

# RULE MAKING ACTIVITIES

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

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

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

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## Office for the Aging

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### NOTICE OF ADOPTION

#### Limits on Administrative Expenses and Executive Compensation

**I.D. No.** AGE-22-12-00011-A

**Filing No.** 509

**Filing Date:** 2013-05-14

**Effective Date:** 2013-07-01

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

**Action taken:** Addition of section 6656 to Title 9 NYCRR.

**Statutory authority:** Elder Law, section 201(3); and Executive Order No. 38

**Subject:** Limits on Administrative Expenses and Executive Compensation.

**Purpose:** To implement guidelines regarding placing limitations on Administrative Expenses and Executive Compensation.

**Substance of final rule:** The revised rule would add a new Part 6656 entitled Limits on Administrative Expenses and Executive Compensation.

Section 6656.1 of the regulations provides the background and intent of the revised rule, which is to implement Executive Order No. 38, issued by Governor Andrew Cuomo on January 18, 2012.

Section 6656.2 sets forth the statutory authority for the promulgation of the rule by the New York State Office for the Aging (hereinafter the "Office").

Section 6656.3 contains definitions for purposes of this Part, including definitions for administrative expenses, covered operating expenses, covered executive, covered provider, executive compensation, Office, program services, program services expenses, related organization, reporting period, State-authorized payments, and State funds. The revised regulation adds a definition of covered reporting period. There has been a minor change to the definition of Executive Compensation.

Section 6656.4 contains limits on the use of State funds or State-authorized payments for administrative expenses. The restriction will apply to subcontractors and agents of covered providers which meet the specified criteria. The restriction will apply to covered providers receiving State funds or State-authorized payments from county or local governments, rather than directly from a State agency, pursuant to specified criteria. The regulation addresses how the restriction will apply in the event that a covered provider has multiple sources of State funds or State-authorized payments. The revised regulation specifies that a cover entity provider will not be held responsible for a subcontractor's or agent's failure to comply with the regulations.

Section 6656.5 contains restrictions on executive compensation provided to covered executives. The restriction will apply to subcontractors and agents of covered providers which meet the specified criteria. The restriction will apply to covered providers receiving State funds or State-authorized payments from county or local governments, rather than directly from a State agency, pursuant to specified criteria. The rule addresses the application of this limit if the covered provider has multiple sources of State funds or State-authorized payments. The revised regulation specifies that a cover entity provider will not be held responsible for a subcontractor's or agent's failure to comply with the regulations. This section has been amended to provide clarification.

Section 6656.6 enumerates the processes that have been established for covered providers to seek waivers of the limit on administrative expenses and the limits on executive compensation.

Section 6656.7 set forth the annual reporting requirements.

Section 6656.8 details the process that is established for the imposition of penalties in the event of non-compliance with the limit on administrative expenses or the limits on executive compensation.

A copy of the full text of the regulatory proposal is available on the New York State Office for the Aging's website at [www.aging.ny.gov](http://www.aging.ny.gov).

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 6656.3(f) and 6656.5(b)(2).

**Revised rule making(s) were previously published in the State Register** on October 31, 2012 and March 13, 2013.

**Text of rule and any required statements and analyses may be obtained from:** Stephen Syzdek, New York State Office for the Aging, New York State Office for the Aging, Two Empire State Plaza, Albany, NY 12223-1251, (518) 474-5041, email: [stephen.syzdek@ofa.state.ny.us](mailto:stephen.syzdek@ofa.state.ny.us)

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

Although changes were made to the proposed 9 NYCRR 6656, they do not necessitate changes to the Regulatory Flexibility Statement, Regulatory Flexibility Analysis for Small Business and Local Government, Rural Area Flexibility Analysis, or Job Impact Statement.

The revisions to the last published proposed rule merely provide clarifications in the text and correct technical errors (i.e. grammatical errors) which require no change to the impact statements or rule making documents.

**Initial Review of Rule**

As a rule that does not require a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement, this rule will be initially reviewed in the calendar year 2018, which is no later than the fifth year after the year in which this rule is being adopted.

**Assessment of Public Comment**

A Notice of Revised Rule Making was published in the New York State Register on March 13, 2013. The New York State Office for the Aging (NYSOFA) received several comments during the public comment period associated with the revised rulemaking. The issues and concerns raised in these comments are set forth below. Issues and concerns have been grouped according to the part of the revised rule they address because they are related or for convenience in providing an efficient response. Because many comments addressed concerns that applied to all of the participating

State agencies that are implementing Executive Order No. 38, the responses to comments provided by each of those agencies are incorporated by reference into these responses. NYSOFA's response is provided for each issue.

#### Definitions

Comment: One comment was received requesting exhaustive lists of what constitute "state funds" and "state-authorized payments".

Response: The proposed regulations were previously modified to clarify what constitute "state funds" and "state-authorized payments". However, additional guidance on this topic will be provided prior to the effective date.

#### Limits on administrative expenses

Comment: One comment was received requesting that the State engage in a dialogue with covered providers over what would constitute an adequate administrative rate.

Response: NYSOFA believes there is a legitimate government interest in limiting the amount of administrative expenses derived from government funds and that the limits set by the proposed regulations are appropriate. However, the agency will continue to monitor this issue in the years that follow. No changes were made to the proposed regulations in response to this comment.

#### Limits on executive compensation

Comment: One comment was received questioning the concept of limiting executive compensation for not-for-profit entities.

Response: NYSOFA believes there is a legitimate government interest in limiting the amount of executive compensation of providers that rely heavily on state funds or state authorized payments of federal funds. No changes were made to the proposed regulations in response to this comment.

Comment: One comment was received arguing that the regulations cannot be made effective on July 1, 2013 because the Division of the Budget has not yet identified, provided or recognized any surveys on executive compensation, thus preventing covered providers from determining whether waivers will be needed.

Response: Additional guidance on this topic will be provided prior to the effective date.

Comment: One comment was received arguing that covered providers may be in the position of having to attempt to recoup executive compensation funds and may not be able to do so under the Labor Law, and that if a waiver is not granted the covered provider would have no ability to recoup such funds, thus having no mechanism to avoid non-compliance with the proposed regulations.

Response: A covered provider who is faced with this dilemma may request a waiver. The waiver provisions of the regulations are intended to avoid placing covered providers into situations where compliance with competing legal requirements is impossible.

Comment: One comment was received requesting that the Division of the Budget create a list of compensation surveys that will be identified, provided and recognized by the State, and that such surveys consider executive compensation in both the not-for-profit and for-profit fields.

Response: Prior to the effective date guidance will be provided regarding acceptable surveys and comparability factors that must be taken into consideration for determining compensation and additional information regarding how this information will be identified, provided or recognized.

#### Waivers

Comment: One comment was received requesting clarification of the consequences of the denial of a waiver.

Response: The proposed regulations provide for penalties in the event of non-compliance by a covered provider that does not obtain a waiver, so if a covered provider fails to obtain a waiver and is thus out of compliance with the requirements, the covered provider may be subject to penalties. However, the proposed regulations addressing penalties provide for a six month period for a covered provider to cure the non-compliance, so the failure to obtain a waiver would not automatically result in the imposition of penalties. No changes have been made to the proposed regulations in response to this comment.

#### Effective Date

Comment: One comment was received requesting that the effective date of the proposed regulations be extended to six months after a covered provider's first reporting period after the later of (1) the date the regulations become effective or (2) the identification, provision and recognition by the Division of the Budget and the State agencies of compensation surveys, in order to afford not-for-profit entities time to comply.

Response: Additional guidance will be provided prior to the effective date to facilitate compliance and/or the waiver process. No change has been made to the proposed regulations in response to this comment.

#### Lack of Necessity

Comment: One comment was received asserting that the proposed regulations address a problem that does not really exist, other than in a few isolated circumstances, and that the proposed regulations are not needed to address those few circumstances.

Response: NYSOFA believes that the regulations will serve a necessary function by establishing appropriate controls so that taxpayer dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. No change was made to the proposed regulations in response to this comment.

#### Coordination

Comment: One comment was received requesting that the Governor, the Attorney General and the State agencies work together so that the regulations are implemented properly and consistently, and that the non-profit sector be included in a taskforce to implement the regulations.

Response: The development of the proposed regulations will continue to involve interagency cooperation. No changes were made to the proposed regulations in response to this comment.

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## Department of Agriculture and Markets

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### NOTICE OF ADOPTION

#### Compliance with Executive Order No. 38 of 2012

**I.D. No.** AAM-22-12-00013-A

**Filing No.** 504

**Filing Date:** 2013-05-14

**Effective Date:** 2013-07-01

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

**Action taken:** Addition of Part 400 to Title 1 NYCRR.

**Statutory authority:** Agriculture and Markets Law, section 18; and Not-For-Profit Corporation Law, section 508

**Subject:** Compliance with Executive Order No. 38 of 2012.

**Purpose:** To limit administrative costs and executive compensation to ensure that services to New Yorkers are available and well-funded.

**Substance of final rule:** The Department of Agriculture and Markets is adopting as final regulations a new Part 400 to 1 NYCRR titled Limits on Administrative Expenses and Executive Compensation.

There have been two minor edits to the text as follows:

Edit to the definition of Executive Compensation in 1 NYCRR Section 400.1(g).

And a clarification in provision on Limits on Executive Compensation in 1 NYCRR Section 400.3(b)(2).

Section 400.1 contains definitions for purposes of this Part, including definitions for administrative expenses, covered operating expenses, covered executive, covered provider, covered reporting period, executive compensation, program services, program services expenses, related organization, reporting period, State-authorized payments, and State funds.

Section 400.2 Limits on Administrative Expenses. Contains limits on the use of State funds or State-authorized payments for administrative expenses.

Section 400.3 Limits on Executive Compensation. Contains restrictions on executive compensation provided to covered executives.

Section 400.4. Waivers. Processes are established for covered providers to seek waivers of the limit on administrative expenses and the limits on executive compensation.

Section 400.5. Reporting.

Covered providers are required to report information on an annual basis.

Section 400.6. Penalties.

A process is established for the imposition of penalties in the event of non-compliance with the limit on administrative expenses or the limits on executive compensation.

A copy of the full text of the regulatory proposal is available on the New York State Department of Agriculture website, <http://www.agriculture.ny.gov>

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 400.1(g) and 400.3(b)(2).

**Revised rule making(s) were previously published in the State Register** on October 31, 2012 and March 13, 2013.

**Text of rule and any required statements and analyses may be obtained from:** Frederick Brian Arnold, Esq., NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, New York 12235, (518) 457-2449, email: [rick.arnold@agriculture.ny.gov](mailto:rick.arnold@agriculture.ny.gov)

**Revised Regulatory Impact Statement**

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement (“RIS”) for the addition of a new Part 400 of 1 NYCRR.

The revisions to the last published rule merely provide clarifications in the text and correct technical errors (i.e., grammar), which requires no change to the Regulatory Impact Statement.

**Revised Regulatory Flexibility Analysis**

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments (“RFASBLG”) for the addition of a new Part 400 of 1 NYCRR.

The revisions to the last published rule merely provide clarifications in the text and correct technical errors (i.e., grammar), which requires no change to the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

**Revised Rural Area Flexibility Analysis**

Changes made to the last published rule do not necessitate revision to the previously published Rural Area Flexibility Analysis (“RAFA”) for the addition of a new Part 400 of 1 NYCRR.

The revisions to the last published rule merely provide clarifications in the text and correct technical errors (i.e., grammar), which requires no change to the Rural Area Flexibility Analysis.

**Revised Job Impact Statement**

Changes made to the last published rule do not necessitate revision to the previously published Job Impact Statement (“JIS”) for the addition of a new Part 400 of 1 NYCRR.

The revisions to the last published rule merely provide clarifications in the text and correct technical errors (i.e., grammar), which requires no change to the Job Impact Statement.

**Initial Review of Rule**

As a rule that does not require a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement, this rule will be initially reviewed in the calendar year 2018, which is no later than the 5th year after the year in which this rule is being adopted.

**Assessment of Public Comment**

A Notice of Revised Rule Making was published in the New York State Register on March 13, 2013. The Department of Agriculture and Markets received several comments during the public comment period associated with the revised rulemaking. The issues and concerns raised in these comments are set forth below. Issues and concerns have been grouped according to the part of the revised rule they address because they are related or for convenience in providing an efficient response. Because many comments addressed concerns that applied to all of the participating State agencies that are implementing Executive Order No. 38, the responses to comments provided by each of those agencies are incorporated by reference into these responses. The Department of Agriculture and Markets response is provided for each issue.

**Definitions**

Comment: One comment was received requesting exhaustive lists of what constitute “state funds” and “state-authorized payments”.

Response: The proposed regulations were previously modified to clarify what constitute “state funds” and “state-authorized payments”. However, additional guidance on this topic will be provided prior to the effective date.

**Limits on administrative expenses**

Comment: One comment was received requesting that the State engage in a dialogue with covered providers over what would constitute an adequate administrative rate.

Response: The Department of Agriculture and Markets believes there is a legitimate government interest in limiting the amount of administrative expenses derived from government funds and that the limits set by the proposed regulations are appropriate. However, the agency will continue to monitor this issue in the years that follow. No changes were made to the proposed regulations in response to this comment.

**Limits on executive compensation**

Comment: One comment was received questioning the concept of limiting executive compensation for not-for-profit entities.

Response: The Department of Agriculture and Markets believes there is a legitimate government interest in limiting the amount of executive compensation of providers that rely heavily on state funds or state authorized payments of federal funds. No changes were made to the proposed regulations in response to this comment.

Comment: One comment was received arguing that the regulations cannot be made effective on July 1, 2013 because the Division of the Budget has not yet identified, provided or recognized any surveys on executive compensation, thus preventing covered providers from determining whether waivers will be needed.

Response: Additional guidance on this topic will be provided prior to the effective date.

Comment: One comment was received arguing that covered providers may be in the position of having to attempt to recoup executive compensation funds and may not be able to do so under the Labor Law, and that if a waiver is not granted the covered provider would have no ability to recoup such funds, thus having no mechanism to avoid non-compliance with the proposed regulations.

Response: A covered provider who is faced with this dilemma may request a waiver. The waiver provisions of the regulations are intended to avoid placing covered providers into situations where compliance with competing legal requirements is impossible.

Comment: One comment was received requesting that the Division of the Budget create a list of compensation surveys that will be identified, provided and recognized by the State, and that such surveys consider executive compensation in both the not-for-profit and for-profit fields.

Response: Prior to the effective date guidance will be provided regarding acceptable surveys and comparability factors that must be taken into consideration for determining compensation and additional information regarding how this information will be identified, provided or recognized.

**Waivers**

Comment: One comment was received requesting clarification of the consequences of the denial of a waiver.

Response: The proposed regulations provide for penalties in the event of non-compliance by a covered provider that does not obtain a waiver, so if a covered provider fails to obtain a waiver and is thus out of compliance with the requirements, the covered provider may be subject to penalties. However, the proposed regulations addressing penalties provide for a six month period for a covered provider to cure the non-compliance, so the failure to obtain a waiver would not automatically result in the imposition of penalties. No changes have been made to the proposed regulations in response to this comment.

**Effective Date**

Comment: One comment was received requesting that the effective date of the proposed regulations be extended to six months after a covered provider’s first reporting period after the later of (1) the date the regulations become effective or (2) the identification, provision and recognition by the Division of the Budget and the State agencies of compensation surveys, in order to afford not-for-profit entities time to comply.

Response: Additional guidance will be provided prior to the effective date to facilitate compliance and/or the waiver process. No change has been made to the proposed regulations in response to this comment.

**Lack of Necessity**

Comment: One comment was received asserting that the proposed regulations address a problem that does not really exist, other than in a few isolated circumstances, and that the proposed regulations are not needed to address those few circumstances.

Response: The Department of Agriculture and Markets believes that the regulations will serve a necessary function by establishing appropriate controls so that taxpayer dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. No change was made to the proposed regulations in response to this comment.

**Coordination**

Comment: One comment was received requesting that the Governor, the Attorney General and the State agencies work together so that the regulations are implemented properly and consistently, and that the non-profit sector be included in a taskforce to implement the regulations.

Response: The development of the proposed regulations will continue to involve interagency cooperation. No changes were made to the proposed regulations in response to this comment.

