RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

NOTICE OF ADOPTION

To Repeal Obsolete Rules

I.D. No. AAM-53-13-00004-A
Filing No. 241
Filing Date: 2014-03-24
Effective Date: 2014-04-09

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

Action taken: Repeal of Parts 128, 129, 131 and 137 of Title 1 NYCRR.

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

Subject: To repeal obsolete rules.

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

Text or summary was published in the December 31, 2013 issue of the Register, I.D. No. AAM-53-13-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Margaret Kelly, Assistant Director, Plant Industry, NYS Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-2087, email: Margaret.Kelly@agriculture.ny.gov

Assessment of Public Comment
The agency received no public comment.

Office of Alcoholism and Substance Abuse Services

EMERGENCY RULE MAKING

Criminal History Information Reviews

I.D. No. ASA-14-14-00005-E
Filing No. 242
Filing Date: 2014-03-19
Effective Date: 2014-03-19

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

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

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

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

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

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

The addition of Part 805, effective June 30, 2013, and subsequently effective September 25, 2013, December 20, 2013 and March 20, 2014 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 and to submit to the Office a criminal background check form.

§ 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 June 16, 2014.

Text of rule and any required statements and analyses may be obtained from: Sara Osborne, Sr. Attorney, NYS Office of Alcoholism and Substance Abuse Services, 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, December 20, 2013 and March 20, 2014 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

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

2. Compliance requirements:

The proposed Rule requires persons who apply to the Office for certification to operate a treatment program, persons who apply to the Office for

a credential, and prospective employees and volunteers of certified treatment providers to comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) and complete a criminal history information review prior to certification, credentialing or hiring.

3. Professional services:

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

4. Compliance costs:

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

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

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Small business and local government participation:

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

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

Incident Reporting in OASAS Certified, Licensed, Funded or Operated Programs

I.D. No. ASA-14-14-00006-E

Filing No. 243

Filing Date: 2014-03-19

Effective Date: 2014-03-19

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, 32.02; Executive Law, section 296(15) and (16); Corrections Law, art. 23-A; Civil Service Law, section 50; Protection of People with Special Needs Act (L. 2012, ch. 501)

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

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

In December, 2012 Governor Andrew Cuomo signed the Protection of People with Special Needs Act (PPSNA; chapter 501 of the Laws of 2012); the statute created the Justice Center for the Protection of People with Special Needs (Justice Center) establishing various protections for vulnerable persons, i.e., a new system for incident management in services oper-

ated 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 and subsequently September 25, 2013, December 20, 2013 and March 20, 2014, 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: Incident Reporting in OASAS Certified, Licensed, Funded or Operated Programs.

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 June 16, 2014.

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 and subsequently September 25, 2013, December 20, 2013 and March 20, 2014 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

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

2. Compliance requirements:

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

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

3. Professional services:

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

4. Compliance costs:

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Small business and local government participation:

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in both public and private sectors, of all sizes and in diverse geographic locations. The Office has prepared webinars and guidance documents for provider use and for training of agency administration. Providers will be required to retain documentation of fingerprint requests for employees, contractors of volunteers they ultimately employ; this will not be a significant additional recordkeeping requirement for personnel records they are already required to retain. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost.

Rural Area Flexibility Analysis

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

OASAS services are provided in every county in New York State. 44 counties have a population less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, 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 establishing a uniform incident reporting process via a state centralized hotline (Vulnerable Persons Central Register). The proposed regulation incorporates provisions from this Act into the OASAS incident reporting regulation which applies to all programs throughout the state in all geographic locations. Because the regulation applies to incident reporting and incident management in OASAS certified, operated, funded or licensed programs, there is no different application in any geographic location. The proposed regulation incorporates the OASAS incident reporting process into a larger oversight and enforcement entity under the Justice Center. These requirements apply to OASAS providers in all geographic regions. Reporting will be done electronically via telephone or other secure means which are not limited by geography. The new rule does not require any additional staff, although training will be required statewide and be largely provided by the Office or the Justice Center.

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

The proposed regulation implements provisions of The Protection of People with Special Needs Act (Chapter 501 of the Laws of2012) 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.

Assessment of Public Comment

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

EMERGENCY RULE MAKING

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

I.D. No. ASA-14-14-00007-E

Filing No. 244

Filing Date: 2014-03-19

Effective Date: 2014-03-19

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

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

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

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

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

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

The amendments to Part 810, effective June 30, 2013 and subsequently September 25, 2013, December 20, 2013 and March 20, 2014, 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 June 16, 2014.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

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

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

2. Legislative Objectives:

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

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

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

3. Needs and Benefits:

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

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

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

4. Costs:

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

5. Paperwork:

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

6. Local Government Mandates:

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

7. Duplications:

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

8. Alternatives:

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

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 and subsequently September 25, 2013, December 20, 2013 and March 20, 2014 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 of2012) 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

Credentialing of Addictions Professionals

I.D. No. ASA-14-14-00008-E
Filing No. 245
Filing Date: 2014-03-19
Effective Date: 2014-03-19

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, 32.02; Executive Law, section 296(15) and (16); Corrections Law, art. 23-A; Civil Service Law, section 50; Protection of People with Special Needs Act (L. 2012, ch. 501)

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

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

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

The amendments to Part 853, effective June 30, 2013 and subsequently September 25, 2013, December 20, 2013 and March 20, 2014 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 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, December 20, 2013 and March 20, 2014 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.

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 June 16, 2014.

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, December 20, 2013 and March 20, 2014 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 of2012) 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.

Assessment of Public Comment

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

EMERGENCY RULE MAKING

Patient Rights

I.D. No. ASA-14-14-00009-E

Filing No. 246

Filing Date: 2014-03-19

Effective Date: 2014-03-19

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

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

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

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

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

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

persons credentialed by the Office, and applicants for new operating certificates.

The repeal and addition of Part 815 related to Patient Rights, effective June 30, 2013 and subsequently September 25, 2013, December 20, 2013 and March 20, 2014, 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 June 16, 2014.

Text of rule and any required statements and analyses may be obtained from: Sara Osborne, Sr. Attorney, NYS Office of Alcoholism and Substance Abuse Services, 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, December 20, 2013 and March 20, 2014 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.

Office of Children and Family Services

EMERGENCY RULE MAKING

Protection of Vulnerable Persons

I.D. No. CFS-14-14-00004-E
Filing No. 239
Filing Date: 2014-03-20
Effective Date: 2014-03-20

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

Action taken: Amendment of Parts 180, 182-2; Subparts 166-1 and 182-1 of Title 9 NYCRR; amendment of Parts 402, 414, 416, 417, 421, 433, 435, 441, 442, 443, 447, 448, 449, 476, 477 and 489; Subparts 418-1 and 418-2 of Title 18 NYCRR.

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

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

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

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

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

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

Subject: Protection of Vulnerable Persons.

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

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

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

The first category of regulations added or amended address jurisdiction of the newly created Vulnerable Persons Central Register (VPCR). Regulations will now reflect that reports of suspected abuse or neglect of persons receiving services in OCFS licensed, certified or operated residential care programs will be reported to the VPCR. Additionally reports regarding significant incidents that harm or put a service recipient at risk of harm at those same programs will be reported to the VPCR.

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 17, 2014.

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

Regulatory Impact Statement

1. Statutory authority:

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

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

Section 501(5) of the New York State Executive Law authorizes the Commissioner of OCFS to promulgate rules and regulations for the establishment, operation and maintenance of division facilities and programs.

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

2. Legislative objectives:

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

3. Needs and benefits:

The proposed changes to the regulations concerning vulnerable persons in programs licensed, certified or operated by OCFS providers is in response to the recognized need to strengthen and standardize the safety net for vulnerable persons, adults and children alike, who are receiving care from New York's human service agencies and programs. The Protection

of People with Special Needs Act creates a set of uniform safeguards, to be implemented by a justice center whose primary focus will be on the protection of vulnerable persons. Accordingly, the benefit of this legislation is to create a durable set of consistent safeguards for all vulnerable persons that will protect them against abuse, neglect and other conduct that may jeopardize their health, safety and welfare, and to provide fair treatment to the employees upon whom they depend.

4. Costs:

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

5. Local government mandates:

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

6. Paperwork:

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

7. Duplication:

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

8. Alternatives:

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

9. Federal standards:

The regulatory amendments do not conflict with any federal standards.

10. Compliance schedule:

The regulations will be effective on March 20, 2013 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

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

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

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

Prior to Chapter 501 of the Laws of 2012, authorized agencies, facilities and mandated reporters employed by the same were required reporters of suspected child abuse or maltreatment to the New York Statewide Central Register of Child Abuse and Maltreatment. Pursuant to the statutory requirements of Social Services Law Sections 490 and 491, those mandated reporters are now required to report all reportable incidents, which will include but not be limited to those things previously falling within the definitions of abuse and neglect of a child in residential care, to the Vulnerable Persons Central Register. Authorized Agencies and facilities will be required to maintain the same level of practice as it relates to recordkeeping, and prevention and remediation plans. Authorized agencies and facilities will be required to comply with investigations and information requests as required by the Justice Center for the Protection of People with Special Needs, as defined in Article 20 of the Executive Law.

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

3. Costs:

All affected programs such as authorized agencies or facilities are currently subject to requirements governing reporting, record keeping, management of approved procedures and policies. As such the proposed regulations should not impose any additional costs associated with those functions. The statutory and regulatory requirements will necessarily require a reconfiguration of the current utilization of administrative costs to conform and comply with the requirements of the new law and conforming regulations. The statutory scheme provides for the enhancement of services for the protections of Vulnerable Persons, which will have added costs.

4. Economic and technological feasibility:

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

5. Minimizing adverse impact:

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

6. Small business and local government participation:

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

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

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

Prior to Chapter 501 of the Laws of 2012, authorized agencies, facilities and mandated reporters employed by the same were required reporters of suspected child abuse or maltreatment to the New York Statewide Central Register of Child Abuse and Maltreatment. Pursuant to the statutory requirements of Social Services Law Sections 490 and 491, those mandated reporters are now required to report all reportable incidents, which will include but not be limited to those things previously falling within the definitions of abuse and neglect of a child in residential care, to the Vulnerable Persons Central Register. Authorized Agencies and facilities will be required to maintain the same level of practice as it relates to recordkeeping, and prevention and remediation plans. Authorized agencies and facilities will be required to comply with investigations and information requests as required by the Justice Center for the Protection of People with Special Needs, as defined in Article 20 of the Executive Law.

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

Assessment of Public Comment

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

Department of Civil Service

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Supplemental Military Leave Benefits

I.D. No. CVS-14-14-00001-P

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

Proposed Action: This is a consensus rule making to amend sections 21.15 and 28-1.17 of Title 4 NYCRR.

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

Subject: Supplemental military leave benefits.

Purpose: To extend the availability of supplemental military leave benefits for certain New York State employees until December 31, 2014.

Substance of proposed rule: The proposed rule amends sections 21.15 and 28-1.17 of the Attendance Rules for Employees in New York State Departments and Institutions to continue the availability of the single grant of supplemental military leave with pay and further leave at reduced pay through December 31, 2014, and to provide for separate grants of the greater of 22 working days or 30 calendar days of training leave at reduced pay during calendar year 2014. Union represented employees already receive these benefits pursuant to memoranda of understanding (MOUs) negotiated with the Governor's Office of Employee Relations (GOER). The proposed rule merely amends section 21.15 of the Attendance Rules consistent with the current MOUs, and amends section 28-1.17 to extend equivalent benefits to employees serving in positions designated managerial or confidential (m/c).

Under current statute, section 242 of the New York State Military Law provides that public officers and employees who are members of the organized militia or any reserve force or reserve component of the armed forces of the United States may receive the greater of 22 working days or 30 calendar days of leave with pay to perform ordered military duty in the service of New York State or the United States during each calendar year or any continuous period of absence.

Following the events of September 11, 2001, certain State employees have been ordered to extended active military duty, or frequent periods of intermittent active military duty. These employees faced the loss of State salary, with attendant loss of benefits for their dependents, upon exhaustion of the annual grant of Military Law paid leave. Accordingly, supplemental military leave, leave at reduced pay and training leave at reduced pay were made available to such employees pursuant to MOUs negotiated with the employee unions. Corresponding amendments to the Attendance Rules were adopted extending equivalent military leave benefits to employees in m/c designated positions. While these benefits are intended to expire upon a date certain, the benefits described herein have been repeatedly renewed in the wake of the continuing war on terror, including homeland security activities, and the armed conflicts in Afghanistan and Iraq.

