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.

Office of Alcoholism and Substance Abuse Services

EMERGENCY RULE MAKING

Criminal History Information Reviews

I.D. No. ASA-41-13-00003-E
Filing No. 940
Filing Date: 2013-09-23
Effective Date: 2013-09-25

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

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

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

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

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

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

The addition of Part 805, effective June 30, 2013, and subsequently effective September 25, 2013 is necessary to implement the criminal history background check provisions as this is a new process for OASAS. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification.

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

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

Subject: Criminal History Information Reviews.

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

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

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

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

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

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

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

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

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

§ 805.8 sets forth standards for documentation and confidentiality.

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 21, 2013.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

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

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

2. Legislative Objectives:

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

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

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

3. Needs and Benefits:

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

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

4. Costs:

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

5. Paperwork:

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

6. Local Government Mandates:

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

7. Duplications:

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

8. Alternatives:

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

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 and subsequently on September 25, 2013 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

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

2. Compliance requirements:

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

3. Professional services:

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

4. Compliance costs:

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

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

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

5. Economic and technological feasibility:

Implementation of the rule will require computer and email capability; all providers in all regions of the state, both private and public sector, already have such capability. No upgrades of hardware or software will be required. Also because every region of the state has resources for gathering fingerprints, and the history information collection is done electroni-

cally from a central state or federal database, and increasingly communicated electronically any additional recordkeeping will be minimal regardless of geographic location.

6. Minimizing adverse impact:

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

7. Small business and local government participation:

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

8. Not applicable. (establish or modify a violation or penalties associated with a violation)

Rural Area Flexibility Analysis

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

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

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

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

The proposed regulation will not have an adverse impact on existing jobs or the development of new employment opportunities for New York residents. It is anticipated that the proposed regulation will not have an adverse impact on existing employees in the field of fingerprinting or history review. The proposed regulations should not impact the number of criminal history information reviews requested via federal and state existing database. The Office is unable to determine what affect the proposed regulation may have on the employment of independent fingerprinting services or Office employees in the future.

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

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

EMERGENCY RULE MAKING

Patient Rights

I.D. No. ASA-41-13-00004-E

Filing No. 941

Filing Date: 2013-09-23

Effective Date: 2013-09-25

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

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

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

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

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

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

The repeal and addition of Part 815 related to Patient Rights, effective June 30, 2013 and subsequently September 25, 2013, is necessary to implement the criminal history background check provisions as this is a new process for OASAS and to make patients aware of additional rights. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification.

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

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

Subject: Patient Rights.

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 21, 2013.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

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

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

2. Legislative Objectives:

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

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

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

3. Needs and Benefits:

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

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

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

4. Costs:

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

5. Paperwork:

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

6. Local Government Mandates:

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

7. Duplications:

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

8. Alternatives:

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

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 and subsequently September 25, 2013 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

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

2. Compliance requirements:

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

3. Professional services:

Providers will be required to retain documentation of fingerprint requests for employees, contractors of volunteers they ultimately employ;

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

4. Compliance costs:

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

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

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Small business and local government participation:

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

Rural Area Flexibility Analysis

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

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

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

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

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

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

EMERGENCY RULE MAKING

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

I.D. No. ASA-41-13-00005-E

Filing No. 942

Filing Date: 2013-09-23

Effective Date: 2013-09-25

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

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

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

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

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

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

The amendments to Part 810, effective June 30, 2013 and subsequently September 25, 2013, are necessary to implement the criminal history background check provisions as this is a new process for OASAS. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification.

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

insufficient safeguards regarding entities receiving operating certificates from the Office.

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

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

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

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

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

Amendments include:

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

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

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

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

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

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

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

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

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

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

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

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

§ 810.18 removes provisions for waiver; adds severability language.

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 21, 2013.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

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

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

2. Legislative Objectives:

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

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

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

3. Needs and Benefits:

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

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

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

4. Costs:

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

5. Paperwork:

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

6. Local Government Mandates:

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

7. Duplications:

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

8. Alternatives:

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

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 and subsequently September 25, 2013 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

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

2. Compliance requirements:

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

3. Professional services:

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

4. Compliance costs:

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Small business and local government participation:

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

Rural Area Flexibility Analysis

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

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

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

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

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

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

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

EMERGENCY RULE MAKING

Patient Rights

I.D. No. ASA-41-13-00006-E

Filing No. 943

Filing Date: 2013-09-23

Effective Date: 2013-09-25

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

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

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

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

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

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

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

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

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

Subject: Patient Rights.

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

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

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

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

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

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

§ 836.4 adds new definitions or amends to be consistent with the Justice Center: "Reportable incident", "physical abuse", "psychological abuse", "deliberate inappropriate use of restraints", "use of aversive conditioning", "obstruction of reports of reportable incidents", "unlawful use or administration of a controlled substance," "neglect", "significant incident", "custodian", "facility or provider agency", "mandated reporter", "human services professional", "physical injury", "delegate investigatory entity", "Justice Center", "Person receiving services,", "Personal representative," "Abuse or neglect", "subject of the report," "other persons named in the report," "Vulnerable Persons Central Register," "vulnerable person", "intentionally and recklessly", "clinical records", "Incident management programs", "Incident report", "Missing client", "qualified person", "staff", "Incident review Committee".

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 21, 2013.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

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

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

2. Legislative Objectives:

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

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

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

3. Needs and Benefits:

OASAS is proposing to adopt the following regulation because The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires that allegations of abuse and neglect, and other significant incidents be reported to the Justice Center Vulnerable Persons Central

Register via the toll free hotline. This legislation conforms OASAS regulations to definitions, incident reporting, documentation and review requirements of the Justice Center. The legislation strengthens the role of the Incident Review Committee and links compliance with reporting and investigating incidents to a providers operating certificate renewal. Criminal history information reviews will be conducted on each prospective treatment provider, operator, employee, contractor, or volunteer of treatment facilities certified by the NYS Office of Alcoholism and Substance Abuse Services ("OASAS" or "Office") who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities and any individual seeking to be credentialed by the Office. The cost of fingerprinting will be subsidized by the Office.

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

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

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

4. Costs:

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

5. Paperwork:

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

6. Local Government Mandates:

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

7. Duplications:

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

8. Alternatives:

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

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

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

Regulatory Flexibility Analysis

OASAS services are provided by programs of varying size in every county in New York State; some counties are also certified service providers.

Compliance:

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

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

The requirements for criminal history information reviews will apply to providers of all sizes and to municipalities which operate programs as well; OASAS will subsidize the cost of fingerprinting applicants in these programs. The minimal paperwork retention required by these programs will not require additional staffing; most transactions will be accomplished and retained electronically as well.

Small Business and Local Governments:

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

Because every region of the state has certified programs, and requirements for staffing and training are uniform already, programs will not be affected in any way because of their size or corporate status.

Rural Area Flexibility Analysis

Rural areas in which the rule will apply:

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

Compliance:

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

The proposed regulation incorporates the OASAS incident reporting process into a larger oversight and enforcement entity under the Justice Center. These requirements apply to OASAS providers in all geographic regions. Reporting will be done electronically via telephone or other secure means which are not limited by geography. The new rule does not require any additional staff, although training will be required statewide and be largely provided by the Office or the Justice Center.

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

Geographic impact:

The proposed Rule has been reviewed by OASAS in consideration of its impact on service providers in rural areas. Because every region of the state has certified programs, and requirements for staffing, training and incident reporting are uniform already, programs will not be affected in any way because of their geographic location in a rural area.

Job Impact Statement

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

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

The Rule sets forth criteria for incident reporting to the Justice Center, investigations, corrective action and penalties for programs and individuals who are not compliant with these, or other applicable, regulations. The proposed regulation requires criminal history information reviews of any

employee, contractor, or volunteer in treatment facilities certified by the Office who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities.

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

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

EMERGENCY RULE MAKING

Credentialing of Addictions Professionals

I.D. No. ASA-41-13-00007-E

Filing No. 944

Filing Date: 2013-09-23

Effective Date: 2013-09-25

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

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

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

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

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

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

The amendments to Part 853, effective June 30, 2013 and subsequently September 25, 2013, are necessary to implement the new process of criminal history background checks into the credentialing process for addictions professionals credentialed by OASAS. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification so OASAS will be more involved in credentialing decisions.

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

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

Subject: Credentialing of Addictions Professionals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 21, 2013.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

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

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

2. Legislative Objectives:

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

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

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

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

3. Needs and Benefits:

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

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

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

4. Costs:

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

5. Paperwork:

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

6. Local Government Mandates:

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

7. Duplications:

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

8. Alternatives:

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

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 and subsequently September 25, 2013 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

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

2. Compliance requirements:

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

3. Professional services:

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

4. Compliance costs:

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Small business and local government participation:

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

Rural Area Flexibility Analysis

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

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

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

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

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

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

Department of Audit and Control

NOTICE OF ADOPTION

Effective Date of Retirement

I.D. No. AAC-30-13-00004-A

Filing No. 949

Filing Date: 2013-09-24

Effective Date: 2013-10-09

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

Action taken: Amendment of sections 341.4(a) and 341.6 of Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11 and 311

Subject: Effective date of retirement.

Purpose: To conform the text of the regulation with RSSL section 70 as amended by chapter 375 of the laws of 2011.

Text or summary was published in the July 24, 2013 issue of the Register, I.D. No. AAC-30-13-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Calculation of Benefits for Restored Members

I.D. No. AAC-31-13-00003-A

Filing No. 948

Filing Date: 2013-09-24

Effective Date: 2013-10-09

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

Action taken: Amendment of section 354.6 of Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 1 and 11

Subject: Calculation of benefits for restored members.

Purpose: To conform the existing regulation to certain time frames and benefit calculation options set forth in current law.

Text or summary was published in the July 31, 2013 issue of the Register, I.D. No. AAC-31-13-00003-P.

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

Text of rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

Assessment of Public Comment

The agency received no public comment.

Delaware River Basin Commission

INFORMATION NOTICE

Notice of Proposed Rulemaking and Public Hearing

The Delaware River Basin Commission ("DRBC" or "Commission") is a Federal interstate compact agency charged with managing the water resources of the Basin without regard to political boundaries. Its commissioners are the governors of the four Basin states –New York, New Jersey, Pennsylvania, and Delaware – and a Federal representative, the North Atlantic Division Commander of the U.S. Army Corps of Engineers. The Commission is not subject to the requirements of the New York State Administrative Procedure Act. This notice is published by the Commission for information purposes.

Proposed Amendments to the Water Quality Regulations, Water Code and Comprehensive Plan to Update Water Quality Criteria for pH

Summary: The Commission will hold a public hearing to receive comments on proposed amendments to the Commission's Water Quality Regulations, Water Code and Comprehensive Plan to update stream quality objectives (also called "water quality criteria") for pH in interstate tidal and non-tidal reaches of the main stem Delaware River.

Dates: The public hearing will be held at 2:00 P.M. on Thursday, October 24, 2013. The hearing will continue until all those wishing to testify have had an opportunity to do so. Written comments will be accepted and must be received by 5:00 P.M. on Thursday, November 21, 2013. For more information regarding the procedures for the hearing and comments, see Supplementary Information.

Addresses: The public hearing will be held in the Goddard Conference Room at the Commission's office building located at 25 State Police Drive, West Trenton, NJ. As Internet mapping tools are inaccurate for this location, please use the driving directions posted on the Commission's website.

Oral Testimony and Written Comments: Persons wishing to testify at the hearing are asked to register in advance by phoning Paula Schmitt at 609-883-9500, ext. 224. Written comments may be submitted as follows: If by email, to paula.schmitt@drbc.state.nj.us; if by fax, to Commission Secretary at 609-883-9522; if by U.S. Mail, to Commission Secretary, DRBC, P.O. Box 7360, West Trenton, NJ 08628-0360; and if by overnight mail, to Commission Secretary, DRBC, 25 State Police Drive, West Trenton, NJ 08628-0360. Comments also may be delivered by hand at any time during the Commission's regular office hours (Monday through Friday, 8:30 A.M. through 5:00 P.M. except on national holidays) until the close of the comment period at 5:00 P.M. on Thursday, November 21, 2013. In all cases, please include the commenter's name, address and affiliation, if any, in the comment document and "pH Rulemaking" in the subject line.

For Further Information: The rule text and a report entitled "pH Criteria Revision Recommendations for Interstate Waters of the Delaware River Basin: Basis & Background Document" (DRBC, March 2013) are available on the Commission's web site, www.drbc.net. Hard copies of the latter document may be obtained for the price of postage by contacting Ms. Paula Schmitt at 609-883-9500, ext. 224. For questions about the technical basis for the rule, please contact Dr. Erik Silldorff at 609-883-9500 ext. 234. For queries about the rulemaking process, please contact Pamela Bush at 609-477-7203.

Supplementary Information

Background. The Commission in 1967 assigned stream quality objectives (also called "criteria") for pH to all tidal and non-tidal interstate streams in the Delaware River Basin ("basin"). Since that time, scientists' understanding of natural fluctuations in freshwater and saltwater pH levels has grown. Likewise, the development and application of pH criteria have evolved, while the Commission's pH stream quality objectives have remained unchanged. Commission scientists in consultation with experts from DRBC member states and federal agencies have evaluated the pH criteria adopted by signatory states and recommended by federal agencies over the past four-and-a-half decades. They have concluded that in order to minimize regulatory inconsistencies and better address natural pH cycles in the main stem Delaware River, two classes of revisions to the Commission's criteria for this shared interstate waterway should be considered. The first concerns the range of pH levels deemed to comprise the numeric standard within the tidal and non-tidal zones of the main stem and tidal portions of tributaries. The second concerns excursions outside the standard range that is attributable to natural conditions. The proposed revisions were unanimously endorsed by the Commission's Water Quality Advisory Committee ("WQAC") in March 2009. The WQAC is a standing committee of stakeholders, including regulators, municipal and industrial dischargers, academicians and environmental organizations that advises the Commission on technical matters relating to water quality within the basin.

Proposed Change to Existing Criteria. The Commission's existing pH criteria applicable to the main stem are expressed as ranges. "Between 6.0 and 8.5" is the range currently assigned to all freshwater (non-tidal) zones of the main stem Delaware River – DRBC Water Quality Zones 1A through 1E. In all tidal zones – DRBC Water Quality Zones 2 through 6, which include the tidal main stem and tidal portions of its tributaries – the pH range currently in effect is "between 6.5 and 8.5". The proposed amendments would make 6.5 the lower threshold of acceptable pH conditions for all water quality zones encompassing reaches of the main stem and tidal portions of its tributaries.

Natural Conditions Clause. The proposed amendments would add a clause to the pH criteria recognizing natural deviations outside the 6.5 to 8.5 pH range in the moderately acidic waters draining the Catskill Mountains and Pocono Plateau, the high-light and high-productivity zones of the non-tidal main stem, and the acidic coastal plain tidewaters of the Delaware Estuary.

Proposed Rule Text. In accordance with these proposed changes, the pH criteria for Water Quality Zones 1A through 1E (non-tidal main stem) and 2 through 6 (tidal main stem and tidal portions of tributaries) are proposed to be amended to read, "Between 6.5 and 8.5 inclusive, unless outside this range due to natural conditions." The affected sections of the Commission's Water Quality Regulations consist of subsection C.3 of each of sections 2.20.2 through 2.20.6, respectively, for Water Quality Zones 1A through 1E (non-tidal main stem); and sections 3.30.2 through 3.30.6, respectively, for Water Quality Zones 2 through 6 (tidal main stem and tidal portions of tributaries). It is further proposed to amend paragraph 410.1(c) of title 18 of the Code of Federal Regulations by replacing the date of incorporation by reference that appears there (currently, December 8, 2010), with the date on which the Commission adopts a final rule in response to this proposal.

Dated: September 19, 2013
PAMELA M. BUSH, ESQ.
Commission Secretary

Education Department

EMERGENCY RULE MAKING

Protection of People with Special Needs Act (L. 2012, Ch. 501)

I.D. No. EDU-28-13-00009-E
Filing No. 937
Filing Date: 2013-09-23
Effective Date: 2013-09-23

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

Action taken: Amendment of sections 200.7 and 200.15 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 4002(1)-(3), 4212(a), 4314(a), 4358(a), 4403(11), 4308(3), 4355(3), 4401(2), 4402(1)-(7), 4403(3), (11), (13) and 4410(1)-(13); and L. 2012, ch. 501

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 501 of the Laws of 2012 and the regulations, guidelines and procedures established by the Justice Center, which became effective June 30, 2013.

The proposed amendment was adopted as an emergency rule at the June 16-17, 2013 Regents meeting, effective June 30, 2013. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 10, 2013.

The State Education Department has continued to work closely with the Justice Center and the other State Oversight Agencies on implementing the provisions of Chapter 501 since it became effective June 30, 2013. It was initially anticipated that the proposed rule would be presented to the

Board of Regents for adoption as a permanent rule at their September 16-17, 2013 meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act. However, additional time is necessary to determine whether any revisions should be made to the proposed rule based any additional clarification and/or decisions that the Justice Center may be providing in the coming months.

Pursuant to SAPA section 202(6)(b), the June 2013 emergency adoption will expire on September 22, 2013 (ninety days after the date of its filing with the Department of State on June 25, 2013). Therefore, a second emergency action is necessary for the preservation of the general welfare in order to ensure that the emergency rule adopted at the June 2013 Regents meeting remains continuously in effect until the effective date of its adoption as a permanent rule at a subsequent Regents meeting, and thereby ensure that students attending residential schools are protected against abuse, neglect and significant incidents that may jeopardize their health, safety and welfare.

It is anticipated that the proposed rule will be presented at the November 18-19, 2013 Regents meeting for either permanent adoption if no substantial revisions are necessary, or for another emergency adoption if substantial revisions must be made to the proposed rule based on additional clarification and/or decisions that the Justice Center may be providing in the coming months.

In the event it is determined that substantial revisions must be made to the proposed rule, the revised rule cannot be presented for permanent adoption until the December 2013 Regents meeting or later, after publication of the proposed revised rule in the State Register and expiration of the 30-day public comment period for revised rules established by the State Administrative Procedure Act.

Subject: Protection of People with Special Needs Act (L. 2012, ch. 501).

Purpose: To conform Commissioner's Regulations relating to students attending residential schools to L. 2012, ch. 501.

Substance of emergency rule: The Board of Regents has adopted amendments to sections 200.7 and 200.15 of the Commissioner's Regulations as an emergency rule, effective September 23, 2013, relating to Chapter 501 of the Laws of 2012: "Protection of People with Special Needs Act." The following is a summary of the substance of the emergency amendments.

Consistent with Chapter 501, section 200.7(b)(3) is amended to add that the code of conduct developed by the Justice Center must govern the conduct of custodians with respect to the safety, dignity and welfare of students in residential schools. Section 200.7(b)(6) is amended to require preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law to conduct personnel screenings in accordance with the provisions of sections 424-a and 495 of the Social Services Law.

Section 200.15 is amended to conform State regulations to Chapter 501 of the NYS Laws of 2012 relating to definitions abuse, neglect and significant incidents; personnel screening procedures; staff supervision; procedures for the protection of students in in-State and out-of-State residential schools from reportable incidents; staff orientation to procedures regarding the protection of students; instruction of students in techniques and procedures to protect themselves from reportable incidents; incident review committees; and access to residential schools and their records necessary to carry out the provisions of Chapter 501.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-28-13-00009-EP, Issue of July 10, 2013. The emergency rule will expire November 21, 2013.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Education Law section 207 authorizes the Regents and Commissioner to adopt rules and regulations to carry out State laws regarding education.