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## Office of Alcoholism and Substance Abuse Services

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**NOTICE OF ADOPTION****Limits on Administrative Expenses and Executive Compensation**

I.D. No. ASA-22-12-00014-A

Filing No. 508

Filing Date: 2013-05-14

Effective Date: 2013-07-01

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

**Action taken:** Addition of Part 812 to Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 19.07, 19.09, 19.21, 19.40, 32.01 and 32.07; and Executive Order No. 38

**Subject:** Limits on Administrative Expenses and Executive Compensation.

**Purpose:** Ensure state funds paid by this agency to providers are not used for excessive compensation or unnecessary administrative costs.

**Substance of final rule:** Changes made to the last published rule do not necessitate revision to the previously published Summary of Text (“Summary”) for the proposed 14 NYCRR Part 812.

The revisions to the last published rule merely provide clarifications in the text and correct technical errors (*i.e.*, grammar), which requires no change to the Summary.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 812.3.

**Revised rule making(s) were previously published in the State Register** on October 31, 2012 and March 13, 2013.

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

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement (“RIS”) for the proposed 14 NYCRR Part 812.

The revisions to the last published rule merely provide clarifications in the text and correct technical errors (*i.e.*, grammar), which requires no change to the Regulatory Impact Statement.

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis For Small Businesses and Local Governments (“RFASBLG”) for the proposed 14 NYCRR Part 812.

The revisions to the last published rule merely provide clarifications in the text and correct technical errors (*i.e.*, grammar), which requires no change to the Regulatory Flexibility Analysis For Small Businesses and Local Governments.

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

Changes made to the last published rule do not necessitate revision to the previously published Rural Area Flexibility Analysis (“RAFA”) for the proposed 14 NYCRR Part 812.

The revisions to the last published rule merely provide clarifications in the text and correct technical errors (*i.e.*, grammar), which requires no change to the Rural Area Flexibility Analysis.

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

Changes made to the last published rule do not necessitate revision to the previously published Job Impact Statement (“JIS”) for the proposed 14 NYCRR Part 812.

The revisions to the last published rule merely provide clarifications in the text and correct technical errors (*i.e.*, grammar), which requires no change to the Job Impact Statement.

#### **Initial Review of Rule**

As a rule that requires a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement, this rule will be initially reviewed in the calendar year 2016, which is no later than the 3rd year after the year in which this rule is being adopted.

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

A Notice of Revised Rule Making was published in the New York State Register on March 13, 2013. OASAS received several comments during the public comment period associated with the revised rulemaking. The issues and concerns raised in these comments are set forth below. Issues and concerns have been grouped according to the part of the revised rule they address because they are related or for convenience in providing an efficient response. Because many comments addressed concerns that applied to all of the participating State agencies that are implementing Executive Order No. 38, the responses to comments provided by each of those agencies are incorporated by reference into these responses. OASAS response is provided for each issue.

##### **Definitions**

Comment: One comment was received requesting exhaustive lists of what constitute “state funds” and “state-authorized payments”.

Response: The proposed regulations were previously modified to clarify what constitute “state funds” and “state-authorized payments”. However, additional guidance on this topic will be provided prior to the effective date.

##### **Limits on administrative expenses**

Comment: One comment was received requesting that the State engage in a dialogue with covered providers over what would constitute an adequate administrative rate.

Response: OASAS believe there is a legitimate government interest in limiting the amount of administrative expenses derived from government funds and that the limits set by the proposed regulations are appropriate. However, the agency will continue to monitor this issue in the years that follow. No changes were made to the proposed regulations in response to this comment.

##### **Limits on executive compensation**

Comment: One comment was received questioning the concept of limiting executive compensation for not-for-profit entities.

Response: OASAS believe there is a legitimate government interest in limiting the amount of executive compensation of providers that rely heavily on state funds or state authorized payments of federal funds. No changes were made to the proposed regulations in response to this comment.

Comment: One comment was received arguing that the regulations cannot be made effective on July 1, 2013 because the Division of the Budget has not yet identified, provided or recognized any surveys on executive compensation, thus preventing covered providers from determining whether waivers will be needed.

Response: Additional guidance on this topic will be provided prior to the effective date.

Comment: One comment was received arguing that covered providers may be in the position of having to attempt to recoup executive compensation funds and may not be able to do so under the Labor Law, and that if a waiver is not granted the covered provider would have no ability to recoup such funds, thus having no mechanism to avoid non-compliance with the proposed regulations.

Response: A covered provider who is faced with this dilemma may request a waiver. The waiver provisions of the regulations are intended to avoid placing covered providers into situations where compliance with competing legal requirements is impossible.

Comment: One comment was received requesting that the Division of the Budget create a list of compensation surveys that will be identified, provided and recognized by the State, and that such surveys consider executive compensation in both the not-for-profit and for-profit fields.

Response: Prior to the effective date guidance will be provided regarding acceptable surveys and comparability factors that must be taken into consideration for determining compensation and additional information regarding how this information will be identified, provided or recognized.

##### **Waivers**

Comment: One comment was received requesting clarification of the consequences of the denial of a waiver.

Response: The proposed regulations provide for penalties in the event of non-compliance by a covered provider that does not obtain a waiver, so if a covered provider fails to obtain a waiver and is thus out of compliance with the requirements, the covered provider may be subject to penalties. However, the proposed regulations addressing penalties provide for a six month period for a covered provider to cure the non-compliance, so the failure to obtain a waiver would not automatically result in the imposition of penalties. No changes have been made to the proposed regulations in response to this comment.

##### **Effective Date**

Comment: One comment was received requesting that the effective date of the proposed regulations be extended to six months after a covered provider’s first reporting period after the later of (1) the date the regulations become effective or (2) the identification, provision and recognition by the Division of the Budget and the State agencies of compensation surveys, in order to afford not-for-profit entities time to comply.

Response: Additional guidance will be provided prior to the effective date to facilitate compliance and/ or the waiver process. No change has been made to the proposed regulations in response to this comment.

##### **Lack of Necessity**

Comment: One comment was received asserting that the proposed regulations address a problem that does not really exist, other than in a few isolated circumstances, and that the proposed regulations are not needed to address those few circumstances.

Response: OASAS believes that the regulations will serve a necessary function by establishing appropriate controls so that taxpayer dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. No change was made to the proposed regulations in response to this comment.

##### **Coordination**

Comment: One comment was received requesting that the Governor, the Attorney General and the State agencies work together so that the regulations are implemented properly and consistently, and that the non-profit sector be included in a taskforce to implement the regulations.

Response: The development of the proposed regulations will continue to involve interagency cooperation. No changes were made to the proposed regulations in response to this comment.

## Office of Children and Family Services

### NOTICE OF ADOPTION

#### Establishing Limitations on Administrative Expenses and Executive Compensation of Service Providers Supported by State Funds

**I.D. No.** CFS-22-12-00010-A

**Filing No.** 507

**Filing Date:** 2013-05-14

**Effective Date:** 2013-07-01

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

**Action taken:** Addition of Part 409 to Title 18 NYCRR; and addition of Subpart 166-5 to Title 9 NYCRR.

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

**Subject:** Establishing limitations on administrative expenses and executive compensation of service providers supported by State funds.

**Purpose:** To comply with Executive Order numbers 38 and 43.

**Substance of final rule:** The New York State Office of Children and Family Services is adopting as final regulations the additions of Part 409 of Title 18 of the NYCRR and Subpart 166-5 of Title 9 of the NYCRR.

There have been minor edits to the text as follows:

Edit to the definition of Executive Compensation in 18 NYCRR 409.3(f) and 9 NYCRR 166-5.3(f).

And a clarification in provision on Limits on Executive Compensation in 18 NYCRR 409.5(b)(2) and 9 NYCRR 166-5.5(b)(2).

18 NYCRR 409.3 and 9 NYCRR 166-5.3 contain definitions for purposes of Part 409 and Subpart 166-5, including definitions for administrative expenses, covered operating expenses, covered executive, covered provider, covered reporting period, executive compensation, program services, program services expenses, related organization, reporting period, State-authorized payments, and State funds.

18 NYCRR 409.4 and 9 NYCRR 166-5.4 Limits on Administrative Expenses contain limits on the use of State funds or State-authorized payments for administrative expenses.

18 NYCRR 409.5 and 9 NYCRR 166-5.5 Limits on Executive Compensation contain restrictions on executive compensation provided to covered executives.

18 NYCRR 409.6 and 9 NYCRR 166-5.6 Waivers establish processes for covered providers to seek waivers of the limit on administrative expenses and the limits on executive compensation.

18 NYCRR 409.7 and 9 NYCRR 166-5.7 Reporting requires covered providers to report information on an annual basis.

18 NYCRR 409.8 and 9 NYCRR 166-5.9 Penalties establish a process for the imposition of penalties in the event of non-compliance with the limits on administrative expenses or the limits on executive compensation.

A copy of the full text of the regulatory proposal is available on: [www.ocfs.state.ny.us/main/legal/Regulatory/final/](http://www.ocfs.state.ny.us/main/legal/Regulatory/final/)

**Final rule as compared with last published rule:** Nonsubstantive changes were made in 18 NYCRR sections 409.3, 409.5 and 9 NYCRR Subpart 166-5.

**Revised rule making(s) were previously published in the State Register** on October 31, 2012 and March 13, 2013.

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

#### Revised Regulatory Impact Statement

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement ("RIS"). The revisions to the last published rule merely provide clarifications in the text and correct technical errors (i.e., grammar), which requires no change to the Regulatory Impact Statement.

#### Revised Regulatory Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments. The revisions to the last published rule merely

clarify the text and correct technical errors (i.e., grammar), which requires no change to the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

#### Revised Rural Area Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published Rural Area Flexibility Analysis. The revisions to the last published rule merely clarify the text and correct technical errors (i.e., grammar), which requires no change to the Rural Area Flexibility Analysis.

#### Revised Job Impact Statement

Changes made to the last published rule do not necessitate revision to the previously published Job Impact Statement. The revisions to the last published rule merely clarify the text and correct technical errors (i.e., grammar), which requires no change to the Job Impact Statement.

#### Initial Review of Rule

As a rule that requires a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement, this rule will be initially reviewed in the calendar year 2016, which is no later than the 3rd year after the year in which this rule is being adopted.

#### Assessment of Public Comment

A Notice of Revised Rule Making was published in the New York State Register on March 13, 2013. The New York State Office of Children and Family Services (OCFS) received comments during the public comment period associated with the revised proposed rulemaking. The issues and concerns raised in those comments are set forth below. Because the comments addressed concerns that applied to all of the participating State agencies that are implementing Executive Order No. 38, the responses to comments provided by each of those agencies are incorporated by reference into these responses.

##### Definitions

**Comment:** One comment was received requesting exhaustive lists of what constitute "state funds" and "state-authorized payments".

**Response:** The proposed regulations were previously modified to clarify what constitute "state funds" and "state-authorized payments". However, additional guidance on this topic will be provided prior to the effective date.

##### Limits on administrative expenses

**Comment:** One comment was received requesting that the State engage in a dialog with covered providers over what would constitute an adequate administrative rate.

**Response:** OCFS believes there is a legitimate government interest in limiting the amount of administrative expenses derived from government funds and that the limits set by the proposed regulations are appropriate. However, OCFS will continue to monitor this issue in the years that follow. No changes were made to the proposed regulations in response to this comment.

##### Limits on executive compensation

**Comment:** One comment was received questioning the concept of limiting executive compensation for not-for-profit entities.

**Response:** OCFS believes there is a legitimate government interest in limiting the amount of executive compensation of providers that rely heavily on state funds or state authorized payments of federal funds. No changes were made to the proposed regulations in response to this comment.

**Comment:** One comment was received arguing that the regulations cannot be made effective on July 1, 2013 because the Division of the Budget has not yet identified, provided or recognized any surveys on executive compensation, thus preventing covered providers from determining whether waivers will be needed.

**Response:** Additional guidance on this topic will be provided prior to the effective date.

**Comment:** One comment was received arguing that covered providers may be in the position of having to attempt to recoup executive compensation funds and may not be able to do so under the Labor Law, and that if a waiver is not granted the covered provider would have no ability to recoup such funds, thus having no mechanism to avoid non-compliance with the proposed regulations.

**Response:** A covered provider who is faced with this dilemma may request a waiver. The waiver provisions of the regulations are intended to avoid placing covered providers into situations where compliance with competing legal requirements is impossible.

**Comment:** One comment was received requesting that the Division of the Budget create a list of compensation surveys that will be identified, provided and recognized by the State, and that such surveys consider executive compensation in both the not-for-profit and for-profit fields.

**Response:** Prior to the effective date, guidance will be provided regarding acceptable surveys and comparability factors that must be taken into consideration for determining compensation and additional information regarding how this information will be identified, provided or recognized.

**Waivers**

Comment: One comment was received requesting clarification of the consequences of the denial of a waiver.

Response: The proposed regulations provide for penalties in the event of non-compliance by a covered provider that does not obtain a waiver, so if a covered provider fails to obtain a waiver and is thus out of compliance with the requirements, the covered provider may be subject to penalties. However, the proposed regulations addressing penalties provide for a six month period for a covered provider to cure the non-compliance, so the failure to obtain a waiver would not automatically result in the imposition of penalties. No changes have been made to the proposed regulations in response to this comment.

**Effective Date**

Comment: One comment was received requesting that the effective date of the proposed regulations be extended to six months after a covered provider's first reporting period after the later of (1) the date the regulations become effective or (2) the identification, provision and recognition by the Division of the Budget and the State agencies of compensation surveys, in order to afford not-for-profit entities time to comply.

Response: Additional guidance will be provided prior to the effective date to facilitate compliance and/or the waiver process. No change has been made to the proposed regulations in response to this comment.

**Lack of Necessity**

Comment: One comment was received asserting that the proposed regulations address a problem that does not really exist, other than in a few isolated circumstances, and that the proposed regulations are not needed to address those few circumstances.

Response: OCFS believes that the regulations will serve a necessary function by establishing appropriate controls so that taxpayer dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. No change was made to the proposed regulations in response to this comment.

**Coordination**

Comment: One comment was received requesting that the Governor, the Attorney General and the State agencies work together so that the regulations are implemented properly and consistently, and that the non-profit sector be included in a taskforce to implement the regulations.

Response: The development of the proposed regulations will continue to involve interagency cooperation. No changes were made to the proposed regulations in response to this comment.

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## Department of Civil Service

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

**Jurisdictional Classification**

**I.D. No.** CVS-22-13-00001-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To delete a position from and classify positions in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by deleting therefrom the position of Executive Director and by increasing the number of positions of Special Assistant from 9 to 11.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was

previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

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

**Jurisdictional Classification**

**I.D. No.** CVS-22-13-00002-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To add a subheading and to classify a position in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department, by adding thereto the subheading "Justice Center for the Protection of People with Special Needs," and the position of Director Public Information.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

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

**Jurisdictional Classification**

**I.D. No.** CVS-22-13-00003-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To delete a position from and classify a position in the non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Civil Service, by deleting therefrom the position of Assistant Director of Affirmative Careers (1) and by adding thereto the position of Psychometrician, Personnel Assessment (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

#### **Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

#### **Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

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

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

#### **Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

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

#### **Jurisdictional Classification**

**I.D. No.** CVS-22-13-00004-P

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

**Proposed Action:** Amendment of Appendix 1 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To delete a position from and classify a position in the exempt class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Labor under the subheading "Workers' Compensation Board," by decreasing the number of positions of District Administrator from 9 to 8 and by increasing the number of positions of Special Assistant from 13 to 14.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

#### **Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

#### **Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

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

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

#### **Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

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

#### **Jurisdictional Classification**

**I.D. No.** CVS-22-13-00005-P

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

**Proposed Action:** Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To classify a position in the exempt class and to classify a position in the non-competitive class.

**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Corrections and Community Supervision, by increasing the number of positions of Associate Commissioner from 2 to 3; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Corrections and Community Supervision, by adding thereto the position of Minority Business Specialist 1 (1).

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

#### **Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

#### **Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

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

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

#### **Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

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

**Jurisdictional Classification**

I.D. No. CVS-22-13-00006-P

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

**Proposed Action:** Amendment of Appendix 2 of Title 4 NYCRR.

**Statutory authority:** Civil Service Law, section 6(1)

**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from and classify positions in the non-competitive class.

**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in Westchester County under the subheading "Department of Correction," by deleting therefrom the position of Special Assistant to the Commissioner of Corrections and by adding thereto the position of Special Assistant to the Commissioner of Corrections and, under the subheading "Department of Emergency Services," by deleting therefrom the position of Director - Office of Emergency Management and by adding thereto the position of Director - Office of Emergency Management.

