

# REGULATORY AGENDA

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## Department of Agriculture and Markets

Pursuant to subdivision 1 of section 202-d of the State Administrative Procedure Act, notice is hereby provided of the following rules which the Department of Agriculture and Markets is considering proposing but for which a rulemaking proceeding has not been commenced. All section and Part references are to Title 1 of the New York Code of Rules and Regulations, except where noted.

### DIVISION OF ANIMAL INDUSTRY

Part 45: Consider amending avian influenza testing requirements to correspond to practices in other states.

Part 46: Consider amending the program for the control and eradication of brucellosis to remove obsolete provisions and adopt updated federal standards.

Part 53: Consider amending the tuberculosis requirement to require a negative test for cattle imported from other states in order to address the increasing threat of this disease in cattle; exempting officially identified calves less than 14 days of age from veterinary inspection; requiring USDA approved identification on all cattle imported into New York except for slaughter; and repealing requirements for anaplasmosis testing.

Part 57: Consider repealing sections 57.7 through 57.23 pertaining to the salmonella enteritidis testing program.

Part 58: Consider amendments to incorporate by reference the USDA cattle tuberculosis program.

Part 59: Consider amending to remove restrictions on the use of the equine encephalitis vaccine.

Part 60: Consider amending requirements governing the intrastate movement of deer in light of amendments to health requirements for captive cervids (Part 68).

Part 61: Consider adopting recordkeeping requirements for swine, cervid, camelid, goat and sheep dealers.

Part 68: Consider amending animal health requirements to require tuberculosis surveillance on all captive cervid herds; to provide owners of herds of chronic wasting disease (CWD) susceptible species with a one-time option to move such animals to a special purpose herd; and to exempt special purpose herds of less than 10 animals from sampling requirements.

Part 77: Consider amending the standards of care for seized dogs, clarify the definition of a dog dealer and conform the definition of euthanasia to State law.

Part 82: Consider adding animal exercise requirements for pet dealers.

Name of agency contact: David C. Smith, DVM, Director, Division of Animal Industry

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### DIVISION OF FOOD SAFETY AND INSPECTION

Part 165: Consider amending regulations regarding the grading of potatoes and the definition of culls.

Part 185: Consider amending regulations to incorporate USDA standards for grades of apples.

Part 245: Consider amending regulations concerning structural and sanitary requirements for slaughterhouses.

Part 262: Consider amending regulations regarding fish processing and smoking establishments.

Part 271: Consider amending sanitation requirements for retail food stores to correspond with changes to the 2011 FDA Food Code.

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### DIVISION OF MILK CONTROL AND DAIRY SERVICES

Part 2: Consider amendments which would incorporate by reference the 2011 Pasteurized Milk Ordinance (PMO).

Section 2.8: Consider repealing the standards for sediment in prepasteurized milk and raw milk.

Part 12: Consider repealing this Part which pertains to requirements and methods for testing prepasteurized milk and raw milk for sediment.

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### DIVISION OF PLANT INDUSTRY

Part 127: Consider amending the golden nematode quarantine to deregulate areas in Orleans, Nassau and Suffolk Counties.

Parts 128, 129, 135 and 137: Consider the repeal of quarantines for the gypsy moth and regulations governing the control of the gypsy moth, blossom thinning sprays and pear root stock and seed.

Part 131: Consider the repeal the pine shoot beetle quarantine.

Part 139: Consider amending the Asian Long Horned Beetle quarantine to deregulate Manhattan and Staten Island.

Part 140: Consider amending the plum pox virus quarantine to deregulate areas in Niagara, Wayne and Orleans Counties.

Part 575 of 6 NYCRR: Consider adopting regulations to ban and regulate various plants and animals from commerce in New York based upon their invasiveness and socioeconomic values. This is a joint regulatory effort between the Department and the Department of Environmental Conservation.

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### BUREAU OF WEIGHTS AND MEASURES

Section 220.2: Consider adopting national standards for the specifications, tolerances and regulations for commercial weighing and measuring devices as published in the 2013 edition of NIST Handbook 44.

Section 220.3: Consider increasing the maximum fees that municipal directors of weights and measures can charge for inspections and adopting maximum fees for pricing accuracy inspections.

Section 220.3(6): Consider eliminating the requirement which prevents municipal directors of weights and measures from charging a fee when witnessing a test.

Section 220.4: Consider increasing fees for metrology laboratory testing.

Section 220.12: Consider increasing fees for type evaluations.

Part 221: Consider adopting NIST HB 130 model regulations allowing metric only labeling for certain consumer and non-consumer commodities.

Part 221: Consider adopting NIST HB 130 model regulations regarding the method of sale of animal bedding and vehicle engine motor oil.

Part 224: Consider adopting diameter size requirements for diesel fuel dispensers.

Section 224.3: Consider adopting standards for alternative fuels produced from biological sources such as biodiesel, blend stock ethanol, and alternative fuels such as E85 and E75.

Section 224.3(6): Consider adopting current standards of the American Society for Testing Materials (ASTM) regarding vapor lock protection for gasoline and gasoline blends.

Name of agency contact: Michael Sikula, Director, Bureau of Weights and Measures

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COUNSEL'S OFFICE

Parts 360 & 365: Consider amending regulations governing public access to records of the Department pursuant to the Freedom of Information Law and the Personal Privacy Protection Act.

Name of agency contact: Rick Arnold, Esq., Senior Attorney, Counsel's Office

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DESIGNATED AGENCY REPRESENTATIVE: Rick Arnold,

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## Education Department

### JUNE 2013 Regulatory Agenda

Pursuant to section 202-d of the State Administrative Procedure Act, the State Education Department presents its regulatory agenda for the remainder of calendar year 2013. All section and part references are to Title 8 of the New York Code of Rules and Regulations. The State Education Department reserves the right to add, delete or modify, without further notice, except as required by the State Administrative Procedure Act, any item or information presented herein as relating to the June 2013 Regulatory Agenda.

#### OFFICE OF P-12 EDUCATION

Amendment of section 100.1(a) of the Commissioner's Regulations relating to the definition of a unit of study. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.1(b) of the Commissioner's Regulations relating to the definition of a unit of credit. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment 100.1(t) of the Commissioner's Regulations relating to the definition of the ELA and mathematics standards. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.3 of the Commissioner's Regulations relating to the PreK-4 Program requirements to reflect the adoption of the Common Core Learning Standards. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4 of the Commissioner's Regulations relating to program requirements in grades 5-6 to reflect the adoption of the Common Core Learning Standards. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.5 of the Commissioner's Regulations to reflect the adoption of the Common Core Learning Standards in English Language Arts and Mathematics. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Addition of section 100.2(a)(9) of the Commissioner's Regulations to add a Regents Research Paper as a general requirement for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2 of the Commissioner's Regulations relating to general school requirements. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.5 of the Commissioner's Regulations, relating to graduation requirements. A regulatory change may be required to allow for additional options for English language learners. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.5 of the Commissioner's Regulations relating to diploma requirements for students pursuing a career/technical education program. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4(b) of the Commissioner's Regulations relating to program requirements in grades five and six. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4(c) of the Commissioner's Regulations relating to unit of study requirements in grades seven and eight. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4(d) of the Commissioner's Regulations relating to grade eight acceleration for diploma credit. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.4(h) of the Commissioner's Regulations relating to models for Middle Level Education. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.5(a), (b) and (c) of the Commissioner's Regulations relating to graduation and diploma requirements. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.5(a)(5)(i) of the Commissioner's Regulations relating to the State Assessment System. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.5 of the Commissioner's Regulations relating to implementation of the Seal of Biliteracy. Chapter 271 of the Laws of 2012 (Section 815 of Education Law) established the state Seal of Biliteracy to recognize high school graduates who have attained a high 2 level of proficiency in listening, speaking, reading, and writing in one or more languages in addition to English. The NYS Seal of Biliteracy will be awarded by the Commissioner to students who meet criteria established by the Board of Regents and attend schools in districts that voluntarily agree to participate in the program. The Seal of Biliteracy will be affixed to the high school diploma and transcript of graduating pupils attaining Seal criteria and must be made available to students at no cost. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.18 to revise the procedure for those districts seeking to open or modify a public school during a current school year as well as to address accountability issues resulting from the administration of new Grade 3-8 English language arts and mathematics assessments. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Repeal of sections 100.14 and 100.15 of the Commissioner's Regulations relating to Excelsior Scholars Program and Grants for Summer Institutes for Mathematics and Science Teachers. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 100.2(dd) of the Commissioner's Regulations, relating to professional development hours. A regulatory change may be required to specific percentage of hours for professional development specific to the needs of ELLs and language acquisition. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 117 of the Commissioner's Regulations relating to initial identification and enrollment processes for English language learners. A regulatory change may be required to align to regulatory changes made to Part 154. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 117 of Commissioner's Regulations pertaining to the screening of students to determine whether they are English language learners.

Amendment of Part 117 of the Commissioner's Regulations relating to diagnostic screening for students who are new entrants or who have low test scores in reading or mathematics. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 118 of the Commissioner's Regulations relating to revisions to the use of the State Assessments Program for school and district accountability purposes. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 125 of the Commissioner's Regulations relating to the requirements for the voluntary registration of nonpublic nursery schools and kindergartens. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 151-1.3 of the Commissioner's Regulations relating to the Universal Pre-Kindergarten program. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations relating to the instructional reporting and improvement system. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations relating to the Early Warning System and the use of standardized student-level attendance rules. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Commissioner's Regulations to conform to and implement Chapter 101 of the Laws of 2010, relating to charter schools. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 119 of the Commissioner's Regulations to add a section relating to residency determinations of students attending charter schools. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 119 of the Commissioner's Regulations to add a section relating to procedures regarding complaints brought pursuant to Education Law section 2855. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 119.1(e) of the Commissioner's Regulations relating to financing of charter schools. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 136.3(b) to conform to Education Law section 901, as amended by Laws of 2006, Ch. 58, pt. A-1, § 57, which removed exemption of the city school districts of Rochester and Buffalo from requirement to provide school health services. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 144.11 of the Commissioner's Regulations to eliminate requirement that school districts have an Early Grade Class Size Reduction Plan. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 154 of Commissioner's Regulations regarding the identification of and provision of services to Limited English Proficient students including administration of a new assessment to determine whether students are English language learners upon their first enrollment in a New York state school. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Development of a new Part of the Commissioner's Regulations to create an identification, placement and program requirements for students who are English language learners in preschool.