Education Law section 4002 establishes responsibilities for education of students in child-care institutions.

Education Law sections 4212(a), 4314(a), 4358(a) and 4403(11) authorize Commissioner's Regulations concerning standards for the protection of children in residential care.

Education Law sections 4308(3) and 4355(3) authorize Commissioner's Regulations regarding admission to the State School for the Blind and State School for the Deaf.

Education Law section 4401 authorizes the Commissioner to approve private day and residential programs serving students with disabilities.

Education Law section 4402 establishes the district's duties regarding education of students with disabilities.

Education Law section 4403 outlines the Department's and district's responsibilities regarding special education programs/services to students with disabilities. Section 4403(3) authorizes Department to adopt regulations as Commissioner deems in its best interests. Section 4403(11) authorizes the Commissioner to promulgate regulations concerning standards for the protection of children in residential care from abuse and maltreatment. Section 4403(12) authorizes and directs the State Education Department to cooperate with other departments, divisions and agencies of the state when a report is received to protect the health and safety of children in residential placement.

Education Law section 4410 establishes requirements for education services and programs for preschool children with disabilities. Section 4410(13) authorizes the Commissioner to adopt regulations.

Chapter 501 of the Laws of 2012 establishes the Justice Center for the Protection of People with Special Needs and procedures for the protection of vulnerable persons from abuse, neglect and significant incidents, including pupils in residential care.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment conforms the Commissioner's Regulations to Chapter 501 of the Laws of 2012 and carries out the legislative objectives in the aforementioned statutes to increase protections for students with disabilities in residential care.

3. NEEDS AND BENEFITS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 501 of the Laws of 2012 and the regulations, guidelines and procedures established by the Justice Center.

Chapter 501 requires the establishment of comprehensive protections for vulnerable persons against abuse, neglect and other harmful conduct. The Act created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems. The Justice Center operates a 24/7 hotline for reporting allegations of reportable incidents (i.e., abuse, neglect and significant incidents) in accordance with Chapter 501's provisions for uniform definitions, mandatory reporting and minimum standards for incident management programs. Working in collaboration with the State Education Department (SED) and other relevant state oversight agencies, the Justice Center is charged with developing and delivering appropriate training for caregivers, their supervisors and investigators.

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

Pursuant to Chapter 501, the Justice Center is charged with recommending policies and procedures to SED for the protection of students with disabilities in residential care. This effort involves the development of requirements and guidelines in areas including but not limited to incident management, rights of people receiving services, and training of custodians. In accordance with Chapter 501, these requirements and guidelines must be reflected, wherever appropriate, in SED's regulations. Consequently, the proposed amendments incorporate the requirements in regulations and guidelines recently developed by the Justice Center.

Chapter 501 further requires SED, in consultation with the Justice Center, to promulgate regulations relating to an incident management program.

4. COSTS:

a. Costs to State government: None.

b. Costs to local governments: None.

c. Costs to regulated parties: None.

d. Costs to SED of implementation and continuing compliance: None.

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes to the Education Law, Social Services Law, and Executive Law (as amended by Chapter 501 of the Laws of 2012) and does not impose any additional costs beyond those imposed by federal and State statutes and regulations.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes in State statute (as amended by Chapter 501 of the Laws of 2012), and does not impose any additional program, ser-

vice, duty or responsibility upon local governments beyond those imposed by federal and State statutes and regulations.

Consistent with Chapter 501, section 200.7(b)(3) is amended to add that the code of conduct developed by the Justice Center must govern the conduct of custodians with respect to the safety, dignity and welfare of students in residential schools. Section 200.7(b)(6) is amended to require preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law to conduct personnel screenings in accordance with the provisions of sections 424-a and 495 of the Social Services Law.

Section 200.15 is amended to conform State regulations to Chapter 501 of the NYS Laws of 2012 relating to definitions abuse, neglect and significant incidents; personnel screening procedures; staff supervision; procedures for the protection of students in in-State and out-of-State residential schools from reportable incidents; staff orientation to procedures regarding the protection of students; instruction of students in techniques and procedures to protect themselves from reportable incidents; incident review committees; and access to residential schools and their records necessary to carry out the provisions of Chapter 501.

6. PAPERWORK:

Consistent with Chapter 501 of the Laws of 2012, the proposed amendment would add additional paperwork requirements pertaining to reporting reportable incidents to the Justice Center. However, many of the new requirements will predominantly utilize electronic format. The proposed rule adds requirements for in-State residential schools to provide parents with written information regarding reporting responsibilities and processes and to provide a written report of the findings of the investigation of a significant incident to parents or guardians of student(s) named in the report, and the school district of the student(s). In-State residential schools will also be required to provide staff at the time of initial employment, and at least annually thereafter, with a copy of the code of conduct developed by the Justice Center; submit reports of incident patterns and trends to SED; and provide copies of records to the Justice Center when a request is made to the Justice Center for public inspection and copying of records relating to the abuse and neglect of students. The proposed amendment also adds additional paperwork requirements for out-of-State residential schools to forward the findings of abuse and neglect investigations not conducted by the Justice Center to the Justice Center, SED, and the student's committee on special education and, as appropriate, the social services district in NYS.

7. DUPLICATION:

The proposed amendment will not duplicate, overlap or conflict with any other State or federal statute or regulation, and is necessary to implement Chapter 501 of the Laws of 2012.

8. ALTERNATIVES:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 501 of the Laws of 2012, and there are no alternatives and none were considered.

9. FEDERAL STANDARDS:

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes in State statute and does not exceed any minimum federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by the June 30, 2013 effective date.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The proposed amendment applies to all approved in-State residential schools, State-operated schools, State-supported schools which have a residential component, special act school districts, approved out-of-State residential schools, and preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law. In total, the proposed amendment affects approximately 618 public and private providers of special education. The 618 providers includes 115 providers who are public school programs and 57 counties that contract for related services. Not more than 160 programs are small businesses employing less than 100 employees. Most of the provisions of the proposed amendment affect only residential programs of which there are 63 that are located in New York State and 24 that are located out of State. Of the 61 residential programs located in NYS, 17 are located in rural areas. There are approximately 10 special act school districts in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes in State statute (as amended by Chapter 501 of the Laws of 2012), and does not impose any additional compliance requirements on small businesses and local governments beyond those imposed by State statutes and regulations.

Consistent with Chapter 501, section 200.7(b)(3) is amended to add that the code of conduct developed by the Justice Center must govern the conduct of custodians with respect to the safety, dignity and welfare of students in residential schools. Section 200.7(b)(6) is amended to require preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law to conduct personnel screenings in accordance with the provisions of sections 424-a and 495 of the Social Services Law.

Section 200.15 is amended to conform State regulations to Chapter 501 of the Laws of 2012 relating to definitions abuse, neglect and significant incidents; personnel screening procedures; staff supervision; procedures for the protection of students in in-State and out-of-State residential schools from reportable incidents; staff orientation to procedures regarding the protection of students; instruction of students in techniques and procedures to protect themselves from reportable incidents; incident review committees; and access to residential schools and their records necessary to carry out the provisions of Chapter 501.

3. PROFESSIONAL SERVICES:

The proposed amendment is necessary to conform the Commissioner's Regulations Chapter 501 of the Laws of 2012,and does not impose any additional professional service requirements on small businesses or local governments.

4. COMPLIANCE COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes to the Education Law, Social Services Law and Executive Law (as amended by Chapter 501 of the Laws of 2012) and the regulations, guidelines and procedures established by the Justice Center, and does not impose any additional costs beyond those imposed by such statutes and regulations.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements. Economic feasibility is addressed above under compliance costs.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes to the Education Law, Social Services Law and Executive Law (as amended by Chapter 501 of the Laws of 2012) and the regulations, guidelines and procedures established by the Justice Center. The proposed amendment has been carefully drafted to meet State statutory requirements and does not impose any additional costs or compliance requirements on small businesses and local governments beyond those imposed by such statutes and regulations.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents and the chief officers of the Big 5 city school districts with the request that they distribute them to school districts within their supervisory districts for review and comment.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment implements and conforms the Commissioner's Regulations to statutory requirements under Chapter 501 of the Laws of 2012, and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS:

The proposed amendment applies to all approved in-State residential schools, State-operated schools, State-supported schools which have a residential component, special act school districts, approved out-of-State residential schools, and preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with population density of 150 per square miles or less. In total, the proposed amendment affects approximately 618 public and private providers of special education of which not more than 172 are located in rural areas of New York State. The 618 providers includes 115 providers who are public school programs and 57 counties that contract for related services. Not more than 160 programs are small businesses employing less than 100 employees. Most of the provisions of the proposed amendment affect only residential programs of which there are 63 that are located in New York State and 24 that are located out of State. Of the 61 residential programs located in NYS, 17 are located in rural areas.

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

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes in State statute (as amended by Chapter 501 of the Laws of 2012), and does not impose any compliance requirements upon small businesses and local governments in rural areas beyond those imposed by State statutes and regulations.

Consistent with Chapter 501, section 200.7(b)(3) is amended to add that the code of conduct developed by the Justice Center must govern the conduct of custodians with respect to the safety, dignity and welfare of students in residential schools. Section 200.7(b)(6) is amended to require preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law to conduct personnel screenings in accordance with the provisions of sections 424-a and 495 of the Social Services Law.

Section 200.15 is amended to conform State regulations to Chapter 501 of the New York State Laws of 2012 relating to definitions abuse, neglect and significant incidents; personnel screening procedures; staff supervision; procedures for the protection of students in in-State and out-of-State residential schools from reportable incidents; staff orientation to procedures regarding the protection of students; instruction of students in techniques and procedures to protect themselves from reportable incidents; incident review committees; and access to residential schools and their records necessary to carry out the provisions of Chapter 501.

3. COSTS:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 501 of the Laws of 2012 and does not impose any additional costs beyond those imposed by federal statutes and regulations and State statutes.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to conform the Commissioner's Regulations to Chapter 501 of the Laws of 2012. The proposed amendment has been carefully drafted to meet State statutory requirements and does not impose any additional costs or compliance requirements on small businesses and local governments in rural areas beyond those imposed by federal law and regulations and State statutes. Since these requirements apply to all in-State residential schools, State-operated schools, State-supported schools which have a residential component, special act school districts, approved out-of-State residential schools, and preschool programs and municipalities who contract for related services approved pursuant to section 4410 of the Education Law in the State, it is not possible to adopt different standards for such entities in rural areas.

5. RURAL AREA PARTICIPATION:

The proposed amendment was submitted for discussion and comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment implements and conforms the Commissioner's Regulations to statutory requirements under Chapter 501 of the Laws of 2012, and therefore the substantive provisions of the proposed amendment cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment is necessary to conform the Commissioner's Regulations to recent changes to the Education Law, Social Services Law and Executive Law, as amended by Chapter 501 of the New York State Laws of 2012 (''Protection of People with Special Needs Act''), and the regulations, guidelines and procedures established by the Justice Center, to ensure that students attending residential schools are protected against abuse, neglect and significant incidents that may jeopardize their health, safety and welfare.

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

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Advisory Committee on Long-Term Clinical Clerkships

I.D. No. EDU-41-13-00009-EP
Filing No. 946
Filing Date: 2013-09-24
Effective Date: 2013-09-24

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

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

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

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

Specific reasons underlying the finding of necessity: The proposed amendment to the Regulations of the Commissioner of Education is necessary to allow for the appointment of an additional member of the Board of Regents to the Advisory Committee on Long-Term Clinical Clerkships prior to the Committee's next meeting on October 25, 2013, and to permit the Chancellor to remove and replace any Committee member who fails to attend three or more consecutive Committee meetings.

Because the Board of Regents meets at fixed intervals, the earliest the proposed amendment can be presented for adoption on a non-emergency basis, after expiration of the required 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), would be the December 16-17, 2013 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the December meeting, would be December 31, 2013, the date a Notice of Adoption would be published in the State Register. However, the next meeting of the Advisory Committee on Long-Term Clinical Clerkships takes place on October 25, 2013, and it will be important to have the participation of the additional Committee member at that meeting.

Emergency action is necessary for the preservation of the public health and general welfare to allow for the appointment of an additional member of the Board of Regents to the Advisory Committee on Long-Term Clinical Clerkships prior to the Committee's next meeting on October 25, 2013, and to permit the Chancellor to remove and replace any Committee member who fails to attend three or more consecutive Committee meetings.

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

Subject: Advisory Committee on Long-Term Clinical Clerkships.

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

Text of emergency/proposed rule: Paragraph (2) of subdivision (f) of section 60.2 of the Regulations of the Commissioner of Education is amended, effective September 24, 2013, as follows:

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

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

(ii) ...

(iii) …

(iv) …

(v) …

(vi) …

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

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

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

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

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire December 22, 2013.

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

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

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

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

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

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

- one member of the Board of Regents;
- the Chairperson and the Executive Secretary of the State Board for Medicine;
- two physicians experienced in the evaluation of medical education programs; and
- representatives of;

o the Department of Health;

o international medical schools that have been approved to place students in New York clinical clerkships;

o New York State registered medical schools; and

o hospitals that serve as clinical clerkship sites.

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

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

3. NEEDS AND BENEFITS:

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

4. COSTS:

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

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

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

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

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

7. DUPLICATION:

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

8. ALTERNATIVES:

There are no viable alternatives to the proposed amendment.

9. FEDERAL STANDARDS:

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

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

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

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

Rural Area Flexibility Analysis

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

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

Job Impact Statement

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

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

State High School Equivalency Diploma

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

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

Proposed Action: Amendment of section 100.7 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided),

207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1) and (2), 308(not subdivided) and 3204

Subject: State High School Equivalency diploma.

Purpose: To permit, for a limited time, acceptance of partial passing scores on one or more sub-tests of the current GED® examination for the corresponding sub-test on any general comprehensive examination prescribed for the High School Equivalency diploma.

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

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

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

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

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

(ii) Notwithstanding the provisions of clauses (a) and (b) of subparagraph (i) of this paragraph and subdivision (d) of this section, a passing score or scores on one or more of the sub-tests of such examination or examinations taken in calendar years 2002 through 2013 for the English version of the exam and 2003 through 2013 for the Spanish version of the exam may be accepted as a passing score on the corresponding sub-test or sub-tests of any general comprehensive examination prescribed for the program and administered on or after January 1, 2014 and before January 1, 2016.

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

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

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

Education Law section 208 authorizes the Regents to establish examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

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

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

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

Education Law section 3204(3) provides for required courses of study in the public schools and authorizes the State Education Department to alter the subjects of required instruction.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Board of Regents relating to examination requirements for a high school equivalency diploma.

NEEDS AND BENEFITS:

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

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

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

COSTS:

(a) Costs to State government: None.

(b) Costs to local government: None.

(c) Costs to private regulated parties: None.

(d) Costs to regulating agency for implementation and continued administration of this rule: The proposed amendment does not impose any direct costs on the State Education Department. The amendment would allow a passing score on one or more of the sub-tests of the current GED® examination taken in calendar years 2002 through 2013 for the English version of the exam and 2003 through 2013 for the Spanish version of the exam to be accepted as a passing score on the corresponding sub-test or

sub-tests of any general comprehensive examination prescribed for the HSE diploma (e.g. the Test Assessing Secondary Completion -TASC) and administered on or after January 1, 2014 and before January 1, 2016. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing SED staff and resources.

LOCAL GOVERNMENT MANDATES:

The proposed amendment applies to individuals seeking a New York State High School Equivalency Diploma and does not impose any additional program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

PAPERWORK:

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

DUPLICATION:

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

ALTERNATIVES:

There are no significant alternatives and none were considered.

FEDERAL STANDARDS:

There are no related federal standards.

COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to individuals who seek to obtain a New York State High School Equivalency Diploma, including those residing in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

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

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

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

3. COMPLIANCE COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement policy enacted by the Board of Regents relating to examination requirements for a high school equivalency diploma and does not impose any additional compliance requirements or costs on persons in rural areas. The amendment would allow a passing score on one or more of the sub-tests of the current GED® examination taken in calendar years 2002 through 2013 for the English version of the exam and 2003 through 2013 for the Spanish version of the exam to be accepted as a passing score on the corresponding sub-test or sub-tests of any general comprehensive examination prescribed for the HSE diploma (e.g. the Test Assessing Secondary Completion -TASC) and administered on or after January 1, 2014 and before January 1, 2016. Because the Regents policy upon which the proposed amendment is based applies to all persons seeking a New York State High School Equivalency diploma, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt persons in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

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

Job Impact Statement

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

Department of Financial Services

EMERGENCY RULE MAKING

Unauthorized Providers of Health Services

I.D. No. DFS-11-13-00008-E

Filing No. 933

Filing Date: 2013-09-19

Effective Date: 2013-09-19

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

Action taken: Addition of Subpart 65-5 to Title 11 NYCRR.

Statutory authority: Financial Services Law, section 202 and arts. 3 and 4; and Insurance Law, sections 301, 5109 and 5221 and arts. 4 and 51

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

Specific reasons underlying the finding of necessity: This regulation concerns the de-authorization of certain providers of health services. Insurance Law § 5109(a) requires the Superintendent, in consultation with the Commissioner of Health and the Commissioner of Education, to promulgate standards and procedures for investigating and suspending or removing the authorization for providers of health services to demand or request payment for health services under Article 51 of the Insurance Law upon findings of certain unlawful conduct reached after investigation, notice, and a hearing pursuant to Insurance Law § 5109.

For years, certain owners and operators of professional service corporations and other types of corporations have abused the no-fault insurance system. These persons are involved in activities that include intentionally staging accidents and billing no-fault insurers for health services that were unnecessary or never in fact rendered. Indeed, recent federal indictments have demonstrated that organized crime has infiltrated and permeated the no-fault provider network. Such wide-scale criminal activity is estimated to have defrauded insurers of at least hundreds of millions of dollars, if not more. Insurers ultimately pass on these costs to New York consumers in the form of higher automobile premiums, and schemes such as the fraudulent staging of auto accidents endangers the innocent public. Furthermore, it places in peril the quality of care received by innocent auto accident victims and the public's health, safety, and welfare.

It is of the utmost importance that the Superintendent, Commissioner of Health, and Commissioner of Education be able, as soon as possible, to prohibit health service providers who engage in such activities from demanding or requesting payment from no-fault insurers.

For the reasons stated above, emergency action is necessary for the public health, public safety, and general welfare.

Subject: Unauthorized Providers of Health Services.

Purpose: Establish standards and procedures for the investigation and suspension or removal of a health service provider's authorization.

Text of emergency rule: *Section 65-5.0 Preamble.*

(a) For years, certain owners and operators of professional service corporations or other similar business entities have abused the no-fault insurance system. These persons are involved in activities that include intentionally staging accidents and billing no-fault insurers for health services that were unnecessary or never in fact rendered. This fraud costs no-fault insurers tens if not hundreds of millions of dollars, which insurers ultimately pass on to New York consumers in the form of higher automobile insurance premiums. It also threatens the affordability of health care and the public's health, safety, and welfare.

(b) Insurance Law section 5109 requires the Superintendent of Financial Services, in consultation with the Commissioner of Health and the Commissioner of Education, to establish standards and procedures for the investigation and suspension or removal of a provider of health services' authorization to demand or request payment for health services provided under Insurance Law article 51. This Subpart implements Insurance Law section 5109.

Section 65-5.1 Definitions.

As used in this Subpart, the following terms shall have the meaning ascribed to them:

(a) "Health services" or "medical services" means services, supplies, therapies, or other treatments as specified in Insurance Law section 5102(a)(1)(i), (ii), or (iv).