**Text of proposed rule and any required statements and analyses may be obtained from:** Shirley LaPlante, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: shirley.laplante@cs.state.ny.us

**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.state.ny.us

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

**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Regulatory Flexibility Analysis**

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Rural Area Flexibility Analysis**

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Job Impact Statement**

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-13-00002-P, Issue of January 9, 2013.

**Subject:** Limits on Administrative Expenses and Executive Compensation.

**Purpose:** To ensure the proper use of taxpayer dollars and the most effective provision of such services to the public.

**Substance of final rule:** The Department of Corrections and Community Supervision is adopting as final regulations for 7 NYCRR Part 513.

There have been to minor edits to the text as follows:

Edit to the definition of Executive Compensation in 7 NYCRR subdivision (f) section 513.3.

And a clarification in provision on Limits on Executive Compensation in 7 NYCRR subdivision (b)(2) of section 513.6.

Section 513.3 contains definitions for purposes of this Part, including definitions for administrative expenses, covered operating expenses, covered executive, covered provider, covered reporting period, executive compensation, program services, program services expenses, related organization, reporting period, State-authorized payments, and State funds.

Section 513.4 Limits on Administrative Expenses. Contains limits on the use of State funds or State-authorized payments for administrative expenses.

Section 513.5. Limits on Executive Compensation. Contains restrictions on executive compensation provided to covered executives.

Section 513.6. Waivers. Processes are established for covered providers to seek waivers of the limit on administrative expenses and the limits on executive compensation.

Section 513.7. Reporting. Covered providers are required to report information on an annual basis.

Section 513.8. Penalties. A process is established for the imposition of penalties in the event of non-compliance with the limit on administrative expenses or the limits on executive compensation.

A copy of the full text of the regulatory proposal is available on the DOCCS website @ <http://www.doccs.ny.gov>.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 513.3(f) and 513.4(b)(2).

**Revised rule making(s) were previously published in the State Register** on October 31, 2012 and March 13, 2013.

**Text of rule and any required statements and analyses may be obtained**

**from:** Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, The Harriman State Campus - Building 2, 1220 Washington Avenue, Albany, NY 12226-2050, (518) 457-4951, email: Rules@doccs.ny.gov

**Revised Regulatory Impact Statement**

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement ("RIS") for the Department of Corrections and Community Supervision 7NYCRR Part 513.

The revisions to the last published rule merely provide clarifications in the text and correct technical errors (i.e., grammar), which requires no change to the RIS.

**Revised Regulatory Flexibility Analysis**

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments ("RFASBLG") for the [insert your agency's NYCRR reference].

The revisions to the last published rule merely clarify the text and correct technical errors (i.e., grammar), which requires no change to the RFASBLG.

**Revised Rural Area Flexibility Analysis**

Changes made to the last published rule do not necessitate revision to the previously published Rural Area Flexibility Analysis ("RAFA") for the Third Amendment to Department of Corrections and Community Supervision 7NYCRR Part 513.

The revisions to the last published rule merely clarify the text and correct technical errors (i.e., grammar), which requires no change to the RAFA.

**Revised Job Impact Statement**

Changes made to the last published rule do not necessitate revision to the previously published Job Impact Statement ("JIS") for the Department of Corrections and Community Supervision 7NYCRR Part 513.

The revisions to the last published rule merely clarify the text and correct technical errors (i.e., grammar), which requires no change to the JIS.

**Assessment of Public Comment**

A Notice of Revised Rule Making was published in the New York State Register on March 13, 2013. The Department of Corrections and Community Supervision received several comments during the public comment period associated with the revised rulemaking. The issues and concerns raised in these comments are set forth below. Issues and concerns have been grouped according to the part of the revised rule they address because they are related or for convenience in providing an efficient response. Because many comments addressed concerns that applied to all

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**Department of Corrections and  
Community Supervision**

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**NOTICE OF ADOPTION****Limits on Administrative Expenses and Executive Compensation**

I.D. No. CCS-22-12-00015-A

Filing No. 513

Filing Date: 2013-05-14

Effective Date: 2013-07-01

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

**Action taken:** Addition of Part 513 to Title 7 NYCRR.

**Statutory authority:** Correction Law, section 112

of the participating State agencies that are implementing Executive Order No. 38, the responses to comments provided by each of those agencies are incorporated by reference into these responses. The Department of Corrections and Community Supervision response is provided for each issue.

**Limits on executive compensation**

Comment: One comment was received arguing that covered providers may be in the position of having to attempt to recoup executive compensation funds and may not be able to do so under the Labor Law, and that if a waiver is not granted the covered provider would have no ability to recoup such funds, thus having no mechanism to avoid non-compliance with the proposed regulations.

Response: A covered provider who is faced with this dilemma may request a waiver. The waiver provisions of the regulations are intended to avoid placing covered providers into situations where compliance with competing legal requirements is impossible.

Comment: One comment was received requesting that the Division of the Budget create a list of compensation surveys that will be identified, provided and recognized by the State, and that such surveys consider executive compensation in both the not-for-profit and for-profit fields.

Response: Prior to the effective date guidance will be provided regarding acceptable surveys and comparability factors that must be taken into consideration for determining compensation and additional information regarding how this information will be identified, provided or recognized.

**Waivers**

**Effective Date**

Comment: One comment was received requesting that the effective date of the proposed regulations be extended to six months after a covered provider's first reporting period after the later of (1) the date the regulations become effective or (2) the identification, provision and recognition by the Division of the Budget and the State agencies of compensation surveys, in order to afford not-for-profit entities time to comply.

Response: Additional guidance will be provided prior to the effective date to facilitate compliance and/ or the waiver process. No change has been made to the proposed regulations in response to this comment.

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## Division of Criminal Justice Services

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### NOTICE OF ADOPTION

**Limits on Administrative Expenses and Executive Compensation**

**I.D. No.** CJS-22-12-00016-A

**Filing No.** 516

**Filing Date:** 2013-05-14

**Effective Date:** 2013-07-01

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

**Action taken:** Addition of Part 6157 to Title 9 NYCRR.

**Statutory authority:** Executive Order No. 38; Executive Law, section 837(13); and Not-For-Profit Corporation Law, section 508

**Subject:** Limits on administrative expenses and executive compensation.

**Purpose:** To implement Executive Order No. 38 issued by Governor Andrew Cuomo on January 18, 2012.

**Substance of final rule:** The Division of Criminal Justice Services (Division) is adopting 9 NYCRR Part 6157 as final regulations.

There have been minor edits to the text as follows:

- Section 6157.2(h) - edit to the definition of "executive compensation".
- Section 6157.4(b)(2) - clarification in provision pertaining to "Limits on Executive Compensation".

Section 6157.2 contains definitions for purposes of this Part, including definitions for administrative expenses, covered operating expenses, covered executive, covered provider, covered reporting period, executive compensation, program services, program services expenses, related organization, reporting period, State-authorized payments, and State funds.

Section 6157.3. Limits on Administrative Expenses. Contains limits on the use of State funds or State-authorized payments for administrative expenses.

Section 6157.4. Limits on Executive Compensation. Contains restrictions on executive compensation provided to covered executives.

Section 6157.5. Waivers. Processes are established for covered providers to seek waivers of the limits on administrative expenses and the limits on executive compensation.

Section 6157.6. Reporting. Covered providers are required to report information on an annual basis.

Section 6157.7. Penalties. A process is established for the imposition of penalties in the event of non-compliance with the limits on administrative expenses or the limits on executive compensation.

A copy of the full text of the regulatory proposal is available on The Division's website at <http://www.criminaljustice.ny.gov/>.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 6157.2(h) and 6157.4(b)(2).

**Revised rule making(s) were previously published in the State Register** on October 31, 2012 and March 13, 2013.

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

**Revised Regulatory Impact Statement**

Changes made to the last published rule do not necessitate revisions to the previously published Regulatory Impact Statement ("RIS") for 9 NYCRR Part 6157.

The revisions to the last published rule merely provide clarifications in the text and correct technical errors (i.e., grammar), which require no change to the Regulatory Impact Statement.

**Revised Regulatory Flexibility Analysis**

Changes made to the last published rule do not necessitate revisions to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments (RFASBLG) for 9 NYCRR Part 6157.

The revisions to the last published rule merely provide clarifications in the text and correct technical errors (i.e., grammar), which require no change to the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

**Revised Rural Area Flexibility Analysis**

Changes made to the last published rule do not necessitate revisions to the previously published Rural Area Flexibility Analysis (RAFA) for 9 NYCRR Part 6157.

The revisions to the last published rule merely provide clarifications in the text and correct technical errors (i.e., grammar), which require no change to the Rural Area Flexibility Analysis.

**Revised Job Impact Statement**

Changes made to the last published rule do not necessitate revisions to the previously published Job Impact Statement (JIS) for 9 NYCRR Part 6157.

The revisions to the last published rule merely provide clarifications in the text and correct technical errors (i.e., grammar), which require no change to the Job Impact Statement.

**Initial Review of Rule**

As a rule that does not require a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement, this rule will be initially reviewed in the calendar year 2018, which is no later than the 5th year after the year in which this rule is being adopted

**Assessment of Public Comment**

"Limits on Administrative Expenses and Executive Compensation"

A Notice of Revised Rule Making was published in the New York State Register on March 13, 2013. The Division of Criminal Justice Services (Division) received several comments during the public comment period associated with the revised rule making. The issues and concerns raised in these comments are set forth below. Issues and concerns have been grouped according to the part of the revised rule they address because they are related or for convenience in providing an efficient response. Because many comments addressed concerns that applied to all of the participating State agencies that are implementing Executive Order No. 38, the responses to comments provided by each of those agencies are incorporated by reference into these responses. The Division's response is provided for each issue.

**Definitions**

Comment: One comment was received requesting exhaustive lists of what constitutes "state funds" and "state-authorized payments".

Response: The proposed regulations were previously modified to clarify what constitutes "state funds" and "state-authorized payments". However, additional guidance on this topic will be provided prior to the effective date.

**Limits on Administrative Expenses**

Comment: One comment was received requesting that the State engage in a dialogue with covered providers over what would constitute an adequate administrative rate.

Response: The Division believes that there is a legitimate government interest in limiting the amount of administrative expenses derived from government funds and that the limits set by the proposed regulations are

appropriate. However, the Division will continue to monitor this issue in the years that follow. No changes were made to the proposed regulations in response to this comment.

#### Limits on Executive Compensation

Comment: One comment was received questioning the concept of limiting executive compensation for not-for-profit entities.

Response: The Division believes that there is a legitimate government interest in limiting the amount of executive compensation of providers that rely heavily on State funds or State-authorized payments of federal funds. No changes were made to the proposed regulations in response to this comment.

Comment: One comment was received arguing that the regulations cannot be made effective on July 1, 2013 because the Division of the Budget has not yet identified, provided or recognized any surveys on executive compensation, thus preventing covered providers from determining whether waivers will be needed.

Response: Additional guidance on this topic will be provided prior to the effective date.

Comment: One comment was received arguing that covered providers may be in the position of having to attempt to recoup executive compensation funds and may not be able to do so under the Labor Law, and that if a waiver is not granted, the covered provider would have no ability to recoup such funds, thus having no mechanism to avoid non-compliance with the proposed regulations.

Response: A covered provider who is faced with this dilemma may request a waiver. The waiver provisions of the regulations are intended to avoid placing covered providers into situations where compliance with competing legal requirements is impossible.

Comment: One comment was received requesting that the Division of the Budget create a list of compensation surveys that will be identified, provided and recognized by the State, and that such surveys consider executive compensation in both the not-for-profit and for-profit fields.

Response: Prior to the effective date, guidance will be provided regarding acceptable surveys and comparability factors that must be taken into consideration for determining compensation, and additional information regarding how this information will be identified, provided or recognized.

#### Waivers

Comment: One comment was received requesting clarification of the consequences of the denial of a waiver.

Response: The proposed regulations provide for penalties in the event of non-compliance by a covered provider that does not obtain a waiver. If a covered provider fails to obtain a waiver and is thus out of compliance with the requirements, the covered provider may be subject to penalties. However, the proposed regulations addressing penalties provide for a six-month period for a covered provider to cure the non-compliance, so the failure to obtain a waiver would not automatically result in the imposition of penalties. No changes were made to the proposed regulations in response to this comment.

#### Effective Date

Comment: One comment was received requesting that the effective date of the proposed regulations be extended to six months after a covered provider's first reporting period after the later of: (1) the date the regulations become effective; or (2) the identification, provision and recognition by the Division of the Budget and the State agencies of compensation surveys, in order to afford not-for-profit entities time to comply.

Response: Additional guidance will be provided prior to the effective date to facilitate compliance and/or the waiver process. No changes were made to the proposed regulations in response to this comment.

#### Lack of Necessity

Comment: One comment was received asserting that the proposed regulations address a problem that does not really exist, other than in a few isolated circumstances, and that the proposed regulations are not needed to address those few circumstances.

Response: The Division believes that the regulations will serve a necessary function by establishing appropriate controls so that taxpayer dollars are used properly, efficiently and effectively to improve the lives of New Yorkers. No changes were made to the proposed regulations in response to this comment.

#### Coordination

Comment: One comment was received requesting that the Governor, the Attorney General and the State agencies work together so that the regulations are implemented properly and consistently, and that the non-profit sector be included in a taskforce to implement the regulations.

Response: The development of the proposed regulations will continue to involve interagency cooperation. No changes were made to the proposed regulations in response to this comment.

## New York State Gaming Commission

### EMERGENCY RULE MAKING

#### Implementation of Substantive Changes and Procedures Pertaining to Equine Drugs and Reporting Requirements for Thoroughbreds

**I.D. No.** RWB-08-13-00006-E

**Filing No.** 506

**Filing Date:** 2013-05-14

**Effective Date:** 2013-05-14

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

**Action taken:** Amendment of sections 4043.2(e)(9), (g), (i) and 4043.4(b) of Title 9 NYCRR.

**Statutory authority:** Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(1), 104(1), (19), 122, 128 and 902(1)

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

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

On September 27, 2012, the New York State Task Force on Racehorse Health and Safety released its report on the investigation of 21 equine fatalities at the 2011-12 fall and winter meet at Aqueduct Racetrack. The Task Force determined that there may have been opportunities to prevent 11 of those 21 fatalities. The amendments contained in this emergency rulemaking are based upon the findings and recommendations of the Task Force.

The Board originally adopted emergency rules to address the administration of clenbuterol and corticosteroids. These emergency rules were requested by the industry for the purpose of protecting the horses and athletes involved in thoroughbred racing and must be implemented on an emergency basis.

Given the danger of a horse breaking down, and the safety threat presented to both the horse and the jockeys racing in close proximity, these rule amendments are necessary to protect the safety of human and equine athletes. Thoroughbred horses travel over the racetrack at an average speed of approximately 40 miles per hour, sometimes exceeding that average as they sprint to the finish or sprint to gain positional advantage. An unsound horse or a horse influenced by the administration of certain medications may be forced to race beyond its limits and result in a fatal breakdown, oftentimes in a sudden or uncontrollable breakdown.

This rule is also necessary to protect the general welfare of the horse racing industry and the thousands of jobs that are created through it. Public confidence in both the process of racing and in pari-mutuel wagering system is necessary for the sport to survive, and with it the jobs and revenue generated in support of government.

**Subject:** Implementation of substantive changes and procedures pertaining to equine drugs and reporting requirements for thoroughbreds.

**Purpose:** To protect the health and safety of thoroughbred race horses, jockeys and exercise riders.

**Text of emergency rule:** Subdivision (g) of Section 4043.2 of 9 NYCRR is amended as follows:

4043.2 Restricted use of drugs, medication and other substances.

(g) The following substances are permitted to be administered by any means until 96 hours before the scheduled post time of the race in which the horse is to compete:

- (1) acepromazine;
- (2) albuterol;
- (3) atropine;
- (4) butorphanol;
- [(5) clenbuterol;]
- [(6)](5) detomidine;
- [(7)](6) glycopyrrolate;

- (8)(7) guaifenesin;
- (9)(8) hydroxyzine;
- (10)(9) isosuprine;
- (11)(10) lidocaine;
- (12)(11) mepivacaine;
- (13)(12) pentoxifylline;
- (14)(13) phenytoin;
- (15)(14) pyrilamine;
- (16)(15) xylazine.

[They] *Such substances* may not be administered within 96 hours of the scheduled post time of the race in which the horse is to compete. In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such [96 hours] *96-hour period*.