Amendment of Parts 100 and 200 of the Commissioner's Regulations to make certain technical amendments, including corrections to cross citations, as may be appropriate and to conform to possible changes made to federal regulations this year. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.2(b) of the Commissioner's Regulations relating to written policies for the declassification of students with disabilities, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of sections 155.1, 155.2, 155.12, 155.15 and 200.2(g) of the Commissioner's Regulations relating to special education space requirements plans, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.3(a) and (c) of the Commissioner's Regulations relating to the membership of the Committee on Special Education (CSE), Subcommittee on Special Education, and Committee on Preschool Special Education (CPSE), as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of sections 200.4(i) and 200.5(a) of the Commissioner's Regulations relating to written notice upon graduation or aging out and the development of adult service recommendations for students with disabilities placed in residential schools, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.5(b) of the Commissioner's Regulations relating to parental consent for initial provision of special education services in a 12-month special service and/or program, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.5(c) of the Commissioner's Regulations relating to written notice to parents regarding CSE, CPSE and Subcommittee meetings, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment to sections 200.5(h) and (j) of the Commissioner's Regulations relating to mediation and impartial due process hearings for students with disabilities parentally placed in private schools, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of sections 200.1(x), 200.5(j) and 200.16(h) of the Commissioner's Regulations relating to the impartial hearing procedure.

dures; and relating to the statute of limitations for requesting an impartial hearing, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of sections 200.7 and 200.20(a) of the Commissioner's Regulations relating to the program standards for private schools and preschool programs approved to serve students with disabilities. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.7(d) of the Commissioner's Regulations relating to the approval of the Commissioner of Education on an appointment of a student with a disability to a State-supported school and evaluations conducted by State-supported schools, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of sections 200.7 and 200.15 of the Commissioner's Regulations relating to the standards for the protection of students in residential care, to conform to changes to State statute, as amended by Chapter 501 of the Laws of 2012 ("Protection of People with Special Needs Act"). A regulatory flexibility analysis for local government and a rural area flexibility analysis will be required.

Amendment of section 200.16 of the Commissioner's Regulations relating to parent selection of a preschool evaluator, as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of sections 200.18 of the Commissioner's Regulations relating to fiscal audits of approved preschool programs. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 200.20(a) of the Commissioner's Regulations relating to public school districts as preschool evaluators as may be necessary to conform to changes to State statute. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

**Agency Representative:**

Information may be obtained, and written comments may be submitted, concerning any of the above proposed amendments by contacting:

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OFFICE OF HIGHER EDUCATION

Amendment of Part 30 of the Regents Rules relating to alignment of tenure areas to certain certification areas. A rural area flexibility analysis may be required.

Amendment of section 80-3.10 of the Commissioner's Regulations to clarify that the School District Leader certificate is the only certificate required for a Superintendent also performing the roles of principal or business official in small school districts. A rural area flexibility analysis may be required.

Amendment of Part 80 of the Commissioner's Regulations relating to changes regarding the new certification examinations. A rural area flexibility analysis may be required.

Amendment of section 80-1.1(47) of the Commissioner's Regulations relating to the definition of part time experience. A rural area flexibility analysis may be required.

Amendment of section 80-1.2 of the Commissioner's Regulations relating to the dates of issuance of certificates. A rural area flexibility analysis may be required.

Amendment of section 80-1.2 of the Commissioner's Regulations

relating to applications for permanent/professional certificates. A rural area flexibility analysis may be required.

Amendment of section 80-3.4 of the Commissioner's Regulations relating to education requirements for the professional certificate. A rural area flexibility analysis may be required.

Amendment of Part 83 of the Commissioner's Regulations to streamline moral character hearings. A regulatory flexibility analysis for local governments and a rural area flexibility analysis may be required.

Amendment of Part 135 of the Commissioner's Regulations to clarify the due process procedures relative to coaching licenses. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 80 of the Commissioner's Regulations to implement the teacher and principal career ladders. A regulatory flexibility analysis for local governments and a rural area flexibility analysis may be required.

Amendment of Part 52 of the Commissioner's Regulations, relating to the registration of curricula. A rural area flexibility analysis may be required.

Amendment of section 80-5.4 of the Commission Regulations regarding clarification of the length of employment for substitute teachers. A rural area flexibility analysis may be required.

Amendment of section 80-5.5 of the Commissioner's Regulations relating to § 211 waivers and school resource officers. A rural area flexibility analysis may be required.

Amendment of section 100.2(dd) and section 80-3.6 of the Commissioner's Regulations to require professional development plans to include a description of alignment to the Common Core Standards and to include as part of the 175 hour requirement, professional development and training on the Common Core Standards. A regulatory flexibility analysis for local governments and a rural area flexibility analysis may be required.

Amendment of section 100.2 of the Commissioner's Regulations related to mandatory requirement that all school officials and personnel report any known incident of misconduct by an educator or other adult involved in testing. A regulatory flexibility analysis may be required.

Amendment of Part 80 of Commissioner's Regulations relating to the certification of bilingual teaching assistants, tenure areas for bilingual teaching assistants and bilingual teachers, and professional development requirements for teachers relating to the provision of instruction to English language learners. A regulatory flexibility analysis for local governments and a rural area flexibility analysis may be required.

Amendment of section 145-2.2(b)(2)(iv)(b)(ii) to consider students for whom the requirement for full time attendance has been waived pursuant to § 661(d)(4), to be deemed as in a remedial program of study for which the number of accrued credits shall not be considered in the determination of making satisfactory progress. This would ensure that students defined as disabled will not be penalized in their eligibility for TAP. This would maintain the grade point average as a measure of satisfactory academic progress for these students. A regulatory flexibility analysis for local governments and a rural area flexibility analysis may be required.

**Agency Representative:**

Information may be obtained, and written comments may be submitted, concerning any of the above proposed amendments by contacting:

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OFFICE OF THE PROFESSIONS

Amendment of Part 29 of the Regents Rules relating to definitions of unprofessional conduct in the public accountancy and certified public accountancy professions. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 52 and Subpart 79-8 of the Commissioner's Regulations relating to educational requirements for licensure in medical physics. A rural area flexibility analysis may be required.

Amendment of Part 61 of the Commissioner's Regulations relating to dental anesthesia certification. A regulatory flexibility analysis for small businesses and a rural area flexibility analysis may be required.

Amendment of Part 65 of the Commissioner's Regulations relating to the implementation of Chapter 438 of the Laws of 2012 which expanded the definition of the practice of podiatry, established new ankle surgery privileges, and authorized the Department to issue ankle surgery limited permits. A rural area flexibility analysis may be required.

Amendment of section 60.8 of the Commissioner's Regulations relating to the segregation, in law, of physician assistants and specialist assistants and conversion of physician assistants from a registered profession to a licensed profession; retaining specialist assistants as a registered profession. A rural area flexibility analysis may be required.

Amendment of Part 76 of the Commissioner's Regulations relating to the continuing competency requirements for occupational therapists and occupational therapy assistants. A rural flexibility analysis and a regulatory flexibility analysis for small business may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning any of the above proposed amendments by contacting:

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OFFICE OF CULTURAL EDUCATION

Amendment of Part 90 of the Commissioner's Regulations, relating to the library and library system programs and services. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the above proposed amendment by contacting:

Bernard A. Margolis

State Librarian and Assistant Commissioner for Libraries

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New York State Library

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Amendment of sections 189.1 and 189.3 of the Commissioner's regulations relating to the Documentary Heritage program, to revise procedures for the award of grants and for the provision of field services. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of Part 188 of the Commissioner's Regulations related to state government archives and records management to update the agency fee list to match the current organizational structure of executive branch agencies. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 3.12 of the Rules of the Board of Regents, relating to Councils of the Board of Regents, to add the State Historical Records Advisory Board as a Regents advisory body.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning any of the above proposed amendments by contacting:

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OFFICE OF ADULT CAREER AND CONTINUING EDUCATION SERVICES (ACCES)

Vocational Rehabilitation

Amendment of Parts 246, 247 and 248 of the Commissioner's Regulations, regarding conforming and technical amendments pertaining to the vocational rehabilitation and independent living programs. A regulatory flexibility analysis for local government and a rural flexibility analysis may be required.

Amendment of Parts 246, 247 and 248 of the Commissioner's Regulations relating to the State vocational rehabilitation and independent living programs, as necessary, to eliminate references to the former Office of Vocational and Educational Services for Individuals with Disabilities. A regulatory flexibility analysis for local government and a rural flexibility analysis may be required.

Amendment of Part 246 of the Commissioner's Regulations relating to sheltered workshop programs and community rehabilitation providers, as may be necessary to conform to federal regulations and to reflect new standards for services established in contracts. A regulatory flexibility analysis for local government and a rural flexibility analysis may be required.

Amendment of Parts 246 and 247 of the Commissioner's Regulations relating to the State vocational rehabilitation program operated pursuant to Title I of the Rehabilitation Act, as may be appropriate in order to conform to possible changes made if Congress reauthorizes that act this year. A regulatory flexibility analysis for local government and a rural flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning the modification or continuation of any of the above rules by contacting:

Frank Coco, CRC

Manager, VR Policy and Partnerships

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Adult Education Programs and Policy

Amendment to Section 100.7 of the Commissioner's Regulations that would update and revise outdated provisions as well as authorize a process whereby assessments other than the approved and subsidized New York State High School Equivalency exam could be approved as an alternative pathway to a High School Equivalency Diploma. An independent expert panel of nationally recognized educational assessment specialists would review educational assessments which would have to demonstrate their alignment with Common Core Standards. A regulatory flexibility analysis for local government and a rural flexibility analysis may be required.