(b) "Insurer" shall have the meaning set forth in Insurance Law section 5102(g), and also shall include the motor vehicle accident indemnification corporation and any company or corporation providing coverage for basic economic loss, as defined in Insurance Law section 5102(a), pursuant to Insurance Law section 5103(g).

(c) "Noticing commissioner" means the Commissioner of Health or the Commissioner of Education, whomever sends a notice of hearing under this Subpart.

(d) "Provider of health services" or "provider" means a person or entity who or that renders or has rendered health services.

(e) "Superintendent" means the Superintendent of Financial Services.

Section 65-5.2 Investigations.

(a) The superintendent may investigate any reports made pursuant to Insurance Law section 405, allegations, or other information in the superintendent's possession, regarding providers of health services engaging in any of the unlawful activities set forth in Insurance Law section 5109(b). After conducting an investigation, the superintendent will send to the Commissioner of Health or the Commissioner of Education, as appropriate, a list of any providers who or that the superintendent believes may have engaged in any of the unlawful activities set forth in Insurance Law section 5109(b), together with a description of the grounds for inclusion on the list. Within 45 days of receipt of the list, the Commissioner of Health or Commissioner of Education shall notify the superintendent in writing whether he or she confirms that the superintendent has a reasonable basis to proceed with notice and a hearing for determining whether any of the listed providers should be deauthorized from demanding or requesting any payment for medical services in connection with any claim under Insurance Law article 51.

(b) The Commissioner of Health and the Commissioner of Education also may investigate any reports, allegations, or other information in their possession, regarding providers engaging in any of the unlawful activities set forth in Insurance Law section 5109(b). If either commissioner conducts an investigation, then that commissioner, or the superintendent, if requested by the commissioner, shall be responsible for providing notice and an opportunity to be heard to the providers of health services that they are subject to deauthorization from demanding or requesting any payment for medical services in connection with any claim under Insurance Law article 51. Nothing in this section, however, shall preclude the superintendent, Commissioner of Health, or Commissioner of Education from conducting joint investigations and hearings, or the Commissioner of Health or Commissioner of Education from conducting professional misconduct proceedings against the providers of health services pursuant to the Public Health Law or Title VIII of the Education Law.

Section 65-5.3 Notice; how given.

(a)(1) The superintendent, Commissioner of Health, or Commissioner of Education shall give notice of any hearing to a provider at least 30 days prior to the hearing, in writing, either by delivering it to the provider or by depositing the same in the United States mail, postage prepaid, registered or certified, and addressed to the last known place of business of the provider or if no such address is known, then to the residence address of the provider.

(2) The notice shall refer to the applicable provisions of the law under which action is proposed to be taken and the grounds therefor, but failure to make such reference shall not render the notice ineffective if the provider to whom it is addressed is thereby or otherwise reasonably apprised of such grounds.

(3) It shall be sufficient for the superintendent or noticing commissioner to give to the provider:

(i) notice of the time and the place at which an opportunity for hearing will be afforded; and

(ii) if the person appears at the time and place specified in the notice or any adjourned date, a hearing.

(b) At least ten days prior to the hearing date fixed in the notice, the provider may file an answer to any charges with the superintendent or noticing commissioner.

(c) Any hearing of which such notice is given may be adjourned from time to time without other notice than the announcement thereof at such hearing.

(d) The statement of any regular salaried employee of the Department of Financial Services, Department of Health, or Department of Education, subscribed and affirmed by such employee as true under the penalties of perjury, stating facts that show that any notice referred to in this section has been delivered or mailed as hereinbefore provided, shall be presumptive evidence that such notice has been duly delivered or mailed, as the case may be.

Section 65-5.4 Hearings.

(a) Unless otherwise provided, any hearing may be held before the superintendent, Commissioner of Health or Commissioner of Education, any deputy, or any designated salaried employee of the Department of Financial Services, Department of Health, or Department of Education who is authorized by the superintendent or noticing commissioner for such purpose. The hearing shall be noticed, conducted, and administered in compliance with the State Administrative Procedure Act.

(b) The person conducting the hearing shall have the power to administer oaths, examine and cross-examine witnesses, and receive documentary evidence, and shall report his or her findings, in writing, to the superintendent or noticing commissioner with a recommendation. The report, if adopted by the superintendent or noticing commissioner, may be the basis of any determination made by the superintendent or noticing commissioner.

(c) Every such hearing shall be open to the public unless the superintendent or noticing commissioner, or the person authorized by the superintendent or noticing commissioner to conduct such hearing, shall determine that a private hearing would be in the public interest, in which case the hearing shall be private.

(d) Every provider affected shall be permitted to: be present during the giving of all the testimony; be represented by counsel; have a reasonable opportunity to inspect all adverse documentary proof; examine and cross-examine witnesses; and present proof in support of the provider's interest. A stenographic record of the hearing shall be made, and the witnesses shall testify under oath.

(e) Nothing herein contained shall require the observance at any such hearing of formal rules of pleading or evidence.

Section 65-5.5 Report of hearing and findings.

(a) Pending a final determination by the superintendent, Commissioner of Health, or Commissioner of Education, if the superintendent or noticing commissioner believes that the provider has engaged in any activity set forth in Insurance Law section 5109(b), then the superintendent or noticing commissioner may temporarily prohibit the provider from demanding or requesting any payment for medical services under Insurance Law article 51 for up to 90 days from the date of the notice of such temporary prohibition pursuant to Insurance Law section 5109(e).

(b) The hearing officer shall issue to the superintendent or noticing commissioner the report described in Section 65-5.4(b) of this Subpart, with a recommendation. The superintendent or noticing commissioner may adopt, modify, remand, or reject the hearing officer's report and recommendation.

(c)(1) Upon consideration of the hearing officer's report and recommendation, the superintendent or noticing commissioner may issue a final order prohibiting the provider from demanding or requesting any payment for medical services in connection with any claim under Insurance Law article 51 and requiring the provider to refrain from subsequently treating, for remuneration, as a private patient, any person seeking medical treatment under Insurance Law article 51, for a period specified by the superintendent or noticing commissioner.

(2) If the superintendent or noticing commissioner issues a final order prohibiting the provider from demanding or requesting any payment for medical services in connection with any claim under Insurance Law article 51 and requiring the provider to refrain from subsequently treating, for remuneration, as a private patient, any person seeking medical treatment under Insurance Law article 51, for a period longer than three years, then the provider may, after the expiration of three years, submit a written application to the superintendent or noticing commissioner

requesting that the superintendent or noticing commissioner reconsider his or her order. The written application shall explain why revising the order would not jeopardize the health, safety, and welfare of the people of this State.

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. DFS-11-13-00008-ERP, Issue of August 7, 2013. The emergency rule will expire November 17, 2013.

Text of rule and any required statements and analyses may be obtained from: Camielle A. Barclay, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5299, email: camielle.barclay@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: Section 202 and Articles 3 and 4 of the Financial Services Law, and Sections 301, 5109, and 5221 and Articles 4 and 51 of the Insurance Law. Insurance Law § 301 and Financial Services Law § § 202 and 302 authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law. Article 3 of the Financial Services Law sets forth administrative and procedural provisions, while Article 4 of the Financial Services Law confers certain powers and duties on the Superintendent with regard to financial frauds prevention. Insurance Law § 5109 requires the Superintendent to promulgate standards and procedures for investigating and suspending or removing, after notice and a hearing, the authorization of health service providers to bill no-fault insurance if they engage in certain unlawful conduct. Insurance Law § 5221 specifies the duties and obligations of the Motor Vehicle Accident Indemnification Corporation ("MVAIC") with regard to the payment of no-fault benefits to qualified persons. In addition, Article 4 of the Insurance Law sets forth requirements for reporting and preventing fraud, while Article 51 of the Insurance Law governs the no-fault insurance system.

2. Legislative objectives: Insurance Law § 5109 requires the Superintendent, in consultation with the Commissioner of Health and the Commissioner of Education, to promulgate standards and procedures for investigating and suspending or removing the authorization for health service providers to demand or request payment for health services under Article 51 of the Insurance Law upon findings of certain unlawful conduct reached after investigation, notice, and a hearing pursuant to § 5109. Furthermore, Insurance Law § 301 and Financial Services Law § § 202 and 302 authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law.

3. Needs and benefits: For years, certain owners and operators of professional service corporations and other business entities have abused the no-fault insurance system. These persons are involved in activities that include intentionally staging accidents and billing no-fault insurers for health services that were unnecessary or never in fact rendered. Indeed, recent federal indictments have demonstrated that organized crime has infiltrated and permeated the no-fault provider network. Such wide-scale criminal activity is estimated to have defrauded insurers of at least hundreds of millions of dollars, if not more. Insurers ultimately pass on these costs to New York consumers in the form of higher automobile insurance premiums, and schemes such as the fraudulent staging of auto accidents endanger the innocent public. Furthermore, these activities place in peril the quality of care received by innocent auto accident victims and the public's health, safety, and welfare.

It is of the utmost importance that the Superintendent, Commissioner of Health, and Commissioner of Education be able, as soon as possible, to prohibit health service providers who engage in such activities from demanding or requesting payment from no-fault insurers.

Therefore, after consultation with the Commissioner of Health and the Commissioner of Education, the Superintendent drafted this rule to promulgate standards and procedures for investigating and suspending or removing the authorization for health service providers to demand or request payment for health services under Article 51 of the Insurance Law upon findings of certain unlawful conduct reached after investigation, notice, and a hearing pursuant to § 5109.

4. Costs: This rule does not impose compliance costs on state or local governments. The rule should reduce costs for no-fault insurers, which may include local governments who self-fund their no-fault insurance benefits, because it will permit the Superintendent, Commissioner of Health, or Commissioner of Education to prohibit, after notice and a hearing, health service providers who engage in certain unlawful conduct from demanding or requesting payment from no-fault insurers. The rule also should reduce costs for New York consumers in the form of reduced automobile insurance premiums.

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

6. Paperwork: This rule does not impose any additional paperwork.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: The earlier, emergency version of this rule did not indicate whether the Superintendent or noticing commissioner may prohibit a person from billing no-fault insurers for a specified period of time rather than permanently. However, there may be circumstances where it is appropriate for the Superintendent or noticing commissioner to impose the prohibition for only a limited period of time or to entertain applications to lift the prohibition after a certain number of years.

Therefore, the rule makes clear that the Superintendent or noticing commissioner may prohibit a person from billing no-fault insurers for a period determined by the Superintendent. Under this language, if the Superintendent or noticing commissioner has prohibited a provider from billing no-fault insurers for more than three years, then the provider may, after the expiration of three years, submit a written application to the Superintendent or noticing commissioner requesting that he or she reconsider his or her order. The written application must explain why revising the order would not jeopardize the health, safety, and welfare of the people of New York State.

9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas. The rule is consistent with federal standards or requirements.

10. Compliance schedule: Insurance Law § 5109(a) requires notice to all health service providers of the provisions of § 5109 and this rule at least 90 days in advance of the effective date of the rule. This rule was promulgated on an emergency basis on March 9, 2012 (to take effect 95 days after filing with the Secretary of State, i.e., June 12, 2012), June 6, 2012 (to take effect on June 12, 2012), August 31, 2012, November 28, 2012, and February 25, 2013. Notice of the proposed rule was published in the State Register on March 13, 2013. The rule was re-promulgated on an emergency basis on May 24, 2013, and on July 22, 2013. A notice of revised rulemaking was published in the State Register on August 7, 2013.

The Department provided the required notice by, among other things, emailing notice of Insurance Law § 5109 and the rule on March 14, 2012 to health service provider organizations, such as the Medical Society of the State of New York, New York State Chiropractic Association, and Acupuncture Society of New York; posting a copy of the rule on its website continually since March 9, 2012; and publishing the rule in the State Register.

Regulatory Flexibility Analysis

1. Effect of the rule: The Department of Financial Services ("Department") finds that this rule will generally not impose reporting, recordkeeping or other requirements on small businesses or local governments. The basis for this finding is that this rule does not impose any substantive requirements on small businesses or local governments. In addition, this rule affects no-fault insurers authorized to do business in New York State and self-insurers, none of which fall within the definition of "small business" because none are both independently owned and have less than one hundred employees. Self-insurers are typically large enough to have the financial ability to self-insure losses and the Department does not have any information to indicate that any self-insurers are small businesses.

This rule also affects health service providers, some of whom may be considered small businesses. However, this rule does not impose any substantive requirements on health service providers.

Some local governments self-insure their no-fault benefits. The Department has not been able to determine the number of local governments that are self-insured. However, this rule does not impose any substantive requirements on local governments, and any impact on local governments would be positive and should reduce their costs.

2. Compliance requirements: This rule does not impose any additional paperwork.

3. Professional services: This rule does not require anyone to use professional services. However, if a health service provider is subject to a hearing, the provider may be represented by counsel.

4. Compliance costs: This rule does not impose compliance costs on small businesses or local governments, because it does not impose any substantive requirements. The rule should reduce costs for no-fault insurers, which may include local governments who self-fund their no-fault insurance benefits, because it will permit the Superintendent, Commissioner of Health, or Commissioner of Education to prohibit, after notice and a hearing, health service providers who engage in certain unlawful conduct from demanding or requesting payment from no-fault insurers.

5. Economic and technological feasibility: This rule does not impose any substantive requirements on small businesses or local governments, so there should not be any issues pertaining to economic and technological feasibility.

6. Minimizing adverse impact: This rule affects uniformly health service providers and no-fault insurers in all parts of New York State and the rule is mandated by statute. The Department does not believe that it will have an adverse impact.

7. Small business and local government participation: The Department issued a press release regarding the rule on March 8, 2012; emailed notice of Insurance Law § 5109 and the rule on March 14, 2012 to health service provider organizations, such as the Medical Society of the State of New York, New York State Chiropractic Association, and Acupuncture Society of New York; has posted a copy of the rule on its website since March 9, 2012; and published the rule in the State Register. In addition, interested parties were given an opportunity to comment on the proposed regulation that was published in the State Register on March 13, 2013.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas: Health service providers, insurers, and self-insurers affected by this regulation do business in every county in this state, including rural areas as defined under Section 102(10) of the State Administrative Procedure Act. Some of the home offices of these health service providers, insurers, and self-insurers lie within rural areas. Some government entities that are self-insurers for no-fault benefits may be located in rural areas.

2. Reporting, recordkeeping and other compliance requirements: This rule does not impose any additional paperwork.

3. Costs: This rule does not impose compliance costs on state or local governments. The rule should reduce costs for no-fault insurers, which may include local governments who self-fund their no-fault insurance benefits, because it will permit the Superintendent, Commissioner of Health, or Commissioner of Education to prohibit, after notice and a hearing, health service providers who engage in certain unlawful conduct from demanding or requesting payment from no-fault insurers. The rule also should reduce costs for New York consumers in the form of reduced automobile insurance premiums.

4. Minimizing adverse impact: This rule affects uniformly health service providers and no-fault insurers in both rural and non rural areas of New York State and the rule is mandated by statute. The Department of Financial Services does not believe that it will have an adverse impact on rural areas.

5. Rural area participation: The Department issued a press release regarding the rule on March 8, 2012; emailed notice of Insurance Law § 5109 and the rule on March 14, 2012 to health service provider organizations, such as the Medical Society of the State of New York, New York State Chiropractic Association, and Acupuncture Society of New York; has posted a copy of the rule on its website continually since March 9, 2012; and published the rule in the State Register. In addition, interested parties were given an opportunity to comment on the proposed regulation that was published in the State Register on March 13, 2013.

Job Impact Statement

This rule will not have any adverse impact on jobs and employment opportunities of persons engaging in lawful conduct in New York State, because the rule only allows the Superintendent of Financial Services, Commissioner of Health, or Commissioner of Education to investigate and suspend or remove the authorization for health service providers to demand or request payment for health services under Article 51 of the Insurance Law upon findings of certain unlawful conduct reached after investigation, notice, and a hearing pursuant to Insurance Law § 5109. The Superintendent or noticing commissioner also may prohibit a person from billing no-fault insurers for a specified period as determined by the Superintendent.

Assessment of Public Comment

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

EMERGENCY RULE MAKING

Business Conduct of Mortgage Loan Servicers

I.D. No. DFS-41-13-00001-E

Filing No. 934

Filing Date: 2013-09-20

Effective Date: 2013-09-23

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

Action taken: Addition of Part 419 to Title 3 NYCRR.

Statutory authority: Banking Law, art. 12-D

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

Specific reasons underlying the finding of necessity: The legislature required the registration of mortgage loan servicers as part of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") to help address the existing foreclosure crisis in the state. By registering servicers and requiring that servicers engage in the business of mortgage loan servicing in compliance with rules and regulations adopted by the Superintendent, the legislature intended to help ensure that servicers conduct their business in a manner acceptable to the Department. However, since the passage of the Mortgage Lending Reform Law, foreclosures continue to pose a significant threat to New York homeowners. The Department continues to receive complaints from homeowners and housing advocates that mortgage loan servicers' response to delinquencies and their efforts at loss mitigation are inadequate. These rules are intended to provide clear guidance to mortgage loan servicers as to the procedures and standards they should follow with respect to loan delinquencies. The rules impose a duty of fair dealing on loan servicers in their communications, transactions and other dealings with borrowers. In addition, the rule sets standards with respect to the handling of loan delinquencies and loss mitigation. The rule further requires specific reporting on the status of delinquent loans with the Department so that it has the information necessary to assess loan servicers' performance.

In addition to addressing the pressing issue of mortgage loan delinquencies and loss mitigation, the rule addresses other areas of significant concern to homeowners, including the handling of borrower complaints and inquiries, the payment of taxes and insurance, crediting of payments and handling of late payments, payoff balances and servicer fees. The rule also sets forth prohibited practices such as engaging in deceptive practices or placing homeowners' insurance on property when the servicers has reason to know that the homeowner has an effective policy for such insurance.

Subject: Business conduct of mortgage loan servicers.

Purpose: To implement the purpose and provisions of the Mortgage Lending Reform Law of 2008 with respect to mortgage loan servicers.

Substance of emergency rule: Section 419.1 contains definitions of terms that are used in Part 419 and not otherwise defined in Part 418, including "Servicer", "Qualified Written Request" and "Loan Modification".

Section 419.2 establishes a duty of fair dealing for Servicers in connection with their transactions with borrowers, which includes a duty to pursue loss mitigation with the borrower as set forth in Section 419.11.

Section 419.3 requires compliance with other State and Federal laws relating to mortgage loan servicing, including Banking Law Article 12-D, RESPA, and the Truth-in-Lending Act.

Section 419.4 describes the requirements and procedures for handling to consumer complaints and inquiries.

Section 419.5 describes the requirements for a servicer making payments of taxes or insurance premiums for borrowers.

Section 419.6 describes requirements for crediting payments from borrowers and handling late payments.

Section 419.7 describes the requirements of an annual account statement which must be provided to borrowers in plain language showing the unpaid principal balance at the end of the preceding 12-month period, the interest paid during that period and the amounts deposited into and disbursed from escrow. The section also describes the Servicer's obligations with respect to providing a payment history when requested by the borrower or borrower's representative.

Section 419.8 requires a late payment notice be sent to a borrower no later than 17 days after the payment remains unpaid.

Section 419.9 describes the required provision of a payoff statement that contains a clear, understandable and accurate statement of the total amount that is required to pay off the mortgage loan as of a specified date.

Section 419.10 sets forth the requirements relating to fees permitted to be collected by Servicers and also requires Servicers to maintain and update at least semi-annually a schedule of standard or common fees on their website.