With respect to supplemental military leave, eligible State employees federally ordered, or ordered by the Governor, to active military duty (other than for training) in response to the war on terror receive a single, non-renewable grant of the greater of 22 working days or 30 calendar days of supplemental military leave with full pay.

With respect to military leave at reduced pay, upon exhaustion of the military leave benefit conferred by the Military Law, and the single grant of supplemental military leave with pay, and any available accruals (other than sick leave) which an employee elects to use, employees who continue to perform qualifying military duty are eligible to receive military leave at reduced pay. Compensation for such leave is based upon the employee's regular State salary as of his/her last day in full pay status (defined as base pay, plus location pay, plus geographic differential) reduced by military pay (defined as base pay, plus food and housing allowances) received from the United States or New York State for military service, if the former exceeded the latter. While in leave at reduced pay status, employees are eligible to receive leave days due upon his/her personal leave anniversary if such anniversary date falls during a period of military leave at reduced pay, and can accumulate biweekly vacation and sick leave credits for any pay period in which they remain in full pay status for at least seven out of ten days (or a proportionate number of days for employees with work weeks of less than 10 days per bi-weekly pay period.) These leave benefits are available even for employees who do not receive supplemental pay because their military salaries (as defined) exceed their regular State pay.

With respect to training leave at reduced pay, many employees ordered to military duty in response to the war on terror also continue to perform other required military service unrelated to the war on terror. To support employees performing other military duty, including mandatory summer and weekend training and other activation, a new category of leave was established, entitled "training leave at reduced pay." Eligible employees receive the greater of 22 work days or 30 calendar days of training leave at reduced pay following qualifying military duty in response to the war on terror, and after depleting the annual Military Law grant of leave with pay and any leave credits (other than sick leave) that they elect to use. Training leave at reduced pay may then be used for any ordered military duty during the calendar year that is not related to the war on terror. Employees who have already utilized leave at reduced pay receive the same compensation for any periods of training leave at reduced pay. Employees who have not used leave at reduced pay prior to their initial use of training leave at reduced pay are paid according to the employee's regular State salary as of his or her last day in full pay status reduced by military pay received from the United States or New York State for military service, if the former exceeds the latter. Employees on training leave at reduced pay retain the same leave accrual benefits as apply to leave at reduced pay.

The proposed rule extends the availability of supplemental military leave with pay, leave at reduced pay and training leave at reduced pay through December 31, 2014. Employees must establish eligibility for supplemental military leave (provided they have not already depleted the single grant of such leave), leave at reduced pay and training leave at reduced pay during 2014 by performing qualifying military service.

Employees on leave at reduced pay or training leave at reduced pay on January 1, 2014, have their rate of pay calculated from their base State pay as of January 1, 2014, reduced by the military pay rate applied to their most recent period in either reduced pay category prior to 2012. For employees who have used leave at reduced pay or training leave at reduced pay prior to year 2014, their pay for either type of reduced pay leave at any point between January 1, 2014 and December 31, 2014, will be calculated from their base State pay as of their last day in full pay status after January 1, 2012, prior to their initial use of leave of reduced pay or training leave at reduced pay, offset by the rate of military pay from their most recent period of reduced pay leave, prior to 2014. Employees whose initial use of either reduced pay leave category occurs during 2014 will have their pay rate determined by their base State pay on their last day of full pay status, minus military pay. For all employees receiving leave at reduced pay or training leave at reduced pay in 2014, the initial pay calculation will apply to all subsequent periods of reduced pay leave.

The proposed amendment provides that in no event shall supplemental military leave, leave at reduced pay or training leave at reduced pay be granted for military service performed after December 31, 2014, nor shall such leaves be available to employees who have voluntarily separated from State service or who are terminated for cause.

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

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

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

Consensus Rule Making Determination

Section 6(1) of the Civil Service Law authorizes the State Civil Service Commission to prescribe and amend suitable rules and regulations concerning leaves of absence for employees in the Classified Service of the State.

Since September 11, 2001, certain State employees have been federally ordered, or ordered by the Governor, to active military duty. The New York State Military Law provides for the greater of 22 working days or 30 calendar days of military leave at full (State) pay for ordered service during each calendar year or continuous period of absence. Employees ordered to prolonged active duty, or repeatedly ordered to intermittent periods of active duty, faced exhaustion of the Military Law leave with pay benefit. Further periods of military service would then subject these employees to economic hardship from the loss of their regular State salaries and deprive their dependents of needed benefits derived from State employment.

To support State employees called to military duty after September 11, 2001, the Governor's Office of Employee Relations (GOER) executed memoranda of understanding (MOUs) with the employee unions to provide for a supplemental grant of military leave with pay and leave at reduced pay. Subsequent MOUs established a new benefit entitled training leave at reduced pay. These military leave benefits have been repeatedly renewed in the wake of the ongoing War on Terror, including homeland security activities and military operations in Afghanistan and Iraq.

The Governor's Office of Employee Relations has executed new MOUs with the Classified Service employee unions extending the availability of the single grant of supplemental military leave with pay and leave at reduced pay, and training leave at reduced pay through December 31, 2014. The State Civil Service Commission shall amend the Attendance Rules in accordance with the MOUs and extend equivalent benefits to employees serving in m/c designated positions.

The Civil Service Commission has received no public comments after publication of prior amendments to the Attendance Rules establishing or re-authorizing the benefits now put forward for renewal. Previous re-adoptions of the proposed amendments have been proposed and adopted as consensus rules. As no person or entity is likely to object to the rule as written, the proposed rule is advanced as a consensus rule pursuant to State Administrative Procedure Act (SAPA) § 202(1)(b)(i).

Job Impact Statement

By amending Title 4 of the NYCRR to extend the availability of supplemental military leave, leave at reduced pay and training leave at reduced pay for eligible employees subject to the Attendance Rules for Employees in New York State Departments and Institutions, these rules will positively impact jobs or employment opportunities for eligible employees, as set forth in section 201-a(2)(a) of the State Administrative Procedure Act (SAPA). Therefore, a Job Impact Statement (JIS) is not required by section 201-a of such Act.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-14-14-00021-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Audit and Control, by adding thereto the positions of Retirement System Assistant Chief Actuary and Retirement System Chief Actuary.

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-14-14-00022-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Health, by adding thereto the position Medical Physicist (1).

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-14-14-00023-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Corrections and Community Supervision, by adding thereto the position of ø Affirmative Action Administrator 4 (1).

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

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

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-14-14-00024-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete and classify positions in the exempt class and delete and classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Employee Relations," by decreasing the number of positions of Assistant Director from 9 to 8, Confidential Assistant from 5 to 2, Confidential Stenographer from 10 to 7, Employee Program Assistant from 5 to 3 and Employee Program Associate from 8 to 4; in the Labor Management Committees, by decreasing the number of positions of Employee Program Assistant from 28 to 78 and Employee Program Associate from 24 to 23; in the Department of State under the subheading "Joint Commission on Public Ethics," by decreasing the number of positions of Information Technology Specialist (JCOPE) from 4 to 1 and by deleting therefrom the position of Manager Information Services; and, in the Executive Department under the subheading "Office of Information Technology Services," by adding thereto the positions of Assistant Director, Confidential Assistant (2), Confidential Stenographer (2), and Information Technology Specialist (JCOPE) (3) and by increasing the number of positions of Employee Program Assistant from 1 to 4, Employee Program Associate from 1 to 6 and Manager Information Services from 1 to 2; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Labor under the subheading "Workers' Compensation Board," by deleting therefrom the position of øAssistant Director Information Technology Services 1 (1); and, in the Executive Department under the subheading "Office of Information Technology Services," by adding thereto the position of øAssistant Director Information Technology Services 1 (1).

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

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

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-14-14-00025-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Taxation and Finance, by deleting therefrom the position of Director of Real Property Tax Research and Complex Appraisal (1) and by adding thereto the position of øDirector Real Property Tax Services (1).

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

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

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

Regulatory Impact Statement
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-14-14-00026-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department, by deleting therefrom the subheading "Racing and Wagering Board," and the positions of øAssistant Counsel (3), øAssistant to the Chief of Racing Operations (1), Assistant to Racing Steward (seasonal) (6), øChief of Audits and Investigations (1), øDirector Charitable Gaming (1), Games of Chance Equipment Specialist (1), Gaming Operations Inspector, Inspector (seasonal), øRacing and Wagering Investigator (10), øRacing Assistant (1), Racing Inspector (Harness Racing) (seasonal) (84), Senior Gaming Operations Inspector, Supervising Gaming Operations Inspector, Supervising Inspector (Harness Racing) (seasonal) (8); in the Department of Taxation and Finance, by deleting therefrom the subheading "Division of the Lottery," and the positions of øAffirmative Action Administrator 2 (1) and Lottery Drawing Assistant (9); and, in the Executive Department under the subheading "Gaming Commission," by adding thereto the positions of øAffirmative Action Administrator 2 (1), øAssistant Counsel (3), øAssistant to Chief Racing Operations (1), Assistant to Racing Steward (6), øChief Audits and Investigations (1), øDirector Charitable Gaming (1), Games Chance Equipment Specialist (1), Gaming Operations Inspector, Inspector, Lottery Drawing Assistant (9), øRacing Assistant (1), Racing Inspector (84), ø Racing and Wagering Investigator (10), Senior Gaming Operations Inspector, Supervising Gaming Operations Inspector and Supervising Inspector Harness Racing (8).

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-14-14-00027-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the New York State Thruway Authority, by adding thereto the position of øChief Information Security Officer 1 (1).

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

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-03-14-00003-P, Issue of January 22, 2014.

Department of Financial Services

EMERGENCY
RULE MAKING

Adjustment of the Subprime Threshold As Established in Banking Law Section 6-m

I.D. No. DFS-14-14-00013-E

Filing No. 251

Filing Date: 2014-03-24

Effective Date: 2014-03-27

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

Action taken: Addition of Part 42 to Title 3 NYCRR.

Statutory authority: Financial Services Law, section 302; and Banking Law, sections 6-m and 14

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

Specific reasons underlying the finding of necessity: Section 6-m of the Banking Law provides for the regulation of subprime home loans. Section 6-m defines a subprime home loan as a loan in which the initial interest rate or the fully-indexed rate, whichever is higher, exceeds by more than a specified number of percentage points the average commitment rate for loans with a comparable duration of such home loan as set forth in an index provided by the Federal Home Loan Mortgage (the "subprime threshold").

In Mortgagee Letter 2013-04, the Federal Housing Administration (the "FHA") revised the period for assessing the annual Mortgage Insurance Premium ("MIP") for FHA-insured loans such that, in certain cases, MIP is required to be paid over the life of the loan, effective June 3, 2013. The FHA's revised policy has caused significantly more FHA-insured loans to exceed the subprime threshold. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State.

Based on a financial analysis and an assessment of market conditions, the Superintendent has determined that FHA Mortgagee Letter 2013-04 has effectively decreased the threshold on certain FHA-insured loans; as a result, the existing subprime threshold in Section 6-m is having an unduly negative effect on the availability of mortgage financing in New York

State. Accordingly, emergency adoption of this regulation is necessary to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of FHA Mortgagee Letter 2013-04.

Subject: Adjustment of the subprime threshold as established in Banking Law section 6-m.

Purpose: Part 42 of the General Regulations of the Superintendent sets forth the adjustment of the subprime threshold as established in Banking Law Section 6-m. As a result of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium ("MIP"), significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State.

The purpose of Part 42 of the General Regulations of the Superintendent is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of the FHA's rule change concerning the calculation of MIP.

Text of emergency rule: *PART 42. SUBPRIME HOME LOANS – THRESHOLDS*

§ 42.1 Background.

Section 6-m of the Banking Law provides for the regulation of subprime home loans as defined in the statute. In doing so, the statute incorporates the federal concept of Annual Percentage Rate ("APR"), as defined in the Federal Truth-in-Lending Act, for determining whether a home loan is deemed subprime. Loans with a fully-indexed rate (a calculation correlated with APR) above a specified threshold are defined as subprime loans.