Agency Representative:

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Mark Leinung,

Director – Adult Education Programs and Policy

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 OFFICE OF STATE REVIEW

Amendment of section 279.1 of the Commissioner's Regulations, relating to the incorporation and clarification of definitions and other provisions, as relevant to state-level review of hearings for students with disabilities, that are currently referenced in Parts 275 and 276; deletion of references to parts 275 and 276; clarification of the jurisdiction of a state review officer and procedures regarding state review proceedings; and clarification regarding the authority of a state review officer to review manifestation determinations. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.2 of the Commissioner's Regulations, relating to timelines for serving and filing a Notice of Intention to Seek Review; clarification of purpose of Notice of Intention to Seek review; clarification of timeframe in which to serve upon another party and file a Notice of Intention to Seek review; and addition of a notice of certification requirement. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.3 of the Commissioner's Regulations, relating to service of an answer. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.4 of the Commissioner's Regulations, relating to the initiation and scope of a review and the timeliness of an appeal, clarify sufficiency of content and time in which to serve the petition for review and memorandum of law upon the opposing party; procedures for filing a petition for review with the Office of State Review; and add disclosure of whether a related action or proceeding is pending in another forum. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.5 of the Commissioner's Regulations, relating to the content and service of an answer and supporting papers upon the opposing party and filing with the Office of State Review. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.6 of the Commissioner's Regulations, relating to additional pleadings and new matters raised in an answer. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.7 of the Commissioner's Regulations, relating to verification of pleadings. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.8 of the Commissioner's Regulations, relating to the table of authorities, clarification of the requirement that pleadings be signed consistent with 22 NYCRR 130-1.1a(a); and submission of electronic copies of pleadings and memoranda of law. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.9 of the Commissioner's Regulations, relating to content and submission of record; certification of record and clarification that 279.9 (b) refers to complete record. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.10 of the Commissioner's Regulations, relating to requests for extensions of time and length of extensions permitted; submission of additional evidence; clarification of effect of agreements to extend the time in which to initiate a review. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.11 of the Commissioner's Regulations, relating to calculating date of mailing and type of mail. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.12 of the Commissioner's Regulations, clarifying provisions relating to the finality of state review officer decisions. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Amendment of section 279.13 of the Commissioner's Regulations, relating to service of petition for review. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Addition of 279.15 of the Commissioner's Regulations, relating to definitions of terms in Part 279. A regulatory flexibility analysis for local government and a rural area flexibility analysis may be required.

Agency Representative:

Information may be obtained, and written comments may be submitted, concerning any of the above proposed amendments by contacting:

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## Department of Environmental Conservation

The New York State Department of Environmental Conservation maintains an updated regulatory agenda on its website @ <http://www.dec.ny.gov/regulations/36816.html>

## Department of Financial Services

Pursuant to section 202-d of the State Administrative Procedure Act ("SAPA"), the following Regulatory Agenda is a list of the regulatory additions and amendments to Titles 3, 11, and 23 of the NYCRR that the New York State Department of Financial Services ("Department") is presently considering proposing during the second half of 2013. Many of these items were previously published in the January 2013 Regulatory Agenda. Items that have already been published in the State Register as "proposed" actions are not included on the list. The Department's regulatory plans are subject to change and the Department reserves the right to add to, delete from, or modify items in the Agenda without further notice.

This notice also is intended to provide small businesses, local governments, and public and private interests in rural areas with the opportunity to participate in the rule making process, as required by sections 202-b and 202-bb of SAPA.

### I. Insurance Regulations

For inquiries about a specific item, please contact the person(s) identified in the item. For general inquiries about the Insurance Regulations included in this Regulatory Agenda, or to obtain copies of current Insurance Regulations, please contact:

Sally Geisel, Associate Attorney  
 Camielle Barclay, Senior Attorney  
 New York State Department of Financial Services  
 One State Street  
 New York, NY 10004

Telephone Numbers: Sally Geisel - (212) 480-5287 and Camielle Barclay - (212) 480-5299

1. Summary description of proposal: Amendment to 11 NYCRR 83 (Financial Statement Filings and Accounting Practices and Procedures) (Insurance Regulation 172), in response to amendments to the Accounting Practices and Procedures Manual, including Statements of Statutory Accounting Principles (published by the National Association of Insurance Commissioners), which is incorporated by reference in the regulation. Agency Contacts: Sally Geisel, Associate Attorney and Camielle Barclay, Senior Attorney, Office of General Counsel - (212) 480-5287 and (212) 480-5299.

2. Summary description of proposal: Adoption of a new part to 11

NYCRR to address certain business practices in the title insurance industry and the supervision of title insurers authorized to write title insurance in this state. Agency Contact: Paul Zuckerman, Office of General Counsel - (212) 480-5286.

3. Summary description of proposal: Amendment of 11 NYCRR 72 (Indemnification of Directors and Officers) (Insurance Regulation 110) to specify co-insurance and retention amounts for state credit unions and make technical corrections. Agency Contact: Brenda Gibbs, Senior Attorney, Office of General Counsel - (518) 408-3451.

4. Summary description of proposal: Adoption of a new part to 11 NYCRR to require insurers to file an enterprise risk report and own risk and solvency assessment. Agency Contact: Joana Lucashuk, Senior Attorney, Office of General Counsel - (212) 480-2125.

5. Summary description of proposal: Adoption of a new 11 NYCRR 244 (Insurance Regulation 168) to guide and enable insurers to guard against the disclosure of confidential information pertaining to domestic violence victims and endangered individuals. Agency Contact: Joana Lucashuk, Senior Attorney, Office of General Counsel - (212) 480-2125.

6. Summary description of proposal: Amendment of 11 NYCRR 178 (Insurance Regulation 163) to conform to revisions made in 2012 to Insurance Law § 1410(f), governing derivative transactions. Agency Contact: Michael Campanelli, Office of General Counsel - (212) 480-5290.

7. Summary description of proposal: Adoption of a new 11 NYCRR 72 (Exclusion Clauses) to address certain exclusion language included in some property/casualty policies. Agency Contact: Joana Lucashuk, Senior Attorney, Office of General Counsel - (212) 480-2125.

8. Summary description of proposal: Amendment of 11 NYCRR 19 (Homeowners Insurance; Applications for Withdrawal from Marketplace) (Insurance Regulation 154) to modify the definition of "material reduction of volume of policies." Agency Contact: Joana Lucashuk, Senior Attorney, Office of General Counsel - (212) 480-2125.

9. Summary description of proposal: Amendment of 11 NYCRR 136 (Standards for the Management of the New York City and New York State Retirement Systems) (Insurance Regulation 85) to establish higher ethical standards, strengthen internal controls and governance, and enhance the operational transparency of the city and state retirement systems. Agency Contact: Martha Lees, General Counsel for Insurance, Office of General Counsel - (212) 480-5282.

10. Summary description of proposal: Amendment of Part 101 to 11 NYCRR (Standards for Financial Risk Transfer Between Insurers and Health Care Providers) (Insurance Regulation 164) to permit, in consultation with the commissioner of the Department of Health, certain insurers to enter into financial risk transfer agreements with Accountable Care Organizations. Agency contact: Pascale Jean-Baptiste, Associate Attorney, Office of General Counsel - (212) 480-5289.

11. Summary description of proposal: Amendment of 11 NYCRR 89 (Audited Financial Statements) (Insurance Regulation 118) to improve the Department's surveillance of the financial condition of insurers by requiring an annual audit of financial statements by independent certified public accountants and the filing of audit reports and other related documents. Agency Contact: Dennis Fernez, Assistant Chief, Life Bureau - (212) 480-5032.

12. Summary description of proposal: Amendment of 11 NYCRR 27 (Excess Line Placements Governing Standards) (Insurance Regulation 41) to revise the various sections of Insurance Regulation 41 to conform to the requirements of the Non-Admitted and Reinsurance Reform Act of 2010 ("NRRA"). Agency Contact: Hoda Nairooz, Principal Insurance Examiner, Property Bureau - (212) 480-5587.

13. Summary description of proposal: Amendment of 11 NYCRR 62-2 (Reports to Central Organization) (Insurance Regulation 96) to remove references to Property Insurance Loss Register (PILR), replacing them with "Central Reporting Organization." Agency Contact: Hoda Nairooz, Supervising Insurance Examiner, Property Bureau - (212) 480-5595.

14. Summary description of proposal: Amendment of 11 NYCRR 60-2 (Supplementary Uninsured/Underinsured Motorists Insurance)

(Insurance Regulation 35-D) to replace references in sections 60-2.3 and 60-2.4 to "AAA/American Arbitration Association" with "designated organization"; amend rules related to the manner in which the organization designated by the Superintendent to administer the SUM arbitration program assesses the cost of the program to the insurance industry; and clarify the intent and application of the coverage via various editorial revisions to the regulation and to the prescribed policy endorsement form. Agency Contact: Hoda Nairooz, Supervising Insurance Examiner, Property Bureau - (212) 480-5595.

15. Summary description of proposal: Amendment of 11 NYCRR 60-2 (Supplementary Uninsured/Underinsured Motorists Insurance) (Insurance Regulation 35-D) to expand the definition of the term "insured" contained within subdivision 60-2.3(f) of the prescribed policy endorsement form in order to implement broadened coverage for certain insureds, as required by newly added Insurance Law Section 3420(f)(5), which became effective April 16, 2013. Agency Contact: Hoda Nairooz, Supervising Insurance Examiner, Property Bureau - (212) 480-5595.

16. Summary description of proposal: Adoption of a new part to 11 NYCRR 224 (Insurance Regulation 187) to set forth standards and procedures for the sale and purchase of annuities to ensure that annuities are suitable for the insurance needs and financial objectives of consumers. Agency Contact: Michael Maffei, Chief, Life Bureau - (212) 480-5027.

17. Summary description of proposal: Adoption of a new part to 11 NYCRR 226 (Insurance Regulation 200) to require the performance of regular cross-checks of an insurer's life insurance policies, annuity contracts and retained asset accounts with the United States Social Security's Death Master File or another database or service approved by the Superintendent of Financial Services to identify any death benefit payments that may be due under life insurance policies, annuity contracts, or retained asset accounts as a result of the death of an insured or contract or account holder; require insurers to request more detailed beneficiary information to facilitate locating and making payments to beneficiaries; and require insurers to respond to consumer requests submitted through the Department of Financial Services' Lost Policy Finder application. Agency Contact: Michael Maffei, Chief Examiner, Life Bureau - (212) 480-5027.

18. Summary description of proposal: Repeal of 11 NYCRR 380 (Insurance Regulation 148) (Viatical Settlements) and adoption of a new part to 11 NYCRR to implement Article 78 (Life Settlements) of the Insurance Law. Agency Contact: Deborah Kahn, Associate Insurance Policy Examiner, Life Bureau - (518) 474-4552.

19. Summary description of proposal: Amendment of 11 NYCRR 97 (Market Value Separate Accounts Funding Guaranteed Benefits; Separate Accounts Operations and Reserve Requirements) (Insurance Regulation 128) to change the discount rate used to determine the value of guaranteed contract liabilities. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau - (518) 474-7929.

20. Summary description of proposal: Amendment of 11 NYCRR 98 (Valuation of Life Insurance Reserves) (Insurance Regulation 147) to revise existing standards for universal life insurance products with secondary guarantees. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau - (518) 474-7929.