Paragraph 9 of Subdivision (e) of Section 4043.2 of 9 NYCRR is amended as follows:

(9) hormones [and steroids] (e.g., [testosterone, progesterone, estrogens,] chorionic gonadotropin[, glucocorticoids])[, except in conjunction with joint aspiration as restricted in subdivision (i) of this section; the use of anabolic steroids is governed by section 4043.15 of this Part];

Subdivision (i) of Section 4043.2 of 9 NYCRR is amended to read as follows:

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

(1) *for at least five days following a systemic administration of a corticosteroid;*

(2) *for at least seven days following a joint injection of a corticosteroid; and*

(3) *for at least 14 days following an administration of clenbuterol.*

*In this regard, substances ingested by a horse shall be deemed administered at the time of eating and drinking. It shall be part of the trainer's responsibility to prevent such ingestion within such time periods.*

New Subdivision (b) is added to Section 4043.4 of 9 NYCRR to read as follows:

(b) *Trainers shall maintain accurate records of all corticosteroid joint injections to horses trained by them. The record(s) of every corticosteroid joint injection shall be submitted, in a form and manner approved by the Board, by the trainer to the Board within 48 hours of the treatment. The trainer may delegate this responsibility to the treating veterinarian, who shall make these reports when so designated. The reports shall be accessible to the examining veterinarian for the purpose of assisting with pre-race veterinary examinations.*

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. RWB-08-13-00006-P, Issue of February 20, 2013. The emergency rule will expire July 12, 2013.

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

#### **Regulatory Impact Statement**

1. Statutory authority and legislative objectives of such authority: The Gaming Commission is authorized to promulgate these rules pursuant to Racing Pari-Mutuel Wagering and Breeding Law sections 103(1), 104(1), 104(19), 122, 128, and 902(1). Under sections 103(1) and 104(1), the Gaming Commission has general jurisdiction over all horse racing and pari-mutuel wagering activities in the state and the corporations and associations and persons engaged therein, including the authority to regulate the use of drugs that can manipulate race performance, and is responsible for the supervision, regulation, and administration thereof. Section 104(19) authorizes the Gaming Commission to promulgate any rules and regulations that it deems necessary to carry out its responsibilities. Section 122 provides that all rule-making of the former New York State Racing and Wagering Board shall continue in force and effect as rule-making of the Gaming Commission until duly modified or abrogated by such commission. Section 128 authorizes the new Gaming Commission to promulgate regulations on an emergency basis by methods outside of standard administrative procedural requirements to ensure continuity through readopting current emergency rules of the Gaming Commission. Section 902(1) prescribes that a state college within New York with an approved equine science program shall conduct equine drug testing to assure public confidence in and to continue the high degree of integrity at pari-mutuel race meetings, and authorizes the Gaming Commission to promulgate any rules and regulations necessary to implement its equine drug testing program and to impose substantial administrative penalties on anyone who races drugged horses.

2. Legislative objectives: To enable the New York State Gaming Commission to preserve the integrity of pari-mutuel racing while generating reasonable revenue for the support of government.

3. Needs and benefits: These rule amendments have been identified by the New York Task Force on Racehorse Health and Safety as emergency measures required to protect the safety and health of thoroughbred race horses and jockeys in New York State. The New York State Gaming Commission has reviewed these recommendations and has endorsed them for emergency adoption.

The Task Force was formed in 2012 after 21 equine deaths occurred between November 2011 and March 2012. The 21 deaths were more than double the expected frequency rate. The Task Force's investigation revealed troubling aspects with the way horses are examined and managed in this state and found that the health and safety of racehorses and jockeys will be improved by reducing the use of legal anti-inflammatory medications in the time after the horse is entered to race.

The amendments to Gaming Commission Rule 4043.2(i) are necessary to control the administration of corticosteroids to thoroughbred horses. These amendments are necessary for the health and safety of both the horse and the jockeys. The withdrawal periods in the rule were prescribed explicitly by the Task Force and are necessary to provide clear guidance as to when administration should be discontinued for the purposes of testing and for the safety of the horse. The intra-articular use of corticosteroids can mask the inflammatory changes ordinarily associated with joint disease, and can frustrate the pre-race clinical examination. For such reasons, regulation of joint injections of corticosteroids is appropriate. The term "intra-articular" has been revised to "joint injection" in the rule text to more accurately reflect a vernacular of the trade.

The Task Force also identified the need to tighten controls over the use of clenbuterol, which is currently permitted as a 96-hour rule under the Gaming Commission's rules. It is a potent bronchodilator that was introduced to race horse care and treatment to prevent respiratory infections in horses experiencing exercise-induced pulmonary hemorrhage (respiratory bleeding). Some trainers have indicated that their horses look better and have increased appetites when treated with clenbuterol. The report stated that in addition to its pharmacological effect on the respiratory tract, clenbuterol mimics anabolic steroids in that it increases muscle and decreases fat in cattle, pigs, poultry and sheep. The report stated that there is a belief that illegally compounded clenbuterol has been used in thoroughbred horses as an alternative to prohibited anabolic steroids. The Task Force found: "It was abundantly clear to the Task Force that while the NYSRWB's time limit regarding clenbuterol was being followed, the medication is in common use as a substitute for anabolic steroids and not for the legitimate therapeutic purpose for which it is intended." The amendments will replace the existing 96-hour time restriction, prompting the change to subdivision (g) of 4043.2 of 9 NYCRR to remove any reference to clenbuterol, with a 14-day restriction to be found in a new paragraph (3) of subdivision (i) of 9 NYCRR.

The Gaming Commission also amended paragraph (9) of subdivision (e) of 4043.2 of 9 NYCRR to remove any references to steroids. This was not a recommendation by the Task Force, but in light of the Gaming Commission's existing rule limiting the administration of anabolic steroids (Rule 4043.15) and the restrictions placed on corticosteroids in this rulemaking, the Gaming Commission believes that Rule 4043.2(e)(9) should contain no reference to steroids, in order to avoid confusion.

The Task Force reported: "The failure of trainers to report intra-articular injections as required prevented the NYRA veterinarians from identifying a pattern of redundant... treatments that had the potential to misrepresent the true clinical condition of a horse." Therefore, in order to ensure proper notification, the Gaming Commission amends Section 4043.4 of 9 NYCRR, which is commonly known as the "Trainer's Responsibility Rule," to require that a trainer submit a corticosteroid joint injection record to the Gaming Commission within 48 hours of treatment so that examining veterinarians will have access to that information as part of the pre-race examinations. This amendment will improve the quality of pre-examinations, provide the Gaming Commission with timely notice of any potential ailments, notify the racing office at the racetrack when horses are ineligible to enter upcoming races because of a corticosteroid joint injection within seven days of the race, and ensure that documentation is available in the event a horse's fitness comes into question. In response to input from the New York Thoroughbred Racing Association, the Gaming Commission previously added the new 9 NYCRR 4043.4(b), authorizing trainers to delegate the reporting responsibility to the treating veterinarians.

These emergency rules certainly have had a positive impact on racing and should be continued. Since December 26, 2012 when the emergency rules took effect, there were only nine equine racing fatalities at Aqueduct (all surfaces) compared to 23 that occurred from December 26, 2011 through April 22, 2012 (the last day of racing at Aqueduct before moving to Belmont). Based on a rate of 1,000 starters, there were 4 equine racing fatalities for every 1,000 horses starting after December 26, 2011 at

Aqueduct (before moving to Belmont) compared to 1.9 equine racing fatalities per 1,000 starters from December 26, 2012 to the time Belmont opened on April 26, 2013, which is a 53 percent decrease in equine racing fatalities since enforcement of these emergency rules at Aqueduct. This result was predicted by the Task Force, when it recommended that these emergency rules be adopted immediately and permanently. Such result was also recognized by the former New York State Racing and Wagering Board, when it authorized a first readoption of these rules and proposed them as permanent rules. More recently, Gaming Commission staff has affirmed the effectiveness of these emergency rules to reduce equine racing fatalities.

4. Costs:

(a) Costs to regulated parties for the implementation of and continuing compliance with the rule: The costs for the New York Drug Testing and Research Program will be substantial. The cost for conducting administration trials necessary for Cortisone Testing will be \$36,000. The cost of related laboratory testing of samples for corticosteroids is \$18,000 per year. The cost of trial administrations of clenbuterol is \$6,000. The related laboratory testing of clenbuterol samples is \$5,000 per year.

(b) Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The amendments will require the New York State Gaming Commission to develop a filing system for corticosteroid reporting.

There will be no costs to local government because the New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel horse racing.

(c) The information, including the source(s) of such information and the methodology upon which the cost analysis is based: The Gaming Commission relied on its experience in collecting information and based upon its experience in the equine drug testing program. The costs associated with clenbuterol and corticosteroid testing was provided directly from the New York Drug Testing and Research Program.

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

5. Local government mandates: None. The New York State Gaming Commission is the only governmental entity authorized to regulate pari-mutuel horse racing activities.

6. Paperwork: There will be a need for reporting corticosteroid injections. Trainers will be required submit paperwork to the Gaming Commission in a manner prescribed by the Gaming Commission.

7. Duplication: None.

8. Alternatives. These rule amendments are based upon the finding and recommendations of the Task Force and no other alternatives were considered.

9. Federal standards: None.

10. Compliance schedule: This rule will be implemented upon submission to the Department of State as a second 60-day extension, the first having been filed with the Department of State on March 13, 2013, to an original emergency rulemaking that was published in the December 26, 2012 State Register. The Notice of Proposed Rule-Making to make these into permanent rules has been published in the February 20, 2013 State Register.

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

As is evident by the nature of this rulemaking, this will not have an adverse affect on jobs or rural areas. This proposal concerns the restricted administration of certain drugs to thoroughbred race horses, the testing procedures to ensure compliance with those restrictions, and reporting of the administration of certain drugs. These medications – corticosteroids and clenbuterol – are currently permitted and will continue to be permitted but under different administration schedules. These schedules will have no impact on jobs or rural areas. This amendment is intended to reduce equine deaths in thoroughbred racing, and as such will have a positive effect on horseracing and the revenue generated through pari-mutuel wagering and breeding in New York State. This will not adversely impact rural areas or jobs or local governments and does not require a Rural Area Flexibility Statement or Job Impact Statement.

**Assessment of Public Comment**

The agency received no public comment.

## Department of Health

### NOTICE OF ADOPTION

**Adverse Event Reporting Via NYPORTS System**

**I.D. No.** HLT-09-12-00001-A

**Filing No.** 515

**Filing Date:** 2013-05-14

**Effective Date:** 2013-05-29

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

**Action taken:** Amendment of sections 405.8 and 751.10 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, section 2805-1

**Subject:** Adverse Event Reporting Via NYPORTS System.

**Purpose:** To update current provisions to conform with current practice.

**Text or summary was published** in the February 29, 2012 issue of the Register, I.D. No. HLT-09-12-00001-P.

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

**Revised rule making(s) were previously published in the State Register** on March 20, 2013.

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

**Assessment of Public Comment**

The agency received no public comment.

### NOTICE OF ADOPTION

**Limits on Executive Compensation and Administrative Expenses in Agency Procurements**

**I.D. No.** HLT-22-12-00012-A

**Filing No.** 517

**Filing Date:** 2013-05-14

**Effective Date:** 2013-07-01

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

**Action taken:** Addition of Part 1002 to Title 10 NYCRR.

**Statutory authority:** Social Services Law, section 363-a(2); Public Health Law, sections 201(1)(o), (p), 206(3) and (6); and Not-For-Profit Corporation Law, section 508

**Subject:** Limits on Executive Compensation and Administrative Expenses in Agency Procurements.

**Purpose:** Ensure State funds and State authorized payments are expended in the most efficient manner and appropriate use of funds.

**Substance of final rule:** The revised rule would add a new Part 1002 to 10 NYCRR titled Limits on Administrative Expenses and Executive Compensation.

There has been a minor change to the proposed regulation as follows:

Edit to the definition of Executive Compensation in Section 1002.1(g) and a clarification in provision on Limits on Executive Compensation in Section 1002.3.

Section 1002.1 Contains definitions for purposes of this Part, including definitions for administrative expenses, covered operating expenses, covered executive, covered provider, executive compensation, program services, program services expenses, related organization, reporting period, State-authorized payments, and State funds. The regulations have been amended since the last Notice of Revised Rulemaking to specifically include those providing early intervention services among the defined "covered providers."

Section 1002.2 Limits on Administrative Expenses. Contains limits on the use of State funds or State-authorized payments for administrative expenses.

The restriction will apply to subcontractors and agents of covered providers which meet the specified criteria.

The restriction will apply to covered providers receiving State funds or

State-authorized payments from county or local governments, rather than directly from a State agency, pursuant to specified criteria.

The revised regulation addresses how the restriction will apply in the event that a covered provider has multiple sources of State funds or State-authorized payments.

Section 1002.3 Limits on Executive Compensation. Contains restrictions on executive compensation provided to covered executives.

The restriction will apply to subcontractors and agents of covered providers which meet the specified criteria.

The restriction will apply to covered providers receiving State funds or State-authorized payments from county or local governments, rather than directly from a State agency, pursuant to specified criteria.

The revised rule addresses the application of this limit if the covered provider has multiple sources of State funds or State-authorized payments.

Section 1002.4 Waivers. Processes are established for covered providers to seek waivers of the limit on administrative expenses and the limits on executive compensation.

Section 1002.5 Reporting by Covered Providers. Covered providers are required to report information on an annual basis for each covered reporting period.

Section 1002.6 Penalties. A process is established for the imposition of penalties in the event of non-compliance with the limit on administrative expenses or the limits on executive compensation.

A copy of the full text of the regulatory proposal is available on the Department of Health website ([www.health.ny.gov](http://www.health.ny.gov)).

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 1002.1(g) and 1002.3(b)(2).

**Revised rule making(s) were previously published in the State Register on April 10, 2013 and March 13, 2013.**

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

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement ("RIS") for the proposed new Part 1002.

The revisions to the last published rule merely provide clarifications in the text and correct technical errors (i.e., grammar), which requires no change to the Regulatory Impact Statement.

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments ("RFASBLG") for the proposed new Part 1002.

The revisions to the last published rule merely clarify the text and correct technical errors (i.e., grammar), which requires no change to the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

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

Changes made to the last published rule do not necessitate revision to the previously published Rural Area Flexibility Analysis ("RAFA") for the Third Amendment to the proposed new Part 1002.

The revisions to the last published rule merely clarify the text and correct technical errors (i.e., grammar), which requires no change to the Rural Area Flexibility Analysis.

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

Changes made to the last published rule do not necessitate revision to the previously published Job Impact Statement ("JIS") for the proposed new Part 1002.

The revisions to the last published rule merely clarify the text and correct technical errors (i.e., grammar), which requires no change to the Job Impact Statement.

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

The Department published a Second Notice of Revised Rulemaking on March 13, 2013 for the addition of a new Part 1002 to 10 NYCRR, and a Third Notice of Revised Rulemaking for the proposed regulations on April 10, 2013. This Assessment of Public Comment addresses comments received for both Notices.

Comment: The revised regulations clarify many aspects of the regulations as previously proposed, but do not alter the basic potentially counterproductive framework previously proposed.

Response: The regulations have been amended to provide additional clarity, and to accommodate different reporting periods and business structures. The proposed regulations are structured to address the underlying policy concerns while minimizing burdens on affected entities. The Department intends to work with other state agencies and with the affected community to minimize any burdens or confusion, to enhance the

ability to continue providing high quality service and to enhance consistent implementation of the rules across all entities.

Comment: The revised effective dates should be further extended to allow nonprofits time to come into compliance, and to allow the Division of the Budget to identify, provide, or recognize relevant compensation surveys. The proposed grandfathering of contracts remains insufficient. The current effective date, and proposed waiver application deadlines, make it difficult for a nonprofit to know whether it should seek a waiver or whether it should address excess compensation in the event a waiver is denied. A nonprofit's ability to recoup excess compensation, if necessary in light of a waiver denial, is limited as both a practical and a legal matter. The effective date of the compensation provisions should be tied to the organization's first reporting period six months after the later of (1) publication of the final regulations or (2) identification by the appropriate state agency and the Director of the Division of the Budget of compensation surveys for the same program service sector and the same or comparable geographic area.

Response: Providers have been aware of the proposed regulations for a substantial period. They have had an opportunity to consider measures to facilitate compliance, including adding provisions to their employment contracts to provide for adjustments, if needed. Further, the regulations have been changed to accommodate providers having different fiscal years, thereby facilitating compliance, and making it easier for waiver applications to make use of more reliable financial information. A covered provider that faces an obstacle to compliance with the executive compensation restrictions may request a waiver.