The term "fully-indexed rate" is defined in Section 6-m(1)(b) to mean "(i) for an adjustable rate loan based on an index, the annual percentage rate calculated using the index rate on the loan on the date the lender provides the 'good faith estimate' required under 12 USC § 2601 et seq. plus the margin to be added to it after the expiration of any introductory period or periods; or (ii) for a fixed rate loan, the annual percentage rate on the loan disregarding any introductory rate or rates and any interest rate caps that limit how quickly the contractual interest rate may be reached calculated at the time the lender issues its commitment."

Section 6-m defines a subprime home loan as a loan in which the initial interest rate or the fully-indexed rate, whichever is higher, exceeds by more than one and three-quarters percentage points for a first-lien loan, or by more than three and three-quarters percentage points for a subordinate-lien loan, the average commitment rate for loans with a comparable duration of such home loan as set forth in an index provided by the Federal Home Loan Mortgage Corporation for the date as specified in the statute (the first-lien threshold and subordinate-lien threshold, collectively, the "subprime threshold").

In Mortgagee Letter 2013-04, the Federal Housing Administration (the "FHA") revised the period for assessing the annual Mortgage Insurance Premium ("MIP") for FHA-insured loans such that, in certain cases, MIP is required to be paid over the life of the loan, effective June 3, 2013. Because MIP is part of the APR calculation, the FHA's revised policy has caused the APR on many FHA-insured loans to increase, resulting in significantly more FHA-insured loans exceeding the subprime threshold. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State.

Section 6-m anticipated the need to adjust the statute's established subprime threshold under certain circumstances. Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the threshold, stating, "(n)otwithstanding the comparable rates set forth in this paragraph, and notwithstanding any other law, if. . . the provisions of this section have had an unduly negative effect upon the availability or price of mortgage financing in this state, the superintendent may from time to time designate such other threshold rates as may be necessary. . . to alleviate such unduly negative effects."

Based on a financial analysis and an assessment of market conditions, the Superintendent has determined that FHA Mortgagee Letter 2013-04 has effectively decreased the threshold on certain loans; as a result, the existing subprime threshold in Section 6-m is having an unduly negative effect on the availability of mortgage financing in New York State. The Superintendent has further determined to use the authority provided by Section 6-m to promulgate this regulation to restore the availability of mortgage financing to New York State residents.

Accordingly, as set forth in Part 42.2 below, the Superintendent is adjusting the subprime threshold by 75 basis points, or 0.75%, to restore the availability of mortgage financing to approximately the levels predating the effective date of FHA Mortgagee Letter 2013-04, subject to the specifications set forth in § 42.2.

§ 42.2 Adjustment of Subprime Threshold.

(a) Threshold Adjustment. Notwithstanding the subprime threshold currently set forth in Banking Law Section 6-m, and subject to the exclusions set forth in subdivision (b), a subprime home loan, if insured by the FHA, means a home loan in which the initial interest rate or the fully-indexed rate, whichever is higher, on the loan exceeds by more than two-and-a-half percentage points for a first-lien loan, or by more than four-and-a-half percentage points for a subordinate-lien loan, the average commitment rate for such loans in the northeast region with a comparable duration to the duration of such home loan, as published by the Federal Home Loan Mortgage Corporation (herein "Freddie Mac") in its weekly Primary Mortgage Market Survey (PMMS) posted in the week prior to the week in which the lender provides the "good faith estimate" required under 12 USC § 2601 et seq."

(b) Exclusions:

(1) The following types of FHA-insured loans are excluded from the threshold adjustment in subdivision (a), and instead are examined in accordance with the threshold currently set forth in Banking Law Section 6-m:

i. Title I Home Improvement Loans;

ii. Home Equity Conversion Mortgages; and

iii. Any loan in which the fully-indexed rate, calculated using the FHA MIP policies that were in effect immediately prior to the effectiveness of Mortgagee Letter 2013-04, exceeds the unadjusted subprime threshold.

(2) All home loans other than FHA-insured loans are excluded from the threshold adjustment in subdivision (a), and instead are examined in accordance with the threshold currently set forth in Banking Law Section 6-m.

§ 42.3 Effective Date.

This Part shall be effective immediately.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 21, 2014.

Text of rule and any required statements and analyses may be obtained from: Harry Goberdhan, New York State Department of Financial Services, One State Street, New York, NY 10004-1417, (212) 709-1669, email: Harry.Goberdhan@DFS.ny.gov

Regulatory Impact Statement

1. Statutory Authority.

Section 6-m of the Banking Law provides for the regulation of subprime home loans as defined in the statute. Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m, stating, "(n)otwithstanding the comparable rates set forth in this paragraph, and notwithstanding any other law, if. . . the provisions of this section have had an unduly negative effect upon the availability or price of mortgage financing in this state, the superintendent may from time to time designate such other threshold rates as may be necessary... to alleviate such unduly negative effects."

2. Legislative Objectives.

Part 42 of the General Regulations of the Superintendent sets forth the adjustment of the subprime threshold as established in Banking Law Section 6-m. As a result of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium ("MIP"), significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State.

The purpose of Part 42 of the General Regulations of the Superintendent is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of the FHA's rule change concerning the calculation of MIP.

3. Needs and Benefits.

Based on a financial analysis and an assessment of market conditions, the Superintendent has determined that a rule change by the FHA concerning the calculation of the annual MIP has effectively decreased the threshold for certain loans; as a result, the existing subprime threshold in Section 6-m is having an unduly negative effect on the availability of mortgage financing in New York State. Accordingly, emergency adoption of this regulation is necessary to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP.

4. Costs.

This proposed regulation will not result in any fiscal implications to the State. It simply restores the availability of mortgage financing to approximately the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP.

5. Local Government Mandates.

This regulation does not impose any new programs, services, duties, or responsibilities upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork.

This proposed regulation does not impose any paperwork burden on lenders or borrowers. It simply restores the availability of mortgage financing to approximately the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP.

7. Duplication.

The proposed regulation does not duplicate, overlap, or conflict with any other regulations.

8. Alternatives.

The Department could choose not to adopt a regulation with respect to adjusting the subprime threshold as established in Banking Law Section 6-m. The emergency adoption of this regulation, however, will restore the availability of mortgage financing to the levels predating the effective date of the FHA rule change concerning the calculation of annual MIP, which will benefit borrowers throughout New York State.

9. Federal Standards.

There are no applicable federal standards.

10. Compliance Schedule.

It is proposed that the regulation be effective upon filing.

Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Business and Local Governments is not being submitted with the regulation because the regulation will not impose any adverse economic impact or any reporting, recordkeeping, or other compliance requirements on small businesses or local governments.

The purpose of Part 42 of the General Regulations of the Superintendent is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium. As a result of the rule change, significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State. Banking Law Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m. Part 42 is issued pursuant to this authority. Since nothing in this regulation will create any adverse impacts on any small businesses or local governments in the state, a full Regulatory Flexibility Analysis is not required and therefore one has not been prepared.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not being submitted with this proposed regulation because it will not impose any adverse impact on rural areas or any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The proposed regulation does not distinguish between regulated parties located in rural, suburban, or metropolitan areas of New York State, but applies universally throughout the state.

The purpose of Part 42 of the General Regulations of the Superintendent is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium. As a result of the rule change, significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State. Banking Law Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m. Part 42 is issued pursuant to this authority. Since nothing in this proposed regulation will create any adverse impacts on rural areas in the state, a full Rural Area Flexibility Analysis is not required and therefore one has not been prepared.

Job Impact Statement

A Job Impact Statement is not being submitted with this proposed regulation because it is evident from the subject matter of the regulation that it will not have an adverse impact on jobs and employment opportunities in New York State. The purpose of Part 42 of the Superintendent's Regulations is to adjust the subprime threshold to restore the availability of mortgage financing to approximately the levels predating the effective date of a rule change by the Federal Housing Administration ("FHA") concerning the calculation of the annual Mortgage Insurance Premium. As a result of the rule change, significantly more FHA-insured loans exceed the subprime threshold as established in Banking Law Section 6-m. Because of the reluctance of secondary market participants to purchase subprime loans, lenders are less willing to originate such loans, which has significantly restricted the availability of mortgage financing in New York State. Banking Law Section 6-m(1)(c)(ii) empowers the Superintendent to adjust the subprime threshold established in Section 6-m. Part 42 is issued pursuant to this authority. The terms as interpreted will not have any adverse impact on jobs or employment opportunities in New York State.

EMERGENCY RULE MAKING

Credit Exposure Arising from Derivative Transactions

I.D. No. DFS-14-14-00020-E

Filing No. 258

Filing Date: 2014-03-25

Effective Date: 2014-03-26

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

Action taken: Addition of Part 117 to Title 3 NYCRR.

Statutory authority: Banking Law, sections 103 and 235; Financial Services Law, section 302

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

Specific reasons underlying the finding of necessity: Derivative transactions, including swaps and options, are a basic tool used by many banking organizations in New York and elsewhere to hedge their exposure to various types of risk, including interest rate, currency and credit risk.

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act [cite] ("DFA") became effective [date]. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an insured state bank (including an insured state savings bank) may only engage in derivative transactions if the law of its chartering state regarding lending limits "takes into consideration credit exposure to derivative transactions."

In light of federal enactment of the DFA, the Legislature amended the Banking Law provision regarding loan limits in July 2011 to authorize the Superintendent to determine the manner and extent to which credit exposure resulting from derivative transactions should be taken into account. Laws of 2011, c. 182, § 2.

This regulation sets forth the manner in which derivative transactions will be taken into account for purposes of the lending limit provisions of the Banking Law. Emergency adoption of the regulation is necessary in order to ensure that New York banking organizations continue to be able to engage in derivative transactions on and after January 21, 2013.

Subject: Credit exposure arising from derivative transactions.

Purpose: To provide for the consideration of credit exposure relating to derivative transactions in calculating bank loan limits.

Text of emergency rule: *PART 117*

LENDING LIMITS: INCLUSION OF CREDIT EXPOSURES ARISING FROM DERIVATIVE TRANSACTIONS

§ 117.1 Definitions.

For the purposes of this Part:

a) The appropriate Federal banking agency of a bank shall be the agency specified by Section 3(q) of the Federal Deposit Insurance Act (FDIA), 12 USC § 1813(q), or the successor to such provision.

b) Bank includes a bank or trust company or a savings bank formed under the Banking Law whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

c) Credit derivative means a financial contract that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure) to another party (the protection provider).

d) The current credit exposure of a bank to a counterparty on a particular date with respect to a derivative transaction other than a credit derivative shall be the amount that the bank reasonably determines would be its loss under the terms of the derivative contract covering such transaction if the counterparty defaulted on such date.

e) The credit exposure of a bank to a counterparty arising from derivative transactions other than credit derivatives is the higher of zero or the sum of the then positive current credit exposures with respect to such derivative transactions, provided, however, that in calculating such credit exposure, the bank may take into account netting to the extent specified in section 117.4(a).

f) Derivative transaction includes any transaction that is a contract, agreement, swap, warrant, note, or option that is based, in whole or in

part, on the value of, any interest in, or any quantitative measure or the occurrence of any event relating to, one or more commodities, securities, currencies, interest or other rates, indices, or other assets.

g) Effective margining arrangement means a master legal agreement governing derivative transactions between a bank and a counterparty that requires the counterparty to post, on a daily basis, variation margin to fully collateralize that amount of the bank's net credit exposure to the counterparty that exceeds $25 million created by the derivative transactions covered by the agreement.

h) Eligible credit derivative means a single-name credit derivative or a standard, non-tranched index credit derivative, provided that:

(1) The derivative contract is executed under standard industry credit derivative documentation and meets the requirements of an eligible guarantee and has been confirmed by both the protection purchaser and the protection provider;

(2) Any assignment of the derivative contract has been confirmed by all relevant parties;

(3) If the credit derivative is a credit default swap, the derivative contract includes the following credit events:

(i) Failure to pay any amount due under the terms of the reference exposure, subject to any applicable minimal payment threshold that is consistent with standard market practice and with a grace period that is closely in line with the grace period of the reference exposure; and