Section 419.11 sets forth the Servicer's obligations with respect to handling of loan delinquencies and loss mitigation, including an obligation to make reasonable and good faith efforts to pursue appropriate loss mitigation options, including loan modifications. This Section includes requirements relating to procedures and protocols for handling loss mitigation, providing borrowers with information regarding the Servicer's loss mitigation process, decision-making and available counseling programs and resources.

Section 419.12 describes the quarterly reports that the Superintendent may require Servicers to submit to the Superintendent, including information relating to the aggregate number of mortgages serviced by the Servicer, the number of mortgages in default, information relating to loss mitigation activities, and information relating to mortgage modifications.

Section 419.13 describes the books and records that Servicers are required to maintain as well as other reports the Superintendent may require Servicers to file in order to determine whether the Servicer is complying with applicable laws and regulations. These include books and records regarding loan payments received communications with borrowers, financial reports and audited financial statements.

Section 419.14 sets forth the activities prohibited by the regulation, including engaging in misrepresentations or material omissions and placing insurance on a mortgage property without written notice when the Servicer has reason to know the homeowner has an effective policy in place.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 18, 2013.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, NYS Department of Financial Services, 1 State Street, New York, NY 10004, (212) 709-1658, email: sam.abram@dfs.gov

Regulatory Impact Statement

1. Statutory Authority.

Article 12-D of the Banking Law, as amended by the Legislature in the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers are individuals or entities which engage in the business of servicing mortgage loans for residential real property located in New York. That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2) (b-1) and 595-b.)

Subsection (1) of Section 590 of the Banking Law was amended by the Mortgage Lending Reform Law to add the definitions of "mortgage loan servicer" and "servicing mortgage loans". (Section 590(1)(h) and Section 590(1)(i).)

A new paragraph (b-1) was added to Subdivision (2) of Section 590 of the Banking Law. This new paragraph prohibits a person or entity from engaging in the business of servicing mortgage loans without first being registered with the Superintendent. The registration requirements do not apply to an "exempt organization," licensed mortgage banker or registered mortgage broker.

This new paragraph also authorizes the Superintendent to refuse to register an MLS on the same grounds as he or she may refuse to register a mortgage broker under Banking Law Section 592-a(2).

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations. The functions and powers of the banking board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89.

New Paragraph (d) was added to Subsection (5) of Section 590 by the Mortgage Lending Reform Law and requires mortgage loan servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be promulgated by the Banking Board or prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Mortgage Lending Reform Law and requires the Superintendent to promulgate regulations and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Mortgage Lending Reform Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

New Subdivision (2) of Section 595-b was added by the Mortgage Lending Reform Law and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

Section 596 was amended by the Mortgage Lending Reform Law to extend the Superintendent's examination authority over licensees and registrants to cover mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

Similarly, the books and records requirements in Section 597 covering licensees, registrants and exempt organizations were amended by the Mortgage Lending Reform Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

The power of the Superintendent to require regulated entities to appear and explain apparent violations of law and regulations was extended by the Mortgage Lending Reform Law to cover mortgage loan servicers (Subdivision (1) of Section 39), as was the power to order the discontinuance of unauthorized or unsafe practices (Subdivision (2) of Section 39) and to order that accounts be kept in a prescribed manner (Subdivision (5) of Section 39).

Finally, mortgage loan servicers were added to the list of entities subject to the Superintendent's power to impose monetary penalties for violations of a law, regulation or order. (Paragraph (a) of Subdivision (1) of Section 44).

The fee amounts for mortgage loan servicer registration and branch applications are established in accordance with Banking Law Section 18-a.

2. Legislative Objectives.

The Mortgage Lending Reform Law was intended to address various problems related to residential mortgage loans in this State. The law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there had previously been no general regulation of servicers by the state or the Federal government.

The Mortgage Lending Reform Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The new law further requires mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Banking Board and the Superintendent.

The mortgage servicing statute has two main components: (i) the first component addresses the registration requirement for persons engaged in the business of servicing mortgage loans; and (ii) the second authorizes the Superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this state.

Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, addresses the first component of the mortgage servicing statute by setting standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as setting financial responsibility standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. This part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Collectively, the provisions of Part 418 and 419 implement the intent of the Legislature to register and supervise mortgage loan servicers.

3. Needs and Benefits.

The Mortgage Lending Reform Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry, particularly with respect to servicing and foreclosure. It addressed a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Until July 1, 2009, when the mortgage loan servicer registration provisions first became effective, the Department regulated the brokering and making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also act as agents for owners of mortgages in negotiations relating to loss mitigation when a mortgage becomes delinquent. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided poor customer service. Specific examples of these activities include: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; erroneously force-placing insurance when borrowers already have insurance; and failing to engage in prompt and appropriate loss mitigation efforts.

More than 2,000,000 loans on residential one-to-four family properties are being serviced in New York. Of these over 9% were seriously delinquent as of the first quarter of 2012. Despite various initiatives adopted at the state level and the creation of federal programs such as Making Home Affordable to encourage loan modifications and help at risk homeowners,

the number of loans modified, have not kept pace with the number of foreclosures. Foreclosures impose costs not only on borrowers and lenders but also on neighboring homeowners, cities and towns. They drive down home prices, diminish tax revenues and have adverse social consequences and costs.

As noted above, Part 418, initially adopted on an emergency basis on July 1 2009, relates to the first component of the mortgage servicing statute – the registration of mortgage loan servicers. It was intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers. It also provided for the suspension, revocation and termination of licensees involved in wrongdoing and establishes minimum financial standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers and establishes certain consumer protections for homeowners whose residential mortgage loans are being serviced. These regulations provide standards and procedures for servicers to follow in their course of dealings with borrowers, including the handling of borrower complaints and inquiries, payment of taxes and insurance premiums, crediting of borrower payments, provision of annual statements of the borrower's account, authorized fees, late charges and handling of loan delinquencies and loss mitigation. Part 419 also identifies practices that are prohibited and imposes certain reporting and record-keeping requirements to enable the Superintendent to determine the servicer's compliance with applicable laws, its financial condition and the status of its servicing portfolio.

Since the adoption of Part 418, 67 entities have been approved for registration or have pending applications and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements.

All Exempt Organizations, mortgage bankers and mortgage brokers that perform mortgage loan servicing with respect to New York mortgages must notify the Superintendent that they do so, and are required to comply with the conduct of business and consumer protection rules applicable to mortgage loan servicers.

These regulations will improve accountability and the quality of service in the mortgage loan industry and will help promote alternatives to foreclosure in the state.

4. Costs.

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publish quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

The ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, and should assist in decreasing the number of foreclosures in this state.

The regulations will not result in any fiscal implications to the State. The Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

5. Local Government Mandates.

None.

6. Paperwork.

Part 419 requires mortgage loan servicers to keep books and records related to its servicing for a period of three years and to produce quarterly reports and financial statements as well as annual and other reports requested by the Superintendent. It is anticipated that the quarterly reporting relating to mortgage loan servicing will be done electronically and would therefore be virtually paperless. The other recordkeeping and reporting requirements are consistent with standards generally required of mortgage bankers and brokers and other regulated financial services entities.

7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations. The various federal laws that touch upon aspects of mortgage loan servicing are noted in Section 9 "Federal Standards" below.

8. Alternatives.

The Mortgage Lending Reform Law required the registration of mortgage loan servicers and empowered the Superintendent to prescribe rules and regulations to guide the business of mortgage servicing. The purpose of the regulation is to carry out this statutory mandate to register mortgage loan servicers and regulate the manner in which they conduct business. The Department circulated a proposed draft of Part 419 and received comments from and met with industry and consumer groups. The current Part 419 reflects the input received. The alternative to these regulations is to do nothing or to wait for the newly created federal bureau of consumer protection to promulgate national rules, which could take years, may not happen at all or may not address all the practices covered by the rule. Thus, neither of those alternatives would effectuate the intent of the legislature to address the current foreclosure crisis, help at-risk homeowners vis-à-vis their loan servicers and ensure that mortgage loan servicers engage in fair and appropriate servicing practices.

9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies, and there are no comprehensive federal rules governing mortgage loan servicing. Federal laws such as the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing, and there have been some recent amendments to those laws and regulations regarding mortgage loan servicing. For example, Regulation Z, 12 C.F.R. section 226.36(c), was recently amended to address the crediting of payments, imposition of late charges and the provision of payoff statements. In addition, the recently enacted Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, obtaining force-placed insurance, responding to borrower requests and providing information related to the owner of the loan.

Additionally, the newly created Bureau of Consumer Financial Protection established by the Dodd-Frank Act may soon propose additional regulations for mortgage loan servicers.

10. Compliance Schedule.

Similar emergency regulations first became effective on October 1, 2010.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The rule will not have any impact on local governments. The Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") requires all mortgage loan servicers, whether registered or exempt from registration under the law, to service mortgage loans in accordance with the rules and regulations promulgated by the Banking Board or Superintendent. The functions and powers of the Banking Board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89. Of the 67 entities which have been approved for registration or have pending applications and the nearly 400 entities which have indicated that they are exempt from the registration requirements, it is estimated that very few are small businesses.

2. Compliance Requirements:

The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers who are not a bank, mortgage banker, mortgage broker or other exempt organizations (the "MLS Registration Regulations") , and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "Mortgage Loan Servicer Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, sets for the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting of borrower payments, late payments, account statements, delinquencies and loss mitigation, fees and recordkeeping.

3. Professional Services:

None.

4. Compliance Costs:

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publishes quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

Compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

5. Economic and Technological Feasibility:

For the reasons noted in Section 4 above, the rule should impose no adverse economic or technological burden on mortgage loan servicers that are small businesses.

6. Minimizing Adverse Impacts:

As noted in Section 1 above, most servicers are not small businesses. Many of the requirements contained in the rule derive from federal or state laws, existing servicer guidelines utilized by Fannie Mae and Freddie Mac and best industry practices.

Moreover, the ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, help borrowers at risk of foreclosure and decrease the number of foreclosures in this state.

7. Small Business and Local Government Participation:

The Department distributed a draft of proposed Part 419 to industry representatives, received industry comments on the proposed rule and met with industry representatives in person. The Department likewise distributed a draft of proposed Part 419 to consumer groups, received their comments on the proposed rule and met with consumer representatives to discuss the proposed rule in person. The rule reflects the input received from both industry and consumer groups.

Rural Area Flexibility Analysis

Types and Estimated Numbers: Since the adoption of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), which required mortgage loan servicers to be registered with the Department unless exempted under the law, 67 entities have pending applications or have been approved for registration and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements. Only one of the non-exempt entities applying for registration is located in New York and operating in a rural area. Of the exempt organizations, all of which are required to comply with the conduct of business contained in Part 419, approximately 400 are located in New York, including several in rural areas. However, the overwhelming majority of exempt organizations, regardless of where located, are banks or credit unions that are already regulated and are thus familiar with complying with the types of requirements contained in this regulation.

Compliance Requirements: The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers that are not a bank, mortgage banker, mortgage broker or other exempt organization (the "MLS Registration Regulations") , and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law of 2008 requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2010, sets forth the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Costs: The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. The periodic reporting requirements of Part 419 are consistent with those imposed on other regulated entities. In addition, many of the other requirements of Part 419, such as those related to the handling of loan delinquencies, taxes, insurance and escrow payments, collection of late fees and charges and crediting of payments, derive from federal or state laws, current federal loan modification programs, servicing guidelines utilized by Fannie Mae and Freddie Mac or servicers' own protocols. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, credit unions, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Of the 67 entities that have been approved for registration or that have pending applications, only one is located in a rural area of New York State. Of the few exempt organizations located in rural areas of New York, virtually all are banks or credit unions. Moreover, compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

Minimizing Adverse Impacts: As noted in the "Costs" section above, while mortgage loan servicers may incur some higher costs as a result of complying with the rules, the Department does not believe that the rule will impose any meaningful adverse economic impact upon private or public entities in rural areas.

In addition, it should be noted that Part 418, which establishes the application and financial requirements for mortgage loan servicers, authorizes the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of mortgage loans servicers that service not more than 12 mortgage loans or more than $5,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases

for good cause. The Department believes that this will ameliorate any burden on mortgage loan servicers operating in rural areas.

Rural Area Participation: The Department issued a draft of Part 419 in December 2009 and held meetings with and received comments from industry and consumer groups following the release of the draft rule. The Department also maintains continuous contact with large segments of the servicing industry though its regulation of mortgage bankers and brokers and its work in the area of foreclosure prevention. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation.

Job Impact Statement

Article 12-D of the Banking Law, as amended by the Mortgage Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2009, sets forth the application, exemption and approval procedures for registration as a mortgage loan servicer, as well as financial responsibility requirements for applicants, registrants and exempted persons.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. Thus, this part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor services' conduct and prohibits certain practices such as engaging in deceptive business practices.

Compliance with Part 419 is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. The vast majority of mortgage loan servicers are sophisticated financial entities that service millions, if not billions, of dollars in loans and have the experience, resources and systems to comply with the requirements of the rule. Moreover, many of the requirements of the rule reflect derive from federal or state laws and reflect existing best industry practices.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Confidentiality Protocols for Victims of Domestic Violence and Endangered Individuals

I.D. No. DFS-41-13-00008-EP

Filing No. 945

Filing Date: 2013-09-23

Effective Date: 2013-09-23

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

Proposed Action: Addition of Part 244 to Title 11 NYCRR.

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

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

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

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

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

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

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

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

Text of emergency/proposed rule: *Section 244.0 Preamble.*

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

Section 244.1 Applicability.

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

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

Section 244.2 Definitions.

As used in this Part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 244.3 Confidentiality protocol.

(a) An insurer shall develop and implement a confidentiality protocol

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

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

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

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

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

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

(c) The insurer's confidentiality protocol shall include written procedures to be followed by its employees, agents, representatives, or other persons with whom the insurer contracts and who may have access to the information sought to be kept confidential. The written procedures shall include:

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

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

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

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

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

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

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

(iii) any other information from which there is a reasonable basis to believe the information specified in subparagraphs (i) and (ii) could be obtained; and

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

(d)(1) An insurer shall notify its employees, agents, representatives, and other persons with whom the insurer contracts who have access to the information sought to be kept confidential, that the insurer's protocol is to be followed for the specified victim of domestic violence or covered individual, within three business days of:

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

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

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

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

(f)(1) Prior to releasing any information prohibited to be disclosed pursuant to subdivisions (a) and (b) of this section pursuant to a warrant, subpoena, or court order involving the policyholder or another insured covered under the policy, an insurer shall notify the individual who delivered the order of protection or the requestor, as soon as reasonably practicable, that it intends to release information and specify what type of information it intends to release, unless prohibited by the warrant, subpoena, or court order.

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

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

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

Section 244.4 Notice.

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

(1) a description of Insurance Law section 2612;

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

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

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

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

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire December 21, 2013.

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

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

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

Regulatory Impact Statement

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

2. Legislative objectives: Insurance Law § 2612, with respect to every insurer regulated under the Insurance Law, provides in relevant part that if any person covered by an insurance policy delivers to the insurer a valid order of protection against the policyholder or other covered person, then the insurer cannot, for the duration of the order, disclose to the policyholder or other person the address and telephone number of the insured, or of any person or entity providing covered services to the insured. Section 2612 also requires a health insurer, as defined in that section, to accommodate a reasonable request made by a person covered by an insurance policy or contract to receive communications of claim-related information by alternative means or at alternative locations if the person clearly states that disclosure of the information could endanger the person. This section further prohibits a health insurer from disclosing certain information to the policyholder.

The Legislature enacted Insurance Law § 2612, and amendments

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

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

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

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

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

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

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

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

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

8. Alternatives: Originally, the rule required an insurer's confidentiality protocol to have written procedures to be followed by its employees, agents, representatives, or any other persons with whom the insurer contracted or who had gained access to the information from the insurer, with regard to the solicitation, negotiation, or sale of insurance or the adjustment or administration of insurance claims. The rule also required an insurer to notify the foregoing persons that the insurer's protocol was to be followed for the specified domestic violence victim or covered individual within three business days of receipt of a valid order of protection and alternative contact information, or receipt of a reasonable request, with regard to a health insurer.

After receiving comments from trade associations representing life and property/casualty insurers, the Department, recognizing that the rule could be construed in an overly broad way, clarified the rule to require that the written procedures in the insurer's confidentiality protocol be followed by its employees, agents, representatives, and persons with whom the insurer contracts where such employees, agents, representatives, or persons may have access to the information sought to be kept confidential. The Department also amended the rule to require an insurer to notify its employees, agents, representatives, and persons with whom the insurer contracts where such employees, agents, representatives, or persons have access to the information sought to be kept confidential, that the insurer's protocol is to be followed for the specified domestic violence victim or covered individual within three business days of receipt of a valid order of protection and alternative contact information, or receipt of a reasonable request, with regard to a health insurer.

The rule also originally stated that prior to releasing any information pursuant to a warrant, subpoena, or court order, an insurer must notify the individual who delivered the order of protection or the requestor, as soon as reasonably practicable, that it intends to release information and specify what type of information it intends to release, unless prohibited by the warrant, subpoena, or court order. However, after receiving an inquiry from an attorney that represents health insurers, the Department amended this language to make clear that the information to which the language is referring is limited to the information barred from disclosure by § 244.3(a) and (b) of the rule, and that the warrant, subpoena, or court order must involve the policyholder or another insured covered under the policy.

In addition, the Department had included language in the rule that prohibited an insurer or any person subject to the Insurance Law from engaging in any practice that would prevent or hamper the orderly working of the rule in accomplishing its intended purpose of protecting domestic violence victims and covered individuals. A trade organization questioned how a person would prevent or hamper the orderly working of the rule. After further discussion, the Department deleted the foregoing language.

Finally, a trade organization stated that it was not always clear which provisions applied only to health insurers. The Department clarified the rule to make clearer when it applies to all insurers and when it applies just to health insurers.

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

10. Compliance schedule: The existing statute already requires an insurer to protect certain information when a person provides the insurer with an order of protection. The new requirements of Insurance Law § 2612 took effect on January 1, 2013. This regulation has been in effect on an emergency basis since June 27, 2013. Insurers had to post certain information on their websites by July 1, 2013.

Regulatory Flexibility Analysis

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

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

person subject to the Insurance Law from engaging in any practice that would prevent or hamper the orderly working of the rule in accomplishing its intended purpose of protecting victims of domestic violence and covered individuals.

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

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

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

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

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

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

Rural Area Flexibility Analysis

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

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

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

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

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

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

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

Job Impact Statement

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

Department of Health

EMERGENCY RULE MAKING

Children's Camps

I.D. No. HLT-41-13-00002-E
Filing No. 938
Filing Date: 2013-09-23
Effective Date: 2013-09-23

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

Action taken: Amendment of Subpart 7-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

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

Specific reasons underlying the finding of necessity: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"), in order to coordinate and improve the State's ability to protect those persons having various physical, developmental, or mental disabilities and who are receiving services from various facilities or provider agencies. The Department must promulgate regulations as a "state oversight agency." These regulations will assure proper coordination with the efforts of the Justice Center.

Among the facilities covered by Chapter 501 are children's camps having enrollments with 20 percent or more developmentally disabled campers. These camps are regulated by the Department and, in some cases, by local health departments, pursuant to Article 13-B of the Public Health Law and 10 NYCRR Subpart 7-2. Given the effective date of Chapter 501 and its relation to the start of the camp season, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such camps. Absent emergency promulgation, such persons would be denied initial coordinated protections until the 2014 camp season. Promulgating these regulations on an emergency basis will provide such protection, while still providing a full opportunity for comment and input as part of a formal rulemaking process which will also occur pursuant to the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to sections 201 and 225 of the Public Health Law.