Prior to the effective date, guidance will be provided regarding acceptable surveys and comparability factors that must be taken into consideration for determining compensation, and additional information regarding how this information will be identified, provided or recognized will also be provided.

After the delay in the effective date contained in the most recent revisions to the regulations, the Department does not believe that further delay of the effective date is necessary or warranted.

Comment: Some commenters noted that the changes to the regulations have addressed many of their previously expressed concerns.

Response: The Department confirms that public comments were taken into account in developing and amending the proposed regulations.

Comment: The regulations should allow entities to rely upon executive compensation committees, and to delegate decisions regarding executive compensation to such committees. The ability to do so is recognized under federal regulations and the State's Not-for-Profit Corporations Law. Not allowing the use of such committees under the proposed State regulations will require affected nonprofits to materially alter their procedures with respect to review and approval of executive compensation.

Response: The regulation has been modified in response to public comment.

Comment: It remains unclear whether public benefit corporations are within the definition of "covered provider." The failure to treat provider systems as a single entity for purposes of applying the "covered provider" definition is similarly problematic.

Response: The regulation was revised to provide additional clarity with regard to the definition of "covered provider."

Comment: One commenter criticized the absence of revisions to the previously-issued Regulatory Flexibility Analysis with respect to small businesses.

Response: The Department believes that, given the nature of the rule and its expected impacts, the assessment documents comply with the State Administrative Procedures Act.

Comment: The revised effective dates as reflected in the 2d Notice of Revised Rulemaking should be revised to July 1, 2015 for all providers, regardless of whether compensation is being paid pursuant to an existing contract. Doing so would treat all providers equally, and would allow providers to pursue a waiver prior to when the limits become effective.

Response: Timeframes were modified in the previous version and remain unchanged in the adopted text. The regulations as currently proposed recognize that some entities may be bound by existing contracts or be subject to different fiscal years.

Comment: The regulations as revised define "executive compensation" differently than the IRS.

Response: The Department is aware that there are differences between the IRS rules and the revised regulations. While the Department has tailored these regulations to the IRS rules where appropriate, certain important differences remain to provide additional and more effective restrictions on the use of funds for excessive compensation.

Comment: The revisions do not address the treatment of individual cost-sharing and applied income amounts, or monies received by "downstream" providers, particularly from managed care plans, under the definition of "state funds" and "state authorized payments."

Response: The regulations were revised, as reflected in the Second No-

tice of Revised Rulemaking, to clarify the treatment of health insurance premiums, including SSI. The Department declines to further revise the regulation, and revisions consistent with what was requested would frustrate the underlying policy goals of the regulation.

**Comment:** The sentence added to section 1002.2(e) of the regulations, as revised pursuant to the 2nd Notice of Proposed Rulemaking, which provides that "However, the definition and interpretation of terms in this Part shall not be affected or limited by the definition or interpretation of terms in other regulations or agreements", will result in overly restrictive and duplicative limits. The provision should be sufficient without the addition of the new final sentence.

**Response:** The language does not result in duplicative terms, nor does it result in limitations more stringent than the greater of those imposed by these regulations or the other relevant contract, grant or other agreement. The additional sentence, by its terms, clarifies that the interpretation of these regulations, and the definitions contained in them, control with regard to their application, notwithstanding that other regulations may define or interpret similar terms differently for purposes of those other regulations.

**Comment:** The regulations as revised continue to provide insufficient protection for private/proprietary information.

**Response:** The regulations specifically acknowledge that submissions may be exempt from release under FOIL. Since materials cannot be made confidential for FOIL purposes by regulation, the regulation could not be amended to authorize additional exclusions. If some information provided is legitimately confidential under FOIL exceptions, the Department will treat it appropriately provided the submitting entity identifies it as such upon submission. The Department declines to amend the regulation to provide that such information is confidential in all cases, as such determinations are made on a case by case basis under FOIL.

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## Division of Housing and Community Renewal

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### NOTICE OF ADOPTION

#### Limits on State-Funded Administrative Costs and Executive Compensation

**I.D. No.** HCR-22-12-00018-A

**Filing No.** 503

**Filing Date:** 2013-05-14

**Effective Date:** 2013-07-01

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

**Action taken:** Addition of Part 2658 to Title 9 NYCRR.

**Statutory authority:** Executive Order No. 38, dated January 18, 2012, as continued by Executive Order No. 43, dated April 13, 2012; Public Housing Law, section 19; and Not-For-Profit Corporation Law, section 508

**Subject:** Limits on state-funded administrative costs and executive compensation.

**Purpose:** To ensure that State funds are not used to support excessive compensation or unnecessary administrative costs.

**Substance of final rule:** The New York State Division of Housing and Community Renewal is adopting as final regulations Part 2658 to 9 NYCRR titled Limits on Administrative Expenses and Executive Compensation.

There have been to minor edits to the text as follows:

Edit to the definition of Executive Compensation in 2658.3(f) and a clarification in provision on Limits on Executive Compensation in 2658.5(b) b.

Section 2658.3: Contains definitions for purposes of this Part, including definitions for administrative expenses, covered operating expenses, covered executive, covered provider, covered reporting period, executive compensation, Office, program services, program services expenses, related organization, reporting period, State-authorized payments, and State funds.

Section 2658.4: Limits on Administrative Expenses. Contains limits on the use of State funds or State-authorized payments for administrative expenses.

Section 2658.5: Limits on Executive Compensation. Contains restrictions on executive compensation provided to covered executives.

Section 2658.6: Waivers. Processes are established for covered providers to seek waivers of the limit on administrative expenses and the limits on executive compensation.

Section 2658.7: Reporting by Covered Providers. Covered providers are required to report information on an annual basis.

Section 2658.8: Penalties. A process is established for the imposition of penalties in the event of non-compliance with the limit on administrative expenses or the limits on executive compensation.

A copy of the full text of the adopted rule is available on [www.nyshcr.org](http://www.nyshcr.org).

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 2658.3 and 2658.5.

**Revised rule making(s) were previously published in the State Register** on October 31, 2012 and March 13, 2013.

**Text of rule and any required statements and analyses may be obtained from:** Brian P. McCartney, Division of Housing and Community Renewal, 38-40 State Street, Albany, NY 12207, (518) 473-1007, email: [bmccartney@nyshcr.org](mailto:bmccartney@nyshcr.org)

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement ("RIS") for the addition of Part 2658 to Title 9 of the NYCRR.

The revisions to the last published rule merely clarify the text and correct technical errors (i.e., grammar), which requires no change to the RIS.

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments ("RFASBLG") for the addition of Part 2658 to Title 9 of the NYCRR.

The revisions to the last published rule merely clarify the text and correct technical errors (i.e., grammar), which requires no change to the RFASBLG.

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

Changes made to the last published rule do not necessitate revision to the previously published Rural Area Flexibility Analysis ("RAFA") for the addition of Part 2658 to Title 9 of the NYCRR.

The revisions to the last published rule merely clarify the text and correct technical errors (i.e., grammar), which requires no change to the RAFA.

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

Changes made to the last published rule do not necessitate revision to the previously published Job Impact Statement ("JIS") for the addition of Part 2658 to Title 9 of the NYCRR. The revisions to the last published rule merely clarify the text and correct technical errors (i.e., grammar), which requires no change to the JIS.

#### **Initial Review of Rule**

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

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

A Notice of Revised Rule Making was published in the New York State Register on March 13, 2013. The New York State Division of Housing and Community Renewal (DHCR) received several comments during the public comment period associated with the revised rulemaking. The issues and concerns raised in these comments are set forth below. Issues and concerns have been grouped according to the part of the revised rule they address because they are related or for convenience in providing an efficient response. Because many comments addressed concerns that applied to all of the participating State agencies that are implementing Executive Order No. 38, the responses to comments provided by each of those agencies are incorporated by reference into these responses. DHCR's response is provided for each issue.

##### **Definitions**

**Comment:** One comment was received requesting exhaustive lists of what constitute "state funds" and "state-authorized payments".

**Response:** The proposed regulations were previously modified to clarify what constitute "state funds" and "state-authorized payments". However, additional guidance on this topic will be provided prior to the effective date.

##### **Limits on administrative expenses**

**Comment:** One comment was received requesting that the State engage in a dialogue with covered providers over what would constitute an adequate administrative rate.

**Response:** DHCR believes there is a legitimate government interest in limiting the amount of administrative expenses derived from government funds and that the limits set by the proposed regulations are appropriate. However, the agency will continue to monitor this issue in the years that

follow. No changes were made to the proposed regulations in response to this comment.

#### Limits on executive compensation

Comment: One comment was received questioning the concept of limiting executive compensation for not-for-profit entities.

Response: DHCR believes there is a legitimate government interest in limiting the amount of executive compensation of providers that rely heavily on state funds or state authorized payments of federal funds. No changes were made to the proposed regulations in response to this comment.

Comment: One comment was received arguing that the regulations cannot be made effective on July 1, 2013 because the Division of the Budget has not yet identified, provided or recognized any surveys on executive compensation, thus preventing covered providers from determining whether waivers will be needed.

Response: Additional guidance on this topic will be provided prior to the effective date.

Comment: One comment was received arguing that covered providers may be in the position of having to attempt to recoup executive compensation funds and may not be able to do so under the Labor Law, and that if a waiver is not granted the covered provider would have no ability to recoup such funds, thus having no mechanism to avoid non-compliance with the proposed regulations.

Response: A covered provider who is faced with this dilemma may request a waiver. The waiver provisions of the regulations are intended to avoid placing covered providers into situations where compliance with competing legal requirements is impossible.

Comment: One comment was received requesting that the Division of the Budget create a list of compensation surveys that will be identified, provided and recognized by the State, and that such surveys consider executive compensation in both the not-for-profit and for-profit fields.

Response: Prior to the effective date guidance will be provided regarding acceptable surveys and comparability factors that must be taken into consideration for determining compensation and additional information regarding how this information will be identified, provided or recognized.

#### Waivers

Comment: One comment was received requesting clarification of the consequences of the denial of a waiver.

Response: The proposed regulations provide for penalties in the event of non-compliance by a covered provider that does not obtain a waiver, so if a covered provider fails to obtain a waiver and is thus out of compliance with the requirements, the covered provider may be subject to penalties. However, the proposed regulations addressing penalties provide for a six month period for a covered provider to cure the non-compliance, so the failure to obtain a waiver would not automatically result in the imposition of penalties. No changes have been made to the proposed regulations in response to this comment.

#### Effective Date

Comment: One comment was received requesting that the effective date of the proposed regulations be extended to six months after a covered provider's first reporting period after the later of (1) the date the regulations become effective or (2) the identification, provision and recognition by the Division of the Budget and the State agencies of compensation surveys, in order to afford not-for-profit entities time to comply.

Response: Additional guidance will be provided prior to the effective date to facilitate compliance and/ or the waiver process. No change has been made to the proposed regulations in response to this comment.

#### Lack of Necessity

Comment: One comment was received asserting that the proposed regulations address a problem that does not really exist, other than in a few isolated circumstances, and that the proposed regulations are not needed to address those few circumstances.

Response: DHCR believes that the regulations will serve a necessary function by establishing appropriate controls so that taxpayer dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. No change was made to the proposed regulations in response to this comment.

#### Coordination

Comment: One comment was received requesting that the Governor, the Attorney General and the State agencies work together so that the regulations are implemented properly and consistently, and that the non-profit sector be included in a taskforce to implement the regulations.

Response: The development of the proposed regulations will continue to involve interagency cooperation. No changes were made to the proposed regulations in response to this comment.

## Office of Mental Health

### NOTICE OF ADOPTION

#### Limits on Administrative Expenses and Executive Compensation

**I.D. No.** OMH-22-12-00019-A

**Filing No.** 514

**Filing Date:** 2013-05-14

**Effective Date:** 2013-07-01

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

**Action taken:** Addition of Part 513 to Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.09, 7.15(a) and (b), 31.04, 31.05(a), 41.03, 41.15, 41.18, 41.44 and 43.02; and Executive Order No. 38; and Not for Profit Corporation Law, section 508

**Subject:** Limits on Administrative Expenses and Executive Compensation.

**Purpose:** To implement Executive Order No. 38 to limit administrative expenses and executive compensation of providers of services.

**Substance of final rule:** The New York State Office of Mental Health is now adopting as final regulations that will add a new Part 513 to Title 14 NYCRR, entitled Limits on Administrative Expenses and Executive Compensation. There have been two minor changes to the text as follows:

- Edit to the definition of Executive Compensation in subdivision (f) of Section 513.3.

- Clarification in provision to Limits on Executive Compensation in paragraph (2) of subdivision (b) of Section 513.5.

No other changes were made.

Section 513.1 provides the background and intent of the rule, which is to implement Executive Order No. 38, issued by Governor Andrew Cuomo on January 18, 2012.

Section 513.2 sets forth the statutory authority for the promulgation of the rule by the Office of Mental Health.

Section 513.3 contains definitions for purposes of this Part, including definitions for administrative expenses, covered executive, covered operating expenses, covered provider, covered reporting period, executive compensation, program services, program services expenses, related organization, reporting period, State-authorized payments, and State funds.

Section 513.4 contains limits on the use of State funds or State-authorized payments for administrative expenses.

Section 513.5 contains limits on executive compensation provided to covered executives.

Section 513.6 sets forth the process and criteria for covered providers to seek waivers of the limit on administrative expenses and the limits on executive compensation.

Section 513.7 specifies the annual reporting requirements for covered providers.

Section 513.8 establishes the process for the imposition of penalties in the event of non-compliance with the limit on administrative expenses or the limits on executive compensation.

The complete regulatory text is available at: [http://www.omh.ny.gov/omhweb/policy\\_and\\_regulations/](http://www.omh.ny.gov/omhweb/policy_and_regulations/)

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 513.3(f) and 513.5(b)(2).

**Revised rule making(s) were previously published in the State Register on** October 31, 2012 and March 13, 2013.

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

#### Revised Regulatory Impact Statement

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement ("RIS") for the regulatory filing to create a new 14 NYCRR Part 513 – Limits on Administrative Expenses and Executive Compensation. The revisions to the last published rule merely clarify the text and correct technical errors (i.e., grammar), which require no change to the Regulatory Impact Statement.

#### Revised Regulatory Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis for Small Business and Local Governments ("RFASBLG") for the regulatory filing to create a new 14 NYCRR Part 513 – Limits on Administrative Expenses and Executive Compensation. The revisions to the last published rule merely

clarify the text and correct technical errors (i.e., grammar), which require no change to the Regulatory Flexibility Analysis for Small Business and Local Governments.

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

Changes made to the last published rule do not necessitate revision to the previously published Rural Area Flexibility Analysis (“RAFA”) for the regulatory filing to create a new 14 NYCRR Part 513 – Limits on Administrative Expenses and Executive Compensation. The revisions to the last published rule merely clarify the text and correct technical errors (i.e., grammar), which require no change to the Rural Area Flexibility Analysis.

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

Changes made to the last published rule do not necessitate revision to the previously published Job Impact Statement (“JIS”) for the regulatory filing to create a new 14 NYCRR Part 513 – Limits on Administrative Expenses and Executive Compensation. The revisions to the last published rule merely clarify the text and correct technical errors (i.e., grammar), which require no change to the Job Impact Statement.

#### **Initial Review of Rule**

As a rule that does not require a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement, this rule will be initially reviewed in the calendar year 2018, which is no later than the fifth year after the year in which this rule is being adopted.

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

##### **Limits on Administrative Expenses and Executive Compensation**

A Notice of Revised Rule Making was published in the New York State Register on March 13, 2013. The Office of Mental Health (Office) received comments during the public comment period associated with the revised rulemaking. The issues and concerns raised in these comments are set forth below. Issues and concerns have been grouped according to the part of the revised rule they address because they are related or for convenience in providing an efficient response. Because many comments addressed concerns that applied to all of the participating State agencies that are implementing Executive Order No. 38, the responses to comments provided by each of those agencies are incorporated by reference into these responses. The Office response is provided for each issue.

##### **Definitions**

Comment: One comment was received requesting exhaustive lists of what constitute “state funds” and “state-authorized payments”.

Response: The proposed regulations were previously modified to clarify what constitute “state funds” and “state-authorized payments”. However, additional guidance on this topic will be provided prior to the effective date.

##### **Limits on administrative expenses**

Comment: One comment was received requesting that the State engage in a dialogue with covered providers over what would constitute an adequate administrative rate.