21. Summary description of proposal: Amendment of 11 NYCRR 99 (Valuation of Annuity, Single Premium Life Insurance, Guaranteed Interest Contract and Other Deposit Reserves) (Insurance Regulation 151) to adopt a new mortality table for valuing annuity reserves in consideration of a proposed NAIC adoption of such table. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau - (518) 474-7929.

22. Summary description of proposal: Amendment of 11 NYCRR 98 (Valuation of Life Insurance Reserves) (Insurance Regulation 147) to revise existing standards for universal life insurance products with secondary guarantees in consideration of recent adopted changes to NAIC standards. Agency Contact: Fred Andersen, Supervising Actuary, Life Bureau (518) 474-7929.

23. Summary description of proposal: Adoption of a new part to 11 NYCRR or amendment of existing parts of 11 NYCRR to implement changes required by the federal Patient Protection and Affordable

Care Act of 2010. Agency Contact: Eileen Hayes, Assistant Chief, Health Bureau - (518) 486-7815.

24. Summary description of proposal: Adoption of a new Part 440 to 11 NYCRR (Insurance Regulation 201) to establish, in consultation with the commissioners of the Departments of Health and Education, standards of professionalism, supervision, and relevant experience for individuals who provide or supervise the provision of behavioral health treatment in the form of applied behavior analysis, for insurance coverage pursuant to Insurance Law sections 3216(i)(25), 3221(l)(17) and 4303(ee). Agency Contact: Abby Nash, Senior Insurance Attorney, Health Bureau - (518) 473-7470.

25. Summary description of proposal: Amendment of 11 NYCRR 39 (Minimum Standards for the New York State Partnership for Long-Term Care Program) (Regulation 144) to update the minimum daily benefit amounts from 2014 through 2023 for the New York State Partnership for Long-Term Care Program. Agency Contact: Austin Rinella, Supervising Insurance Attorney, Health Bureau - (518) 486-5253.

26. Summary description of proposal: Amendment of 11 NYCRR 362 (The Healthy New York Program and the Direct Payment Stop Loss Relief Program) (Regulation 171) to conform with statutory amendments that discontinue the Healthy New York program for individuals and sole proprietors and revise covered benefits for small employer groups to comply with federal requirements. Agency Contact: Mary Frances Sabo, Associate Insurance Attorney, Health Bureau - (518) 486-7815.

27. Summary description of proposal: Adoption of a new part to 11 NYCRR and/or amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) to adopt requirements for the minimum standards for the form, content and sale of policies and contracts of student accident and health insurance. Agency Contact: Sarah L. Allen, Associate Insurance Attorney, Health Bureau (518) 486-7815.

28. Summary description of proposal: Amendment of 11 NYCRR 52 (Minimum Standards for Form, Content and Sale of Health Insurance, Including Standards of Full and Fair Disclosure) (Regulation 62) and/or amendment of 11 NYCRR 360 (Rules to Assure an Orderly Implementation and Ongoing Operation of Open Enrollment and Community Rating of Individual and Small Group Health Insurance) (Regulation 145) to set forth requirements regarding the payment of commissions, fees and other compensation to agents and brokers. Agency Contact: Lydia Hoffman, Associate Insurance Attorney, Health Bureau - (518) 402-4139.

29. Summary description of proposal: Amendment of 11 NYCRR 86.6 (Fraud Prevention Plans and Special Investigations Unit) (Insurance Regulation 95) to establish a requirement that any amendment to a fraud prevention plan that the Criminal Investigations Unit had previously approved must be submitted to the Criminal Investigations Unit within thirty days of its implementation. Agency Contact: Edward Ferrity, Counsel, Criminal Investigations Unit - (212) 480-5683.

30. Summary description of proposal: Adoption of a new Part to 11 NYCRR to set forth rules regarding, among other things, the rating and placement of, and practices related to, force-placed insurance. Agency Contact: Brian Montgomery, Associate Counsel, Financial Frauds and Consumer Protection Division - (212) 480-2296.

## II. Banking Regulations

For inquiries about the Banking Regulations included in this Regulatory Agenda, or to obtain copies of current Banking Regulations, please contact:

Sam L. Abram  
Assistant Counsel  
New York State Department of Financial Services  
One State Street  
New York, NY 10004  
Telephone Number: (212) 709-1658

1. Summary description of proposal: Adoption of new rules to

implement the provisions of legislation addressing the mortgage foreclosure crisis in the state, including:

(a) Rules governing the registration and financial responsibility requirements for mortgage loan servicers (rules on this subject were adopted on an emergency basis most recently on June 9, 2013);

(b) Rules governing the business conduct of mortgage loan servicers (rules on this subject were adopted on an emergency basis most recently on April 2, 2013);

(c) Rules determining the applicability of those mortgage loan servicer regulations to loans secured by interests in manufactured housing;

(d) Rules governing the licensing and education requirements for mortgage loan originators (rules on this subject were adopted on an emergency basis most recently on May 23, 2013); and

(e) Rules concerning force-placed insurance

2. Summary description of proposal: Amendment of various aspects of the regulations of mortgage brokers and mortgage bankers, including regulations on advertising, misleading business conduct, disclosures for new mortgage loans and loan modifications, table funding and participation in the Federal Housing Administration's correspondent lender program, including revisions to implement provisions of state legislation addressing the mortgage crisis and to take account of changes in federal laws and regulations.

3. Summary description of proposal: Amendment of the Banking Regulations regarding the Banking Development District ("BDD") program to implement amendments to the BDD legislation.

4. Summary description of proposal: Amendment of the Banking Regulations to:

(a) codify the net worth requirements for check cashers;

(b) codify the net worth requirements and establish liquidity requirements for premium finance agencies;

(c) establish net worth and line of credit requirements for licensed lenders; and

(d) establish net worth requirements for sales finance companies.

5. Summary description of proposal: Amendment of Part 41 of the General Regulations of the Banking Board to address threshold limits, the impact of lender paid fees, and otherwise to conform to the requirements of Section 6-l of the Banking Law.

6. Summary description of proposal: Amendment of Part 79 of the General Regulations of the Banking Board to incorporate advertising requirements for reverse mortgage loans and clarify the applicability of disclosure and filing requirements for HUD-HECMS.

7. Summary description of proposal: Amendment of Part 410 of the Superintendent's Regulations to clarify language on required notifications to the Department.

8. Summary description of proposal: Amendment of Part 82 of the General Regulations of the Banking Board or adopting new rules to effectuate amendments to Section 6-f of the Banking Law with respect to shared appreciation mortgages.

9. Summary description of proposal: Adoption of new rules clarifying that when financial statements submitted to the Department are required by law or regulation to be audited, the external auditors who provide the audit opinion on the statements may not also perform bookkeeping services for the audited entity.

10. Summary description of proposal: Amendment of Supervisory Procedure CB 117 in connection with the Department's consideration of adopting the interagency change of control application used by the federal financial institutions regulatory agencies.

11. Summary description of proposal: Adoption of a new regulation setting forth the manner and extent to which credit exposure resulting from derivative transactions, repurchase agreements, reverse repurchase agreements, securities lending transactions and securities borrowing transactions are to be taken into account for purposes of the lending limits applicable to banks, trust companies, savings banks and savings and loan associations. (Rules on this subject were adopted on an emergency basis most recently on April 17, 2013.)

12. Summary description of proposal: Adoption of a new regulation

formalizing the assessment process for persons regulated under the Banking Law. (Rules on this subject were adopted on an emergency basis most recently on April 28, 2013.)

### III. Financial Services Regulations

For specific inquiries about the Financial Services Regulation included in this Regulatory Agenda, please contact the person identified in the item. For general inquiries about the item, or to obtain copies of current Financial Services Regulations, please contact any one of the following:

Sam Abram, Associate Counsel  
Sally Geisel, Associate Attorney  
Camielle Barclay, Senior Attorney  
New York State Department of Financial Services  
One State Street  
New York, NY 10004

Telephone Numbers: Sam Abram - (212) 709-1658; Sally Geisel - (212) 480-5287; Camielle Barclay - (212) 480-5299

1. Summary description of proposal: Adoption of a new Part 23 NYCRR to set forth standards for the collection of consumer debts to prevent abusive and deceptive collection practices. Agency Contact: Max Dubin, Assistant Counsel, Financial Frauds and Consumer Protection Division - (212) 480-7232.

## Department of Health

The following regulatory actions are under consideration for submission as a Notice of Proposed Rulemaking from July through December 2013:

### DESCRIPTION OF THE RULE SUBJECT MATTER

#### Title 10 NYCRR (Health)

Accountable Care Organizations - Promulgate regulations governing ACOs pursuant to Article 29-E of the Public Health Law, including criteria for issuing certificates of authority, quality standards, and reporting requirements.

Family Health Care Decisions Act - Promulgate regulations as required under Public Health Law section 2994-t (L. 2010, Ch. 8).

1.31 Disclosure of Confidential Cancer Information for Research Purposes - Amend the existing regulation which specifies that confidential cancer data can only be disclosed for governmental or government-sponsored research projects to be more consistent with current cancer research needs and sponsorship practices. The regulations will provide clearer definitions of the circumstances under which cancer information can be released for research and non-research purposes.

2.5 Communicable Diseases – Revise the list of reportable diseases in 10 NYCRR, section 2.5 (list of diseases for which physicians have a duty to submit specimens) to be consistent with those listed in section 2.1. Revision will ensure appropriate reporting of diseases that are of public health importance, enable public health officials to identify outbreaks and new or emerging infections in a timely manner, contain transmission, implement prevention and control measures, and evaluate the effectiveness of the public health response.

2.10 Communicable Diseases -The list of reportable diseases defined in the New York State Sanitary code (10 NYCRR 2) is periodically modified in response to new emerging infections and changing priorities for disease surveillance. The addition of new or emerging cases to the list of reportable communicable diseases allows public health officials to prevent secondary transmission, identify new emerging infections, identify outbreaks and evaluate the effectiveness of control measures. Some communicable diseases, though important public health problems, may be either exceedingly rare or no longer pose a significant risk to the public. They do not require a public health response and should, therefore, be deleted from the list of reportable communicable diseases.

2.14 Communicable Diseases - Update the rabies regulations to be consistent with changes enacted to the Public Health Law (PHL). The regulations will provide definitions and requirements for reporting human exposures, confinement of animals exposing people to rabies,

quarantine of animals exposed to rabies, and county responsibility for establishing provisions for animal control related to rabies.

5-1 Public Water Systems - Amend the regulation to reflect changes to Public Health Law section 1125 pertaining to water supply emergency plans.