Promulgating the regulations on an emergency basis will ensure that campers with special needs promptly receive the coordinated protections to be provided to similar individuals cared for in other settings. Such protections include reduced risk of being cared for by staff with a history of inappropriate actions such as physical, psychological or sexual abuse towards persons with special needs. Perpetrators of such abuse often seek legitimate access to children so it is critical to camper safety that individuals who that have committed such acts are kept out of camps. The regulation provides an additional mechanism for camp operators to do so. The regulations also reduce the risk of incidents involving physical, psychological or sexual abuse towards persons with special needs by ensuring that such occurrences are fully and completely investigated, by ensuring that camp staff are more fully trained and aware of abuse and reporting obligations, allowing staff and volunteers to better identify inappropriate staff behavior and provide a mechanism for reporting injustice to this vulnerable population. Early detection and response are critical components for mitigating injury to an individual and will prevent a perpetrator from hurting additional children. Finally, prompt enactment of the proposed regulations will ensure that occurrences are fully investigated and evaluated by the camp, and that measures are taken to reduce the risk of re-occurrence in the future. Absent emergency adoption, these benefits and protections will not be available to campers with special needs until

the formal rulemaking process is complete, with the attendant loss of additional protections against abuse and neglect, including physical, psychological, and sexual abuse.

Subject: Children's Camps.

Purpose: To include camps for children w/ developmental disabilities as a type of facility with in the oversight of the Justice Center.

Substance of emergency rule: The Department is amending 10 NYCRR Subpart 7-2 Children's Camps as an emergency rulemaking to conform the Department's regulations to requirements added or modified as a result of Chapter 501 of the Laws of 2012 which created the Justice Center for the Protection of Persons with Special Needs (Justice Center). Specifically, the revisions:

- amend section 7-2.5(o) to modify the definition of "adequate supervision," to incorporate the additional requirements being imposed on camps otherwise subject to the requirements of section 7-2.25
- amend section 7-2.24 to address the provision of variances and waivers as they apply to the requirements set forth in section 7-2.25
- amend section 7-2.25 to add definitions for "camp staff," "Department," "Justice Center," and "Reportable Incident"

With regard to camps with 20 percent or more developmentally disabled children, which are subject to the provisions of 10 NYCRR section 7-2.25, add requirements as follows:

- amend section 7-2.25 to add new requirements addressing the reporting of reportable incidents to the Justice Center, to require screening of camp staff, camp staff training regarding reporting, and provision of a code of conduct to camp staff
- amend section 7-2.25 to add new requirements providing for the disclosure of information to the Justice Center and/or the Department and, under certain circumstances, to make certain records available for public inspection and copying
- amend section 7-2.25 to add new requirements related to the investigation of reportable incidents involving campers with developmental disabilities
- amend section 7-2.25 to add new requirements regarding the establishment and operation of an incident review committee, and to allow an exemption from that requirement under appropriate circumstances
- amend section 7-2.25 to provide that a permit may be denied, revoked, or suspended if the camp fails to comply with the regulations, policies or other requirements of the Justice Center

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire December 21, 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

Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council is authorized by Section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. Article 13-B of the PHL sets forth sanitary and safety requirements for children's camps. PHL Sections 225 and 201(1)(m) authorize SSC regulation of the sanitary aspects of businesses and activities affecting public health including children's camps.

Legislative Objectives:

In enacting to Chapter 501 of the Laws of 2012, the legislature established the New York State Justice Center for the Protection of People with Special Needs (Justice Center) to strengthen and standardize the safety net for vulnerable people that receive care from New York's Human Services Agencies and Programs. The legislation includes children's camps for children with developmental disabilities within its scope and requires the Department of Health to promulgate regulations approved by the Justice Center pertaining to incident management. The proposed amendments further the legislative objective of protecting the health and safety of vulnerable children attending camps in New York State (NYS).

Needs and Benefits:

The legislation amended Article 11 of Social Services law as it pertains to children's camps as follows. It:

- included overnight, summer day and traveling summer day camps for children with developmental disabilities as facilities required to comply with the Justice Center requirements.
- defined the types of incident required to be reported by children's camps for children with developmental disabilities to the Justice Center Vulnerable Persons' Central Registry.
- mandated that the regulations pertaining to children's camps for children with developmental disabilities are amended to include incident management procedures and requirements consistent with Justice Center guidelines and standards.
- required that children's camps for children with developmental disabilities establish an incident review committee, recognizing that the Department could provide for a waiver of that requirement under certain circumstances.
- required that children's camps for children with developmental disabilities consult the Justice Center's staff exclusion list (SEL) to ensure that prospective employees are not on that list and to, where the prospective employee is not on that list, to also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment (SCR) to determine whether prospective employees are on that list.
- required that children's camps for children with developmental disabilities publicly disclose certain information regarding incidents of abuse and neglect if required by the Justice Center to do so.

The children's camp regulations, Subpart 7-2 of the SSC are being amended in accordance with the aforementioned legislation.

Compliance Costs:

Cost to Regulated Parties:

The amendments impose additional requirements on children's camp operators for reporting and cooperating with Department of Health investigations at children's camps for children with developmental disabilities (hereafter "camps"). The cost to affected parties is difficult to estimate due to variation in salaries for camp staff and the amount of time needed to investigate each reported incident. Reporting an incident is expected to take less than half an hour; assisting with the investigation will range from several hours to two staff days. Using a high estimate of staff salary of $30.00 an hour, total staff cost would range from $120 to $1600 for each investigation. Expenses are nonetheless expected to be minimal statewide as between 40 and 50 children's camps for children with developmental disabilities operate each year, with combined reports of zero to two incidents a year statewide. Accordingly, any individual camp will be very unlikely to experience costs related to reporting or investigation.

Each camp will incur expenses for contacting the Justice Center to verify that potential employees, volunteers or others falling within the definition of "custodian" under section 488 of the Social Services Law (collectively "employees") are not on the Staff Exclusion List (SEL). The effect of adding this consultation should be minimal. An entry level staff person earning the minimum wage of $7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the Justice Center, within a few hours.

Similarly, each camp will incur expenses for contacting the Office of Children and Family Services (OCFS) to determine whether potential employees are on the State Central Registry of Child Abuse and Maltreatment (SCR) when consultation with the Justice Center shows that the prospective employee is not on the SEL. The effect of adding this consultation should also be minimal, particularly since it will not always be necessary. An entry level staff person earning the minimum wage of $7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the OCFS, within a few hours. Assuming that each employee is subject to both screens, aggregate staff time required should not be more than six to eight hours. Additionally, OCFS imposes a $25.00 screening fee for new or prospective employees.

Camps will be required to disclose information pertaining to reportable incidents to the Justice Center and to the permit issuing official investigating the incident. Costs associated with this include staff time for locating information and expenses for copying materials. Using a high estimate of staff salary of $30.00 an hour, and assuming that staff may take up to two hours to locate and copy the records, typical cost should be under $100.

Camps must also assure that camp staff, and certain others, who fall within the definition of mandated reporters under section 488 of the Social Services Law receive training related to mandated reporting to the Justice Center, and the obligations of those staff who are required to report incidents to the Justice Center. The costs associated with such training should be minimal as it is expected that the training material will be provided to the camps and will take about one hour to review during routine staff training. Camps must also ensure that the telephone number for the Justice Center reporting hotline is conspicuously posted for campers and staff. Cost associated with such posting is limited, related to making and posting a copy of such notice in appropriate locations.

The camp operator must also provide each camp staff member, and others who may have contact with campers, with a copy of a code of conduct established by the Justice Center pursuant to Section 554 of the Executive Law. The code must be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct must be acknowledged, and the recipient must further acknowledge that he or she has read and understands it. The cost of providing the code, and obtaining and filing the required employee acknowledgment, should be minimal, as it would be limited to copying and distributing

the code, and to obtaining and filing the acknowledgments. Staff should need less than 30 minutes to review the code.

Camps will also be required to establish and maintain a facility incident review committee to review and guide the camp's responses to reportable incidents. The cost to maintain a facility incident review committee is difficult to estimate due to the variations in salaries for camp staff and the amount of time needed for the committee to do its business. A facility incident review committee must meet at least annually, and also within two weeks after a reportable incident occurs. Assuming the camp will have several staff members participate on the committee, an average salary of $50.00 an hour and a three hour meeting, the cost is estimated to be $450.00 dollars per meeting. However, the regulations also provide the opportunity for a camp to seek an exemption, which may be granted subject to Department approval based on the duration of the camp season and other factors. Accordingly, not all camps can be expected to bear this obligation and its associated costs.

Camps are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Finally, the regulations add noncompliance with Justice Center-related requirements as a ground for denying, revoking, or suspending a camp operator's permit.

Cost to State and Local Government:

State agencies and local governments that operate children's camps for children with developmental disabilities will have the same costs described in the section entitled "Cost to Regulated Parties." Currently, it is estimated that five summer day camps that meet the criteria are operated by municipalities. The regulation imposes additional requirements on local health departments for receiving incident reports and investigations of reportable incidents, and providing a copy of the resulting report to the Department and the Justice Center. The total cost for these services is difficult to estimate because of the variation in the number of incidents and amount of time to investigate an incident. However, assuming the typically used estimate of $50 an hour for health department staff conducting these tasks, an investigation generally lasting between one and four staff days, and assuming an eight hour day, the cost to investigate an incident will range $400.00 to $1600. Zero to two reportable incidents occur statewide each year, so a local health department is unlikely to bear such an expense. The cost of submitting the report is minimal, limited to copying and mailing a copy to the Department and the Justice Center.

Cost to the Department of Health:

There will be routine costs associated with printing and distributing the amended Code. The estimated cost to print revised code books for each regulated children's camp in NYS is approximately $1600. There will be additional cost for printing and distributing training materials. The expenses will be minimal as most information will be distributed electronically. Local health departments will likely include paper copies of training materials in routine correspondence to camps that is sent each year.

Local Government Mandates:

Children's camps for children with developmental disabilities operated by local governments must comply with the same requirements imposed on camps operated by other entities, as described in the "Cost to Regulated Parties" section of this Regulatory Impact Statement. Local governments serving as permit issuing officials will face minimal additional reporting and investigation requirements, as described in the "Cost to State and Local Government" section of this Regulatory Impact Statement. The proposed amendments do not otherwise impose a new program or responsibilities on local governments. City and county health departments continue to be responsible for enforcing the amended regulations as part of their existing program responsibilities.

Paperwork:

The paperwork associated with the amendment includes the completion and submission of an incident report form to the local health department and Justice Center. Camps for children with developmental disabilities will also be required to provide the records and information necessary for LHD investigation of reportable incidents, and to retain documentation of the results of their consultation with the Justice Center regarding whether any given prospective employee was found to be on the SEL or the SCR.

Duplication:

This regulation does not duplicate any existing federal, state, or local regulation. The regulation is consistent with regulations promulgated by the Justice Center.

Alternatives:

The amendments to the camp code are mandated by law. No alternatives were considered.

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

Federal Standards:

Currently, no federal law governs the operation of children's camps.

Compliance Schedule:

The proposed amendments are to be effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Types and Estimated Number of Small Businesses and Local Governments:

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. About 30% of summer day camps are operated by municipalities (towns, villages, and cities). Typical regulated children's camps representing small business include those owned/operated by corporations, hotels, motels and bungalow colonies, non-profit organizations (Girl/Boy Scouts of America, Cooperative Extension, YMCA, etc.) and others. None of the proposed amendments will apply solely to camps operated by small businesses or local governments.

Compliance Requirements:

Reporting and Recordkeeping:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties," "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.

Other Affirmative Acts:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement.

Professional Services:

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Compliance Costs:

Cost to Regulated Parties:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Cost to State and Local Government:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in the "Cost to Regulated Parties" section of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

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

Minimizing Adverse Economic Impact:

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized.

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

Small Business Participation and Local Government Participation:

No small business or local government participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the regulations, and training will be provided to affected entities with regard to the new requirements.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. Currently, there are

seven day camps and ten overnight camps operating in the 44 counties that have population less than 200,000. There are an additional four day camps and three overnight camps in the nine counties identified to have townships with a population density of 150 persons or less per square mile.

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Other Compliance Requirements:

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Professional Services:

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Compliance Costs:

Cost to Regulated Parties:

The costs imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

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

Minimizing Adverse Economic Impact on Rural Area:

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized, and no impacts are expected to be unique to rural areas.

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

Rural Area Participation:

No rural area participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the routine regulations, and training will be provided to affected entities with regard to the new requirements.

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types and assisting with the investigation of new reportable incidents are expected to be completed by existing camp staff, and should not be appreciably different than that already required under current requirements.

NOTICE OF ADOPTION

Electronic Prescriptions and Records for Hypodermic Needles and Hypodermic Syringes

I.D. No. HLT-23-13-00004-A

Filing No. 947

Filing Date: 2013-09-24

Effective Date: 2013-10-09

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

Action taken: Amendment of sections 80.131 and 80.133 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3381

Subject: Electronic Prescriptions and Records for Hypodermic Needles and Hypodermic Syringes.

Purpose: Allow a practitioner to issue an electronic prescription for hypodermic needles and syringes.

Text or summary was published in the June 5, 2013 issue of the Register, I.D. No. HLT-23-13-00004-P.

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

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

Public comments were submitted to the NYS Department of Health (DOH) in response to the regulation. The public comment period for this regulation ended on July 22, 2013. The Department received a total of five comments from representatives of the pharmacy community, including a school of pharmacy, independent pharmacy, and chain pharmacy. The comments resonated with positive enthusiasm.

Four of the five comments were similar and positive, stating that the adoption of these regulations is an obvious benefit to prescribers, pharmacists and, most importantly, to the patients they serve. Summarized below is the Department of Health's response to one comment:

COMMENT: A commenter representing the pharmacy community expressed concern over potential cost burdens to pharmacies as they attempt to conform and implement electronic record keeping processes, but also stated that the benefit to such processes far outweighs any incremental cost suffered.

RESPONSE: Electronic recordkeeping is optional. Pharmacies retain the option to keep records manually. Initial and annual costs for continuing compliance with the regulations is not a factor.

Department of Labor

NOTICE OF ADOPTION

Deductions from Wages

I.D. No. LAB-21-13-00010-A

Filing No. 950

Filing Date: 2013-09-24

Effective Date: 2013-10-09

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

Action taken: Repeal of Part 195; and addition of new Part 195 to Title 12 NYCRR.

Statutory authority: Labor Law, section 193

Subject: Deductions from Wages.

Purpose: To explain the types of deduction that are authorized to be made from wages and the method by which those deductions may be made.

Substance of final rule: Full text is posted at the following State website: www.labor.ny.gov

This rule repeals the current Part 195 and adds a new Part 195, effective October 9, 2013. This rule shall expire upon the expiration and repeal of Chapter 451 of the Laws of 2012.

195-1.1 provides that the purpose of the part is to establish provisions governing authorized deductions for the benefit of employees, for the recovery of overpayments due to clerical or mathematical errors, and for repayment of advances.

195-1.2 Provides to whom the regulation applies and that the regulation requires continued compliance with other laws relating to company stores and wage deductions.

195-2.1 Provides that wage deductions are prohibited unless they are (1) deductions made in accordance with any law, rule or regulation issued by any governmental agency; (2) deductions specified by, or similar to those specified by, section 193 of the Labor Law, authorized by, and for the benefit of, the employee; (3) deductions for the recovery of overpayments made in accordance with the proposed regulation; and (4) deductions for the repayment of wage advances made in accordance with the proposed regulation.

195-2.2 Provides that no employer engaged in performing a public work shall operate a company store if there is a store within two miles of the work site and provides that no deduction shall be made for groceries, provisions, board, lodging or clothing.

195-3.1 Provides that deductions from wages may be made in accordance with a government's law, rule or regulation.

195-4.1 Provides that deductions for the benefit of the employee are authorized if they are listed in Labor Law § 193(b) (1) or are a "similar deduction for the benefit of the employee."

195-4.2 Provides when an employer must seek authorization for a

deduction for the benefit of an employee, and provides that such a deduction is authorized if agreed to in a collective bargaining agreement or a written authorization signed by the employee prior to the deduction being made and provides for notice of the deduction to the employee.

195-4.3 Provides that deductions for the benefit of the employee are those listed in Labor Law § 193(b) (1) or those that are: health and welfare benefits; pensions and retirement benefits; child care and educational benefits; charitable benefits; dues and assessments; transportation; and food and lodging. Also provides for deductions that may be made when the employer receives a financial gain and deductions that are prohibited.

195-4.4 Categorizes the deductions that may be made for payments listed in Labor Law § 193(b) (1).

195-4.5 Lists some payments that are not similar and for the benefit of the employee.

195-5.1 Provides the following for deductions for overpayments where such overpayment is due to a mathematical or other clerical error made by the employer: (1) the timing and duration of the deduction; (2) the frequency of the deduction; (3) method of recovery of the overpayment; (4) limitations on the periodic amount of recovery for the overpayment; (5) the timing and contents of a notice of intent to make the deduction; and (6) the procedure that an employee may take if he or she chooses to contest the deduction.

195-5.2 Provides for deductions from an employee's wages for repayment of advances of salary or wages made by the employer. This section provides for: (1) timing and duration of the deduction; (2) the frequency of the deduction; (3) the method of recovery of the advance; (4) limitations on the periodic amount of recovery; (5) authorization for the deduction; and (6) implementation of and a procedure for an employee to contest the deduction.

195-5.3 Provides for the format and method of transmission of authorizations and notifications.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 195-4.2(a), 195-5.1(f)(4), (i), 195-5.2(b), (c) and (f).

Text of rule and any required statements and analyses may be obtained from: Amy C. Karp, Legislative Counsel, New York State Department of Labor, State Office Campus, Building 12, Room 509, Albany, NY 12240, (518) 457-7350, email: Regulations@labor.ny.gov

Revised Regulatory Impact Statement

Statutory Authority: Labor Law §§ 21(11), 193 and 199.

Legislative Objectives: The purpose of the authorizing legislation is to allow additional specifically stated deductions for the benefit of an employee; permit the recovery of overpayments due to clerical or mathematical errors; permit the repayment of advances; and to provide for a method for making these deductions.

Needs and Benefits: New Part 195 will improve regulatory conditions in the state by providing clarification of the requirements for making deductions from wages. The new Part 195 will provide benefits to the regulated community as it will ensure the protection of workers and provide guidance to employers who wish to make deductions from wages. This regulation will inform and serve the public and regulated community, and supplement the Department's ability to monitor and enforce certain deductions.

Costs: The Department estimates the cost to comply with this rule is minimal. There would be a minimal cost to employers to develop and store authorizations, notices and other paperwork that would be required if an employer chooses to make deductions from wages for the benefit of the employee. There would be a minimal cost to employers to provide notices and to develop and execute a procedure for an employee to contest or delay a deduction for an overpayment made to the employee due to mathematical or clerical error or an advance made to the employee, if an employer chooses to deduct an overpayment or advance from wages. The Department estimates that there will be no increased costs to the State to administer the rule.

Local Government Mandate: Labor Law § 193 does not apply to governments or municipalities.

Paperwork: The statute requires that an employer provide notice of the terms and conditions of the deduction and that an employee sign an authorization prior to an employer making a deduction from wages for the benefit of an employee. The statute also requires that an employer provide notice of the procedure for disputing a deduction for an overpayment made to an employee due to clerical or mathematical error or an advance or delaying a deduction for an overpayment or advance and to execute this procedure when necessary. The regulations provide guidance regarding these statutory requirements.

Duplication: This rule does not duplicate, overlap or conflict with any other State or federal requirements.