(ii) Bankruptcy, insolvency, restructuring (for obligors not subject to bankruptcy or insolvency) or inability of the obligor on the reference exposure to pay its debts, or its failure or admission in writing of its inability generally to pay its debts as they become due and similar events;

(4) The terms and conditions dictating the manner in which the derivative contract is to be settled are incorporated into the contract; and

(5) If the derivative contract allows for cash settlement, the contract incorporates a robust valuation process.

i) Eligible protection provider means:

(1) A sovereign entity (a central government, including the United States government; an agency; department; ministry; or central bank);

(2) This state or any city, county, town, village or school district of this state, the New York State Thruway Authority, the Metropolitan Transportation Authority, the Triborough Bridge and Tunnel Authority or The Port Authority of New York and New Jersey;

(3) Any state other than the State of New York;

(4) The Bank for International Settlements, the International Monetary Fund, the European Central Bank, the European Commission, or a multilateral development bank;

(5) A Federal Home Loan Bank;

(6) The Federal Agricultural Mortgage Corporation;

(7) A depository institution, as defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c);

(8) A bank holding company, as defined in Section 2 of the Bank Holding Company Act, 12 U.S.C. § 1841;

(9) A savings and loan holding company, as defined in Section 10 of the Home Owners' Loan Act, 12 U.S.C. § 1467a;

(10) A securities broker or dealer registered with the Securities and Exchange Commission (SEC) under the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq.;

(11) An insurance company that is subject to the supervision of a state insurance regulator;

(12) A foreign banking organization;

(13) A non-United States-based securities firm or a non-United States-based insurance company that is subject to consolidated supervision and regulation comparable to that imposed on U.S. depository institutions, securities broker-dealers, or insurance companies;

(14) A qualifying central counterparty; and

(15) Such other entity or entities as may be designated from time to time by the superintendent.

j) Readily marketable collateral means financial instruments and bullion that are salable under ordinary market conditions with reasonable promptness at a fair market value.

k) Financial market utility shall have the same meaning as used in Section 803(6) of the Dodd–Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5462(6).

l) The following terms shall have the same meaning as used in the Capital Adequacy Guidelines for Banks: Internal-Ratings-Based and Advanced Measurement Approaches (Capital Adequacy Guidelines) of the bank's appropriate Federal banking agency.[1]

(1) Eligible guarantee;

(2) Qualifying netting agreement;

(3) Qualifying central counterparty.

§ 117.2 General Rule.

a) In computing the amount of loans of a bank outstanding to a person under Section 103.1 of the Banking Law or to a borrower under Section 235.8-c of the Banking Law at any specific time, the credit exposures of the bank arising from derivative transactions with respect to such person or borrower shall be included.

b) Such credit exposures shall be calculated as the sum of the bank's credit exposure to such person or borrower as a counterparty arising from derivative transactions other than credit derivatives plus the bank's credit exposure to such person or borrower as a counterparty arising from credit derivatives plus, where such person or borrower is the obligor on a reference exposure, the bank's credit exposure with respect to such person or borrower as obligor on such reference exposure arising from credit derivatives.

§ 117.3 Credit Derivatives.

a) Credit exposure to a counterparty. A bank shall calculate its credit exposure to a counterparty arising from credit derivatives by adding the net notional value of all protection purchased from the counterparty with respect to each reference exposure.

b) Credit exposure with respect to a reference exposure. A bank shall calculate the credit exposure with respect to a reference exposure arising from credit derivatives entered by the bank by adding the notional value of all protection sold on such reference exposure.

c) Exposure mitigants. In computing the exposures in paragraphs a and b hereof, the bank may take into account exposure mitigants to the extent specified in section 117.4.

§ 117.4 Exposure Mitigants.

a) Netting. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty with whom such bank has in force a qualifying master netting agreement, such bank may net the credit exposures covered by such qualifying master netting agreement.

b) Collateral. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty, such credit exposures may be reduced to the extent that such credit exposures have been secured with readily marketable collateral under an effective margining arrangement. The amount of such reduction shall be equal to the value of such collateral multiplied by the percentage applicable to such type of collateral as may be prescribed by the superintendent from time to time.

c) Hedging. In computing the credit exposures arising from derivative transactions of a bank with a particular counterparty or with respect to a particular reference exposure, such credit exposures may be reduced to the extent hedged by an eligible credit derivative from an eligible protection provider.

§ 117.5 Exception.

In computing its credit exposures arising from derivative transactions, a bank need not include credit exposures to a qualifying central counterparty that has been designated by the Financial Stability Oversight Council as a financial market utility that is, or is likely to become, systemically important.

§ 117.6 Alternate Valuation Method.

With the permission of the superintendent, a bank may utilize an alternate method to evaluate its credit exposures arising from derivative transactions.

§ 117.8 Residual Authority of the Superintendent.

Where the method or methods used by a bank fails to appropriately reflect the credit exposures of the bank arising from derivative transactions, the superintendent may direct such bank to use an alternate method or methods.

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[1] *In the case of a bank that is a member of the Federal Reserve System (member bank), the applicable definitions appear at Section 2 of Appendix F to 12 C.F.R. Part 208, and the case an Federally-insured bank that is not a member of the Federal Reserve System (nonmember insured bank), the applicable definitions appear at Section 2 of Appendix D to 12 C.F.R. Part 325.*

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 22, 2014.

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

Regulatory Impact Statement

1. Statutory Authority

Section 14 of the Banking Law provides that the Superintendent of Financial Services (the "Superintendent") shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the New York Banking Law (the "Banking Law") authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law (the "FSL") authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

2. Legislative Objectives

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y).

In response to federal enactment of Section 611 of DFA, the New York Legislature amended the Banking Law regarding loan limits in July 2011 to authorize the Superintendent to determine the manner and extent to which credit exposure resulting from certain types of transactions, including derivative transactions, shall be taken into account for purposes of the statutory loan limits. (L. 2011, c. 182).

This emergency regulation implements the Superintendent's authority by setting forth the manner in which derivative transactions will be taken into account for purposes of the lending limit provisions of the Banking Law. Note that state chartered or licensed entities subject to DFA Section 610, including savings associations, and branches and agencies of foreign banking organizations, are not covered by the regulation.

3. Needs and Benefits

Derivative transactions, including swaps and options, are a basic tool used by many banking organizations to manage exposure to various types of risk, including interest rate, currency and credit risk. If the state's lending limit rules do not take account of credit exposure from derivatives transactions, DFA Section 611 will prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on state banks' ability to manage the exposures embedded in their existing balance sheets (including exposures from any derivatives contracts entered into prior to the cutoff date), as well as the risks arising out of their ongoing business. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave state banks at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

While noting that there already exists some flexibility in the lending limit statute to interpret what constitutes credit exposure, the objective of the amendment was to provide certainty that New York law will comply with the requirements of DFA so as to ensure that insured banks in New York could continue to engage in derivative transactions after the cutoff date in Section 611 of DFA.

4. Costs

Banks that use derivatives already have systems in place to measure and manage the exposures incurred and their effect on the banks' overall risk position. The Department currently reviews such systems as part of its regular safety and soundness examination of regulated organizations.

It is believed that most state banks which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be comparatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for these banks are expected to be minimal.

Banks that engage in a larger volume of more complex derivatives transactions already have more sophisticated systems and processes in place for managing their risks, including those associated with derivatives transactions. The regulation provides that these institutions may, with the permission of the Superintendent, use an "alternative valuation method" to measure their credit exposure resulting from derivatives. Such institutions are expected to seek permission to use measurement methods which reflect their existing risk management procedures, thus minimizing the additional compliance costs resulting from the regulation.

5. Local Government Mandates

None.

6. Paperwork

The regulation does not require that state banks produce any additional reports. Banks that use derivatives have internal systems to measure their exposures, including exposures resulting from derivatives. In the course of its regular safety and soundness examination, the Department expects to be able to review the bank's records and computations regarding compliance with applicable lending limits.

While a bank seeking permission from the Department to utilize an alternative valuation model will be expected to provide information supporting the reasonableness of the proposed model, it is anticipated that such models will normally already have been reviewed by the Department during the examination process.

7. Duplication

The regulation does not duplicate, overlap or conflict with any other regulations.

8. Alternatives

The Department could choose not to adopt a regulation with respect to loan limits that takes into consideration credit exposure to derivative transactions. However, under DFA Section 611 if such a regulation is not adopted insured state banks will not be able to engage in derivative transactions, a basic tool used by many banking organizations to manage their exposure to various types of risk, including interest rate, currency and credit risk. In addition, not adopting such a regulation would put state banks at a competitive disadvantage, since federally chartered banks will be able to continue to engage in derivative transactions to manage their exposure to risk.

The Department also considered adoption of a regulation similar to the interim rule adopted by the federal Office of the Comptroller of the Currency (the "OCC") regarding credit exposure arising from derivatives and securities financing transactions (the "OCC Interim Rule"). 77 FR 37265, 37275 (June 21, 201212), C.F.R. § 32 (2012). However, that rule is quite complex and requires institutions to devote significant resources to compliance. Given the non-complex nature of the derivatives activity of most state banks, the Department did not consider it necessary to impose such extensive requirements.

9. Federal Standards

Although DFA Section 611 prohibits state banks from engaging in derivative transactions after January 20, 2013 if state's law does not take into account credit exposure to derivative transactions, there are no federal standards for how state law is to do so.

The OCC Interim Rule applies to national banks and federal and state savings associations. Under Section 4 of the International Banking Act of 1978, federally licensed branches and agencies of foreign banks are generally subject to the same limitations on their activities as national banks. Thus, the OCC Interim Rule effectively applies to them as well and through the Foreign Bank Supervision Enhancements Act applies to state-licensed branches and agencies. See 12 USC § 3105(h). However, the OCC Interim Rule does not apply to state-chartered banks and savings banks.

10. Compliance Schedule

The regulation is effective immediately. However, it is recognized that banks will require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology.

Regulatory Flexibility Analysis

1. Effect of the Rule

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y). This emergency regulation implements the authority of the Superintendent of Financial Services (the "Superintendent") under Sections 14, 103 and 235(8-c) of the New York Banking Law (the "Banking Law") and under Section 302 of the Financial Services Law (the "FSL").

Section 14 of the Banking Law provides that the Superintendent shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the Banking Law authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

Those banks that are small businesses are predominantly in the business of making commercial loans. To the extent these banks utilize derivatives, they generally use non-complex derivative transactions to manage their exposure to interest rate risk. If this regulation is adopted, such banks will continue to be able to manage their risk exposure using derivatives. However, under DFA Section 611, failure to adopt a regulation applicable to these banks would have the effect of prohibiting them from engaging in derivative transactions, which would have a severe adverse effect on their ability to manage the risks embedded in their existing balance sheets as well as the risks arising out of their ongoing business. Such banks would

also be left at a substantial competitive disadvantage relative to federally-chartered banking organizations, which will be able to continue to enter into derivative transactions so long as they do so in compliance with applicable federal regulations.

This regulation does not have any impact on local governments.

2. Compliance Requirements

It is believed that most banks which are small businesses and which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward. The regulation does not require that banks, including banks that are small businesses, produce any additional reports.

3. Professional Services

Banks that are small businesses and engage in derivative transactions will already have the information necessary to make the computation regarding the regulation from their existing risk management systems.

4. Compliance Costs

Those banks that are small businesses and use derivatives generally engage in a relatively limited number of non-complex derivative transactions. For such banks it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for such banks are expected to be minimal.

While new Part 117 is effective immediately, it is recognized that some banks may require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology. This provision should further serve to minimize compliance costs for those banks that are small businesses.

5. Economic and Technological Feasibility

The regulation will provide an economic benefit to banks, including banks that are small businesses, since they will be able to continue using derivatives to manage the risk exposures resulting from their normal business activities.

Compliance with the regulation should not present a technological challenge, since banks that use derivatives, including banks that are small businesses, already have in place systems to measure and manage their exposures from derivative transactions. Moreover, the provision of the rule effectively giving banks until to July 1, 2013, to start using the credit exposure calculation methodology set forth in the regulation, or to get the Superintendent's approval to use an alternative calculation methodology, will facilitate the resolution of any remaining economic or technological issues facing individual banks, including banks that are small businesses.