5-1 Public Water Systems - Amend the regulation to incorporate mandatory federal regulations to improve control of microbial pathogens (federal LT2SWTR) while limiting risks associated with the formation of and exposure to disinfection byproducts (federal Stage 2 D/DBPR).

5-1 Public Water Systems - Amend the regulation to incorporate mandatory federal regulations to improve the control of lead and copper in public water supply systems. This will include the federal minor revisions and short-term revisions to the Lead and Copper Rule (LCR). To be included will be a restructuring of 5-1 Appendix C to update and simplify listings of analytical methods approved for drinking water, including lead and copper analyses.

5-1 Public Water Systems - Amend the regulation to update provisions pertaining to backflow device tester certification requirements; revise the provisions applicable to variances and exemptions and update and clarify specific code references.

7-2 Children's Camps – Amend the regulation to address the requirements of the Laws of 2012 Chapter 501, which established the New York State Justice Center for the Protection of People with Special Needs (Justice Center) to strengthen and standardize the safety of vulnerable people that receive care from New York's Human Services Agencies and Programs. The legislation includes children's camps for children with developmental disabilities as a type of facility within the oversight of the Justice Center and requires the Department to promulgate regulations approved by the Justice Center pertaining to staff hiring, staff training and incident management.

12.3 Precautions to be observed for the prevention of hemorrhagic diseases and coagulation disorders of the newborn and infants related to vitamin K deficiency - Amend the existing regulation which specifies the requirements for the administration of vitamin K to newborn infants to be consistent with current standards of medical care and the American Academy of Pediatrics' Policy Statement.

14 Food Protection - Amend the regulation to consolidate all current subparts by adopting Chapters one through seven of the U.S. Food and Drug Administration (FDA) Model Food Code. Adopting the technical content of the Model Food Code will make Part 14 consistent with national standards. The amendments will also promote uniformity among local health departments, many of which have already established local requirements more consistent with the FDA Model Food Code.

16 Ionizing Radiation - Amend the regulation for consistency with federal requirements applicable to medical and industrial use of radioactive material, radiation protection standards and license termination/decommissioning standards. Update the quality assurance requirements for diagnostic x-ray equipment, including computed tomography, to align with current equipment and imaging modalities to ensure patient safety. Consolidate current requirements in 12 NYCRR 38 (NYS DOL Ionizing Radiation) into 10 NYCRR 16, consistent with the merger of the NYS DOL Radiological Health unit into the DOH/CEH/BERP program in 2006.

19 Clinical Laboratory Directors - Revise qualifications for directors of clinical laboratories to recognize professional boards accepted as qualifying under the federal Clinical Laboratory Improvement Amendments (CLIA); and codify the definition of assistant director; and establish qualifications for directors of forensic identity and other categories not currently specified in the regulation.

22.3 Supplementary Reports of Certain Congenital Anomalies for Epidemiological Surveillance; Filing - Amend the regulation by requiring reporting to the Congenital Malformations Registry of children up to 10 years of age with certain birth defects, as well as fetuses diagnosed with defects prior to birth. Reporting of cytogenetic test results confirming presence of a birth defect will also be required. Changes will support an improved ability to accurately document prevalence rates for certain birth defects and help monitor the impact of environmental factors or preventive measures.

22.7 Reportable Levels of Heavy Metals in Blood and Urine - Amend the regulation to remove the threshold levels for reporting cadmium, mercury and arsenic. All laboratory tests for cadmium, mercury and arsenic will be submitted to enable case monitoring to assist in assessing interventions and education to reduce elevated exposures.

23.2 - Sexually Transmitted Diseases Treatment Facilities – Modify relevant sections of Part 23 Control of Sexually Transmissible Diseases consistent with recent statutory amendments as follows:

- Repeal of Public Health Law sections 2300, 2301, 2302, 2303, 2309, 2310

- Amendment of Public Health Law Sections 2304, 2305, 2306, 2308, 2308a, 2311 as follows:

- o Move from provision of diagnosis and treatment of Sexually Transmitted Diseases (STDs) by local health departments ‘free of charge’ to allowing for third party reimbursement

- o Change the word ‘transmissible’ to ‘transmitted’ throughout

- o Change the word ‘venereal’ to ‘sexually transmitted’ throughout

- o Define the term ‘health officer’

- o Add the provision of diagnosis and treatment services by local health departments through contracts

39 Payment of State Aid - Amend the regulation to comply and maintain consistency with the recent Public Health Law Article 6 statute changes.

40 State Aid for Public Health Services: Counties and Cities - Amend the regulation to comply and maintain consistency with the recent Public Health Law Article 6 statute changes.

40-2 State Aid for Public Health Services: Counties and Cities - Amend the regulations to amend Subpart 40-2 to clarify eligible technical assistance activities pertaining to delivery of the Realty Subdivision program and Individual Water and Sewer programs.

46 Physically Handicapped Children - Amend the existing regulation to update and clarify current policy regarding coverage of medical and orthodontic services to children under the age of 21 years under the Physically Handicapped Children’s Program. The proposed amendments will allow the inclusion of specific orthodontic procedures and criteria in the Department’s Medicaid Dental Provider Manual.

52 Tissue Banks and Nontransplant Anatomic Banks - Revise requirements for procurement of tissue from deceased donors, including setting restrictions on banks’ ownership and business relationships with funeral directors and funeral firms, and limiting recovery of tissue to hospitals and appropriately licensed banks, and update technical requirements to reflect advances in technology and changes in industry standards and enhance monitoring and enforcement of restrictions on the sale of human tissue for transplant.

52-12 Therapeutic Cell Banks - Promulgate a new subpart to propose standards for the collection, processing, storage, and distribution of nucleated somatic cells, including, but not limited to, mesenchymal cells, embryonic stem cells, dendritic cells, and stromal cells, intended for a therapeutic purpose other than hematopoietic reconstitution.

55-2 Approval of Laboratories Performing Environmental Analysis - Amend the regulation to accommodate for a tiered level of certification pertaining to types of analysis performed, application requirements, requirements for on-site assessment and proficiency testing as well as requisite qualification of technical directors, and to clarify that regulated analytes exclude analytes considered process controls by the NYS Department of Environmental Conservation (DEC).

57 Rabies - Dogs at Large in Rabies Areas - Delete this provision. It is outdated since rabies is endemic in wildlife in New York. Important provisions are being included in section 2.14. This Part is no longer needed, and is proposed for deletion.

58-1 Clinical Laboratories - Revise laboratory personnel requirements to reflect industry standards; consolidate existing requirements for clarity; codify quality systems, performance testing and other requirements as necessary to align with federal CLIA standards; clarify assistant director responsibilities; establish standards for track-

ing and referral of critical agent and communicable disease specimens; and establish standards for demonstrating the technical and clinical validity of test methods.

58-2 Blood Banks - Amend the regulations to permit emergency medical technicians, with additional training, to administer transfusions during inter-facility transport; enhance donor and patient safeguards; update technical requirements; eliminate obsolete requirements; clarify regulatory intent; meet federal requirements as directed by the Centers for Medicare and Medicaid Services; provide regulated parties with greater flexibility in complying with regulations regarding emergency transfusions, qualifying donors over 75 and apheresis donors, and provide options for equivalent electronic records.

58-5 Hematopoietic Progenitor Cell Banks - Update requirements for donor suitability determination, infectious disease testing, and record keeping related to hematopoietic progenitor cell (HPC) donation and transplantation. Amend the regulations to require the HPC bank medical director to establish a policy regarding testing allogeneic donors for West Nile virus, Trypanosoma cruzi, and hemoglobinopathies.

58-8 Human Immunodeficiency Virus (HIV) Testing - Amend the regulation to create consistency with the HIV testing law implemented September 1, 2010 and supporting regulations of Part 63. Address updated technologies and revise testing algorithms for the management of HIV.

60-1.13 Vendor Applicant Enrollment Criteria – Amend the regulation to maintain compliance with USDA program requirements regarding vendor authorization and management including vendor participant ratio, geographic proximity and transaction volume of nearby vendors.

66-1.1 thru 66-1.10 and 66-2.1 through 66-2.9 Immunization - Update the regulations to be consistent with changes enacted to the PHL. The regulations will codify Advisory Committee on Immunization Practice recommendations and incorporate by reference the recommended vaccination schedule, as well as the catch-up schedule. Language will also be added to clarify medical exemptions, acceptable serology, what it means to be “in process”, annual school immunization survey requirements, and change physician diagnosis standards for measles and mumps to reflect the rarity of these diseases. The regulations will also seek to establish time limits for completion of needed immunizations.

66-1.2 Immunization - Amend the regulation to redefine “registrants” and “authorized user” as they apply to the New York State Immunization Information System (NYSIIS). The regulation will seek to expand and clarify information that is required to be reported to NYSIIS or the Citywide Immunization Registry (CIR). Language will be added to clarify those eligible for read and /or write access to NYSIIS.

69-1 Testing for Phenylketonuria and Other Diseases and Conditions - Amend 69-1.2(b) of the regulation to include Adrenoleukodystrophy (XALD) to the list of diseases or conditions for newborn testing.

69-4 Early Intervention Program - Amend the regulations, as needed, to comply with 34 CFR Parts 300 and 303 issued on September 28, 2011. Amendments are also needed to Early Intervention Program regulations to comply with statutory changes enacted with the SFY 2012-13 budget. Section 10 NYCRR Section 69-4.30 will be amended to clarify the commissioner’s authority to establish a fixed payment methodology for service coordination services. Amendments may also be needed to address other areas of regulation to ensure quality and consistency of EI service delivery.

69-8 Newborn Hearing Screening - Amend the regulation to specify follow-up where conditions of the screening are considered to contribute to invalid results; require reporting of individualized, identifiable data to the department; require staff involved in newborn hearing screenings to complete training; require that infants who fail an initial screening receive at least one additional screening prior to discharge; require that a re-screening post discharge from a facility occur within 8 weeks of discharge; require that an infant be referred to the early intervention program as an at-risk child, unless the parent objects, if the results of a follow-up outpatient screening are not returned to the

facility within 45 days post discharge; require reporting to an electronic data system.

72-1 Tanning Facilities - Amend the regulations to be consistent with recent Chapter 105 of the Laws of 2012 amendments to Public Health Law Article 35-A –Tanning Facilities. The regulations will be amended to reflect the recent changes to the Public Health Law Section 3555 which prohibit individuals under seventeen (17) years of age from utilizing indoor tanning facilities. Additionally, the proposed amendments will clarify a LHDs authority to implement the program.