Response: The Office believes there is a legitimate government interest in limiting the amount of administrative expenses derived from government funds and that the limits set by the proposed regulations are appropriate. However, the agency will continue to monitor this issue in the years that follow. No changes were made to the proposed regulations in response to this comment.

##### **Limits on executive compensation**

Comment: One comment was received questioning the concept of limiting executive compensation for not-for-profit entities.

Response: The Office believes there is a legitimate government interest in limiting the amount of executive compensation of providers that rely heavily on state funds or state authorized payments of federal funds. No changes were made to the proposed regulations in response to this comment.

Comment: One comment was received arguing that the regulations cannot be made effective on July 1, 2013 because the Division of the Budget has not yet identified, provided or recognized any surveys on executive compensation, thus preventing covered providers from determining whether waivers will be needed.

Response: Additional guidance on this topic will be provided prior to the effective date.

Comment: One comment was received arguing that covered providers may be in the position of having to attempt to recoup executive compensation funds and may not be able to do so under the Labor Law, and that if a waiver is not granted the covered provider would have no ability to recoup such funds, thus having no mechanism to avoid non-compliance with the proposed regulations.

Response: A covered provider who is faced with this dilemma may request a waiver. The waiver provisions of the regulations are intended to avoid placing covered providers into situations where compliance with competing legal requirements is impossible.

Comment: One comment was received requesting that the Division of the Budget create a list of compensation surveys that will be identified, provided and recognized by the State, and that such surveys consider executive compensation in both the not-for-profit and for-profit fields.

Response: Prior to the effective date guidance will be provided regarding acceptable surveys and comparability factors that must be taken into consideration for determining compensation and additional information regarding how this information will be identified, provided or recognized.

##### **Waivers**

Comment: One comment was received requesting clarification of the consequences of the denial of a waiver.

Response: The proposed regulations provide for penalties in the event of non-compliance by a covered provider that does not obtain a waiver, so if a covered provider fails to obtain a waiver and is thus out of compliance with the requirements, the covered provider may be subject to penalties. However, the proposed regulations addressing penalties provide for a six month period for a covered provider to cure the non-compliance, so the failure to obtain a waiver would not automatically result in the imposition of penalties. No changes have been made to the proposed regulations in response to this comment.

##### **Effective Date**

Comment: One comment was received requesting that the effective date of the proposed regulations be extended to six months after a covered provider’s first reporting period after the later of (1) the date the regulations become effective or (2) the identification, provision and recognition by the Division of the Budget and the State agencies of compensation surveys, in order to afford not-for-profit entities time to comply.

Response: Additional guidance will be provided prior to the effective date to facilitate compliance and/ or the waiver process. No change has been made to the proposed regulations in response to this comment.

##### **Lack of Necessity**

Comment: One comment was received asserting that the proposed regulations address a problem that does not really exist, other than in a few isolated circumstances, and that the proposed regulations are not needed to address those few circumstances.

Response: The Office believes that the regulations will serve a necessary function by establishing appropriate controls so that taxpayer dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. No change was made to the proposed regulations in response to this comment.

##### **Coordination**

Comment: One comment was received requesting that the Governor, the Attorney General and the State agencies work together so that the regulations are implemented properly and consistently, and that the non-profit sector be included in a taskforce to implement the regulations.

Response: The development of the proposed regulations will continue to involve interagency cooperation. No changes were made to the proposed regulations in response to this comment.

## **NOTICE OF ADOPTION**

### **Transfer of Involuntary Patients to Authorized Secure Facilities**

**I.D. No.** OMH-12-13-00018-A

**Filing No.** 502

**Filing Date:** 2013-05-13

**Effective Date:** Error in 5-29-13 issue of State Register caused printing of incorrect effective date of 7-1-13. Correct effective date is 5-29-13.

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

**Action taken:** Amendment of Part 57 of Title 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 7.09, 29.01, 29.11 and 31.04

**Subject:** Transfer of Involuntary Patients to Authorized Secure Facilities.

**Purpose:** To allow for the transfer of an involuntary patient from an OMH hospital to one of its regional forensic units.

**Text or summary was published in** the March 20, 2013 issue of the Register, I.D. No. OMH-12-13-00018-EP.

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

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

#### **Initial Review of Rule**

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

**Assessment of Public Comment**

The agency received no public comment.

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## Department of Motor Vehicles

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

**Restriction on Driver's Licenses**

**I.D. No.** MTV-22-13-00007-P

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

**Proposed Action:** This is a consensus rule making to amend section 3.2 of Title 15 NYCRR.

**Statutory authority:** Vehicle and Traffic Law, sections 215(a) and 501(2)(c)

**Subject:** Restriction on driver's licenses.

**Purpose:** To establish the medical certification exemption restriction on driver's licenses.

**Text of proposed rule:** Paragraph (3) of subdivision (c) of section 3.2 is amended to read as follows:

A3 [SCHOOL BUS/MUNICIPAL VEHICLE] *Med Cert Exempt*

**Text of proposed rule and any required statements and analyses may be obtained from:** Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, New York 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

**Data, views or arguments may be submitted to:** Ida L. Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, New York 12228, (518) 474-0871, email: ida.traschen@dmv.ny.gov

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

**Consensus Rule Making Determination**

No person shall operate a commercial motor vehicle unless such person meets the physical qualifications and physical examination requirements required by federal regulation, as set forth in 49 CFR 391.41 and 391.43. Drivers performing "non-excepted" operation must meet the physical qualification requirements contained in 49 CFR 391 and must obtain a Medical Examiner's Certificate. Drivers performing "excepted operation" are exempt from federal and state regulations requiring a Medical Examiner's Certificate. Such "excepted" drivers must have the A3 Restriction recorded on their driver's license, which indicates that they are exempt from the medical requirements.

Currently, the A3 restriction only exempts school bus and municipal drivers from the medical requirements. However, under federal law (49 CFR 390.3 and 391.2) and New York State DOT regulations, the State must exempt other drivers from the federal medical requirements, including drivers who operate commercial motor vehicles:

Transporting school children and/or school staff between home and school;

As Federal, State or local government employees;

Transporting human corpses or sick or injured persons;

Driving fire truck or rescue vehicles during emergencies and other related activities;

Primarily in the transportation of propane winter heating fuel when responding to an emergency condition requiring immediate response such as damage to a propane gas system after a storm or flooding;

In response to a pipeline emergency condition requiring immediate response such as a pipeline leak or rupture;

In custom harvesting on a farm or to transport farm machinery and supplies used in the custom harvesting operation to and from a farm or to transport custom harvested crops to a storage or market;

As a beekeeper in the seasonal transportation of bees;

In a vehicle controlled and operated by a farmer, but is not a combination vehicle (power unit and towed unit), and is used to transport agricultural products, farm machinery or farm supplies (no placardable hazardous materials) to and from a farm and within 150 air-miles of the farm;

As a private motor carrier of passengers for non-business purposes;

Transporting migrant workers;

Drivers who obtained their NYS CDL prior to the adoption of the NYS DOT regulations are permitted to operate "non-excepted" commercial vehicles (except when transporting hazardous materials) in NYS only.

NYS DOT has incorporated by reference the federal medical requirements for operators of commercial vehicles within New York State. However, persons who obtained their CDLs prior to the adoption of those regulations are exempt from such medical requirements.

The proposed amendment expands the scope of the A3 restriction to include those drivers who are exempt from the federal medical requirements. Since this proposed amendment merely reflects federal and state requirements, a consensus rule is appropriate.

**Job Impact Statement**

A Job Impact Statement is not submitted with this rule because it will not have an adverse impact on job creation or development.

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## Office for People with Developmental Disabilities

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**NOTICE OF ADOPTION****Limits on Administrative Expenses and Executive Compensation**

**I.D. No.** PDD-22-12-00020-A

**Filing No.** 512

**Filing Date:** 2013-05-14

**Effective Date:** 2013-07-01

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

**Action taken:** Addition of Part 645 to 14 NYCRR.

**Statutory authority:** Mental Hygiene Law, sections 13.09(b) and 43.02; and Not-for-Profit Corporation Law, section 508

**Subject:** Limits on administrative expenses and executive compensation.

**Purpose:** To curb abuses in executive compensation and administrative expenses and ensure that taxpayer dollars are used to help persons in need.

**Substance of final rule:** The final regulations add a new Part 645 to 14 NYCRR, titled Limits on Administrative Expenses and Executive Compensation.

Section 645.1 contains definitions for purposes of this Part, including definitions for administrative expenses, covered operating expenses, covered executive, covered provider, covered reporting period, executive compensation, program services, program services expenses, related organization, reporting period, State-authorized payments, and State funds.

There has been a minor change to the proposed regulation as follows: a clarification has been made to the definition of Executive Compensation.

Section 645.2. Limits on Administrative Expenses. Contains limits on the use of State funds or State-authorized payments for administrative expenses.

The restriction applies to subcontractors and agents of covered providers which meet the specified criteria.

The restriction applies to covered providers receiving State funds or State-authorized payments from county or local governments, rather than directly from a State agency, pursuant to specified criteria.

The final regulation addresses how the restriction will apply in the event that a covered provider has multiple sources of State funds or State-authorized payments.

Section 645.3. Limits on Executive Compensation. Contains restrictions on executive compensation provided to covered executives.

The restriction applies to subcontractors and agents of covered providers which meet the specified criteria.

The restriction applies to covered providers receiving State funds or State-authorized payments from county or local governments, rather than directly from a State agency, pursuant to specified criteria.

The final rule addresses the application of this limit if the covered provider has multiple sources of State funds or State-authorized payments.

Section 645.4. Waivers. Processes are established for covered providers to seek waivers of the limit on administrative expenses and the limits on executive compensation.

Section 645.5. Reporting.

Covered providers are required to report information on an annual basis.

Section 645.6. Penalties.

A process is established for the imposition of penalties in the event of non-compliance with the limit on administrative expenses or the limits on executive compensation.

A copy of the full text of the final regulations is available on the OPWDD website at [www.opwdd.ny.gov](http://www.opwdd.ny.gov).

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 645.1(f) and 645.3(b)(2).

**Revised rule making(s) were previously published in the State Register** on October 31, 2012 and March 13, 2013.

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

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

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

The revisions to the last published rule merely clarify the text and correct technical errors (i.e., grammar).

These changes do not necessitate revisions to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Business and Local Governments, Rural Area Flexibility Analysis, or Job Impact Statement.

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

A Notice of Revised Rule Making was published in the New York State Register on March 13, 2013. The Office for People with Developmental Disabilities (OPWDD) received several comments during the public comment period associated with the revised rulemaking. The issues and concerns raised in these comments are set forth below. Issues and concerns have been grouped according to the part of the revised rule they address because they are related or for convenience in providing an efficient response. Because many comments addressed concerns that applied to all of the participating State agencies that are implementing Executive Order No. 38, the responses to comments provided by each of those agencies are incorporated by reference into these responses. OPWDD's response is provided for each issue.

**Comment:** If property rental and maintenance is neither program nor administrative expense for purposes of regulation, and the provider can't pay for this out of its own resources, does OPWDD expect the provider to go out of business?

**Response:** The regulations only exclude property rental and maintenance from the calculation of the administrative expense cap. They do not prevent these costs from being funded. These costs will continue to be funded pursuant to existing formula and rules in other regulations, contracts or other policy documents.

**Comment:** There should be no waivers to the limits on administrative expenses.

**Response:** OPWDD believes it is important to retain the waivers to address instances when a provider has necessary and unavoidable administrative expenses that exceed the cap.

**Comment:** The regulations should be amended to make covered providers' records subject to the freedom of information law and meetings subject to the open meetings law. This will ensure public scrutiny and ensure that taxpayer monies are used for their intended purposes and that the provider adheres to all laws, rules and regulations.

**Response:** The open meetings law and freedom of information law can only be modified through statutory change.

**Comment:** We support the limits on administrative expenses and hope this will lead to better pay for direct care workers. We also support the executive compensation limits and think that this will ensure that State money is spent for direct care and will improve quality of care. We commend OPWDD for revisions clarifying that certain program related costs (such as IT, legal, public outreach and quality assurance) will not be administrative expenditures under the regulations, that certain staff who perform mainly programmatic roles are exempt from the compensation limits, for changes easing the waiver requirements, and excluding State Education Department funds from the definition of "State authorized payments and State funds."

**Response:** OPWDD appreciates the support.

**Comment:** OPWDD should use the IRS guidelines to measure reasonableness of executive compensation.

**Response:** OPWDD is aware that there are differences between the IRS rules and the revised regulations. While OPWDD has tailored these regulations to the IRS rules where appropriate, certain important differences remain to provide additional and more effective restrictions on the use of funds for excessive compensation.

**Comment:** The definition of executive compensation will include longevity payments, pension benefits (including accrued but unrealized investment returns on contributions) and deferred compensation. Highly compensated employees of tax exempt providers have the same need for adequate retirement income as employees of for profit companies. Non profits have established 457 plans to allow executives to reach reasonable

retirement income goals. The regulations will prohibit contributions to supplemental executive retirement 457 plans, and will reduce the contributions an executive can make to an amount or percentage lower than some of their employees. Tax exempt organizations are at a disadvantage competing for executive talent because they cannot offer stock or other equity compensation to key employees. The executive compensation cap becomes a hard cap for covered entities such as OPWDD providers that rely almost exclusively on state funding. Other organizations that do not primarily provide services to persons with public health insurance can pay executives more than the cap. This puts OPWDD providers at a disadvantage in recruiting and retaining executives.

**Response:** For-profit companies are not excluded from the regulations. If a for-profit company meets the definition of covered provider, the regulation will apply to it. One of the key goals of the regulation is to limit the extent of executive compensation paid by providers that rely to a significant degree upon taxpayer dollars and to ensure that taxpayer dollars are used properly, efficiently and effectively to improve the lives of New Yorkers. Also, if a provider's governing board reviews and approves the executive compensation, and the compensation is at or less than the 75th percentile of compensation for comparable executives, the provider will be in compliance with the regulation. If the provider cannot meet these limits, it can receive a waiver from the limits if it demonstrates good cause supporting the waiver.

**Comment:** The definition of executive compensation is too broad and the cap on executive compensation is arbitrary. The state will be micro-managing executive compensation and this will be cumbersome, costly and ineffective.

**Response:** OPWDD disagrees. It is necessary to broadly define executive compensation to prevent taxpayer dollars from being used for excessive executive compensation packages and to ensure that taxpayer dollars are used properly, efficiently and effectively to improve the lives of New Yorkers. The cap on executive compensation is reasonable. OPWDD and the other agencies implementing EO 38 are working hard to ensure compliance and implementation will not be burdensome for providers or the State.

**Comment:** Waivers will be based on compensation for executives of providers of the same size, same program service sector and same or comparable geographic area. This does not recognize providers that are seeking entrepreneurial leaders from the private sector or different regions of the State or country.

**Response:** Any organization competes for talent against other organizations of the same size, in the same sector of the economy and in the same or comparable geographic areas. In fact, many of the compensation tools available to providers take into account fully the extent which providers draw their executives from other sectors in some instances. Accordingly, these regulations will not preclude such competition.

**Comment:** The regulations single out, without any rational basis, only some of the State contractors and their employees who provide services and supports to persons with developmental disabilities. The regulations exclude State, county and local governmental units, professionals, partnerships, S corporations and other entities or persons providing products. Many public employees earn over \$199,000 per year, and the value of public pensions for public employees is considerable. This is discrimination.

**Response:** The regulations have been developed to implement Executive Order No. 38, which addresses State funding to render program services. EO 38 does not address salaries of State employees and such employees are not similarly situated for the purposes of the goals of these regulations.

**Comment:** There is no authority for OPWDD to adopt the regulations or for the governor to promulgate EO 38, especially since the legislature did not adopt limits proposed in the Governor's executive budget.

**Response:** The regulations are within OPWDD's authority. Also, the Legislature did not reject the proposal made in Executive Order 38. Rather, the Governor's Office chose to proceed by regulation in part to ensure that the rules developed in this area could be monitored and revised as necessary over time.

**Comment:** The cost of expensed equipment, repairs and maintenance and utilities will not be factored into the administrative expense limit calculation. However, these costs are included in program services expenses and administrative expenses when calculating the ratio value factor. Therefore, depending on the disparity of these costs within program services and administrative expenses, this could have a significant effect of the calculation of the limit. The regulations should specify how these expenses will be allocated in determining administrative limits and the allocation should be on a proportionate basis.

**Response:** OPWDD does not feel that the definition of administrative expenses, for the purpose of the administrative limit calculation, will have negative implications for providers.