6. Minimizing Adverse Impacts

If the state's lending limit does not take account of credit exposure from derivatives transactions, DFA Section 611 will prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on the ability of banks, including banks that are small businesses, to manage the exposures embedded in their balance sheets. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also leave banks, including banks which are small businesses, at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

7. Small Business and Local Government Participation

The Department has had informal discussions regarding preliminary versions of the regulation with industry associations representing banks which engage in derivatives activities, including banks that engage in significant derivatives activities as well as banks that are small businesses. The regulation takes account of the comments received in the course of this process.

Rural Area Flexibility Analysis

1. Effect of the Rule

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 ("DFA") became effective July 22, 2010. Section 611 of DFA amended Section 18 of the Federal Deposit Insurance Act to provide that effective January 21, 2013, an "insured state bank" (which term includes an insured state savings bank) may engage in a derivative transaction only if the law of its chartering state concerning lending limits "takes into consideration credit exposure to derivative transactions." 12 U.S.C. § 1828(y). This emergency regulation implements the authority of the Superintendent of Financial Services (the "Superintendent") under Sections 14, 103 and 235(8-c) of the New York Banking Law (the "Banking Law") and under Section 302 of the Financial Services Law (the "FSL").

Section 14 of the Banking Law provides that the Superintendent shall have the power to make, alter and amend regulations not inconsistent with law. Sections 103 and 235(8-c) of the Banking Law authorize the Superintendent to prescribe regulations limiting the credit extended to any one person by state banks and savings banks, respectively. Section 302 of the Financial Services Law authorizes the Superintendent to prescribe regulations involving financial products and services to effectuate any power given to the Superintendent under the FSL, the Banking Law or any other law.

Those banks that are located in rural areas are predominantly in the business of making commercial loans. To the extent these banks utilize derivatives, they generally use non-complex derivative transactions to manage their exposure to interest rate risk. If this regulation is adopted, such banks will continue to be able to manage their risk exposure using derivatives. However, under DFA Section 611, failure to adopt a regulation applicable to these banks would have the effect of prohibiting them from engaging in derivative transactions, which would have a severe adverse effect on their ability to manage the risks embedded in their existing balance sheets, as well as the risks arising out of their ongoing business. Such banks would also be left at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivative transactions so long as they do so in compliance with applicable federal regulations.

2. Compliance Requirements

It is believed that most banks which are located in rural areas and which use derivatives to manage the risk exposures arising out of their activities engage in a relatively limited number of non-complex derivatives transactions. For those banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward. The regulation does not require that banks, including banks that are located in rural areas, produce any additional reports.

3. Professional Services

Banks which are located in rural areas and engage in derivative transactions will already have the information necessary to make the computation regarding the regulation from their existing risk management systems.

4. Compliance Costs

To the extent banks located in rural areas use derivatives, they generally engage in a relatively limited number of non-complex derivative transactions. For such banks, it is anticipated that the credit exposure computation required by the regulation will be relatively simple and straightforward, and the information necessary to make the computation will be readily available from their existing risk management systems. Compliance costs for such banks are expected to be minimal.

While new Part 117 is effective[immediately, it is recognized that some banks may require a period of time to ensure that their systems for calculating credit exposure from derivative transactions are consistent with the method of calculation required by the new rule, or to apply for and receive approval from the Superintendent to use an alternative calculation method. Therefore, the rule provides that until July 1, 2013, a bank may use any reasonable methodology to calculate its credit exposure from derivative transactions, subject to the Superintendent's Section 117.8 authority to require use of a different methodology. This provision should further serve to minimize compliance costs for banks that are located in rural areas.

5. Economic and Technological Feasibility

The regulation will provide an economic benefit to banks, including banks that are located in rural areas, since they will be able to continue using derivatives to manage the risk exposures resulting from their normal business activities.

Compliance with the regulation should not present a technological challenge, since banks that use derivatives, including banks that are located in rural areas, already have in place systems to measure and manage their exposures from derivative transactions. Moreover, the provision of the rule effectively giving banks until to July 1, 2013 to start using the credit exposure calculation methodology set forth in the regulation, or to get the Superintendent's approval to use an alternative calculation methodology, will facilitate the resolution of any remaining economic or technological issues facing individual banks, including banks that are located in rural areas.

6. Minimizing Adverse Impacts

If the state's lending limit did not take account of credit exposure from derivatives transactions, DFA Section 611 would prohibit insured state banks from engaging in derivatives transactions starting January 21, 2013.

Such a prohibition would have a severely adverse effect on the ability of banks, including banks that are located in rural areas, to manage the exposures embedded in their balance sheets. The inability to manage such risks using derivatives would have the effect of limiting the banks' ability to conduct their usual business in a safe and sound manner. It would also

leave banks, including banks which are located in rural areas, at a substantial competitive disadvantage relative to federally chartered banking organizations, which will be able to continue to enter into derivatives transactions so long as they do so in compliance with applicable federal regulations.

7. Rural Area Participation

The Department has had informal discussions regarding preliminary versions of the regulation with industry associations representing banks which engage in derivatives activities, including banks that engage in significant derivatives activities as well as banks that are located in rural areas. The regulation takes account of the comments received in the course of this process.

Job Impact Statement

The regulation will not have an adverse impact on employment in the state. Banking organizations that engage in derivative transactions already have systems and staff in place to manage the credit and other risks associated with those transactions.

Conversely, failing to adopt the regulation could have an adverse impact on employment. Under DFA Section 611, state banks would be prohibited from engaging in derivative transactions and therefore would need to find other uses for staff currently involved in derivatives activity. Moreover, if state banks were no longer able to use derivatives to manage the risks resulting from their current types and levels of business, they might be forced to reduce or restructure the banking services they provide, which could have a further adverse impact on employment levels for both the banks and their customers.

NOTICE OF ADOPTION

Confidentiality Protocols for Victims of Domestic Violence and Endangered Individuals

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

Filing No. 257

Filing Date: 2014-03-25

Effective Date: 2014-04-09

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

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

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

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

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

Text or summary was published in the October 9, 2013 issue of the Register, I.D. No. DFS-41-13-00008-EP.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2017, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The New York State Department of Financial Services ("Department") received comments from an organization that represents the New York family planning provider network ("family planning organization"), an organization that represents people living with HIV/AIDS ("HIV organization"), an organization that works to defend constitutional rights ("civil liberties organization"), a trade organization that represents property/casualty insurers ("property/casualty trade organization"), and an organization that represents United States insurers ("insurer trade organization"), in response to its publication of the proposed rule in the New York State Register.

Comments on specific parts of the proposed rule are discussed below.

11 NYCRR 244.2 ("Definitions")

Comment

The family planning organization, HIV organization, and civil liberties organization commented that the Department should expand the rule to apply to more than just domestic violence by defining "endanger" to encompass concerns that an insured individual's privacy or confidentiality could be compromised if he or she did not receive communications and claim-related information at an alternate address. These organizations also commented that the Department should amend the definition of "requestor" to include a minor who is able to consent or has consented to health care services under the law.

Department's Response

The Department believes that these comments are beyond the limited scope of the proposed rule. Therefore, the Department did not make any changes to the rule to address these comments.

11 NYCRR 244.3 ("Delivers")

Comment

The insurer trade organization stated that consistent with statutory law, this section requires that the victim deliver to the insurer's home office a valid order of protection issued by a court of competent jurisdiction in New York, and recommended clarifying that "deliver" does not require physical delivery to the insurer's home office.

Department's Response

This term comes directly from the statute. To effectuate the intent and goals of the statute, the Department construes the term broadly to mean delivery to the insurer by any means, including mail, email, or otherwise. Accordingly, the Department did not make any changes to the rule to address this comment.

11 NYCRR 244.3(a) ("Covered Services")

Comment

The property/casualty trade organization and insurer trade organization noted that this provision requires insurers to keep certain information confidential for "a person providing covered services to the victim", and commented that there is confusion as to what this might mean in the property/casualty insurance context. The organization suggested that the Department add clarifying language if this provision is not intended to apply to property/casualty insurers.

Department's Response

The Department construes this to mean any benefit or service provided under the policy to the victim. For example, this could be information about a medical provider under a no-fault or workers' compensation claim or the name and address of a body shop under an automobile claim. Accordingly, the Department did not make any changes to the rule to address this comment.

11 NYCRR 244.3(c) and (d) ("Contractor Notification")

Comment

The insurer trade organization commented that the broad scope of these subdivisions was extremely troublesome because insurers contract with numerous vendors and many of these vendors are not in a position be to be able divulge any of the victim's information or to change the address of the victim. The organization recommended revising these subdivisions to limit their applicability solely to employees and draft a new section that clearly outlines the responsibilities of and expectations for insurance producers.

Department's Response

The Department revised a prior version of the emergency rule and the proposed rule to address this comment by adding language that makes it clear that the subdivisions apply to employees, agents, representatives, or persons who have or may have access to the information sought to be kept confidential.

11 NYCRR 244.3(c)(4) ("Personal Identifiers")

Comment

The insurer trade organization noted that this paragraph requires an insurer's written procedures to include the procedure for limiting or removing personal identifiers before information is used or disclosed, and commented that it is unclear what would constitute "limiting or removing personal identifiers."

Department's Response

The Department thinks that it is clear that limiting or removing personal identifiers means limiting or removing, such as by redacting, any information that could identify the victim or covered individual. Therefore, the Department did not make any changes to the rule to address this comment.

11 NYCRR 244.3(h) ("Hampering this Rule")

Comment

The insurer trade organization noted that the rule contained language stating that an insurer or any person subject to the Insurance Law may not engage 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. The organization commented that it is unclear how a person would prevent or hamper the orderly working of the rule.

Department's Response

The Department deleted this language in a prior version of the emergency rule and the proposed rule and relettered section 244.3 of the rule.

11 NYCRR 244.4 ("Notice")

Comment

The insurer trade organization suggested that the Department amend

the rule to require that an insurer include a simple disclosure on the "contact us" or privacy page of the insurer's website rather than on the homepage of the insurer's website.

Department's Response

The rule requires an insurer to post on its website certain information. It does not require that information be posted on homepage of the insurer's website. Therefore, the Department did not make any changes to the rule to address this comment.

Applicability to Property/Casualty Insurers

Comment

The property/casualty trade organization commented that there are a number of areas throughout the rule in which it is unclear whether the language applies to property/casualty insurers, and gave the example of where the rule refers to a "victim or covered individual." The organization suggested that clarifying the rule's applicability would reduce confusion and facilitate compliance.

Department's Response

When the rule applies to all insurers, including property/casualty insurers, the rule uses the term "insurer" as defined in Insurance Law section 2612(c)(2). When the rule applies to just a health insurer, the rule uses that term (which Insurance Law section 2612(h)(1)(B) defines). In addition, the rule clearly defines "covered individual" as applying to an individual covered under a policy issued by a health insurer only. The rule also defines "victim" as having the meaning set forth in Social Services Law section 459-a(1), which applies generally and does not distinguish between kinds of insurance. Therefore, the Department did not make any changes to the rule to address this comment.

Comment

The insurer trade organization commented that the legislative history of Insurance Law section 2612 indicates a clear focus on medical information and health insurers and therefore, the rule should not apply to property/casualty insurance. The organization also suggested that if the rule applies to property/casualty insurance, then it should exclude certain commercial lines policies.

Department's Response

Insurance Law section 2612(c)(2) defines "insurer" as an insurer, an Insurance Law Article 43 corporation, a municipal cooperative health benefit plan, a health maintenance organization, a provider issued a special certificate of authority pursuant to the Public Health Law, or an agent, representative, or designee thereof regulated pursuant to the Insurance Law. This definition is not limited to health insurers or personal lines insurance.

This rule merely implements Insurance Law section 2612 and cannot narrow its applicability. Therefore, the Department did not make any changes to the rule to address these comments. Moreover, medical information is often involved in property/casualty policies, such as under no-fault or workers' compensation insurance, and is not limited to strictly health insurance or personal lines.

Alternate Contact Information

Comment

The insurer trade organization commented that it cannot find any statutory requirement that property/casualty insurers establish a procedure to accept an alternate address for domestic violence victims. However, the organization stated that it would be willing to have the rule establish an alternate contact information requirement for property/casualty medical claims payments to such victims.