Alternatives: It has been concluded that regulations relating to the types of deductions that may be made, the method by which an employee should be provided with notice, the nature of employee authorization, and the type of procedures by which an employee may contest certain wage deductions are appropriate to provide employers with guidance and to assist in the equal application of the law.

Federal Standards: Federal regulations regarding wage deductions provide that no deduction shall be made that would reduce an employee's wage to a wage below the minimum wage.

Compliance Schedule: The regulated community will be required to comply with this regulation when it becomes effective. This regulation shall become effective upon publication of its adoption in the State Register.

Revised Regulatory Flexibility Analysis

Effect of Rule: This rule explains the types of deductions that are authorized to be made from wages and the method by which those deductions may be made. The rule applies to all employers, and clarifies the expanded circumstances in which deductions can be made. The rule will not affect small businesses unless they choose to make deductions from an employee's wages and will not affect local governments at all.

Compliance Requirements: Employers that choose to make deductions from wages for the benefit of the employee pursuant to Labor Law § 193(b) would be required to obtain employee written authorizations and provide notice of the deductions. Those employers that choose to make deductions pursuant to Labor Law § 193(c) and (d) for overpayments due to clerical and mathematical errors made to an employee would be required to provide written notice of deductions and notice of procedures for an employee to contest these deductions made for overpayments in addition to providing a procedure for an employee to contest the deductions themselves, and/or the terms of repayment. Employers and employees must enter into an agreement for advances deducted from wages and employers must provide a procedure to contest such deductions. Employers who make deductions from wages for the benefit of the employee must maintain records of those deductions for a period of six years, regardless of whether the employer/employee relationship continues, similar to all other payroll record retention requirements.

Professional Services: No professional services would be required to effectuate the purposes of this rule.

Compliance Costs: While there may be costs associated with the compliance of this rule, if an employer chooses to make deductions from wages pursuant to Labor Law § 193(b), (c) and (d) and this rule, these costs should be minimal.

Economic and Technological Feasibility: The regulation does not require any use of technology to comply. Although there may be minimal additional costs associated with the new rule, if an employer chooses to make deductions from wages pursuant to Labor Law § 193(b), (c) and (d) and this rule, compliance is economically feasible. § 193 and these regulations do not apply to municipalities or governments.

Minimizing Adverse Impact: If a small business chooses to make deductions from wages for the benefit of an employee, for overpayments due to mathematical and clerical errors or for advances, the paperwork and requirements regarding authorization, notice and procedures for an employee to contest deductions are minimal. Therefore, the Department does not anticipate that the regulations will adversely impact small employers who comply with this Part. Different requirements for small businesses are not necessary.

Small Business and Local Government Participation: The Department has ensured that small businesses and local governments will have an opportunity to participate in the rule-making process. The Department has also participated in discussions with representatives of affected entities. The Department will elicit input from small businesses during the public comment period.

Revised Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: The requirements contained in the proposed new rule apply to any employer who chooses to make a deduction from wages for (1) the benefit of an employee, (2) overpayments made to an employee due to a mathematical or clerical error, or (3) advances made to an employee. These employers may include those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

2. Reporting, recordkeeping and other compliance requirements: Employers that choose to make deductions from wages for the benefit of the employee pursuant to Labor Law § 193(b) would be required "to obtain written employee authorizations" and provide employees with notices of the deductions. Those employers that choose to make deductions pursuant to Labor Law § 193(c) and (d) for overpayments due to clerical and mathematical errors or advances made to an employee would be required to provide written notice of deductions and procedures for an employee to contest these deductions, and must also utilize a procedure if an employee chooses to contest these deductions. Employers who make deductions

from wages for the benefit of the employee must maintain records during the time the employee from whom the deduction was taken is employed by the employer and for six years after that employee's employment with the employer ends, as they do for other payroll records.

3. Professional services: No professional services will be required to comply with this rule.

4. Costs: The Department estimates the cost to comply with this rule is minimal. There could be a minimal cost to employers to develop and store authorizations, notices and other paperwork required if an employer chooses to make deductions from wages for the benefit of the employee. There would be a minimal cost to employers to provide notice and to develop and execute a procedure for an employee to contest or delay a deduction for an overpayment made to the employee due to mathematical or clerical error or an advance made to the employee, if an employer chooses to make a deduction to recoup an overpayment or advance from wages.

5. Minimizing adverse impact: The requirements of this rule are not mandatory, and if an employer chooses to make deductions from wages for the benefit of an employee, for overpayments due to mathematical and clerical errors or for advances, the paperwork and requirements regarding notice to the employee and procedures for an employee to contest deductions are minimal. Therefore, the Department does not anticipate that the regulations will adversely impact employers who comply with this Part. Different requirements for rural areas were not necessary.

6. Rural area participation: The Department has ensured that employers from rural areas have had an opportunity to participate in the rule-making process. The Department will elicit input from employers and employees in rural areas during the public comment period.

Revised Job Impact Statement

The Department of Labor projects there will be no adverse impact on jobs or employment opportunities in the State of New York as a result of this proposed rule change. The rule provides guidance for deductions from wages as authorized in Labor Law 193. The nature and purpose of the rule is such that it will not have a substantial adverse impact on jobs or employment opportunities and therefore no Job Impact Analysis is required.

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

1. The regulations should define "goods and services" as stated in 4.3(c) so employers know which items are covered.

Such a definition would be misleading to employers who thought that the item itself was permissible. Goods and services are permissible as long as they fall under one of the specifically listed categories in the statute, or are very similar to a listed category and are for the benefit of the employee. It is not the nature of the item which makes it permissible, but rather whether the item is similar to an enumerated category and a benefit to the employee whose wages are being deducted.

2. The regulations should allow employers to charge employees for the reasonable replacement value of items provided by the employer which had been lost, stolen or destroyed while in the employee's possession.

Neither the statute nor the regulations allow this to take place through deductions.

3. The regulations should include other types of similar payments.

The statute already allows for a deduction made in accordance with any other law, rule or regulation.

4. There should be no list of prohibited deductions in the regulation. The list of prohibited deductions should be done through Department guidance documents instead.

The list of prohibited deductions provides a clear rule to employers and employees and contains some of the most frequent violations.

5. The regulations should not contain a list of similar deductions and should not have reorganized the statutory list of permissible deductions into groups of similar deductions. Doing so made it confusing as to whether the aggregate limits required for certain statutory categories applies to any particular deduction.

The organization into similar groups makes it easier to understand what types of deductions will be similar to those listed in the statute. The statute explicitly lists types of deductions are subject to the aggregate limit.

6. Written authorizations are too burdensome when multiple deductions are being made or amounts fluctuate, such as with insurance premiums or cafeteria purchases.

Nothing in these regulations requires a separate form for each deduction. Employers may use one form containing all the deductions (and other required information) and may include a range or cap amount for deductions which may vary from pay period to pay period. This clarification has been made.

7. Employers should be required to get separate written authorizations for each deduction made, rather than using a single authorization containing all deductions.

The information provided in the authorization and the voluntary execution of the authorization make the deduction compliant with the regulations.

8. The employer should not have to provide the employee with the option of having another person selected by the employee review the deductions material prior to authorization.

There is no requirement that the employer must provide such representation, pay for the representation, or provide multiple copies to an authorized representative. It requires that the employee be allowed to show the material to an authorized representative for review prior to signing the authorization form. If the employee is prevented from doing so, the authorization is not valid.

9. The employer should have to pay for an outside representative should the employee opt to have such representative review material regarding deductions and benefits.

The regulation strikes a balance between an employee's need to have all the information necessary to make a decision, and an employer's efficient operation of a business.

10. The regulations do not require the employer to pay for an authorized representative to review deduction and benefit material prior to authorization. This may conflict with some collective bargaining agreements (CBA) which require the employer to pay for the representative review.

The regulation does not prevent an employer from paying for such representation, nor does it prevent the provision of such in a CBA.

11. Section 5.1(a) is confusing as it limits the look back period to 8 weeks, but allows the repayment to take place over 6 years.

While there are two different time frames for the look back period and the repayment period, these time periods are clear.

12. Section 5.1(a) should have a longer look back period.

The 8 week period represents a reasonable amount of time for employers to catch possible payroll errors.

13. The time frames in the contest period should be longer, and the employer should not be permitted to recoup the entire overpayment from the next payment of wages.

The time frames provide both a fair process to employers and employees, and a swift resolution to the issues raised. The total reclamation from the very next wage payment is a reasonable resolution for the common problem of the accidental double issuance of a paycheck.

14. It should be clarified as to whether the limitations in Section 5.1 apply to a limit per wage payment or a limit per overpayment in the case of multiple overpayments being recouped at the same time.

The limitations apply per wage payment. Employers recouping multiple overpayments are limited to the total they may deduct from any wage payment.

15. Section 5.1(g) is confusing in that it requires an employer to repay improperly made deductions despite the automatic postponement of the deduction until after the final determination made in accordance with 5.1(g).

In the case of full recovery of the overpayment from the next wage payment, the employee must respond within two days of receipt of the notice to postpone the deduction. However, an employee who responds after the two days contained in Section 5.1(g) but before the one week contained in paragraph (f)(1) still has a right to contest the deduction while not preventing the deduction from taking place. Section 5.1(g) requires repayment of any deduction made in these circumstances should the deduction ultimately be found improper or inaccurate.

16. There should not be a presumption that the deduction is impermissible if the employer fails to comply with the dispute resolution time frames contained in the regulation.

The Department disagrees.

17. The employee should be provided material regarding the overpayment similar to the material the employer is required to provide in the case of a substantial change in benefits.

The regulation requires the employer to provide the employee with written notice containing the relevant information.

18. An employer could circumvent the notice requirement by sending the notice to an email account not regularly checked by the employee.

Notice must actually be received to be effective.

19. In making a final determination pursuant to paragraph 5.1(f)(4), the employer should have to consider whether an overpayment existed in the first place, not just a determination on the amount and time periods for recovery.

Section 5.1(f)(4) already requires the employer to make a final determination regarding the existence of an overpayment, and further requires the employer to consider whether the alleged overpayment appeared to the employee to be a new agreed upon rate of pay.

20. The last paragraph in the overpayments section should specify that employees may seek redress with the Department, as it does in the advance section.

This clarification has been made.

21. There is language missing in 5.1(f)(4).

Section 5.1(f)(4) is missing an "and" and should be corrected to read, in relevant part, "When making a final determination regarding the amount of the deduction to be made per pay period 'and' the date such deductions shall commence, the employer shall …"

22. Commenters asked whether the regulations governed the advance of personal time off, such as sick days and vacation days.

These regulations apply to any circumstance where the employer is providing money to an employee for work not yet performed by the employee, and recouping that money through a deduction. A deduction from future earned paid time off is to be treated the same as a deduction from future wages.

23. Employers should be allowed to make deductions for repayment of advances more frequently than once per wage payment.

The Department disagrees.

24. Employers should be able to provide and reclaim more than one advance at a time.

The one advance at a time requirement eliminates the possibility of the advance section being used as a substitute for a company store, where the employee gets further and further into debt without ever justifying the account.

25. Section 3.1(c) states that an employee may revoke their authorization to make a deduction at any time, while Section 5.2(e) of the regulation only allows authorization to be revoked prior to the provision of the advance by the employer.

Section 3.1(c) also states that the deduction is to be cancelled as soon as practicable. It is not practicable for an employer to provide an advance under a written agreement, only to have the employee unilaterally revoke the authorization to recoup the advance immediately after the advance is given.

26. Section 5.2(b) states that an employer may recover advances no less than each wage payment. It should be revised to read "no more" than each wage payment.

This correction has been made.

27. Section 5.2(c) uses the term "overpayments" rather than advances.

This correction has been made.

28. Section 5.1(f) allows dispute procedures for overpayments in CBAs to be used rather than the procedure in the regulation. This language should also be contained in Section 5.2.

This correction has been made.

29. Employers need guidance as to when an employee has been deemed to be paid for purposes of the time tables contained in the regulation.

An employee is paid when the employee has access to their wages.

30. The regulation should contain guidance regarding when a separate transaction is permissible in place of a deduction.

The regulations state when a separate transaction is permissible to reclaim overpayments or advances. Labor Law § 193 generally prohibits separate transactions which are not otherwise permissible as a deduction.

31. Commenters sought clarification regarding the impact of the proposed rulemaking on the scope of authorized deductions permitted or required under a CBA to unions and to union sponsored funds.

Neither the statute nor the regulation prohibit deductions for collectively bargained deductions for payments to unions and union funds.

32. Comments should be accepted through to July 8, 2013, as the published deadline fell on a Saturday.

The Department agrees.

33. The regulations provide much needed ability for farm employers and employees to engage in an employment relationship under reasonable terms.

The Department agrees.

34. The regulations should clarify whether the 10% rule in the prior regulation will remain.

The regulation expressly repeals the prior version. There is no similar 10% rule in the regulation. The statute does require aggregate limits agreed upon in advance for certain types of deductions.

35. Commenters identified concerns as to whether employers who pay a draw and factor that draw into the calculation of additional commissions at a later date are required to treat the draw as an advance pursuant to these regulations.

The payment of a draw is not an advance to be recouped through deductions.

36. The regulations should specify if, in the calculation of days, it means business days instead of calendar days. Similarly, it should be clarified that a week means 7 calendar days.

This clarification has been made.

37. The regulations regarding an employee's ability to seek a delay of payments are unclear.

The statute requires the Department to issue regulations containing numerous factors to consider in the reclamation of overpayments and advances. The proposed regulations address the issues required by the statute.

38. Section 3.1(a) "misstates" the statute by using the phrase "laws, rules or regulations that are issued by any governmental agency," rather than "any law or any rule or regulation issued by any governmental agency" used in the statute.

The rephrasing used in the regulation does not change the meaning.

Other submitters posed questions regarding the statute, requested advice on how to handle certain situations not covered by these regulations, and made suggestions regarding the provision of guidance documents. Such submissions were reviewed but not referenced in the assessment of comments regarding these regulations.

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Farmworker Minimum Wage

I.D. No. LAB-41-13-00011-P

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

Proposed Action: Amendment of Part 190 of Title 12 NYCRR.

Statutory authority: Labor Law, sections 21(11), 652, 673 and 674

Subject: Farmworker Minimum Wage.

Purpose: To comply with chapter 57 of the laws of 2013 that increased the minimum wage.

Public hearing(s) will be held at: 2:00 p.m., Nov. 26, 2013 at Department of Labor, 333 E. Washington St., Syracuse, NY.

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

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

Text of proposed rule: Part 190 of Title 12 of the New York Codes, Rules, and Regulations is amended as follows:

Subdivision d of section 190-1.3 is amended to read as follows:

(d) Basic minimum hourly wage means:

(1) [$5.15 per hour on and after March 31, 2000;

(2) $6.00 per hour on and after January 1, 2005;

(3) $6.75 per hour on and after January 1, 2006;

(4)]$7.15 per hour on and after January 1, 2007;

([5]*2*) $7.25 per hour on and after July 24, 2009*;*

(3) $8.00 per hour on and after December 31, 2013;

(4) $8.75 per hour on and after December 31, 2014;

(5) $9.00 per hour on and after December 31, 2015[,] or, if greater, such other wage as may be established by Federal law pursuant to 29 U.S.C. section 206 or any successor provisions.

Section 190-2.1 is amended to read as follows:

§ 190-2.1 Basic minimum wage rate.

The basic minimum wage rate for each hour worked shall be [$5.15 per hour on and after March 31, 2000; [$6.00 per hour on and after January 1, 2005; $6.75 per hour on and after January 1, 2006;] $7.15 per hour on and after January 1, 2007; $7.25 per hour on and after July 24, 2009[.]*; $8.00 per hour on and after December 31, 2013; $8.75 per hour on and after December 31, 2014; $9.00 per hour on and after December 31, 2015; or, if greater, such other wage as may be established by Federal law pursuant to 29 U.S.C. section 206 or any successor provisions.*

Section 190-2.3 is amended to read as follows:

§ 190-2.3 Youth rates.

Youths under 18 years of age shall be paid the basic minimum wage rates set forth in section 190-2.1 of this Subpart on and after December 31, 2013. Prior to December 31, 2013, t[T]he following rates shall apply to youths under 18 years of age, provided the employer has been issued a youth rate certificate by the commissioner:

(a) Harvest workers. Sixteen- and seventeen-year-old youths working in or in connection with the harvesting of fruits and vegetables in their first harvest season for an employer may be paid $2.85 per hour until January 1, 1991; $3.25 per hour on and after January 1, 1991; and $3.60 per hour on and after January 1, 1992. During their second harvest season with the same employer they may be paid $3 per hour until January 1, 1991; $3.40 per hour on and after January 1, 1991; and $3.80 per hour on and after January 1, 1992. During their third season for the same employer they shall be paid the basic minimum wage rate.

(b) Nonharvest workers. Sixteen- and seventeen-year-old youths working in nonharvest work may be paid $2.85 per hour during their first 300 hours of employment, until January 1, 1991; $3.25 per hour on and after January 1, 1991; and $3.60 per hour on and after January 1, 1992, $3 per hour during their second 300 hours of employment for the same employer until January 1, 1991; $3.40 per hour on and after January 1, 1991; and $3.80 per hour on and after January 1, 1992 and the basic minimum wage rate thereafter when working for the same employer.

(c) Youths under 16 years of age. Youths under 16 years of age may be employed only if each such youth has been issued a farm work permit by the appropriate authorities and may be paid $2.50 per hour until January 1, 1991; $2.85 per hour on and after January 1, 1991; and $3.20 per hour on and after January 1, 1992.

Text of proposed rule and any required statements and analyses may be obtained from: Amy C. Karp, Department of Labor, Building 12, State Campus, Albany, NY, (518) 457-7350, email: regulations@labor.ny.gov

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

Public comment will be received until: Five days after the last scheduled public hearing.

Additional matter required by statute: Pursuant to Section 674(3) of the Labor Law, Notice of Promulgation of is hereby given that this rulemaking will be adopted, effective December 31, 2013.

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

Regulatory Impact Statement

Statutory Authority: Labor Law § 21(11), which provides that the Commissioner may promulgate regulations related to the Labor Law; Labor Law § 673 (1), which provides that the wage order for farmworkers must be increased so that farmworkers receive the minimum wage established under Labor Law § 652; and Labor Law § 674, which provides that the Commissioner may promulgate regulations to carry out the purposes of Article 19A of the Labor Law after a public hearing.

Legislative Objectives: The legislature provided that the Commissioner of Labor may regulate the minimum wage for farm workers to assure that they are paid the minimum wage. Chapter 57 of the laws of 2013 required increases in the minimum wage established at Labor Law § 652(1), which increases apply, by operation of law, to farm workers pursuant to Labor Law § 673(1).

Needs and Benefits: The regulations implement the recent increases in the minimum wage rates enacted by the legislature as part of chapter 57 of the laws of 2013. Specifically, the legislation increased the basic hourly minimum wage from its current rate of $7.25 to $8.00 on December 31, 2013, $8.75 on December 31, 2014, and $9.00 on December 31, 2015, and the regulations add those new rates to the current listings of minimum wage rates to ensure that those regulatory provisions accurately reflect the minimum wage rates going forward. The regulations will benefit farmers and farm workers who are subject to the regulation by ensuring that it accurately reflects the minimum wage rates. In addition, the regulation will benefit farm workers by ensuring that farm workers will receive the same minimum wage rates without regard to age by setting the new rates for youth under age 18 at the new statutory rates set forth above.

Costs: There will be costs associated with providing the increases in the minimum wage rates that were established by the legislature and with ending the period during which farm workers under the age of 18 may be paid at rates that are lower than such minimum wage rates.