**Comment:** The administrative caps fail to recognize the differences be-

tween small agencies, with revenue of less than \$15 million and large agencies with revenue of over \$30M. The cap does not take into account economies of scale and punishes small providers.

Response: OPWDD believes that small and large agencies will be able to remain within the cap percentage.

Comment: By suppressing overhead, the cap will cause higher turnover, poorer leadership and worse service.

Response: OPWDD believes the cap will allow for adequate funding of the administrative operations of a provider and will not lead to deterioration in the quality of administration, leadership or services. Also, non-recurring or unanticipated administrative expenses over \$10,000 are not considered administrative expenses or program expenses under the regulation.

Comment: The administrative costs of HUD corporations should be excluded. Some providers also have HUD corporations, which are not state funded. A HUD corporation incurs primarily capital expenses and has a high portion of administrative expenses.

Response: If a HUD corporation is a separate corporation and does not meet the definition of covered provider, it will not be covered by these regulations.

Comment: The regulation should clarify whether utility expenses are administrative expenses or program services expenses.

Response: Utility expenses incurred in delivering program services are program services expenses. Utility expenses incurred in administration are administrative expenses. Covered providers may allocate such expenses accordingly.

Comment: The costs of fundraising should be program services costs and not administrative costs.

Response: For all providers who report on a Consolidated Fiscal Report, fundraising costs are not reportable as allowable costs. Therefore, fundraising costs are not recognized as either program or administrative costs.

Comment: The regulation should define "corporate family" as used in subparagraph 645.1(d)(3)(v).

Response: This term may be further defined in guidance documents released prior to the effective date.

Comment: The regulation should clarify whether compensation of part time employees and employees who do not work for a full reporting period will be annualized.

Response: Such compensation will not be annualized.

Comment: The regulation should clarify whether reporting period means the period for the Consolidated Fiscal Report, the AHCF-1, Standard of Payment or any other State cost report.

Response: The reporting period is the reporting period for the consolidated fiscal report.

Comment: The effective date of the regulation should be January 1 or April 1, 2014. The regulations are complex and there is no information about reporting forms, the waiver process or the compensation survey.

Response: Timeframes were modified in previous versions and remain unchanged in the adopted text.

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## Public Service Commission

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

#### To Issue Long-Term Indebtedness, Preferred Stock and Hybrid Securities and to Enter into Derivative Instruments

**I.D. No.** PSC-22-13-00008-P

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

**Proposed Action:** The Public Service Commission is considering a petition of New York State Electric & Gas Corporation authorizing the issuance of approximately \$74 million of long-term securities and to enter into derivative instruments.

**Statutory authority:** Public Service Law, section 69

**Subject:** To issue long-term indebtedness, preferred stock and hybrid securities and to enter into derivative instruments.

**Purpose:** To permit New York State Electric & Gas Corporation to finance transactions for purposes authorized under PSL section 69.

**Substance of proposed rule:** The Commission is considering whether to approve or reject in whole or in part or modify a request sought in a peti-

tion filed by New York State Electric & Gas Corporation authorizing the issuance of approximately \$74 million of long-term indebtedness, preferred stock and hybrid securities and to enter into derivative instruments.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

**Data, views or arguments may be submitted to:** Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: secretary@dps.ny.gov

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

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

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

(13-M-0200SP1)

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

#### On Remand from New York State Court Litigation, Determine the Recovery of Certain Deferred Amounts Owed NFG by Ratepayers

**I.D. No.** PSC-22-13-00009-P

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

**Proposed Action:** To initiate a remand phase of this proceeding resulting from NYS court litigation to determine the recovery of certain Site Investigation Remediation (SIR) deferral amounts owed by ratepayers to National Fuel Gas Distribution Corporation.

**Statutory authority:** Public Service Law, sections 66, 66(1), (4), (5), (9) and 72

**Subject:** On remand from New York State court litigation, determine the recovery of certain deferred amounts owed NFG by ratepayers.

**Purpose:** On remand, to determine the recovery of certain deferral amounts owed NFG from ratepayers.

**Substance of proposed rule:** The Public Service Commission (Commission) is initiating a remand phase of Case 07-G-0141 to address the recovery of certain deferred amounts owed National Fuel Gas Distribution Corporation (NFG) by ratepayers as a result of New York State court litigation. By an Order Establishing Rates for Gas Service, issued December 21, 2007 (2007 Rate Order), the Commission established rates for NFG. In that Order, the Commission imputed some \$3.7 million (net of tax) in insurance proceeds and used this imputed amount to reduce deferred Site Investigation Remediation (SIR) costs in rate base. That imputation was subsequently reversed by the New York State courts.<sup>1</sup> In response to staff interrogatories in Case 13-G-0136,<sup>2</sup> NFG has quantified the additional annual revenue requirement due it from the reversal of the Commission's rate base adjustment at approximately \$401,175. This amount provides the required return on the increase to rate base at the authorized overall rate of return established in the 2007 Order.

It is anticipated that this remand phase will identify what additional amounts should be booked in the deferred SIR regulatory asset as a result of the New York State Court decisions, and determine the additional carrying charges that will accrue currently and until the Commission recognizes these deferred amounts in NFG's rate base. The Commission may grant, deny or modify, in whole or in part, the quantification and supporting information for the amounts to be recovered and associated carrying charges provided by NFG, and may also consider related matters.

<sup>1</sup> *Matter of National Fuel Gas Distribution Corp. v. Public Service Commission of the State of New York*, 71 A.D.3d 62, 67 (3d Dept 2009), *affirmed*, 16 N.Y.2d 360, 371 (2011).

<sup>2</sup> Case 13-G-0136, *National Fuel – Rates*, Order Instituting Proceeding and to Show Cause (issued April 19, 2013).

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** Deborah Swatling, Public Service Commission, 3 Empire State Plaza,

Albany, New York 12223, (518) 486-2659, email: [deborah.swatling@dps.ny.gov](mailto:deborah.swatling@dps.ny.gov)

**Data, views or arguments may be submitted to:** Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223, (518) 408-1978, email: [Secretary@dps.ny.gov](mailto:Secretary@dps.ny.gov)

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

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

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

(07-G-0141SP5)

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

**Adjustments to Usage Block Allowances**

**I.D. No.** PSC-22-13-00010-P

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

**Proposed Action:** The Public Service Commission is considering a tariff filing by New York American Water Company, Inc. to make revisions to Service Classification No. 1-E regarding adjustments to usage block allowances, to become effective October 21, 2013.

**Statutory authority:** Public Service Law, section 89-c(1) and (10)

**Subject:** Adjustments to usage block allowances.

**Purpose:** To approve adjustments to usage block allowances in Service Classification No. 1-E in P.S.C. No. 2—Water.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by New York American Water Company, Inc. to make revisions to Service Classification No. 1-E regarding adjustments to usage block allowances in P.S.C. No. 2—Water. The proposed filing has an effective date of October 21, 2013. The Commission may resolve related matters and may take this action for other utilities.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: [Deborah.Swatling@dps.ny.gov](mailto:Deborah.Swatling@dps.ny.gov)

**Data, views or arguments may be submitted to:** Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)

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

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

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

(13-W-0203SP1)

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

**Petition for the Submetering of Electricity**

**I.D. No.** PSC-22-13-00011-P

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

**Proposed Action:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Soundview Management Associates, LLC to submeter electricity at 50 and 80 Guion Place, New Rochelle, New York.

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

**Subject:** Petition for the submetering of electricity.

**Purpose:** To consider the request of Soundview Management Assoc, LLC to submeter electricity at 50 and 80 Guion Place, New Rochelle, NY.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Soundview Management Associates, LLC to submeter electricity at 50 and 80 Guion Place, New Rochelle, New York, located in the territory of Consolidated Edison Company of New York, Inc.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** Deborah Swatling, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2659, email: [Deborah.Swatling@dps.ny.gov](mailto:Deborah.Swatling@dps.ny.gov)

**Data, views or arguments may be submitted to:** Jeffrey C. Cohen, Acting Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 408-1978, email: [secretary@dps.ny.gov](mailto:secretary@dps.ny.gov)

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

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

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

(13-E-0189SP1)

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## Department of State

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### NOTICE OF ADOPTION

**Limits on Administrative Expenses and Executive Compensation**

**I.D. No.** DOS-22-12-00017-A

**Filing No.** 505

**Filing Date:** 2013-05-14

**Effective Date:** 2013-07-01

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

**Action taken:** Addition of Part 144 to Title 19 NYCRR.

**Statutory authority:** Executive Law, section 91; Not-For-Profit Corporation Law, section 508

**Subject:** Limits on administrative expenses and executive compensation.

**Purpose:** To address limits on the use of State funds/State-authorized payments for administrative expenses and executive compensation.

**Substance of final rule:** The rule adds a new Part 144 to 19 NYCRR, titled Limits on Administrative Expenses and Executive Compensation.

Section 144.1 provides the Background and Intent of the revised rule, which is to implement Executive Order No. 38, issued by Governor Andrew Cuomo on January 18, 2012.

Section 144.2 sets forth the Legal Basis for the promulgation of the rule by the Department of State (hereinafter the "Department").

Section 144.3 contains Definitions for purposes of this Part, including definitions for administrative expenses, covered executive, covered operating expenses, covered provider, covered reporting period, department, executive compensation, program services, program services expenses, related organization, reporting period, state-authorized payments, and state funds. A minor change has been made to the last proposed text of the rule; clarification to the definition of "executive compensation" has been made in the adopted text.

Section 144.4, titled Limits on Administrative Expenses, contains limits on the use of State funds or State-authorized payments for administrative expenses. The restriction will apply to subcontractors and agents of covered providers which meet the specified criteria. The restriction will apply to covered providers receiving State funds or State-authorized payments from county or local governments, as well as to those receiving such funds directly from a State agency, pursuant to specified criteria. The revised regulation addresses how the restriction will apply in the event that a covered provider has multiple sources of State funds or State-authorized payments. The effective date for this section shall commence no earlier than July 1, 2013.

Section 144.5, titled Limits on Executive Compensation, contains restrictions on executive compensation provided to covered executives. The restriction will apply to subcontractors and agents of covered providers which meet the specified criteria. The restriction will apply to covered providers receiving State funds or State-authorized payments from county

or local governments, as well as to those receiving such funds directly from a State agency, pursuant to specified criteria. The revised rule addresses the application of this limit if the covered provider has multiple sources of State funds or State-authorized payments. The effective date for this section shall commence no earlier than July 1, 2013. A minor change has been made to the last proposed text of the rule; a second parenthetical has been added to section 144.5(b)(2) to clarify language of the provision.

Section 144.6, titled Waivers, establishes processes for covered providers to seek waivers of the limits on administrative expenses and the limits on executive compensation.

Section 144.7 pertains to Reporting by covered providers. Covered providers are required to report information on an annual basis.

Section 144.8 discusses Penalties. A process is established for the imposition of penalties in the event of non-compliance with the limit on administrative expenses or the limits on executive compensation.

Section 144.9, titled Severability, declares that if any provision in this Part is deemed invalid, such invalidity shall not affect other provisions of this Part that can be given effect without the invalid portions.

A copy of the full text of the revised regulatory proposal is available on the DOS website at: [http://www.dos.ny.gov/info/regulatory\\_activity/index.html](http://www.dos.ny.gov/info/regulatory_activity/index.html)

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 144.3(g) and 144.5(b)(2).

**Revised rule making(s) were previously published in the State Register** on March 13, 2013 and October 31, 2012.

**Text of rule and any required statements and analyses may be obtained from:** David Treacy, Department of State, One Commerce Plaza, Albany, NY 12231, (518) 474-6740, email: David.Treacy@dos.ny.gov

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement (“RIS”) for the addition of Part 144 to Title 19 NYCRR. The revisions to the last published rule merely provide clarifications in the text and correct technical errors (i.e., grammar), which requires no change to the RIS.

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments (“RFASBLG”) for the addition of Part 144 to Title 19 NYCRR. The revisions to the last published rule merely provide clarifications in the text and correct technical errors (i.e., grammar), which requires no change to the RFASBLG.

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

Changes made to the last published rule do not necessitate revision to the previously published Rural Area Flexibility Analysis (“RAFA”) for the addition of Part 144 to Title 19 NYCRR. The revisions to the last published rule merely provide clarifications in the text and correct technical errors (i.e., grammar), which requires no change to the RAFA.

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

Changes made to the last published rule do not necessitate revision to the previously published Job Impact Statement (“JIS”) for the addition of Part 144 to Title 19 NYCRR. The revisions to the last published rule merely provide clarifications in the text and correct technical errors (i.e., grammar), which requires no change to the JIS.

#### **Initial Review of Rule**

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

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

A Notice of Revised Rule Making was published in the New York State Register on March 13, 2013. The Department of State received several comments during the public comment period associated with the revised rulemaking. The issues and concerns raised in these comments are set forth below. Issues and concerns have been grouped according to the part of the revised rule they address because they are related or for convenience in providing an efficient response. Because many comments addressed concerns that applied to all of the participating State agencies that are implementing Executive Order No. 38, the responses to comments provided by each of those agencies are incorporated by reference into these responses. The Department of State’s response is provided for each issue.

##### **Definitions**

**Comment:** One comment was received requesting exhaustive lists of what constitutes “state funds” and “state-authorized payments”.

**Response:** The proposed regulations were previously modified to clarify what constitutes “state funds” and “state-authorized payments.” However,

additional guidance on this topic will be provided prior to the effective date.

##### **Limits on administrative expenses**

**Comment:** One comment was received requesting that the State engage in a dialogue with covered providers over what would constitute an adequate administrative rate.

**Response:** The Department of State believes there is a legitimate government interest in limiting the amount of administrative expenses derived from government funds and that the limits set by the proposed regulations are appropriate. However, the agency will continue to monitor this issue in the years that follow. No changes were made to the proposed regulations in response to this comment.

##### **Limits on executive compensation**

**Comment:** One comment was received questioning the concept of limiting executive compensation for not-for-profit entities.

**Response:** The Department of State believes there is a legitimate government interest in limiting the amount of executive compensation of providers that rely heavily on state funds or state authorized payments of federal funds. No changes were made to the proposed regulations in response to this comment.

**Comment:** One comment was received arguing that the regulations cannot be made effective on July 1, 2013 because the Division of the Budget has not yet identified, provided or recognized any surveys on executive compensation, thus preventing covered providers from determining whether waivers will be needed.

**Response:** Additional guidance on this topic will be provided prior to the effective date.

**Comment:** One comment was received arguing that covered providers may be in the position of having to attempt to recoup executive compensation funds and may not be able to do so under the Labor Law, and that if a waiver is not granted the covered provider would have no ability to recoup such funds, thus having no mechanism to avoid non-compliance with the proposed regulations.

**Response:** A covered provider who is faced with this dilemma may request a waiver. The waiver provisions of the regulations are intended to avoid placing covered providers into situations where compliance with competing legal requirements is impossible.

**Comment:** One comment was received requesting that the Division of the Budget create a list of compensation surveys that will be identified, provided and recognized by the State, and that such surveys consider executive compensation in both the not-for-profit and for-profit fields.

**Response:** Prior to the effective date, guidance will be provided regarding acceptable surveys and comparability factors that must be taken into consideration for determining compensation and additional information regarding how this information will be identified, provided or recognized.

##### **Waivers**

**Comment:** One comment was received requesting clarification of the consequences of the denial of a waiver.

**Response:** The proposed regulations provide for penalties in the event of non-compliance by a covered provider that does not obtain a waiver, so if a covered provider fails to obtain a waiver and is thus out of compliance with the requirements, the covered provider may be subject to penalties. However, the proposed regulations addressing penalties provide for a six-month period for a covered provider to cure the non-compliance, so the failure to obtain a waiver would not automatically result in the imposition of penalties. No changes have been made to the proposed regulations in response to this comment.

##### **Effective date**

**Comment:** One comment was received requesting that the effective date of the proposed regulations be extended to six months after a covered provider’s first reporting period after the later of (1) the date the regulations become effective or (2) the identification, provision and recognition by the Division of the Budget and the State agencies of compensation surveys, in order to afford not-for-profit entities time to comply.

**Response:** Additional guidance will be provided prior to the effective date to facilitate compliance and/or the waiver process. No change has been made to the proposed regulations in response to this comment.

##### **Lack of necessity**

**Comment:** One comment was received asserting that the proposed regulations address a problem that does not really exist, other than in a few isolated circumstances, and that the proposed regulations are not needed to address those few circumstances.