72-2 Body Piercing and Tattooing - Amend the regulations to be consistent with Public Health Law Article 4-A - Regulation of Body Piercing and Tattooing. The regulations will provide definitions and requirements for permit, inspection, and operation of tattooing and body piercing studios and the permitting of body piercing specialists and tattooists.

73 Asbestos Safety Training Program Requirements - Amend the regulations to incorporate changes made by the New York State Department of Labor to Code Rule 56 as well as changes that have occurred in the industry that should be reflected in the training programs.

74 Approval of Realty Subdivisions - Amend the regulation to update and clarify requirements for plan submittals and approvals of realty subdivisions.

75 Standards for Individual Water Supplies and Individual Sewage Treatment Systems and Appendix 75C - Individual Water Well Quality Standards - Amend the individual water supplies and sewage treatment system regulations to clarify design submittal and approval procedures; add new regulations for individual water wells in order to establish water quality reference standards for individual household wells.

77 Funeral Establishments, Registrations, Funeral Directing, and Misconduct - Amend the regulations to prohibit the recovery of tissue within a funeral establishment and not allow non-transplant anatomical banks to operate within such establishments or the requesting of consent for an anatomical donation by a funeral director or employees of a funeral firm.

80 Controlled Substances - Amend the regulations to reflect recent statutory changes pertaining to the implementation of an upgraded Prescription Monitoring Program (PMP) Registry for collecting, monitoring and reporting data concerning the prescribing and dispensing of controlled substances. The amended regulations will address the statutory requirements for prescribing practitioners to consult the Registry prior to prescribing controlled substances; provide pharmacists access to the Prescription Monitoring Program Registry; allow for the use of designees to assist in accessing the PMP; and provide for more timely reporting of prescription information. Amended regulations will reflect statutory changes mandating the implementation of electronic prescribing for all prescriptions with limited exceptions. Amend the regulations to allow for electronic transmission, documentation, record keeping and endorsement of hypodermic needle and syringe prescriptions to allow for transfer of needle and hypodermic syringe prescriptions and eliminate the requirement for a written follow-up prescription of oral prescriptions (authorizations) for needles and syringes. Amend the regulations to permit prescribing of needles and syringes pursuant to a patient specific order form, as provided in State Education Law section 6810(7)(b). Amend the regulations related to the treatment of narcotic addiction and associated requirements to allow for the ability to treat a greater number of patients by authorized physicians. Amend Part 80 to update reporting requirements for Methadone Maintenance Treatment Programs enacted by Public Health Law section 3352 statutory changes. Amend the regulations regarding the storage, surrender and disposal of controlled substances. Amend the regulations to outline the training requirements associated with certification of Euthanasia technicians (for animals) as required by section 374(3)(b) of the Agriculture and Markets Law. Amend the regulations to allow for interstate sharing of PMP information.

80.131 and 80.137 Expanded Syringe Access Demonstration Program - Sale and possession of hypodermic syringes and hypodermic needles without a prescription under the Expanded Syringe Access Demonstration Project (ESAP) - Amend section 3381 by remov-

ing “Demonstration” from the title of the program and formally adopt “Expanded Syringe Access Program” as the name of the program since the program has become permanent.

80.138 Opioid Overdose Prevention Programs - Public Health Law section 3309(1) authorizes the Commissioner “to establish standards for approval of any opioid overdose prevention programs which may include, but not be limited to, standards for program directors, appropriate clinical oversight, training, record keeping and reporting.” Revision is needed with respect to language pertaining to the definitions of “person,” “affiliated prescriber” and “registered provider” in 10 NYCRR 80.138(a); the responsibilities of the program director in 10 NYCRR 80.138(c)(1); and the supplies which must be maintained and provided by opioid overdose prevention programs in 10 NYCRR 80.138(c)(5).

85.13 Physically Handicapped Children - Rescind the regulation thus allowing providers outside of the Physically Handicapped Children’s Program to provide hearing assessments and order hearing aids for Medicaid eligible children.

86-1.16(c)(2) Statewide Base Price - Amend the regulations to continue a statewide base price reduction. The amount of the reduction will be \$19,200,000 for the period May 1, 2012, through March 31, 2013, and for state fiscal year periods on and after April 1, 2013.

86-1.38 Redirect Inpatient Reform Transition II Funds to the Safety Net/ Vital Access Provider (VAP) Pool - Amend the regulations relating to Transition II funds that were to be returned to the base rate for distribution to all hospitals. Such funds will now be dedicated toward establishing a \$100M Safety Net/VAP Pool instead.

86-1.45 Language Assistance Medicaid Reimbursement for Hospital Inpatient Services - Add regulations and develop rates for the payment of Language Assistance services provided by hospitals to inpatients.

86-2 Nursing Home Reform - Amend the regulations to establish a Statewide pricing model for nursing homes.

86-4.16 FQHC Medicaid Capital - Amend the regulation to reflect the ability for FQHC’s to receive Medicaid capital appeal increases due to projects now exempt from the CON process due to enacted legislation.

86-8 Physician Home Visits for Hospitals and Clinic - Amend the regulation to establish Medicaid rates and billing policies to allow hospitals and clinics to be reimbursed for physician home visits for chronically ill patients.

94.2 Physician Assistants - Amend the regulations to allow a Registered Physician Assistant to prescribe controlled substances, including Schedule II substances, for patient’s under the care of the supervising physician in conformance with Public Health Law section 3703(3).

98-1 Accountable Care Organization - Amend to expand an IPA’s powers and purposes to include the formation of an Accountable Care Organization pursuant to Article 29-E of the Public Health Law.

98-1 Various Technical Amendments - Revise the regulations, making technical corrections: 1) 98-1.9(b)(3), requiring managed care organizations (MCOs) to provide assurances of continuing compliance with Article 49 of the Public Health Law, in addition to Article 44 and Part 98; 2) 98-1.11(h), restoring language that prohibits health maintenance organizations (HMOs) from discriminating in enrollments and services provisions; 3) 98-1.11(k)(4), clarifying that the MCO is responsible for monitoring contractors’ fiscal stability; 4) 98-1.11(q), clarifying that MCOs must comply with Article 49 of the Public Health Law, in addition to Article 44 and Part 98; 5) 98-1.13(c)(iii), correcting a 2005 change which inadvertently limited provider contract assignments to within one year of promulgation of the rule to reflect that the rule applies prospectively; and 6) amending 98-1.5(6)(e)(2) the MCO management functions to reflect that if an independent practice association (IPA) is delegated MCO management functions, then a separate management contract is required and it must be separate from the delivery of service contract.

98-1.5 Application for a Certificate of Authority - Amend the regulations to require electronic submission of the managed care organization’s provider network, consistent with the filing requirements

in 98-1.16(j). Modify section (b)(6)(vii)(e)(2) to specify that an independent provider association (IPA) performing management functions should have requirements detailed in a contract separate and apart from the IPA provider agreement.

98-1.6 Issuance of the Certificate of Authority - Amend the regulations to add a provision requiring managed care organizations (MCOs) to maintain a complete file on each request for health care services or benefits and associated appeals pursuant to Article 49 of the Public Health Law and federal law and regulations.

98-1.8 Continuance of a Certificate of Authority - Amend the regulations to clarify that managed care organizations must maintain compliance with the requirements of PHL Articles 44 and 49 and 10 NYCRR Part 98, including provisions related to initial application and certification standards, in order to maintain their certificate of authority.

98-1.11(e) Operational and Financial Requirements for MCOs - Section 98-1.11(e) would be amended to extend the lower contingent reserve requirement applied to revenues from the Medicaid managed care, Family Health Plus and HIV SNP programs.

98-1.13 Assurance of Access to Care - Amend the regulations to: 1) require that managed care organizations (MCOs) ensure each member has selected a primary care provider from which the member receives all primary care services; 2) address requirements related to subdivision 5-d to section 4406-c which imposes a "cooling off" period after termination or non renewal of a contract between an MCO and a hospital; 3) amend regulations to clarify that certain out-of-network service denial notices must include internal MCO and external appeal rights afforded by section 4904(1-a); and 4) promote consistency of initial adverse determination notices issued in accordance with section 4903(5) by clarifying notice content requirements.

98-1.16(c) Preparation and Filing of Audited Financial Statements - Amend this part and new section 98-3 to establish standards for the preparation and filing of audited financial statements by PHSPs, HIV SNPs, and managed long term care plans that are consistent with the National Association of Insurance Commissioners (NAIC) model audit rules already adopted by the Department of Financial Services for other insurers.

98-1.18(a) MCO Agreements - Amend the regulations to add this section as it applies to MCO agreements with licensed pharmacies and laboratories acting as benefit managers arranging for services, equipment and supplies.

98-2 External Appeals of Adverse Determinations - Amend the regulations to reflect changes to Article 49 of the Public Health Law made by Chapter 237 of the Laws of 2009, Chapter 451 of the Laws of 2007, Chapter 219 of the Laws of 2011 and the Patient Protection and Affordable Care Act (PPACA).

128 New York City Watershed Rules and Regulations - Amend the regulations to incorporate requirements intended to protect NYC's Watersheds and preserve NYC's Filtration Avoidance Determination by providing various limitations on watershed activities and construction.

300 Statewide Health Information Network for New York (SHIN-NY) - Promulgate regulations as required under Public Health Law section 206(18-a)(b) (L. 2010, Ch. 58, Part A, § 11).

400 All Facilities - General Requirements - Require Article 28 facilities to make available to the public and others information regarding nurse staffing and patient outcomes.

400.15 and 700.4 The Role of the Licensed Practical Nurse (LPN) in Intravenous Therapy Procedures - Amend the regulations to be consistent with the LPN scope of practice.

400.18 Statewide Planning and Research Cooperative System (SPARCS) - Repeal section 400.18 and add a new section 400.18 to reflect current practices of SPARCS. New section 400.18 will permit SPARCS to collect all other outpatient clinic data not presently being collected by SPARCS from general hospitals and diagnostic and treatment centers licensed under Article 28 of the Public Health Law. In addition, the regulations will be updated to be consistent with the amendment to the PHL for the collection of claims data and covered person data from third party health care payers. As a result of the

changes to section 400.18, the following will be repealed: Appendix C-2, Appendix C-3, Appendix C-5, section 755.10, and section 405.27. Section 407.5 and section 400.14 will be amended to coordinate to the revised section 400.18.

400.21 Advance Directives - Amend the regulations as required under Public Health Law section 2994-t within Article 29-CC - Family Health Care Decisions Act. REPEAL identical provisions in 700.5.