Local Government Mandate: None. Federal, state and municipal governments and political subdivisions thereof are excluded from coverage under Part 190 by Labor Law § § 651(5) (last paragraph § 671(2).

Paperwork: None.

Duplication: This rule exceeds the federal minimum wage requirements, but follows the requirements set by the New York State Legislature.

Alternatives: The increases in minimum wage rates are required by law. The provision ending the period during which farm workers under the age of 18 may be paid less than the minimum wage rates was determined to be the best alternative to paying these workers subminimum wage.

Federal Standards: This rule implements minimum wage increases that exceed the federal minimum wage. There are no other federal standards relating to this rule.

Compliance Schedule: The regulated community will be required to comply with this regulation on and after December 31, 2013.

Regulatory Flexibility Analysis

Effect of Rule: Some farms, but no local governments, are potentially affected by the changes in the regulations.

Compliance Requirements: There are no changes in the reporting or record-keeping requirements regarding the minimum wage. Farms that employ workers at rates that are near, or below, the new statutory minimum wage rates will have to review their payrolls in light of the new statutory minimum wage rates and the farm worker wage order, as amended by this rulemaking, to determine whether they must increase the rates that they pay to their workers.

Professional Services: No professional services would be required to effectuate the purposes of this rule.

Compliance Costs: The cost of this rule to farms is related to the cost of the increase in the minimum wage as set by the legislature by chapter 57 of the laws of 2013 that amended Labor Law § 652 and to the proposed amendment to the farm worker wage order to end the period for paying less than the minimum wage for workers under 18.

Economic and Technological Feasibility: Compliance with these regulations will be economically and technologically feasible because these regulations simply adjust existing rates, without imposing new, or altering existing, requirements or procedures for complying with minimum wage requirements.

Minimizing Adverse Impact: The increases to the minimum wage rates are required by law, but farmers may choose to take steps to minimize their costs by claiming available allowances for items such as meals and lodging.

Small Business and Local Government Participation: The increases in minimum wage rates were enacted by the legislature following public hearings across the state in 2012 and were the subject of extensive public dialogue and input leading up to the enactment in 2013. Additional participation will be afforded through the public comment period, including a public hearing, for this rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: The amendments to the Farm Worker Wage Order (12 NYCRR 190) will apply to farm workers rural areas throughout the State.

2. Reporting, recordkeeping and other compliance requirements: There are no changes in the reporting or record-keeping requirements regarding the minimum wage. Farms that employ workers at rates that are near, or below, the new statutory minimum wage rates will have to review their payrolls in light of the new statutory minimum wage rates and the farm worker wage order, as amended by this rulemaking, to determine whether they must increase the rates that they pay to their workers.

3. Professional services: No professional services will be required to comply with this rule.

4. Costs: The cost of this rule to farms is related to the cost of the increase in the minimum wage as set by the legislature by chapter 57 of the laws of 2013 that amended Labor Law § 652 and to the proposed amendment to the farm worker wage order to end the period for paying less than the minimum wage for workers under 18.

5. Minimizing adverse impact: The increases to the minimum wage rates are required by law, but farmers may choose to take steps to minimize their costs by claiming available allowances for items such as meals and lodging.

6. Rural area participation: The increases to the minimum wage rates are required by law, but rural areas will have an opportunity to participate during the rulemaking process, which includes a public hearing.

Job Impact Statement

1. Nature of impact: The amendment to these regulations, the Wage Order for Farm Workers (12 NYCRR 190) would provide the recently enacted minimum wage increases to be extended to farm workers of all ages.

2. Categories and numbers affected: This amendment will increase the wages for farm workers of all ages.

3. Regions of adverse impact: This amendment will affect those areas with farms that employ farm workers.

4. Minimizing adverse impact: This amendment implements the recently enacted increases in minimum wages and minimizes the adverse impact on adult workers by ensuring that those same rates are paid to workers regardless of age.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Minimum Wage

I.D. No. LAB-41-13-00012-P

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

Proposed Action: Amendment of Parts 141, 142, 143 and 146 of Title 12 NYCRR.

Statutory authority: Labor Law, sections 21(11), 652(2) and (6)

Subject: Minimum Wage.

Purpose: To comply with chapter 57 of the laws of 2013 that increased the minimum wage.

Substance of proposed rule (Full text is posted at the following State website:labor.ny.gov): In compliance with Labor Law section 652, as amended by Part P of Chapter 57 of the laws of 2013, which, in part, will increase the minimum wage to $8.00 per hour on and after December 31, 2013; $8.75 on and after December 31, 2014; and $9.00 on and after December 31, 2015, the following modifications are made to existing Wage Orders:

12 NYCRR Part 141 (Minimum Wage Order for the Building Service Industry)- increase the basic hourly minimum wage to $8.00 per hour on and after December 31, 2013; $8.75 on and after December 31, 2014; and $9.00 on and after December 31, 2015 to reflect the increases in the minimum wage enacted in Part P of Chapter 57 of the laws of 2013 (141-1.3) with proportional increases to unit rate for janitors in residential buildings (141-1.2), allowances for utilities (141-1.6), uniform allowance (141-1.8), unit rate limitations (141-2.8), classification of executive work (141-3.2(c)(1)(i)), classification of administrative work (141-3.2(c)(1)(ii)).

12 NYCRR Part 142-2 (Minimum Wage Order for Miscellaneous Industries except Nonprofitmaking Institutions)- increase the basic hourly minimum wage to $8.00 per hour on and after December 31, 2013; $8.75 on and after December 31, 2014; and $9.00 on and after December 31, 2015 to reflect the increases in the minimum wage enacted in Part P of Chapter 57 of the laws of 2013 (142-2.1) with proportional increases to meal and lodging allowances (142-2.5)(a)), tip allowances (142-2.5(b), uniform allowance (142-2.5(c)), classification of executive work (142-2.14(c)(4)(i)), classification of administrative work (142-2.14(c)(4)(ii)).

12 NYCRR Part 142-3 (Minimum Wage Order for Nonprofit Making Institutions that have not Elected to be Exempt from Coverage under a Minimum Wage Order)- increase the basic hourly minimum wage to $8.00 per hour on and after December 31, 2013; $8.75 on and after December 31, 2014; and $9.00 on and after December 31, 2015 to reflect the increases in the minimum wage enacted in Part P of Chapter 57 of the laws of 2013 (142-3.1) with proportional increases to meal and lodging allowances (142-3.5)(a)), meal and lodging allowances for employees in children's camps (143-3.5(b)), uniform allowance (142-3.5(c)), classification of executive work (142-3.12(c)(2)(i)), classification of administrative work (142-3.12(c)(2)(ii)).

12 NYCRR Part 143 (Minimum Wage Order for not-for-profit institutions that certifies that it will pay the stautory minimum wage in lieu of being covered under a minimum wage order)- increase the basic hourly minimum wage to $8.00 per hour on and after December 31, 2013; $8.75 on and after December 31, 2014; and $9.00 on and after December 31, 2015 to reflect the increases in the minimum wage enacted in Part P of Chapter 57 of the laws of 2013 (143.0(b)) with proportional increases to classification of executive work (143.1(b)(1)), with proportional increases to classification of administrative work (143.1(b)(2)).

12 NYCRR Part 146 (Minimum Wage Order for the Hospitality Industry)- increase basic hourly minimum wage to $8.00 per hour on and after December 31, 2013; $8.75 on and after December 31, 2014; and $9.00 on and after December 31, 2015 to reflect the increases in the minimum wage enacted in Part P of Chapter 57 of the laws of 2013 (146-1.2) and makes corresponding changes to reflect that wages and tips shall equal or exceed the minimum wage (146-1.3), makes changes to examples to indicate the time period for which the figures in the example apply (146-1.4), increases the cost of maintaining uniforms proportionately to the increase in the minimum wage (146-1.8), make corresponding changes to meal and lodging credits for all workers covered by this wage order other than food service workers and services employees (146-1.9); makes corresponding changes to the classification of executive work (146-3.2 (c)(1)(i)), makes corresponding changes to the classification of administrative work (146- 3.2(c)(1)(ii)) and changes the definition of service employee by increasing the amount of tips an employee must receive to be defined as a service employee covered by Part 146 (146-3.3(a)).

Text of proposed rule and any required statements and analyses may be obtained from: Amy C. Karp, Department of Labor, Building 12, State Campus, Albany, NY, (518) 457-7350, email: regulations@labor.ny.gov

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

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

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

Regulatory Impact Statement

Statutory Authority: Labor Law § 21 at subdivision (11), which provides that the Commissioner of Labor ("Commissioner") may promulgate regulations related to the Labor Law; and Labor Law § 652, as amended by chapter 57 of the laws of 2013, at subdivision (2), which provides that the Commissioner must increase all monetary amounts set forth in Wage Orders in the same proportion as the increase in the minimum wage and at subdivision 6, which provides that the cash wage and tip credit paid to food service workers and service employees covered by the Hospitality Wage Order (12 NYCRR 146) shall equal the minimum wage.

Legislative Objectives: Chapter 57 of the laws of 2013 provided that the minimum wage will be raised to $8.00 per hour on and after December 31, 2013; $8.75 per hour on and after December 31, 2014; and $9.00 on and after December 31, 2015. The Labor Law establishes a minimum hourly rate and requires the Commissioner to increase wage orders in a proportionate amount to reflect the increase the legislature deems necessary to provide. New subdivision 6 of Labor Law § 652 provides that the hourly cash wage and meal and lodging allowances for restaurant workers and service employees subject to 12 NYCRR 146 (Minimum Wage Order for the Hospitality Industry) shall not be raised in proportion to the minimum wage and that the tip credits set forth in 12 NYCRR 146 must be raised so that the cash wage combined with the tip credit equals the minimum wage. Labor Law § 652(2) also provides that these wage orders are to be promulgated by the Commissioner without a public hearing, and without reference to a wage board and will be effective on the effective date of an increase in the hourly minimum wage.

Needs and Benefits: The regulations implement the recent increases in the minimum wage rates enacted by chapter 57 of the laws of 2013 according to the statutory formulas set forth in Labor Law § 652(2) & (6), as amended. Specifically, the legislation increased the basic hourly minimum wage from its current rate of $7.25 to $8.00 on December 31, 2013, $8.75 on December 31, 2014, and $9.00 on December 31, 2015, and Labor Law § 652(2) & (6) specify statutory formulas for increasing various other rates set forth in the regulations by reference to the above-referenced minimum wage increases. The regulations will benefit employers and employees by specifying the exact dollar amounts that result from those statutory formulas to facilitate compliance with statutory increases. Employees will benefit from increases in those rates that specify additional pay required under certain circumstances, while employers will benefit from increases in those rates that specify allowances that employers can use as credits towards partial satisfaction of the minimum wage. The regulations do not establish or eliminate any requirements for additional pay or opportunities for allowances that employers may claim, but simply establish the new dollar amounts that result from the legislation enacted this year.

Costs: The cost of these rules to the regulated community is related to the cost of the increase in the minimum wage enacted by the legislature. There will be costs associated with providing the increase in the minimum wage, including proportional increases in additional pay required in certain circumstances involving uniforms, and proportional savings associated with increases in certain allowances that can be used by employers to partially satisfy their minimum wage requirements and minimal initial additional cost associated with recordkeeping.

Local Government Mandate: None. Federal, state and municipal governments and political subdivisions thereof are excluded from coverage under Parts 141, 142, 143 and 146 by Labor Law Section 651(5)(n) and 651(5) (last paragraph). They are not covered under Part 143 because it covers only certain non-profit organizations, in accordance with Labor Law § 652(3).

Paperwork: None.

Duplication: This rule exceeds the federal minimum wage requirements, but follows the requirements set by the New York State Legislature.

Alternatives: These amendments made are required by law and thus there are no alternatives to amending these regulations.

Federal Standards: This rule implements the minimum wage and requirements set forth in New York law that exceeds the federal minimum wage. There are no other federal standards relating to this rule.

Compliance Schedule: The regulated community will be required to comply with this regulation on and after December 31, 2013.

Regulatory Flexibility Analysis

Effect of Rule: All small businesses, but no local governments, are potentially affected by the changes in the regulations.

Compliance Requirements: There are no changes in the reporting or record-keeping requirements regarding the minimum wage. Small businesses in the hospitality industry, and small businesses in other industries that employ workers at rates that are near, or below, the new statutory minimum wage rates, will have to review their payrolls in light of the new statutory minimum wage rates and the proposed wage orders to determine whether they will need to increase the amount that they pay to their workers.

Professional Services: No professional services would be required to effectuate the purposes of this rule.

Compliance Costs: These rules do not impose any additional costs separate and apart from the costs imposed by the legislature in increasing minimum wage rates and in establishing statutory formulas for adjusting amounts set forth in these rules. Such compliance costs, however characterized, do not exceed the cost of reviewing and increasing pay rates consistent with the statutory increases implemented by this rulemaking.

Economic and Technological Feasibility: Compliance with these regulations will be economically and technologically feasible because

these regulations simply adjust existing rates, without imposing new, or altering existing, requirements or procedures for complying with minimum wage requirements.

Minimizing Adverse Impact: The increases to the minimum wage rates are required by law, but small businesses may choose to take steps to minimize their costs by claiming available allowances for items such as meals and lodging and by avoiding practices that trigger additional pay requirements for certain work shifts and uniform (clothing) practices.

Small Business and Local Government Participation: The increases in minimum wage rates were enacted by the legislature following public hearings across the state in 2012 and were the subject of extensive public dialogue and input leading up to the enactment in 2013. Additional participation will be afforded through the public comment period for these regulations.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: These rules apply to all private employers in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements: There are no changes in the reporting or record-keeping requirements regarding the minimum wage. Employers in the hospitality industry, and employers in other industries that employ workers at rates that are near, or below, the new statutory minimum wage rates, will have to review their payrolls in light of the new statutory minimum wage rates and the proposed wage orders to determine whether they will need to increase the amount that they pay to their workers.

3. Professional services: No professional services will be required to comply with this rule.

4. Costs: These rules do not impose any additional costs separate and apart from the costs imposed by the legislature in increasing minimum wage rates and in establishing statutory formulas for adjusting amounts set forth in these rules. Such compliance costs, however characterized, do not exceed the cost of reviewing and increasing pay rates consistent with the statutory increases implemented by this rulemaking.

5. Minimizing adverse impact: The increases to the minimum wage rates are required by law, but small businesses may choose to take steps to minimize their costs by claiming available allowances for items such as meals and lodging and by avoiding practices that trigger additional pay requirements for certain work shifts and uniform (clothing) practices.

6. Rural area participation: The increases in minimum wage rates were enacted by the legislature following public hearings across the state in 2012 and were the subject of extensive public dialogue and input leading up to the enactment in 2013. Additional participation will be afforded through the public comment period for these regulations.

Job Impact Statement

1. Nature of Impact: These regulations conform the Wage Orders to the statutory increase in the New York State minimum hourly wage rate that is required by Labor Law § 652 and the amendments thereto made by chapter 57 of the laws of 2013.

2. Categories and numbers affected: These regulations are required by statute or will have no impact on employment within the state.

3. Regions of adverse impact: These regulations will not have a disproportionate impact upon any area of the State.

4. Minimizing adverse impact: The increases to the minimum wage rates are required by law, but employers may minimize their costs and impact on jobs, by claiming available allowances for items such as meals and lodging and by avoiding practices that trigger additional pay requirements for certain work shifts and uniform (clothing) practices.

Public Service Commission

NOTICE OF ADOPTION

Approving, with Modifications, the Revisions to Service Classification No. 1-E in PSC No. 2 - Water

I.D. No. PSC-22-13-00010-A

Filing Date: 2013-09-24

Effective Date: 2013-09-24

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

Action taken: On 9/19/13, the PSC adopted an order approving, with modifications, a tariff filing by New York American Water Company, Inc. to revise 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: Approving, with modifications, the revisions to Service Classification No. 1-E in PSC No. 2 - Water.

Purpose: To approve, with modifications, the revisions to Service Classification No. 1-E in PSC No. 2 - Water.

Substance of final rule: The Commission, on September 19, 2013, adopted an order approving, with modifications, the tariff filing by New York American Water Company, Inc. to make revisions to Service Classification No 1-E Regarding Adjustments to usage block allowances, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-W-0203SA1)

NOTICE OF ADOPTION

Approving Zucker Trust to Acquire More Shares of Corning Up to 15 Percent

I.D. No. PSC-23-13-00003-A

Filing Date: 2013-09-19

Effective Date: 2013-09-19

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

Action taken: On 9/19/13, the PSC adopted an order approving the joint petition of Corning Natural Gas Corporation (Corning) and the Article 6 Marital Trust (Zucker Trust) of a stock acquisition by the Zucker Trust to increase its ownership stock up to 15 percent.

Statutory authority: Public Service Law, section 70

Subject: Approving Zucker Trust to acquire more shares of Corning up to 15 percent.

Purpose: To approve Zucker Trust to acquire more shares of Corning up to 15 percent.

Substance of final rule: The Commission, on September 19, 2013, adopted an order approving the joint petition of Corning Natural Gas Corporation (Corning) and the Article 6 Marital Trust (Zucker Trust) to allow the Zucker Trust to acquire stock acquisition of Corning up to 15 percent, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-G-0202SA1)

NOTICE OF ADOPTION

Approving Review Procedures and Requirements for Certain Energy Highway Transmission Facilities

I.D. No. PSC-24-13-00011-A

Filing Date: 2013-09-19

Effective Date: 2013-09-19

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

Action taken: On 9/19/13, the PSC adopted an order approving the procedures and application filing requirements for projects submitted in response to the Energy Highway transmission initiative.

Statutory authority: Public Service Law, sections 4(1), 20(1), 66(1) and 122(1)

Subject: Approving review procedures and requirements for certain Energy Highway transmission facilities.

Purpose: To approve review procedures and requirements for certain Energy Highway transmission facilities.

Substance of final rule: The Commission, on September 19, 2013, adopted an order approving the review procedures and application filing requirements for certain proposed electric transmission facilities, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-T-0502SA2)

NOTICE OF ADOPTION

Approving the Distribution of Settlement Funds to Electric Ratepayers

I.D. No. PSC-24-13-00012-A

Filing Date: 2013-09-20

Effective Date: 2013-09-20

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

Action taken: On 9/19/13, the PSC adopted an order approving the distribution of Constellation Energy Commodities Group, Inc. settlement refunds to electric ratepayers in accordance with the Federal Energy Regulatory Commission.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Approving the distribution of settlement funds to electric ratepayers.

Purpose: To approve the distribution of settlement funds to electric ratepayers.

Substance of final rule: The Commission, on September 19, 2013, adopted an order approving the distribution of settlement funds to all affected electric ratepayers from a settlement with the Federal Energy Regulatory Commission and Constellation Energy Group, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-E-0232SA1)

NOTICE OF ADOPTION

Approval of Determination That NiGen is Not Subject to Lightened Regulation

I.D. No. PSC-25-13-00014-A

Filing Date: 2013-09-23

Effective Date: 2013-09-23

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

Action taken: On 9/19/13, the PSC adopted an order approving a petition by Niagara Generation LLC (NiGen), and rescinding lightened ratemaking regulation.

Statutory authority: Public Service Law, sections 2(2-b), (2-d), (3), (4), (13), (5)(1)(b), 64, 65, 66, 68, 69, 69-a, 70, 71, 72, 72-a, 75, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 114-a, 115, 117, 118, 119-a and 119-c

Subject: Approval of determination that NiGen is not subject to lightened regulation.

Purpose: To approve the determination that NiGen is not subject to lightened regulation.