Department's Response

The requirement is implicit in the law. Insurance Law section 2612(f) and (g) state that if a person covered under an insurance policy delivers to an insurer an order of protection against the policyholder or another person covered under the policy, then the insurer may not disclose to the policyholder or other covered person the address or telephone number of the victim or of any person providing covered services to the victim. This language presumes that the victim already is using an alternate address or telephone number otherwise there would be no reason to keep it confidential from the policyholder or other covered person. Therefore, the Department did not make any changes to the rule to address this comment. Nor is there any basis in the law to limit the rule to medical claims.

Joint Policy Confidentiality

Comment

The property/casualty trade organization commented that it will be difficult, and in some cases potentially impossible, to keep information confidential where the victim and the person against whom the order of protection is issued on are on the same policy, such as in the homeowners' insurance context where there is joint ownership of a home.

Department's Response

As a preliminary matter, Insurance Law section 2612 requires an insurer to keep confidential certain information if the insurer receives an order of protection from an insured or other person covered under the insurance policy. This rule merely implements the legislative mandate that insurers must have confidentiality protocols in place. The association did not explain why it would be difficult or impossible to keep the victim's address and telephone number confidential from another person covered under the policy. Therefore, the Department did not make any changes to the rule to address this comment.

New York State Gaming Commission

NOTICE OF ADOPTION

Implementation of Procedure to Disclose Horses' Recent Corticosteroid Joint Injections to Claimants

I.D. No. SGC-40-13-00002-A

Filing No. 249

Filing Date: 2014-03-24

Effective Date: 2014-04-09

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

Action taken: Addition of section 4038.5(c) to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1), (19) and 122

Subject: Implementation of procedure to disclose horses' recent corticosteroid joint injections to claimants.

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

Text or summary was published in the October 2, 2013 issue of the Register, I.D. No. SGC-40-13-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Kristen M. Buckley, New York State Gaming Commission, One Broadway Center, Suite 600, Schenectady, NY 12305-2553, (518) 388-3332, email: info@gaming.ny.gov

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

One public comment was received in response to the publication of the proposed rule-making in the October 2, 2013 State Register. A racetrack official wrote in support and suggested that the proposed rule should require the previous trainer of a claimed horse to submit the previous 30 days of veterinary information to the Commission, which would then transmit such information to the claimant. The Commission rejected this approach because it would add an unnecessary layer of reporting to the rule. Another Commission rule, 9 NYCRR 4043.4(b), already require the trainer or veterinarian of a horse to report all corticosteroid joint injections ("CJI") to the Commission on the Commission's online reporting system. Such reports are mandatory within 48 hours of such treatments. Such treatments are not permitted within seven days of racing. The Commission has modified this system to transfer the already reported CJI information to the claimant of a horse, once the previous trainer verifies online that such claim has occurred.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Addition of a New Multi-Jurisdiction Lottery Game

I.D. No. SGC-14-14-00011-P

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

Proposed Action: Addition of section 5007.15 to Title 9 NYCRR.

Statutory authority: Tax Law, sections 1601, 1604, 1612(a) and 1617; Racing Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19)

Subject: Addition of a new multi-jurisdiction lottery game.

Purpose: To permit the Commission to raise revenue for education with a new lottery game.

Substance of proposed rule (Full text is posted at the following State website:http://www.gaming.ny.gov): This amendment of Part 5007, Multi-Jurisdictional Games, of Subtitle T of Title 9 NYCRR will add a new Section 5007.15, to allow the New York State Gaming Commission ("Commission") to offer the Cash 4 Life game.

The purpose of Cash 4 Life is the generation of revenue for education in New York through the operation of a multi-state lottery game that will award prizes to ticket holders matching specified combinations of numbers randomly selected in regularly-scheduled drawings.

The new section of the Gaming Commission regulations describes the Cash 4 Life as a multi-jurisdictional lottery game similar to Powerball and the Mega Millions games that have been offered in New York and other states since 2002. Subdivision (a) sets forth some definitions. Subdivision (b) governs ticket pricing and the terms and conditions of ticket sales. Subdivision (c) describes the game. During each Cash 4 Life drawing, six Cash 4 Life Winning Numbers will be selected from two fields of numbers in the following manner: five winning numbers from a field of 60 numbers and one winning number from a field of numbers one through four, inclusive. The objective of Cash 4 Life drawings shall be to select at random, with the aid of drawing equipment, Cash 4 Life Winning Numbers, pursuant to the controls and methods established for the game. A player who matches all numbers is eligible for a jackpot prize.

Subdivision (d) sets forth play characteristics and restrictions. Subdivision (e) describes the time and place of drawings. Subdivision (f) details the prize structure and probabilities of winning. Subdivision (g) describes the payment options that may be chosen by a winner. Subdivision (h) governs the limits of payments and distribution of prizes when there are multiple winners. Subdivision (i) indicates that Parts 5003 and 5004 govern this new game. Subdivision (j) states that this new section applies only to the new Cash 4 Life game.

The full text of this proposed rule is posted on the Commission's website, www.gaming.ny.gov.

Text of proposed rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, PO Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.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: The New York State Gaming Commission ("Commission") is authorized to promulgate this rule by Tax Law Sections 1601, 1604, 1612(a) and 1617 and by Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2) and 104(1, 19). Tax Law Section 1601 describes the purpose of the New York State Lottery for Education Law (Tax Law Article 34) as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively to aid to education. Tax Law Section 1604 authorizes the promulgation of rules governing the establishment and operation of such lottery. Tax Law Section 1612(a) describes the distribution of revenues for a joint, multi-jurisdiction, and out-of-state lottery. Section 1617 of such law authorizes the Commission to enter into an agreement with a government-authorized group of one or more other jurisdictions for the operation and administration of such a joint, multi-jurisdiction and out-of-state lottery.

Racing Law Section 103(2) provides that the Commission is responsible to operate and administer the state lottery for education, as prescribed by Article 34 of the Tax Law. Racing Law Section 104(1) provides the Commission with general jurisdiction over all gaming activities within the State and over any person, corporation or association engaged in such activities. Section 104(19) of such law authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities.

2. Legislative objectives: To permit the Commission to operate a new multi-jurisdiction lottery game that will raise revenue for education.

3. Needs and benefits. This rule making will permit the Commission to offer a new multi-jurisdiction lottery game to increase lottery revenue for education.

The proposed amendment will permit the Commission to offer an alternative large jackpot multi-jurisdiction game to players that is expected to raise revenue for education because of variations in player preferences.

The Commission operates and administers joint, multi-jurisdiction, and out-of-state lottery games as a member of the Mega Millions Consortium, a government-authorized group formed by an agreement of the Commission with 10 other jurisdictions. Such Consortium takes concepts for possible new games and subjects them to consumer research, and then develops new multi-jurisdiction lottery games of interest to one or more members of the Consortium. This allows jurisdictions in the Consortium to introduce new multi-jurisdiction lottery games that appeal to consumer interest and increase the lottery sales and revenue.

Cash 4 Life is a new multi-jurisdiction game that has been developed by the Consortium. The Commission and one or more other jurisdictions are ready to operate and administer this new joint, multi-jurisdiction and out-of-state lottery game that is expected to increase lottery revenue for education in New York.

This proposal would authorize such lottery game in New York.

4. Costs:

a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to stakeholders. Existing lottery agents will be able to sell these tickets the same as they do other lottery games.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated. The Commission can administer this game using existing resources.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the Commission's experience operating State Lottery games for more than 40 years.

5. Local government mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

6. Paperwork: There are no changes in paperwork requirements. Lottery agents will be able to report the sales of this game using the same electronic reporting system.

7. Duplication: There are no relevant State programs or regulations that duplicate, overlap or conflict with the proposed amendment.

8. Alternatives: The alternative to amending these multi-jurisdictional regulations is to continue offering only the games currently offered. This alternative was rejected because offering new games is proven to generate greater revenue for education by attracting the interest of players and providing them with another game choice.

9. Federal standards: The proposed amendment does not exceed any minimum standards imposed by Federal government.

10. Compliance schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon adoption of this rule.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rule making because it will have no adverse effect on small businesses, local governments, rural areas, or jobs.

The rule making allows the Commission to offer customers a new play option, a multi-jurisdiction lottery game known as Cash 4 Life. This addition will impose no significant technological changes. No local government activity is involved. Lottery sales agents offer new or different lottery games only in order to increase sales. Customers are not required to play. There will be no new reporting, record keeping or other compliance requirements on small businesses or local governments or rural areas. The new lottery game will not adversely affect employment opportunities or jobs.

Based on the foregoing, no regulatory flexibility analysis for small businesses and local governments, rural area flexibility analysis, or a job impact statement is required for this proposed rule making.

Department of Health

EMERGENCY RULE MAKING

Children's Camps

I.D. No. HLT-14-14-00002-E
Filing No. 237
Filing Date: 2014-03-20
Effective Date: 2014-03-20

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 June 17, 2014.

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

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.

EMERGENCY RULE MAKING

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

I.D. No. HLT-14-14-00010-E

Filing No. 247

Filing Date: 2014-03-24

Effective Date: 2014-03-24

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

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

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

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

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

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

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

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

Substance of emergency rule: The Department proposes to amend 18 NYCRR Parts 487 and 488 to address the creation of the Justice Center for the Protection of Persons with Special Needs (Justice Center) pursuant to Chapter 501 of the Laws of 2012, and to conform the Department's regula-

tions to requirements added or modified as a result of that Chapter Law. Specifically, the amendments:

- add definitions specific to facilities subject to the Justice Center of "abuse," "mistreatment," "neglect," "misappropriation of property," "reasonable cause," "reportable incident," "Justice Center," "significant incident," "custodian," "facility subject to the Justice Center," "psychological abuse," "Department," and " unlawful use or administration of a controlled substance" at sections 487.2(d)(1)-(13) and 488.2(c)(1)-13;
- amend sections 487.5 and 488.5 to add occurrences which would constitute a reportable incident to the list of occurrences which residents should not experience, and to require the operator of certain facilities to conspicuously post the telephone number of the Justice Center incident reporting hotline;
- amend sections 487.7 and 488.7 to clarify a facility's obligations regarding what incidents must be investigated, how they must be investigated and who must investigate them;
- amend sections 487.7 and 488.7 to replace outdated references to the State Commission on Quality of Care for the Mentally Disabled with references to the Justice Center;
- amend sections 487.7 and 488.7 to add a requirement addressing when reports must be provided to the Justice Center, and requiring such reports to conform to the requirements of the Justice Center;
- amend sections 487.9 and 488.9 to add a requirement for staff training in the identification of reportable incidents and facility reporting procedures, and to add a requirement for certain facilities regarding the provision of a code of conduct to employees, volunteers, and others providing services at the facility who could be expected to have resident contact;
- amend sections 487.9 and 488.9 to add a requirement that certain facilities consult the Justice Center's staff exclusion list with regard to prospective employees, volunteers, and others, and that when such person is not on the staff exclusion list, that such facilities also consult the State Central Registry, with regard to such persons. The facility must maintain documentation of such consultation. The amendments also address the hiring consequences associated with the outcome of those consultations;
- amend sections 487.9 and 488.9 to specifically include investigation of reportable incidents to the administrative obligations of facilities, and to the duties of a case manager;
- amend sections 487.9 and 488.9 to require the operator of a facility to designate an additional employee to be a designated reporter;
- amend sections 487.10 and 488.10 to add a new requirement that certain facilities provide certain information to the Justice Center, and make certain information public, at the request of the Justice Center, and to allow sharing of information between the Department and the Justice Center;
- add new sections 487.14 and 488.13 to address reporting of certain incidents; and
- add new sections 487.15 and 488.14 to address the investigation of reportable incidents involving facilities subject to the Justice Center.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 21, 2014.