400.25 Disclosure of Nursing Quality Indicators - Amend the regulations to create a new section 400.25 in response to Chapter 422 of the Laws of 2009, the Nursing Care Quality Protection Act. The law requires Article 28 facilities to disclose identified nursing quality indicator information upon request to any member of the public, any state agency licensing the facility or responsible for overseeing the delivery of services by the facility, or any organization accrediting the facility.

405 Federal Conditions of Participation - Amend the regulation to include recent federal conditions of participation.

405 Pediatric Amendments - Amend the regulations to incorporate various pediatric amendments into the Hospital Minimum Standards provisions.

405.7 Patients' Rights - Amend the requirements limiting the use of physical restraints to be consistent with federal guidelines.

405.9 Admission/Discharge - Revise regulations to clarify that all donor and procurement responsibilities must be carried out before a dead body is removed from a hospital.

405.11 Infection Control - Amend the regulations to conform to PHL section 2819(2). The proposed regulation would define requirements for hospitals to report select hospital acquired infections using methods, definitions and protocols defined by the Department, ensures patient privacy in collection and release of data and creates standards for publication and release of the data reported.

405.19 Emergency Services Observation Units - The provisions in subdivision (g) regarding Observation Units will be REPEALED.

405.20 Outpatient Services - Amend the regulations to cross reference 752.2 for hospital based free standing emergency facilities.

405.21 Perinatal Services - Technical amendments are required in Section 405.21 Perinatal Services. A specialty hospital releasing a neonate back to the hospital of birth would be entitled to billing as a discharge, while transfer to another community hospital would be considered a transfer and therefore reimbursed at a lower rate. Transfer back to the hospital of birth or another lower level perinatal service hospital is strongly encouraged to ensure proximity to parents, and to ensure that neonates who no longer need the higher level of care do not use higher level resources. It is anticipated that 86-1.15 will be amended as well. Therefore, to ensure consistency, amend the perinatal services regulations to allow release to "the sending hospital or other hospital providing a lower level of perinatal services...." to conform with changes to Sections 86-1.15 and current language in Section 721.4(c)(1).

405.21 Perinatal Services - Amend the regulations in Section 405.21 (c)(2)(ii) to cross reference 405.9(b)(12) of this Part, which is the correct regulatory reference instead of 405.9(b)(11).

405.22 Critical Care and Special Care Services - Update the regulations regarding the organ transplant center provisions; and provide specific minimum standards for pediatric intensive care units (PICUs) similar to adult ICUs, recognizing differences between adult and pediatric ICUs beyond just the size and weight of the patients.

405.27 Information, Policy and Other Reporting Requirements - Amend the regulations to repeal this section because the authority for the reporting requirements are detailed in either section 400.18 (SPARCS data) or section 86-1.2 and 86-1.3 (Uniform financial report and uniform statistical reports).

405.32 Observation Services - Amend the regulation to update operational standards for observation services. This will conform the regulations with recent legislation, help ease administrative burdens by increasing consistency with Medicare rules, reduce unnecessary emergency room visits by allowing direct referrals and reduce unnecessary inpatient admissions by increasing the maximum time allowed in observation status.

405.43 Orders Not to Resuscitate - Amend the regulations to repeal provisions which are no longer current as a result of the adoption of PHL Article 29-CC - Family Health Care Decisions Act. Section 400.21 Advance Directives provisions will be updated consistent with PHL Article 29-CC.

407 Federal Conditions of Participation - Amend the regulation to incorporate federal conditions of participation for Critical Access Hospitals (CAHs).

415.3(h) Resident Rights - Amend the regulations to require nursing home providers to issue a valid written transfer/discharge notice to the resident and his or her designated representative. Such notice shall include date of notice, resident's identity, effective date of proposed transfer/discharge, reason for proposed discharge or transfer, notice of the resident's right to an evidentiary hearing to appeal the proposed discharge, contact information for the NYS Long Term Care Ombudsman, contact information for the agency responsible for the protection and advocacy of individuals with mental illness or development disabilities, and notice of the resident's right to remain in the facility (except in cases of imminent danger), pending the appeal hearing decision. The proposed amendment outlines the Department's interim policy in effect since December 1, 2004.

425.18 Adult Day Health Care (Services for Registrants with Acquired Immune Deficiency Syndrome) - Amend the regulations to create a more flexible model appropriate to the clinical state of the HIV/AIDS epidemic and for inclusion into the Medicaid Managed Care benefit package.

600.1 - 600.7; 610.1 - 610.2; 620.1 - 620.3; 630.1; 640.2 - 640.3; 650.1 - 650.2; 670.1 - 670.6; 680.2; 680.4 - 680.6; 680.8 - 680.10, 705.9 - Amend the regulations to change references to the Public Health Council to the Public Health and Health Planning Council; and to delete references to the State Hospital Review and Planning Council.

600.3 Certificate of Need (CON) Applications - Amend the regulation to simplify the process for review of amendments to Certificate of Need (CON) applications that have received approval for establishment by the Public Health and Health Planning Council (PHHPC) but which have not yet proceeded to actual establishment.

700 Accountable Care Organizations (ACOs) - It is anticipated that regulations will be added to 10 NYCRR Part 700 pursuant to amendments to PHL Article 29-E governing Accountable Care Organizations (ACOs).

700.5 Advance Directives - Amend the regulations to repeal this section because it is identical to the Advance Directives section in section 400.21. As a result of the adoption of PHL Article 29-CC - Family Health Care Decisions Act, section 400.21 Advance Directive provisions will be updated consistent with PHL Article 29-CC.

705.7, 708.1, 710.1, 710.2, 710.5 - Amend the regulations to change references to the State Hospital Review and Planning Council to the Public Health and Health Planning Council.

708 Appropriateness Review - Amend the regulations regarding the Trauma Center Designation Standards for consistency with the current practice of trauma care in New York State. Repeal references to burn care.

709 Determination of Public Need for Medical Facility Construction - Amend the regulations related to the liver and human heart transplantation services provisions.

710.1 Medical Facility Construction - Amend the regulations to reflect amendments to PHL 2802 that substitute written notice for limited review, CON administrative review and CON full review for projects confined to non-clinical infrastructure, repair and maintenance, and one-for-one equipment replacement and further amend to allow greater flexibility in the relocation of extension clinics in rural areas.

710.5 Certificate of Need (CON) Applications - Amend the regulation to simplify the process for review of amendments to Certificate of Need (CON) applications that have received approval for construction by the Public Health and Health Planning Council (PHHPC) but which have not yet proceeded to actual construction.

721.4 Patient Care and Patient Transfers - Amend the regulations to

allow release to "the sending hospital or other hospital providing a lower level of perinatal services....." to conform with proposed changes to Section 86-1.15, 405.21 and current language in Section 721.4(c)(1).

722 Sexual Assault Forensic Examiner (SAFE) Program - Amend existing regulations related to the review and approval of licensed Article 28 hospitals as Sexual Assault Forensic Examiner (SAFE) programs. This includes the standards for approving SAFE hospital programs, approving programs that train individual SAFE examiners, and certifying individual SAFE examiners and criteria for continuous quality improvement program activities. The SAFE program provides a specialized standard of medical care and evidence collection to victims of sexual assault.

750-759 Treatment Center and Diagnostic Center Operation - Update the regulations addressing the Department's New York Patient Occurrence Reporting and Tracking System (NYPORTS) provisions for Diagnostic and Treatment Centers to reflect current practice.

752-2 Up-Graded Diagnostic and Treatment Center Services - Amend the regulations, if necessary, which address freestanding emergency department classification.

757 Chronic Renal Dialysis Services - Amend the regulations to be consistent with federal changes to 42 CFR regarding Medicare and Medicaid Programs; Conditions for Coverage for End-Stage Renal Disease Facilities.

759 Adult Day Health Care (Services for Registrants with AIDS) - Amend the regulations to create a more flexible model appropriate to the clinical state of the HIV/AIDS epidemic and for inclusion into the Medicaid Managed Care benefit package.

760 and 761 Home Health Services - Amend the regulations to update the current need methodology for establishment of certified home health agencies and to reflect statutory modification of Certified Home Health Agency Charity Care program requirements.

790 Hospices - Add regulations implementing changes in the federal Conditions of Participation; expand the definition of terminal illness as a result of Chapter 441 of the Laws of 2011.

800 Emergency Medical Services (EMS) - General - Amend the regulations to conform with federal requirements/recommendations, current medical practice and national safety standards. Add regulations related to the use and application by members of the public of automatic external defibrillators; codify regulatory requirements for Advance Life support First Response Agencies; codify regulatory requirements for Basic Life Support Providers; make updates to EMS certification and training regulations. Modernize course sponsors provisions to address the current environment and technology as well as reflecting the current EMS education curricula. Strengthen the surveillance portions of these provisions to appropriately address issues of quality, student rights and safety. Establish a new section on the mobilization and/or sharing of resources in the event of a declared disaster. Amend to reflect current ambulance vehicle construction requirements, technology and safety for the patients and EMS providers.

#### Title 18 NYCRR (Social Services)

360 Medicaid - Various amendments necessary to conform to statutory changes made by Part D of Chapter 56 of the Laws of 2013 with respect to Medicaid applications and determinations, financial eligibility methodologies, and covered benefits.

360-10 Medicaid Managed Care Program - Replace emergency regulations promulgated to conform to changes authorized by Chapter 649 of the Laws of 1996 and Chapters 433 and 436 of the Laws of 1997. The proposed regulations will clarify provisions of law and provide clearer guidance regarding fair hearing rights and requirements specific to Medicaid managed care and Family Health Plus.

485, 486, 487, 488 and 490 Adult Homes, Enriched Housing Programs and Residences for Adults - Amend the regulations to consolidate and streamline provisions relating to adult homes, enriched housing programs and residences for adults, to reflect recent legislative changes and the changing environments of these types of facilities. Amendments will provide clarification and consistency to residents, operators and the public with regards to adult care facilities, including role of nurse practitioners and physician assistants.

505.3 Drugs - Amend existing regulations to incorporate changes in Social Service Law that authorize the Commissioner to establish payments and dispensing fees for prescription drugs. The definition of estimated acquisition cost for the Medicaid fee-for-service pharmacy program will be added to regulation and prescription drug dispensing fees will be identified.

505.3(i) Drugs - Amend the regulations to allow the Department to require each enrolled pharmacy to report actual acquisition cost of a prescription drug to the Department in a manner specified by the Department. This will enable the Department to include Average Acquisition Cost (AAC), when available, in the Medicaid drug payment methodology, as required by SSL section 367-a(9)(g)(b)(i).

