 10:30 a.m., July 22, 2013 and continuing daily as needed at Department of Public Service, 90 Church St., 4th Fl. Boardroom, New York, NY (Evidentiary Hearing)*

*On occasion, there are requests to reschedule or postpone evidentiary hearing dates. If such a request is granted, notification of any subsequent scheduling changes will be available at the DPS website (www.dps.ny.gov) under Cases 13-E-0030, 13-G-0031 and 13-S-0032.

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

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

Substance of proposed rule: The Commission is considering a proposal filed by Consolidated Edison Company of New York, Inc. (Con Edison) to decrease the Con Edison steam delivery base revenues for the rate year ending December 31, 2014 by approximately \$5 million. The decrease is in addition to an estimated \$66 million in annual fuel cost savings that will result from the conversion of two Con Edison steam plants from burning fuel oil to natural gas. The combined effect is equivalent to an overall decrease in customers' bills of approximately 10.1%. The filing also proposes concurrent changes in revenue allocation, rate design, and utility policy matters affecting the steam services and practices of Con Edison. The statutory suspension period for the proposed filing runs through December 23, 2013. The Commission may adopt, in whole or in part, modify or reject terms set forth in Con Edison's proposal or other negotiated proposals.

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: Jeffrey C. Cohen, Acting 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-S-0032SP2)

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

Development of Reliability Contingency Plan(s) to Address the Potential Retirement of Indian Point Energy Center

I.D. No. PSC-29-13-00016-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 adopt, modify, or reject, in whole or in part, a proposed plan for energy efficiency, demand reduction, and combined heat and power filed by Consolidated Edison Company of New York Inc., et al., on June 20, 2013.

Statutory authority: Public Service Law, sections 4(1), 5(1)(b), (2), 65(1), 66(1), (2), (4), (5), (9) and (12)

Subject: Development of reliability contingency plan(s) to address the potential retirement of Indian Point Energy Center.

Purpose: To identify the proposed projects for inclusion in the Indian Point Energy Center reliability contingency plan(s).

Substance of proposed rule: The Public Service Commission (Commission) is considering whether to adopt, modify, or reject, in whole or in part, proposed energy efficiency, demand reduction, and combined heat and power projects filed in Case 12-E-0503 on June 20, 2013, by Consolidated Edison Company of New York, Inc., the New York Power Authority, and the New York State Energy Research and Development Authority (Filing). The Commission may address the June 20, 2013 Filing and related matters in developing reliability contingency plan(s) to address the potential retirement of the Indian Point Energy Center.

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: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: Secretary@dps.ny.gov

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

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

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

(12-E-0503SP4)

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

Issuance of Stocks, Bonds, Notes or Other Evidences of Indebtedness for Terms in Excess of 12 Months

I.D. No. PSC-29-13-00017-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 deciding whether to grant, modify or deny, in whole or in part, the petition of the New York Independent System Operator, Inc. (NYISO) to incur indebtedness of up to \$150 million, for a term in excess of 12 months.

Statutory authority: Public Service Law, section 69

Subject: Issuance of stocks, bonds, notes or other evidences of indebtedness for terms in excess of 12 months.

Purpose: To determine the basis upon which to authorize the issuance of the indebtedness.

Substance of proposed rule: The Public Service Commission is considering a petition from the New York Independent System Operator, Inc. (NYISO) requesting authorization, under the Public Service Law, to enter into indebtedness with a term in excess of twelve months. The NYISO proposes to issue a combined four-year credit facility, of up to \$150,000,000 (\$50,000,000 for a revolving line of credit facility and \$100,000,000 for a delayed draw, term loan) for the term beginning January 2014 through December 2017. The Commission may adopt, reject or modify, in whole or in part, the relief proposed.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.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: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, 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-0240SP1)

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

Waiver of 16 NYCRR Sections 894.1 Through 894.4(b)(2)

I.D. No. PSC-29-13-00020-P

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

Proposed Action: The Public Service Commission is considering whether to approve, modify, or reject a Petition from the Town of Carlisle to waive 16 NYCRR Sections 894.1 through 894.4 pertaining to the franchising process for the Town of Carlisle, New York.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 16 NYCRR Sections 894.1 through 894.4(b)(2).

Purpose: To allow the Town of Carlisle, NY, to waive certain preliminary franchising procedures to expedite the franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify, or reject the Petition of the Town of Carlisle, Schoharie County, New York to waive the requirements of 16 NYCRR, Sections 894.1 through 894.4 to expedite the franchising process.

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: Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, 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-V-0271SP1)