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

Summary of Regulatory Impact Statement

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

Adult homes and enriched housing programs subject to the Justice Center will be required to consult the Justice Center's register of substantiated category one cases of abuse or neglect as established pursuant to section 495 of the Social Services Law prior to hiring certain employees, and where the person is not on that list, the facility will also be required to check the Office of Children and Family Services' Statewide Central Registry of Child Abuse and Maltreatment. The facility could not hire a person on the Justice Center's list, but would have the discretion to hire a person who was only on Office of Children and Family Services' list. Reporting and investigation obligations for all facilities would be expanded to cover "reportable incidents" which, are slightly more inclusive than what is covered by current reporting and investigation obligations. The amendments also add specific provisions addressing reporting and investigation procedures, to require the posting the telephone number of the Justice Center's reporting hotline, and to require the case manager to be capable of reporting and investigating incidents. Those amendments should not require any significant change in current practice or impose anything beyond nominal additional expense to facilities. Requirements imposed on facilities generally are limited to an obligation to train staff in the identification and reporting of reportable incidents. With regard to facilities subject to the Justice Center, that obligation, as well as the others imposed by the regulations, are required by virtue of Chapter 501 of the Laws of 2012. The costs imposed by the amendments are expected to be minimal. In many cases, particularly with regard to the investigation requirements, the amendments generally reflect existing practice, so should neither impose any significant new costs or require any significant change in practice.

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

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

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

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

Compliance Requirements:

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

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

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

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

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

These amendments will not have an adverse impact on the ability of

small businesses or local governments to comply with Department requirements, as full compliance would require minimal enhancements to present hiring and follow-up practices.

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

Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

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

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

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

Other Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

Cost to Regulated Parties:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Economic Impact on Rural Area:

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

Rural Area Participation:

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

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a (2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types, reporting to the Justice Center for the Protection of People with Special Needs (Justice Center), as opposed to the Commission on the Quality of Care and Advocacy for People with Disabilities, making public certain information as directed by the Justice Center and assisting with the investigation of new reportable incidents are expected to be completed by existing facility staff. Similarly, the need for a medical examination of the patient in the course of investigating reportable incidents is similarly not appreciably different from the current practice of obtaining such examination under such circumstances. Accordingly, the amendments should not have any appreciable effect on employment as compared to current requirements.

New York State Joint Commission on Public Ethics

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Gift Regulations for Lobbyists and Their Clients

I.D. No. JPE-33-13-00010-RP

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

Proposed Action: Addition of Part 934 to Title 19 NYCRR.

Statutory authority: Legislative Law, art. 1-A, sections 1-c(j) and 1-m; Executive Law, section 94(9)(c) and (17)(a)

Subject: Gift regulations for lobbyists and their clients.

Purpose: To implement the restrictions on the offering of gifts contained in Legislative Law Article 1-A (the ''Lobbying Act'').

Substance of revised rule: Executive Law section 94(17)(a) directs the Joint Commission on Public Ethics ("JCOPE") to promulgate rules concerning limitations on the receipt of gifts, and section 94(9)(c) authorizes JCOPE to adopt, amend, and rescind rules and regulations to govern JCOPE procedures. Legislative Law Article 1-A, section 1-m prohibits individuals or entities who are required to be listed on a statement of registration (in other words, lobbyists or clients of lobbyists) or the spouses and unemancipated children of such individuals from offering or giving gifts to public officials or their spouses or unemancipated children, except in certain limited circumstances. The definition of a gift and exclusions from the definition are contained in Legislative Law Article 1-A, section 1-c(j).

By setting forth the circumstances in which lobbyists and clients of lobbyists, as well as their family members, can offer or give gifts to public officials or their families, these rules provide a comprehensive set of requirements. These regulations provide clear guidance to questions concerning who is covered by these requirements, what qualifies as a gift and what as an exclusion, and what requirements apply to the covered individuals.

Revised rule compared with proposed rule: Substantial revisions were made in sections 934.2(m), 934.3(c), (f) and 934.4(a)(4).

Text of revised proposed rule and any required statements and analyses may be obtained from Louis Manuta, Associate Counsel, Joint Commission on Public Ethics, 540 Broadway, Albany, NY 12207, (518) 408-3976, email: regs@jcope.ny.gov

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

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

Revised Regulatory Impact Statement

1. Statutory authority: Executive Law § 94(17)(a) directs the Joint Commission on Public Ethics ("JCOPE") to promulgate rules concerning limitations on the receipt of Gifts, and § 94(9)(c) authorizes JCOPE to adopt, amend, and rescind rules and regulations to govern JCOPE procedures. Legislative Law Article 1-A, § 1-c(j) defines a "Gift" and sets forth exclusions from the definition of Gift. Legislative Law Article 1-A, § 1-m prohibits, except in certain limited circumstances, individuals or entities who are required to be listed on a statement of registration – referred to as "Lobbyists" and/or "Clients" – or certain of their family members from offering or giving Gifts to "Public Officials" (i.e., generally, persons covered by Public Officers Law § 73) or certain of their family members.

2. Legislative objectives: To regulate and clarify the prohibition on the offering and giving of Gifts to public officials by lobbyists and their clients.

3. Needs and benefits: The proposed rulemaking is necessary to regulate

and clarify the prohibition on the offering and giving of Gifts to Public Officials by Lobbyists and their Clients. The regulations provide clear guidance concerning who is a Public Official, who is prohibited from offering and giving a Gift to a Public Official, and what qualifies as a Gift.

Part 934.1 provides the purpose and effect of the regulations. The Part clarifies that the regulations supersede prior Advisory Opinions issued by predecessor agencies to the extent such Advisory Opinions are inconsistent with the regulations.

Part 934.2 defines key terms in the regulations. In particular, the draft revised regulations amend the definition of Nominal Value. The initial proposed regulations defined the term as an item or service (or anything else of value) with a fair market value of ten dollars or less. The revised proposed regulations note that the term is not defined in the Public Officers Law or Legislative Law Article 1-A, but that the Commission "generally deems an item or service with a fair market value of fifteen dollars or less as having a Nominal Value."

Part 934.3 incorporates various statutory provisions concerning the offering or giving of a Gift to a Public Official. These rules are designed to provide Lobbyists and Clients with an established structure within which to determine whether the giving or offering of Gift to public officials is appropriate. Part 934.3(a) specifies that a Gift offered or given by a Lobbyist or Client to a Public Official is presumptively impermissible unless certain criteria are met. The presumption is overcome (making the Gift permissible) only when: (1) it would not be reasonable to infer that the Gift was intended to influence the Public Official; and (2) the Gift could not reasonably be expected to influence the Public Official in the performance of his official duties; and (3) it would not be reasonable to infer that the Gift was intended as a reward for any official action on the Public Official's part.

Pursuant to Part 934.3(b), the offering or giving of a Gift from a Lobbyist or a Client to the spouse or unemancipated child of a Public Official is permissible unless, under the circumstances, any one of the following criteria is met: (1) it could reasonably be inferred that the Gift was offered or given with the intent to influence the Public Official; or (2) the Gift could reasonably be expected to influence the Public Official in the performance of his or her official duties; or (3) it could reasonably be inferred that the Gift was offered or given with the intent to reward the Public Official for any official action on his or her part.

Finally, the draft revised regulations include new language – found in Part 934.3(c) – that incorporates the statutory provision regarding the offering or giving of a Gift from a spouse or unemancipated child of a Lobbyist or a Client to a Public Official. Such a Gift is permissible unless, under the circumstances, any one of the following criteria is met: (1) it could reasonably be inferred that the Gift was offered or given with the intent to influence the Public Official; or (2) the Gift could reasonably be expected to influence the Public Official in the performance of his or her official duties; or (3) it could reasonably be inferred that the Gift was offered or given with the intent to reward the Public Official for any official action on his or her part.

Part 934.3(d) sets forth the statutory exception that a Lobbyist or Client is permitted to give a Gift to officers, members, or directors of boards, commissions, councils, public authorities, or public benefit corporations who receive no compensation or are compensated on a per diem basis as long as the Lobbyist or Client does not appear, and does not have any matters pending before, the entity on which the recipient sits.

Part 934.3(e) articulates the rule that a Lobbyist or Client may not offer or give an impermissible Gift to a third party, including a charitable organization, on behalf of or at the direction of, a Public Official.

Finally, Part 934.3(f) addresses a Lobbyist or Client giving or offering multiple Gifts to the same person. The revised draft Part 934.3(f) states that even if each Gift is permissible on its own, the fact that multiple Gifts are offered or given may create a reasonable basis to infer that the Gifts are, in fact, impermissible.

Part 934.4 sets forth and clarifies the statutory exclusions from the definition of Gifts, which are contained in Legislative Law Article 1-A, § 1-c(j). In particular, the draft revised regulations amend aspects of the Widely Attended Event exclusion to clarify the conditions under which entertainment, recreational, and sporting activities, as well as food and beverage, are considered to be part of the Widely Attended Event and therefore covered by the exclusion.

Part 934.5 identifies the statutory provision, Executive Law § 94, that authorized JCOPE to investigate possible violations of § 1-m of article 1-A of the Legislative Law and its corresponding regulations and to take appropriate action as authorized in these statutes.

4. Costs:

a. costs to regulated parties for implementation and compliance: Minimal.

b. costs to the agency, state and local government: Minimal costs to state and local governments. Minimal administrative costs to the agency during the implementation phase.

c. cost information is based on the fact that there will be minimal costs to regulated parties and state and local government for training staff on changes to the requirements. The cost to the agency is based on the estimated slight increase in staff resources to implement the regulations.

5. Local government mandate: The proposed regulation imposes, at most, minimal new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district, as they must make themselves aware of any requirements from the regulation that would apply to Gifts they would give to public officials.

6. Paperwork: This regulation may require the preparation of additional forms or paperwork. Such additional paperwork is expected to be minimal.

7. Duplication: This regulation does not duplicate any existing federal, state or local regulations.

8. Alternatives: JCOPE could promulgate a formal advisory opinion or other guidance, but the formal rulemaking process provides more clarity to affected parties.

9. Federal standards: These regulations do not exceed any federal minimum standard with regard to a similar subject area.

10. Compliance schedule: Compliance will take effect upon adoption.

Revised Regulatory Flexibility Analysis

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not submitted with this Notice of Proposed Rulemaking because the proposed rulemaking will not impose any adverse economic impact on small businesses or local governments, nor will it require or impose any reporting, record-keeping or other affirmative acts on the part of these entities for compliance purposes. The New York State Joint Commission on Public Ethics notes that while the gift regulations may affect what items and services certain small businesses and local governments can offer or give to public officials, this does not impose extensive record-keeping requirements or other adverse economic impacts on these entities.

Revised Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this Notice of Proposed Rule Making since the proposed rule making will not impose any adverse economic impact on rural areas, nor will compliance require or impose any reporting, record-keeping, or other affirmative acts on the part of rural areas. The Joint Commission on Public Ethics makes these findings based on the fact that the gift regulations affect what items or services lobbyists and clients of lobbyists can offer or give to public officials. Rural areas are not affected in any way.

Revised Job Impact Statement

A Job Impact Statement is not submitted with this Notice of Proposed Rule Making because the proposed rulemaking will have no impact on jobs or employment opportunities. The Joint Commission on Public Ethics makes these findings based on the fact that the gift regulations affect what items or services lobbyists and clients of lobbyists can offer or give to public officials. This regulation does not apply nor relate to economic development or employment opportunities.

Assessment of Public Comment

The Commission received public comments from one entity. This commenter supported the Commission's finding that in order for a Gift to be allowable, all criteria in the proposed regulatory regime must be met. It went on to support the clarification that Gifts may also not be made on behalf of the spouse or unemancipated child of a public official to a third party. The commenter did urge the Commission to provide uniformity regarding items of Nominal Value and food and beverages so that the monetary value is the same, rather than ten dollars and fifteen dollars, respectively.

The Commission was generally of the view that, with respect to dollar amount thresholds, there should be consistency within the regulations. Accordingly, it amended the definition of Nominal Value to include the following language: "The Commission … generally deems an item or service with a fair market value of fifteen dollars or less as having a Nominal Value."

Office of Mental Health

EMERGENCY RULE MAKING

Implementation of the Protection of People with Special Needs Act and Reforms to Incident Management

I.D. No. OMH-14-14-00003-E
Filing No. 238
Filing Date: 2014-03-20
Effective Date: 2014-03-20

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

Action taken: Repeal of Part 524; addition of new Part 524; and amendment of Parts 501 and 550 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.07, 7.09 and 31.04

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

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

In December, 2012, the Governor signed the Protection of People with Special Needs Act (PPSNA). This new law created the Justice Center for the Protection of People with Special Needs (Justice Center) and established many new protections for vulnerable persons, including a new system for incident management in services operated or licensed by OMH and new requirements for more comprehensive and coordinated pre-employment background checks.