Substance of final rule: The Commission, on September 19, 2013, adopted an order approving Niagara Generation LLC's petition determining it is not subject to lightened ratemaking regulation, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-E-0233SA1)

NOTICE OF ADOPTION

Approving Waivers of Certain Provisions of 16 NYCRR

I.D. No. PSC-26-13-00011-A

Filing Date: 2013-09-24

Effective Date: 2013-09-24

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

Action taken: On 9/19/13, the PSC adopted an order approving the joint application of New York State Electric and Gas Corporation and Niagara Mohawk Power Corporation d/b/a National Grid granting waivers of certain provisions of 16 NYCRR.

Statutory authority: Public Service Law, sections 86.3(a)(2), (b)(2) and 88.4(a)(4)

Subject: Approving waivers of certain provisions of 16 NYCRR.

Purpose: To approve waivers of certain provisions of 16 NYCRR.

Substance of final rule: The Commission, on September 19, 2013, adopted an order approving the joint application of New York State Electric and Gas Corporation and Niagara Mohawk Power Corporation d/b/a National Grid to waive certain of the Commission's regulations relating to Public Service Law Article VII applications, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-T-0235SA1)

NOTICE OF ADOPTION

Approving the Transfer of Assets from Garrow Water Works, Inc. to the Town of Schuyler Falls

I.D. No. PSC-28-13-00015-A

Filing Date: 2013-09-23

Effective Date: 2013-09-23

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

Action taken: On 9/19/13, the PSC adopted an order approving the joint petition of Garrow Water Works Company, Inc. and the Town of Schuyler Falls to transfer all of the water supply assets to the Town.

Statutory authority: Public Service Law, section 89-H

Subject: Approving the transfer of assets from Garrow Water Works, Inc. to the Town of Schuyler Falls.

Purpose: To approve the transfer of assets from Garrow Water Works, Inc. to the Town of Schuyler Falls.

Substance of final rule: The Commission, on September 19, 2013, adopted an order approving the joint petition of Garrow Water Works Company, Inc. and the Town of Schuyler Falls (Town) to transfer all of the water supply assets to the Town, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-W-0270SA1)

NOTICE OF ADOPTION

Approving, with Conditions, NYISO to Incur Indebtedness for a Term in Excess of 12 Months

I.D. No. PSC-29-13-00017-A

Filing Date: 2013-09-20

Effective Date: 2013-09-20

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

Action taken: On 9/19/13, the PSC adopted an order approving, with conditions, the petition of the New York Independent System Operator, Inc. (NYISO) to incur indebtedness of up to $150 million for a term in excess of 12 months.

Statutory authority: Public Service Law, section 69

Subject: Approving, with conditions, NYISO to incur indebtedness for a term in excess of 12 months.

Purpose: To approve, with conditions, NYISO to incur indebtedness for a term in excess of 12 months.

Substance of final rule: The Commission, on September 19, 2013, adopted an order approving the petition of the New York Independent System Operator, Inc. to incur indebtedness for a term in excess of twelve months, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-E-0240SA1)

NOTICE OF ADOPTION

Approving Waivers of Certain Provisions of 16 NYCRR Sections 894.1 Through 894.4(b)(2)

I.D. No. PSC-29-13-00020-A

Filing Date: 2013-09-23

Effective Date: 2013-09-23

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

Action taken: On 9/19/13, the PSC adopted an order approving the petition of the Town of Carlisle, Schoharie County, for a waiver of certain provisions of 16 NYCRR sections 894.1 through 894.4 pertaining to the franchising process.

Statutory authority: Public Service Law, section 216(1)

Subject: Approving waivers of certain provisions of 16 NYCRR sections 894.1 through 894.4(b)(2).

Purpose: To approve waivers of certain provisions of 16 NYCRR sections 894.1 through 894.4(b)(2).

Substance of final rule: The Commission, on September 19, 2013, adopted an order approving the petition of the Town of Carlisle, Schoharie County, to waive certain requirements of 16 NYCRR sections 894.1 through 894.4, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-V-0271SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Tariff Changes to Modify the Calculation of the Monthly Cost of Gas for Sales Customers

I.D. No. PSC-41-13-00013-P

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

Proposed Action: The Commission is considering a proposal filed by The Brooklyn Union Gas Company d/b/a National Grid NY to make various changes to the rates, charges, rules and regulations contained in its Schedule for Gas Services P.S.C. No. 12 — Gas.

Statutory authority: Public Service Law, sections 5, 65 and 66

Subject: Tariff changes to modify the calculation of the monthly cost of gas for sales customers.

Purpose: To modify the calculation of the monthly cost of gas for sales customers under Service Classification Nos. 4A, 4A-CNG and 4B.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by The Brooklyn Union Gas Company d/b/a National Grid NY (the Company) to modify the calculation of the monthly cost of gas for sales customers provided service under Service Classification Nos. 4A, High Load Factor Service; 4A-CNG, Compressed Natural Gas Equipment Service and 4B, Year-Round Air Conditioning Service. Specifically, the amount of fixed cost credits flowed back to each service classification will be set proportionate to the amount of fixed gas costs allocated to that service classification in the calculation of the monthly cost of gas. The amendments have an effective date of January 1, 2014. The Commission may apply its decision here to 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

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-4535, email: secretary@dps.ny.gov

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

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

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

(13-G-0439SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Issuance of Aggregate Long-Term Debt of Up to $300 Million

I.D. No. PSC-41-13-00014-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 National Grid Generation Inc. requesting authorization of the issuance of aggregate long-term debt of up to $300 million.

Statutory authority: Public Service Law, section 69

Subject: Issuance of aggregate long-term debt of up to $300 million.

Purpose: To consider the authorization of aggregate long-term debt of up to $300 million.

Substance of proposed rule: The Public Service Commission is considering a petition of National Grid Generation Inc. requesting authorization of the issuance of aggregate long-term debt of up to $300 million. The Commission may grant, deny or modify, in whole or in part, the petition and may grant related relief.

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

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(13-E-0390SP1)

State University of New York

EMERGENCY
RULE MAKING

State University of New York Tuition and Fees Schedule

I.D. No. SUN-30-13-00005-E

Filing No. 936

Filing Date: 2013-09-20

Effective Date: 2013-09-20

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

Action taken: Amendment of section 302.1(b) of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

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

Specific reasons underlying the finding of necessity: Amendment of these regulations needs to proceed on an emergency basis because tuition increases are intended to be effective for the Fall 2013 semester. Billing for these new tuition rates occurs during the summer of 2013; therefore, notice of the new rates needs to occur as soon as possible.

Subject: State University of New York Tuition and Fees Schedule.

Purpose: To amend the Tuition and Fees Schedule to increase tuition for students in all programs in the State University of New York.

Text of emergency rule: Section 302.1. Tuition and fees at State-operated units of State University.

* * * * *

(b) Tuition charges as listed in the following table for categories of students, terms and programs, and as modified, amplified or explained in footnotes 1 through [6]*7* are effective with the [2012] *2013* fall term and thereafter.

		Charge per Semester		Charge per Semester credit hour[1] Special Students	
		New York State residents	Out-of-State residents	New York State residents	Out-of-State residents
(1)	Students enrolled in degree-granting undergraduate programs leading to an associate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	[$2,785] *$2,935*	[$7,410] *$7,660*, $4,870[2] *$5,020*[3]	[$232] *$245* [$232] *$245*[4]	[$618] *$638* $406[2] *$418*[3] [$232[3]] *$245*[4]
(2)	Students enrolled in degree-granting undergraduate programs leading to a baccalaureate degree and non-degree granting programs of at least one regular academic term in duration which have been approved as eligible for Tuition Assistance Program Awards	[$2,785] *$2,935*	[$7,410] *$7,660*, [$8,095[4]] *$8,905*[5] [$7,360[5]] *$8,095*[6] [$4,180[6]] *$4,405*[7]	[$232] *$245*	[$618] *$638* [$675[4]] *$742*[5] [$613[5]] *$675*[6] [$349[6]] *$367*[7]
(3)	Students enrolled in graduate programs (other than Masters of Business Administration, Architecture, Social Work or Physician['s] Assistant) leading to a Master's, Doctor's or equivalent degree	[$4,685] *$4,935*	[$8,340] *$9,175* [$7,035[6]] *$7,405*[7]	[$390] *$411*	[$695] *$765* [$586[6]] *$617*[7]
(4)	Students enrolled in a graduate program leading to a Masters of Business Administration (MBA)	[$5,565] *$6,065*	[$9,160] *$10,075*	[$464] *$505*	[$763] *$840*
(5)	Students enrolled in a graduate program leading to a Masters of Architecture	[$5,020] *$5,470*	[$8,340] *$9,175*	[$418] *$456*	[$695] *$765*
(6)	Students enrolled in a graduate program leading to a Masters of Social Work	[$5,000] *$5,450*	[$8,340] *$9,175*	[$417] *$454*	[$695] *$765*
(7)	Students enrolled in the professional program of pharmacy	[$10,765] *$11,305*	[$20,875] *$21,920*	[$897] *$942*	[$1,740] *$1,827*
(8)	Students enrolled in the professional program of law	[$10,365] *$10,985*	[$17,610] *$19,020*	[$864] *$915*	[$1,468] *$1,585*
(9)	Students enrolled in the professional program of medicine	[$14,765] *$16,095*	[$27,325] *$28,690*	[$1,230] *$1,341*	[$2,277] *$2,391*
(10)	Students enrolled in the professional program of dentistry	[$12,725] *$13,870*	[$28,615] *$31,475*	[$1,060] *$1,156*	[$2,385] *$2,623*
(11)	Students enrolled in the professional program of physical therapy and doctor of nursing practice	[$8,970] *$9,775*	[$16,110] *$17,720*	[$748] *$815*	[$1,343] *$1,477*
(12)	Students enrolled in the professional program of optometry	[$9,950] *$10,945*	[$19,105] *$20,440*	[$829] *$912*	[$1,592] *$1,703*
(13)	Students enrolled in the professional program of physician assistant	[$4,970] *$5,415*	[$9,905] *$10,005*	[$414] *$451*	[$758] *$834*

[1] The Chancellor shall determine the equivalent of a credit hour.

[2] In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge a [this] lower rate for non-resident students enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs. This reduced rate does not apply to those students in degree-granting programs leading to a baccalaureate degree. *Alfred and Morrisville are authorized to charge the rate noted effective with the fall 2013 semester.*

[3] In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge *a* [this] lower rate for *non-resident students enrolled in degree-granting programs*

leading to an associate degree or in non-degree granting programs [special students (part-time) enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs, and taking classes at off-campus locations or during the summer or winter intercessions]. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree. *Canton and Delhi are authorized to charge the rate noted effective with the fall 2013 term.*

[4] *In accordance with Chapter 309 of the Laws of 1996, and enabling action by the Board of Trustees, the Colleges of Technology at Alfred, Canton, Cobleskill, Delhi and Morrisville are authorized to charge this lower rate for special students (part-time) enrolled in degree-granting programs leading to an associate degree or in non-degree granting programs, and taking classes at off-campus locations or during the summer or winter intercessions. This reduced rate does not apply to those students enrolled in degree-granting programs leading to a baccalaureate degree.* [In accordance with the NY-SUNY 2020 Challenge Grant Program Act, the University Centers at Buffalo and Stony Brook are authorized to charge this rate for non-resident undergraduate students.]

[5] In accordance with the NY-SUNY 2020 Challenge Grant Program Act, *the University Centers at Buffalo and Stony Brook are authorized to charge this rate for non-resident undergraduate students.* [the University Center at Binghamton is authorized to charge this rate for non-resident undergraduate students. The University Center at Albany is authorized to charge this rate for non-resident undergraduate students, pending approval of its submitted plan.]

[6] *In accordance with the NY-SUNY 2020 Challenge Grant Program Act, the University Center at Binghamton and the University Center at Albany are authorized to charge this rate for non-resident undergraduate students.* [As authorized by the Board of Trustees (2010-081), Maritime College is authorized to charge up to this rate for non-resident students from states considered to be in-region (Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Mississippi, Maryland, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, and Washington D.C.).]

[7] *As authorized by the Board of Trustees (2010-081), Maritime College is authorized to charge up to this rate for non-resident students from states considered to be in-region (Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Mississippi, Maryland, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, Virginia, and Washington D.C.).*

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. SUN-30-13-00005-EP, Issue of July 24, 2013. The emergency rule will expire November 18, 2013.

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, 353 Broadway, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Regulatory Impact Statement

1. Statutory Authority: Education Law, Sections 355(2)(b) and 355(2)(h). Section 355(2)(b) authorizes the State University Trustees to make and amend rules and regulations for the governance of the State University and institutions therein. Section 355(2)(h) authorizes the State University Trustees to regulate the admission of students, tuition charges and other fees and charges, curricula and all other matters pertaining to the operation and administration of each State-operated institution of the University.

2. Legislative Objectives: The present measure will provide essential financial support for the operations of the State University of New York, in accordance with the NY-SUNY 2020 Challenge Grant Program Act, Chapter 260, Laws of 2011.

3. Needs and Benefits: The present measure establishes a series of tuition increases in the degree programs of the State University of New York.

- In accordance with the NY-SUNY 2020 Challenge Grant Program Act, resident undergraduate tuition will increase by $300 for all students, and pursuant to approval by the Governor and Chancellor of a long term economic and academic plan submitted by each University Center, non-resident undergraduate tuition for students at the University Centers will increase by 10%
- Non-resident undergraduate tuition for students at the Comprehensive Colleges, Colleges of Technology, and the Other Research/Doctoral institutions will be increased by 3.4%
- For graduate students enrolled in masters' and doctoral programs not otherwise specified, resident tuition will be increased by 5.3% and non-resident tuition will be increased by 10%
- Tuition rates for identified professional programs (dental, doctorate of physical therapy, doctorate of nursing practice) will be increased by 9% for resident students and by 10% for non-resident students
- Tuition rates for students enrolled in the Law program at the University at Buffalo will increase by 6% for resident students and 8% for non-resident students
- Tuition rates for students enrolled in the professional Pharmacy program will increase by 5% for both resident and non-resident students
- Tuition rates for the professional program in medicine will be increased by 9% for resident students and by 5% for non-resident students
- For students enrolled in the MBA program, rates for resident students will be increased 9% and by 10% for non-resident students
- For students enrolled in the Masters of Architecture program, rates for resident students will be increased by 9% and by 10% for non-resident students
- For students enrolled in the Masters of Social Work program rates for resident students will be increased by 9% and by 10% for non-resident students
- For students enrolled in the Physician Assistant (Masters) program, rates will be increased by 9% for resident students and by 10% for non-resident students
- For students enrolled in the Optometry program, rates for resident students will increase by 10% and rates for non-resident students will increase by 7%

Even with the recommended increases, the tuition charged at the State-operated campuses of State University of New York is still competitive when compared to peer institutions in other university systems. Accordingly, the tuition increases on an annual basis proposed by this resolution are as follows:

Undergraduate Degree: Tuition would increase by $300 to $5,870 for resident students.

Undergraduate Degree: Tuition would increase by $1,620 to $17,810 for out-of-state students at the University Centers at Buffalo and Stony Brook; by $1,470 to $16,190 at the University Centers at Albany and Binghamton; and, by $500 to $15,320 for all other campuses.

Undergraduate Degree: Tuition for out-of-state students enrolled in an associates degree program at one of the Colleges of Technology at Alfred or Morrisville would increase by $0, remaining at $9,740 annually; and by $300, to $10,040 at Canton and Delhi.

Graduate Degree Programs: Tuition would increase by $500 for resident students, to $9,870. Tuition would increase by $1,670 for out-of-state students, to $18,320. For students enrolled in programs leading to a Masters in Business Administration degree, tuition would increase by $1000 to $12,130 for residents and by $1,830 to $20,150 for out-of-state students. For students enrolled in programs leading to a Masters in Architecture degree, tuition would increase by $900 to $10,940 for residents and by $1,670 to $18,350 for out-of-state students. For students enrolled in programs leading to a Masters in Social Work degree, tuition would increase by $900 to $10,900 for residents and by $1,670 to $18,350 for out-of-state students.

Medicine: Tuition would increase by $2,660 to $32,190 for residents and by $2,730 to $57,380 for out-of-state residents.

Law: The tuition at the Law School of the University at Buffalo would be increased by $1,240 to $21,970 for residents and by $2,820 to $38,040 for out-of-state residents.

Pharmacy: The tuition at the School of Pharmacy at the University at Buffalo would increase by $1,080 to $22,610 for residents and by $2,090 to $43,840 for out-of-state residents.

Physical Therapy and Doctor of Nursing Practice: Tuition for the Doctor of Physical Therapy and Nursing Practice at the University at Buffalo and the University at Stony Brook would increase by $1,610 to $19,550 for residents and by $3,220 to $35,440 for out-of-state residents.

Dentistry: Tuition for the D.D.S programs at the Universities at Stony Brook and Buffalo would increase by $2,290 to $27,740 for residents and by $5,720 to $62,950 for out-of-state residents.

Optometry: Tuition for the Optometry program at the College of Optometry would increase by $1,990 to $21,890 for residents and by $2,670 to $40,880 for out-of-state residents.

Physician Assistant: Tuition for the Physicians' Assistant graduate program at Stony Brook and Upstate would increase by $890 to $10,380 for residents and by $1,820 to $20,010 for out-of-state residents.

The tuition rates were last increased in the Fall 2012.

4. Costs: Students enrolled in these programs of the State University of New York will be required to pay additional tuition ranging from $300 per year for resident associate degrees to $5,720 for non-resident students at the Schools of Dentistry. In setting the new tuition schedule, the State University has examined its appropriation levels, the prevailing tuition rates charged by other public universities and the status of various State and Federal student financial aid programs.

5. Local Government Mandates: There are no local government mandates. The amendment does not affect students enrolled in the community colleges operating under the program of the State University of New York.

6. Paperwork: No parties will experience any new reporting responsibilities. State University of New York publications and documents containing notices regarding costs of attendance will need to be revised to reflect these changes.

7. Duplication: None.

8. Alternatives: Delays in tuition increases as well as higher increases were considered, however, there is no acceptable alternative to the proposed increases. The revenue from these tuition increases is necessary in order for the University to maintain quality of instruction and essential services to students, especially given the high cost professional programs.

9. Federal Standards: None.

10. Compliance Schedule: The amendment to the tuition schedule will go into effect for the Fall 2013 semester.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on small businesses and local governments. This proposed rule making will not impose any adverse economic impact on small businesses and local governments or impose any reporting, recordkeeping or other compliance requirements on small businesses and local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is submitted with this notice because the proposed rule does not impose any requirements on rural areas. The rule will not impose any adverse economic impact on rural areas or impose any reporting, recordkeeping, professional services or other compliance requirements on rural areas.

Job Impact Statement

No job impact statement is submitted with this notice because the proposed rule does not impose any adverse economic impact on existing jobs, employment opportunities, or self-employment. This regulation governs tuition charges for State University of New York and will not have any adverse impact on the number of jobs or employment.

Assessment of Public Comment

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

NOTICE OF ADOPTION

State University of New York Tuition and Fees Schedule

I.D. No. SUN-30-13-00005-A

Filing No. 935

Filing Date: 2013-09-20

Effective Date: 2013-10-09

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

Action taken: Amendment of section 302.1(b) of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(b) and (h)

Subject: State University of New York Tuition and Fees Schedule.

Purpose: To amend the Tuition and Fees Schedule to increase tuition for students in all programs in the State University of New York.

Text or summary was published in the July 24, 2013 issue of the Register, I.D. No. SUN-30-13-00005-EP.

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

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, Office of General Counsel, University Plaza, Albany, NY 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Assessment of Public Comment

The agency received no public comment.