**Response:** The Department of State believes that the regulations will serve a necessary function by establishing appropriate controls so that taxpayer dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. No change was made to the proposed regulations in response to this comment.

##### **Coordination**

**Comment:** One comment was received requesting that the Governor, the Attorney General and the State agencies work together so that the

regulations are implemented properly and consistently, and that the non-profit sector be included in a taskforce to implement the regulations.

Response: The development of the proposed regulations will continue to involve interagency cooperation. No changes were made to the proposed regulations in response to this comment.

## Office of Temporary and Disability Assistance

### NOTICE OF ADOPTION

#### Limits on Administrative Expenses and Executive Compensation

**I.D. No.** TDA-22-12-00021-A

**Filing No.** 510

**Filing Date:** 2013-05-14

**Effective Date:** 2013-07-01

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

**Action taken:** Addition of Part 315 to Title 18 NYCRR.

**Statutory authority:** Social Services Law, section 20(3)(d); and Not-For-Profit Corporation Law, section 508

**Subject:** Limits on administrative expenses and executive compensation.

**Purpose:** Establishes limits on the use of State funds or State-authorized payments for administrative costs and executive compensation by covered providers.

**Substance of final rule:** The Office of Temporary and Disability Assistance ("OTDA") is adopting final regulations to add Part 315 to Title 18 NYCRR.

There have been two minor edits to the text as follows:

Edit to the definition of Executive Compensation in 18 NYCRR § 315.3(f).

And a clarification in the provision on Limits on Executive Compensation in 18 NYCRR § 315.5(b)(2).

Section 315.1 provides the background and intent of the final regulations.

Section 315.2 sets forth the statutory authority for the promulgation of the rule by OTDA.

Section 315.3 contains definitions for purposes of this Part, including definitions for administrative expenses, covered operating expenses, covered executive, covered provider, covered reporting period, executive compensation, office, program services, program services expenses, related organization, reporting period, State-authorized payments, and State funds.

Section 315.4. Limits on Administrative Expenses. Contains limits on the use of State funds or State-authorized payments for administrative expenses.

Section 315.5. Limits on Executive Compensation. Contains restrictions on executive compensation provided to covered executives.

Section 315.6. Waivers. Processes are established for covered providers to seek waivers of the limit on administrative expenses and the limits on executive compensation.

Section 315.7. Reporting. Covered providers are required to report information on an annual basis.

Section 315.8. Penalties. A process is established for the imposition of penalties in the event of non-compliance with the limit on administrative expenses or the limits on executive compensation.

A copy of the full text of the regulatory proposal is available on OTDA's website at [www.otda.ny.gov/legal](http://www.otda.ny.gov/legal).

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 315.3(f) and 315.5(b)(2).

**Revised rule making(s) were previously published in the State Register** on October 31, 2012 and March 13, 2013.

**Text of rule and any required statements and analyses may be obtained from:** Jeanine S. Behuniak, New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16C, Albany, New York 12243-0001, (518) 474-9779, email: [Jeanine.Behuniak@otda.ny.gov](mailto:Jeanine.Behuniak@otda.ny.gov)

#### Revised Regulatory Impact Statement

1. Statutory authority:

Social Services Law (SSL) § 20(3)(d) authorizes the Office of Temporary and Disability Assistance (hereinafter "agency") to promulgate regulations to carry out its powers and duties.

Not-For-Profit Corporation Law (N-PCL) § 508 provides that a corporation, as defined in N-PCL § 102(a)(5), may make an incidental profit. All such incidental profits are to be applied to the maintenance, the expansion or the operation of the lawful activities of the corporation, and shall not be divided or distributed in any manner whatsoever among the members, the directors or the officers of the corporation.

2. Legislative objectives:

It was the intent of the Legislature in enacting SSL § 20(3)(d) that the agency establish rules, regulations and policies to carry out its powers and duties, and it was the intent of Governor Andrew Cuomo in signing Executive Orders No. 38 and No. 43 that this agency promulgate regulations to establish limits on the use of State funds or State-authorized payments for administrative costs and executive compensation by covered providers.

3. Needs and benefits:

This agency is proposing to adopt the regulations because the State of New York directly or indirectly funds with taxpayer dollars a large number of tax exempt organizations and for-profit entities that provide critical services to New Yorkers in need and the goal is to ensure that taxpayers' dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. In certain instances, providers of services that receive State funds or State-authorized payments have used such funds to pay for excessive administrative costs or inflated compensation for their senior executives, rather than devoting a greater proportion of such funds to providing direct care or services to their clients. Such abuses involving public funds harm both the people of New York who are paying for such services, and those persons who must depend upon such services to be available and well-funded. These regulations, which are required by Executive Order No. 38, are intended to prevent providers from using State funds or State-authorized payments paid by this agency to support excessive compensation or unnecessary administrative costs.

The revisions made to the last published rule merely clarify the text and correct technical errors (i.e., grammar) in the definition of "executive compensation" at 18 NYCRR § 315.3(f) and in the section providing limits on executive compensation at 18 NYCRR § 315.5(b)(2).

4. Costs:

The costs of implementing this rule to affected providers are anticipated to be minimal as most, if not all, of the information that must be reported by such providers is already gathered or reported for other purposes. The costs to this agency of such implementation are expected to be mitigated by efforts that are underway to ensure efficient centralization of certain aspects of such implementation.

5. Local government mandates:

The social services districts will be required to provide minimal information to the agency concerning service providers with which the social services districts have contractual relationships. The administrative functions required by the proposed regulations will be carried out by the agency.

6. Paperwork:

The proposed regulatory amendments will require limited additional information to be reported to the agency by covered providers receiving State funds or State-authorized payments. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs.

7. Duplication:

This proposed rule does not duplicate, overlap, or conflict with any State or federal statute or rule. However, the proposed rule seeks to minimize the reporting requirements faced by covered providers by building upon those requirements in the federal internal revenue code that require certain tax-exempt organizations to report information concerning their executive compensation and administrative costs.

8. Alternatives:

Executive Orders No. 38 and No. 43 require the adoption of this proposed rule.

9. Federal standards:

This proposed rule does not conflict with federal standards.

10. Compliance schedule:

The rule will become effective and be implemented on July 1, 2013.

#### Revised Regulatory Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published Statement in lieu of a Regulatory Flexibility Analysis for Small Businesses and Local Governments for the addition of Part 315 to Title 18 NYCRR.

The revisions made to the last published rule merely clarify the text and correct technical errors (i.e., grammar), which require no change to the previously published Statement in lieu of a Regulatory Flexibility Analysis for Small Businesses and Local Governments.

#### Revised Rural Area Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published Statement in lieu of a Rural Area Flexibility Analysis for the addition of Part 315 to Title 18 NYCRR.

The revisions made to the last published rule merely clarify the text and correct technical errors (i.e., grammar), which require no change to the previously published Statement in lieu of a Rural Area Flexibility Analysis.

**Revised Job Impact Statement**

Changes made to the last published rule do not necessitate revision to the previously published Statement in lieu of a Job Impact Statement for the addition of Part 315 to Title 18 NYCRR.

The revisions made to the last published rule merely clarify the text and correct technical errors (i.e., grammar), which require no change to the previously published Statement in lieu of a Job Impact Statement.

**Initial Review of Rule**

As a rule that does not require a Regulatory Flexibility Analysis, Rural Area Flexibility Analysis or Job Impact Statement, this rule will be initially reviewed in the calendar year 2018, which is no later than the 5th year after the year in which this rule is being adopted.

**Assessment of Public Comment**

A Notice of Revised Rule Making was published in the New York State Register on March 13, 2013. The Office of Temporary and Disability Assistance (“OTDA”) received one comment during the public comment period associated with the revised rulemaking. The issues and concerns raised in this comment and certain comments received by other State agencies are set forth below. Issues and concerns have been grouped according to the part of the revised rule they address because they are related or for convenience in providing an efficient response. Because many comments addressed concerns that applied to all of the participating State agencies that are implementing Executive Order No. 38, the responses to comments provided by each of those agencies are incorporated by reference into these responses. OTDA’s response is provided for each issue.

**Definitions**

Comment: One comment was received requesting exhaustive lists of what constitute “State funds” and “State-authorized payments”.

Response: The proposed regulations were previously modified to clarify what constitute “State funds” and “State-authorized payments”. However, additional guidance on this topic will be provided prior to the effective date.

**Limits on administrative expenses**

Comment: One comment was received requesting that the State engage in a dialogue with covered providers over what would constitute an adequate administrative rate.

Response: OTDA believes there is a legitimate government interest in limiting the amount of administrative expenses derived from government funds and that the limits set by the proposed regulations are appropriate. However, the agency will continue to monitor this issue in the years that follow. No changes were made to the proposed regulations in response to this comment.

**Limits on executive compensation**

Comment: One comment was received questioning the concept of limiting executive compensation for not-for-profit entities.

Response: OTDA believes there is a legitimate government interest in limiting the amount of executive compensation of providers that rely heavily on State funds or State-authorized payments of federal funds. No changes were made to the proposed regulations in response to this comment.

Comment: One comment was received arguing that the regulations cannot be made effective on July 1, 2013, because the Division of the Budget has not yet identified, provided or recognized any surveys on executive compensation, thus preventing covered providers from determining whether waivers will be needed.

Response: Additional guidance on this topic will be provided prior to the effective date.

Comment: One comment was received arguing that covered providers may be in the position of having to attempt to recoup executive compensation funds and may not be able to do so under the Labor Law, and that if a waiver is not granted the covered provider would have no ability to recoup such funds, thus having no mechanism to avoid non-compliance with the proposed regulations.

Response: A covered provider who is faced with this dilemma may request a waiver. The waiver provisions of the regulations are intended to avoid placing covered providers in situations where compliance with competing legal requirements is impossible.

Comment: One comment was received requesting that the Division of the Budget create a list of compensation surveys that will be identified, provided and recognized by the State, and that such surveys consider executive compensation in both the not-for-profit and for-profit fields.

Response: Prior to the effective date, guidance will be provided regarding acceptable surveys and comparability factors that must be taken into consideration for determining compensation and additional information regarding how this information will be identified, provided or recognized.

**Waivers**

Comment: One comment was received requesting clarification of the consequences of the denial of a waiver.

Response: The proposed regulations provide for penalties in the event of non-compliance by a covered provider that does not obtain a waiver, so if a covered provider fails to obtain a waiver and is thus out of compliance with the requirements, the covered provider may be subject to penalties. However, the proposed regulations addressing penalties provide for a six month period for a covered provider to cure the non-compliance, so the failure to obtain a waiver would not automatically result in the imposition of penalties. No changes have been made to the proposed regulations in response to this comment.

**Effective Date**

Comment: One comment was received requesting that the effective date of the proposed regulations be extended to six months after a covered provider’s first reporting period after the later of (1) the date the regulations become effective or (2) the identification, provision and recognition by the Division of the Budget and the State agencies of compensation surveys, in order to afford not-for-profit entities time to comply.

Response: Additional guidance will be provided prior to the effective date to facilitate compliance and/ or the waiver process. No change has been made to the proposed regulations in response to this comment.

**Lack of Necessity**

Comment: One comment was received asserting that the proposed regulations address a problem that does not really exist, other than in a few isolated circumstances, and that the proposed regulations are not needed to address those few circumstances.

Response: OTDA believes that the regulations will serve a necessary function by establishing appropriate controls so that taxpayer dollars are used properly, efficiently, and effectively to improve the lives of New Yorkers. No change was made to the proposed regulations in response to this comment.

**Coordination**

Comment: One comment was received requesting that the Governor, the Attorney General and the State agencies work together so that the regulations are implemented properly and consistently, and that the non-profit sector be included in a taskforce to implement the regulations.

Response: The development of the proposed regulations will continue to involve interagency cooperation. No changes were made to the proposed regulations in response to this comment.

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## Office of Victim Services

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### NOTICE OF ADOPTION

**Limits on Administrative Expenses and Executive Compensation**

**I.D. No.** OVS-22-12-00009-A

**Filing No.** 511

**Filing Date:** 2013-05-14

**Effective Date:** 2013-07-01

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

**Action taken:** Amendment to section 525.22; and addition of section 525.24 to Title 9 NYCRR.

**Statutory authority:** Executive Law, section 623(3); Not-For-Profit Corporation Law, section 508; and Executive Order No. 38

**Subject:** Limits on administrative expenses and executive compensation.

**Purpose:** To establish limitations on administrative expenses and executive compensation for those programs funded by the Office.

**Substance of final rule:** The revised, proposed regulations amend section 525.22 of Title 9 NYCRR and adds a new section 525.24 to Title 9 NYCRR, related to Victim Assistance Programs and Limits on Administrative Costs and Executive Compensation, respectively.

Since the publication of the last, revised rule on March 13, 2013, there have been minor edits to the text as follows:

Edit to the definition of Executive Compensation in section 525.24(b)(6), and

Edit to the provisions on Limits on Executive Compensation in section 525.24(d)(2)(ii).

Section 525.22 is amended to state that Victim Assistance Programs receiving state funds or state-authorized payments from the Office of Victim Services (OVS or Office) pursuant to the terms of a contract or memorandum of understanding shall comply with all applicable federal

and state laws and regulations and any applicable contractual or memorandum of understanding language entered into with the office. Applicable state regulations shall include, but not be limited to this section and the newly added section 525.24 of this part.

Section 525.24, subdivision (a) provides for the background and intent of the revised rule, which is to implement Executive Order No. 38, issued by Governor Andrew Cuomo on January 18, 2012.

Subdivision (b) contains definitions for purposes of this section, including definitions for administrative expenses, covered operating expenses, related organization, covered executive, covered provider, executive compensation, office, program services, program services expenses, reporting period, state-authorized payments, and state funds.

Subdivision (c) relates to limits on administrative expenses. This subdivision contains limits on the use of state funds or state-authorized payments for administrative expenses. The restriction will apply to subcontractors and agents of covered providers which meet the specified criteria. The restriction will apply to covered providers receiving state funds or state-authorized payments from county or local governments, rather than directly from a state agency, pursuant to specified criteria. The revised regulation addresses how the restriction will apply in the event that a covered provider has multiple sources of state funds or state-authorized payments.

Subdivision (d) relates to limits on executive compensation. This subdivision contains restrictions on executive compensation provided to covered executives. The restriction will apply to subcontractors and agents of covered providers which meet the specified criteria. The restriction will apply to covered providers receiving state funds or state-authorized payments from county or local governments, rather than directly from a state agency, pursuant to specified criteria. The revised rule addresses the application of this limit if the covered provider has multiple sources of state funds or state-authorized payments.

Subdivision (e) relates to waivers for the limit on executive compensation and the processes are established for covered providers to seek such waivers.

Subdivision (f) relates to waivers for the limit on reimbursement for administrative expenses and the processes are established for covered providers to seek such waivers.

Subdivision (g) relates to denials of waiver requests, notice to the impacted parties and the Office's reconsideration of the waiver requests.

Subdivision (h) relates to the reporting by covered providers. Covered providers are required to report information on an annual basis.

Subdivision (i) establishes a process for the imposition of penalties in the event of non-compliance with the limits on administrative expenses or the limits on executive compensation.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 525.24(b)(6) and (d)(2)(ii).

**Revised rule making(s) were previously published in the State Register on** October 31, 2012 and March 13, 2013.

**Text of rule and any required statements and analyses may be obtained from:** John Watson, General Counsel, Office of Victim Services, A.E. Smith State Office Bldg., 80 S. Swan Street, 2nd Floor, Albany, New York 12210-8002, (518) 457-8066, email: john.watson@ovs.ny.gov

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

The Office of Victim Services has determined that changes made to the last published rule do not necessitate revision to the previously published Statement in Lieu of a Regulatory Flexibility Analysis (RIS).

The revisions to the last published rule merely provide clarifications in the text and correct technical errors (i.e., grammar), which requires no change to the RIS.

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

The Office of Victim Services has determined that changes made to the last published rule do not necessitate revision to the previously published Statement in Lieu of a Regulatory Flexibility Analysis (RFA).

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

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

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

A Notice of Revised Rule Making was published in the New York State Register on March 13, 2013. The Office of Victim Services (OVS or Office) received several comments during the public comment period associated with the revised rulemaking. The issues and concerns raised in these comments are set forth below. Issues and concerns have been grouped according to the part of the revised rule they address because they are related or for convenience in providing an efficient response. Because many comments addressed concerns that applied to all of the participating State agencies that are implementing Executive Order No. 38, the responses to comments provided by each of those agencies are incorporated by reference into these responses. The OVS response is provided for each issue.

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