505.11 Rehabilitation Services - Amend the regulations to align with State Education law, federal guidelines, and current standards of practice; clarify who can order rehabilitation services, particularly speech-language pathology services provided to Medicaid recipients; clarify supervision requirements for services provided “under the direction of” speech-language pathologists, occupational therapists, and physical therapists.

505.12 Podiatry Services - Amend the regulation to expand podiatry coverage to Medicaid eligible adults with a diagnosis of Diabetes Mellitus. This will align the regulation with 2012 changes made to state social service laws.

505.14 Personal Care Services Program - Amend the regulations to reflect the statutory change regarding the limitation of housekeeping services to 8 hours weekly, and to clarify eligibility requirements for continuous and live-in personal care services.

505.15 Psychiatric Care - Amend the regulations to align with federal requirements regarding who may provide school supportive health services.

505.18 Clinical Psychological Services - Amend the regulations to align with federal guidelines and current standards of practice and clarify which practitioners are qualified to provide services in the Preschool/School Supportive Health Services Program to Medicaid recipients.

505.28 Consumer Directed Personal Assistance Program (CDPAP) - Amend the regulations to reflect the statutory change regarding the limitation of housekeeping services to 8 hours weekly, and to clarify eligibility requirements for continuous and live-in consumer directed personal assistance.

505.31(d)(e)(1) Audiology, Hearing Aid Services and Products - Amend the regulations to align Medicaid regulations with federal guidelines, State Education Law and current standards of practice and clarify who can order audiology services.

505.33 Personal Emergency Response Services (PERS) - Amend the regulations to allow for annual authorizations and to delete the requirement that authorization of PERS be contingent upon a reduction/elimination of personal care aide/home health aide hours.

## Office of Temporary and Disability Assistance

Pursuant to State Administrative Procedure Act (SAPA) § 202-d, the Office of Temporary and Disability Assistance (OTDA) is required to publish a regulatory agenda for those regulations that it is considering for publication in the New York State Register. Set forth below is an agenda for the second half of 2013. SAPA § 202-d does not preclude OTDA from proposing for adoption a regulation that is not described in the agenda, nor does it require OTDA to propose for adoption a regulation that is described in the agenda.

All references are to Title 18 of the New York Codes, Rules and Regulations (NYCRR) unless otherwise noted. The agenda items are organized pursuant to the Part of Title 18 NYCRR that most likely would be amended. However, the agenda items eventually could require amendments to different Parts than those listed below and/or to more than one Part of Title 18 NYCRR.

### PART 300 Local Welfare Administration

A new section 300.13 will be added to reflect programmatic responsibility for desk review of distribution and collections under section 347.25.\*

### PART 301 –Veteran Assistance

Amend regulations to replace gender-specific terms with gender-neutral terms.

### Part 341 – Local Advisory Councils

Remove the regulatory requirement for social services districts to create and maintain local advisory councils.\*

### Part 346 – Support Collection

Establish guidelines for the local child support enforcement units to follow in determining whether and under what circumstances a passport, which has been revoked, denied or suspended by the U.S. Department of State due to non-payment of child support, may be released.\*

Update regulations to address State statutory amendments, and an exemption thereof, concerning property execution provisions.\*

Update regulations to address process changes to lottery intercept provisions.\*

### Part 347 – Establishment of Paternity and Enforcement of Child Support

Update regulation pertaining to the modification of child support orders and the calculation of basic child support obligations, and repeal the child support standards chart.\*

Revise regulations for the distribution and assignment of child support collections to reflect the requirements of federal and State statutes and to conform with the Personal Responsibility Work Opportunity Reconciliation Act’s elimination of excess current support.\*

Update regulation setting forth definitions used in this Part.\*

Revise desk review procedures addressing the accounting and disbursement of child support for certain current and former recipients of Public Assistance.\*

Revise regulation to establish the procedures by which the State will distribute child support incentives received from the U.S. Department of Health and Human Services and allocate portions of those incentives to social service districts.\*

Promulgate regulations for establishing and enforcing medical support obligations.\*

Revise regulation concerning confidentiality of information based on federal requirements and Social Services Law (SSL) § 111-v.\*

Revise regulation concerning case closure to add new criterion as set forth in the federal Department of Health and Human Services regulation at Title 45 of the Code of Federal Regulations (CFR) § 303.11.

Revise regulations concerning the provision of child support services in intergovernmental cases.

### Part 349 – General Provisions

Update provisions regarding persons who are permanently residing in the United States under the color of law (PRUCOL).\*

### Part 351 – Investigation and Eligibility

Clarify provisions concerning the submission of a social security number as a condition of eligibility for Public Assistance.\*

Delete the regulatory provisions relating to the Learnfare program.

Require social services districts to make all applicants for and recipients of public assistance aware of their option to receive information appropriate for victims of sexual assault consistent with SSL § 131(20).\*

### Part 352 – Standards of Assistance

Amend regulations to make technical updates to Part 352, including updating references to “aid to dependent children” and “home relief” with “family assistance” and “safety net assistance” respectively.

Amend regulations to address support payments, noncountable income and resources, and estimates of need and application of income.\*

Amend regulations to establish new schedules for the standard of monthly need for determining eligibility for all categories of public assistance consistent with SSL § 131-a.

Amend regulations authorizing social services districts to provide shelter allowance supplements at local option to prevent eviction and address homelessness.\*

Amend regulations governing emergency shelter allowances for persons medically diagnosed with AIDS or HIV-related illness.\*

Update regulations to comply with the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.\*

Amend regulations to implement a shared living reduction.\*

#### Part 358 – Fair Hearings

Revise regulations to clarify the distinction between the standard of proof required at the fair hearing and the standard required for judicial review.\*

Amend regulations to state that when a person is objecting to the amount deducted from his or her initial payment of Supplemental Security Income as reimbursement of public assistance, the social services district must establish that its actions were correct.\*

Amend regulations to add provisions concerning the telephone hearings and the video hearings processes.\*

Amend the definition of the fair hearing record as it pertains to decisions without a hearing.\*

#### Part 359 – Disqualification for Intentional Program Violation

Amend regulations to reflect changes to federal Supplemental Nutrition Assistance Program (SNAP) regulations regarding Intentional Program Violations, including changes to the definition of “trafficking” and the imposition of a ten-year disqualification.\*

#### Part 369 – Family Assistance

Amend regulation to address applications for or receipt of public assistance as an assignment to the State and the social services district of rights to support.

#### Part 385 – Public Assistance and Food Stamp Employment Program Requirements

Implement a federal waiver regarding the SNAP employment sanction process.\*

Revise assessment regulations to clarify that the requirements for exempt individuals in households without dependent children are consistent with those for exempt individuals in households with dependent children.\*

Amend employment program provisions for notices of conciliation and notices of discontinuance or reduction to incorporate plain language requirements.\*

Establish additional guidelines regarding work activity definitions and work documentation and verification procedures to make them consistent with standards required by federal regulations.\*

Implement changes to participation rate regulations to conform to amendments to the SSL which require social services districts to expand the countable work activities available to Safety Net Assistance participants without children to include community service programs, the provision of child care services to an individual participating in community service and time limited vocational education training, job search and job readiness assistance.\*

Revise regulations for employment to comply with final federal regulations.\*

Revise SNAP employment and training regulations to conform to federal regulations.\*

Clarify how participation rates are calculated based on federal reporting requirements and clarify the calculation of two distinct Safety Net Assistance work participation rates.\*

Correct a technical error in regulation related to good cause for failing to comply with work requirements.

Identify cases that may be excluded from participation rates pursuant to federal Temporary Assistance for Needy Families (TANF) regulations.\*

Repeal provisions which permit foster care parents and individuals who are caring for a disabled household member to be deemed as community service participants as required by federal regulations.

Authorize shift of certain cases to non-TANF Family Assistance or to non-MOE (non-Maintenance of Effort) Safety Net Assistance to facilitate implementation of changes as required by federal regulations.\*

#### Part 387 – Supplemental Nutrition Assistance Program

Amend regulations to make technical updates to Part 387.

Update regulations to reflect the current policy that standard allowances for heating/air conditioning, utility and telephone costs are used in calculating shelter expenses for SNAP.\*

Update regulations to reflect the current policy that households in shared living arrangements are entitled to the full applicable level of the standard utility allowance.\*

Revise SNAP regulations concerning the special definition of the “head of the household.”\*

Update the determination of SNAP eligibility regulations to include Supplemental Security Income live-alone New York State Nutrition Improvement Program provisions and education grant exclusions.\*

Delete SNAP monthly reporting/retrospective budgeting references and add provisions for change reporting.\*

Conform regulations concerning in-office interviews for SNAP applicants to federal requirements.\*

Generally update SNAP regulations to conform to changes in federal regulations and law.\*

Amend regulations to accommodate the Statewide implementation of the Working Families Food Stamp Initiative.\*

Amend regulations to reflect expanded categorical eligibility for SNAP.\*

Update regulations for the SNAP Transitional Benefits Alternative Program, which helps provide nutritional assistance to households who often are transitioning from public assistance programs to employment and would otherwise not be eligible for SNAP benefits.\*

Amend regulations regarding what is a complete periodic report to require verification of income only if a change in income has been reported.\*

Update regulations concerning household cooperation with quality control reviews to reflect changes in federal requirements.\*

#### Part 388 – Food Assistance Program

Repeal provisions relating to the Food Assistance Program.

#### Part 393 – Home Energy Assistance Program

Amend HEAP regulations to reflect current practices and the provisions of the federally accepted HEAP State Plan.\*

#### Part 398 – Supplemental Security Income Program and State Supplemental Payment Program

Amend regulations to provide for State administration of additional State payments to persons eligible for federal Supplemental Security Income benefits instead of federal administration pursuant to contract.\*

It is not anticipated that small business regulation guides will need to be developed for the proposals set forth in this agenda.

\* The asterisks identify rules for which a regulatory flexibility analysis or a rural area flexibility analysis may be required.

At this time, OTDA cannot specify the dates for publication in the New York State Register of the items listed above. OTDA would welcome comments related to this regulatory agenda at the address listed below, and each published Notice of Proposed Rule Making will provide a public comment period and a contact person to whom comments may be sent.

*Any questions or comments concerning the items listed in this agenda can be referred to:* Jeanine S. Behuniak, Office of Temporary and Disability Assistance, 40 N. Pearl St. 16C, Albany, NY 12243, (518) 474-9779, e-mail: Jeanine.Behuniak@OTDA.ny.gov

The regulatory agenda may be accessed on OTDA’s website at <http://otda.ny.gov/legal/>.