The amendment of OMH regulations is necessary to implement many of the provisions contained in the PPSNA.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals with mental illness who receive services in the OMH system. If OMH did not promulgate regulations on an emergency basis, many of the protections established by the PPSNA vital to the health, safety and welfare of individuals with mental illness would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from inconsistent requirements. For example, the emergency regulations change the categories of incidents to conform to the categories established by the PPSNA. Without the promulgation of these amendments, agencies would be required to report incidents based on one set of definitions to the Justice Center and incidents based on a different set of definitions to OMH. Requirements for the management of incidents would also be inconsistent. Especially concerning regulatory requirements related to incident management and pre-employment background checks, it is crucial that OMH regulations be changed to support the new requirements in the PPSNA so that this initiative is implemented in a coordinated fashion.

For all of the reasons outlined above, this rule is being adopted on an Emergency basis until such time as it has been formally adopted through the SAPA rule promulgation process.

Subject: Implementation of the Protection of People with Special Needs Act and reforms to incident management.

Purpose: To enhance protections for people with mental illness served in the OMH system.

Substance of emergency rule: The emergency regulations are intended to conform regulations of the Office of Mental Health (OMH) to Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act or PPSNA). The primary changes include:

- 14 NYCRR Part 501 is amended by adding a new Section 501.5, entitled "Obsolete References," and then replaces any reference throughout OMH regulations to the Commission on Quality of Care and Advocacy for Persons with Disabilities with a reference to the Justice Center for the Protection of People with Special Needs.
- 14 NYCRR Part 524 (Incident Management) has been repealed and revised to incorporate categories of "reportable incidents" as established by the PPSNA and includes enhanced provisions regarding incident investigations. The amendments make changes related to definitions, reporting, investigation, notification and committee review of events and situations that occur in providers of mental health services licensed or operated by OMH. It is OMH's expectation that implementation of these amendments will enhance safeguards for persons with mental illness, which, in turn, will allow individuals to focus on their recovery. The amendments also require distribution of the Code of Conduct, developed by the Justice Center, to all employees. Providers must maintain signed documentation from such employees, indicating that they have received, and understand, the Code.
- Revisions to 14 NYCRR Part 550 are intended to facilitate and implement the consolidation of the criminal background check function in the Justice Center, and to make other conforming changes to the criminal background check function established by the PPSNA.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 17, 2014.

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

Regulatory Impact Statement

1. Statutory Authority: Chapter 501 of the Laws of 2012, i.e., "The Protection of People with Special Needs Act," establishes Article 20 of the Executive Law, Article 11 of the Social Services Law, and makes a number of amendments in other statutes, including the Mental Hygiene Law.

Section 7.07 of the Mental Hygiene Law, charges the Office of Mental Health with the responsibility for seeing that persons with mental illness are provided with care and treatment, that such care, treatment, and rehabilitation are of high quality and effectiveness, and that the personal and civil rights of persons with mental illness receiving care and treatment are adequately protected.

Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

2. Legislative Objectives: These regulatory amendments further the legislative objectives embodied in the Protection of People with Special Needs Act, as well as Sections 7.07, 7.09, and 31.04 of the Mental Hygiene Law. The amendments incorporate a number of reforms to regulations of the Office of Mental Health (OMH) in order to increase protections and improve the quality of services provided to persons receiving services from mental health providers operated or licensed by OMH.

3. Needs and Benefits: The amendments include new and modified requirements for incident management programs, codified at 14 NYCRR Part 524, and also add and revise provisions of Parts 501 and 550 to implement Chapter 501 of the Laws of 2012. Known as "The Protection of People with Special Needs Act," this new law requires the establishment of comprehensive protections for vulnerable persons, including persons with mental illness, against abuse, neglect and other harmful conduct.

The Act created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems. The Justice Center operates a 24/7 hotline for reporting allegations of abuse, neglect and significant incidents in accordance with Chapter 501's provisions for uniform definitions, mandatory reporting and minimum standards for incident management programs. In collaboration with OMH, the Justice Center is also charged with developing and delivering appropriate training for caregivers, their supervisors and investigators. Additionally, the Justice Center is responsible for conducting criminal background checks for applicants, including those who will be working in the OMH system.

Chapter 501 of the Laws of 2012 also created a Vulnerable Persons' Central Register (VPCR). This register contains the names of custodians found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All custodians found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Custodians having committed egregious or repeated acts of abuse or neglect are prohibited from future employment in providing services for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Job applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

Pursuant to Chapter 501 of the Laws of 2012, the Justice Center is charged with recommending policies and procedures to OMH for the protection of persons with mental illness. This effort involves the development of requirements and guidelines in areas including but not limited to incident management, rights of people receiving services, criminal background checks, and training of custodians. In accordance with Chapter 501, these requirements and guidelines must be reflected, wherever appropriate, in OMH's regulations. Consequently, the amendments incorpo-

rate the requirements in regulations and guidelines recently developed by the Justice Center.

The amendments make changes to OMH's incident management process to strengthen the process and to provide further protection to people receiving services from harm and abuse. For example, the amendments make changes related to definitions, reporting, investigation, notification, and committee review of events and situations that occur in providers of mental health services licensed or operated by OMH. It is OMH's expectation that implementation of the amendments will enhance safeguards for persons with mental illness, which will in turn allow individuals to focus on their recovery.

4. Costs: (a) Costs to the Agency and to the State and its local governments: OMH will not incur significant additional costs as a provider of services. While the regulations impose some new requirements on providers, OMH expects that it will comply with the new requirements with no additional staff. There may be minimal one-time costs associated with notification and training of staff.

Chapter 501 created the Justice Center, which assumes some designated functions previously performed by OMH. The Justice Center manages the criminal background check process and conducts some investigations that had previously been conducted by OMH. OMH experienced savings associated with the reduction in staff performing these functions; however, because the staff shifted to the Justice Center, the net effect is cost neutral.

There may be some minor costs associated with necessary modifications to NIMRS (the New York Incident Management Reporting System developed by OMH) to reflect Justice Center requirements.

Any costs or savings will have no impact on Medicaid rates, prices or fees. Therefore, there is no impact on New York State in its role paying for Medicaid services.

There are no costs to local governments as there are no changes to Medicaid reimbursement.

(b) Costs to private regulated parties: It is difficult to estimate the cost impact on private regulated parties; however, OMH expects that costs to providers will be minimal. OMH already requires the reporting and investigation of incidents. The implementation of these reforms in general will not result in costs. There may also be additional costs associated with the need for medical examinations in cases of alleged physical abuse or clinical assessments needed to substantiate a finding of psychological abuse. Again, OMH is not able to estimate these cost impacts. There are no costs associated with a check of the Staff Exclusion List. Other amendments made in the rule making merely clarify existing requirements or interpretive guidance, or can be implemented without cost to the provider.

OMH anticipates that generally any potential costs incurred will be mitigated by savings that the provider will realize from the improvements to the incident management process. OMH expects that in the long term, the amendments will ultimately reduce incidents and abuse in its system and increase efficiency and quality in the reporting, investigation, notification, and review of such events. OMH is not able to quantify the minor potential costs or the savings that might be realized by the promulgation of these amendments.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: The new regulations require additional paperwork to be completed by providers. Examples of additional paperwork are found in new requirements pertaining to reporting reportable incidents to the Justice Center and making additional notifications. However, the Justice Center will likely predominantly utilize electronic format for incident reporting.

7. Duplication: The amendments do not duplicate any existing State or Federal requirements that are applicable to services for persons with mental illness. In some instances, the regulations reiterate current requirements in New York State law.

8. Alternatives: Current definitions of incidents in OMH regulations that require reporting and investigation exceed the criteria in the new statutory definitions in Chapter 501. OMH considered reducing or eliminating requirements applying to events and situations that do not meet the criteria in the statutory definitions for "reportable incidents." However, OMH chose to propose the continuation of protections associated with these events and situations.

9. Federal Standards: The amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: The regulations will be effective immediately upon filing to ensure compliance with Chapter 501 of the Laws of 2012. OMH intends thereafter to continue to develop and transmit implementation guidance to regulated parties to assist them with compliance.

Regulatory Flexibility Analysis

1. Effect on small business: OMH has determined, through its Bureau of Inspection and Certification, that approximately 732 agencies provide services which are certified or licensed by OMH. OMH is unable to estimate the portion of these providers that may be considered to be small businesses (under 100 employees).

However, the amendments have been reviewed by OMH in light of their impact on small businesses. The regulations make revisions to OMH's requirements for incident management which will necessitate some changes in compliance activities and may result in additional costs and savings to providers, including small business providers. However, OMH is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, these changes are required by statute and OMH considers that the improvements in protections for people served in the OMH system will help safeguard individuals from harm and abuse; thus, the benefits more than outweigh any potential negative impact on providers.

2. Compliance requirements: The regulations add several new requirements with which providers must comply. Amendments associated with the implementation of Chapter 501 include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries; however, OMH anticipates that providers are already obtaining examinations of physical injuries. While Chapter 501 also establishes an obligation to obtain a clinical assessment to substantiate a charge of psychological abuse, it is not immediately clear who will be responsible for obtaining, and paying for, that assessment.

Current OMH regulations require reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate some changes and reforms, the basic requirements are conceptually unchanged. OMH, therefore, expects that additional compliance activities (except as noted above) will be minimal. There is no associated cost with checking the Staff Exclusion List. The cost to check the Statewide Register of Child Abuse and Maltreatment is $25 per check; providers serving children are already incurring this cost. However, this would represent a new cost for providers who previously did not request such checks, though this cost could be passed by the provider to the applicant.

Providers subject to these regulations are already responsible for complying with incident management regulations. The regulations enhance some of these requirements, e.g., providers must comply with the new requirement to complete investigations within a 45-day timeframe. Providers must also comply with new requirements to enhance the independence of investigators and incident review committees. However, OMH expects that additional compliance activities associated with these enhanced requirements will be minimal.

3. Professional services: There may be additional professional services required for small business providers as a result of these amendments. The definition of psychological abuse references a need to determine specific impacts on an individual receiving services by means of a clinical assessment, but it is not immediately clear at what stage in the process that assessment must be maintained or who is responsible for obtaining and paying for it. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There may be modest costs for small business providers associated with these amendments. There may be nominal costs for providers to comply with the expanded notification requirements, but OMH is unable to determine the cost impact. Furthermore, providers may experience savings if the Justice Center or OMH assumes responsibility for investigations that were previously conducted by provider staff. In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Economic and technological feasibility: The amendments may impose the use of new technological processes on small business providers. Providers have already been reporting incidents and abuse in NIMRS, and that technology will continue to be used. However, statutory requirements to report reportable incidents to the Justice Center in the manner specified by the Justice Center may impose new technology requirements if that is the manner specified by the Justice Center. However, this is not a direct impact caused by the regulations.

6. Minimizing adverse economic impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OMH expects that compliance with these new regulations will result in savings in the long term and there may be some short term savings as a result of the conduct of investigations by the Justice Center.

OMH has reviewed the regulations to determine if there were any viable approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act; none were readily identified. However, OMH did not consider the exemption of small businesses from these amendments or the establishment of differing compliance or reporting requirements since OMH considers compliance

with the amendments to be crucial for the health, safety, and welfare of the individuals served by small business providers.

7. Small business participation: Chapter 501 of the Laws of 2012 was originally a Governor's Program Bill which received extensive media attention. Providers have had the opportunity to become familiar with its provisions since it was made available on various government websites last June. Furthermore, in accordance with statutory requirements, the rule was presented to the Mental Health Services Council for review and recommendations.

8. The amendments include a penalty for violating the regulations of a fine not to exceed $1,000 per day or $15,000 per violation in accordance with section 31.16 of the Mental Hygiene Law and/or may suspend, revoke, or limit an operating certificate or take any other appropriate action, in accordance with applicable law and regulations. However, due process is available to a provider via 14 NYCRR Part 503.

Rural Area Flexibility Analysis

1. Description of the types and estimation of the number of rural areas in which the rule will apply: OMH services are provided in every county in New York State. Forty-three counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. Additionally, 10 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

The amendments have been reviewed by OMH in light of their impact on rural areas. The regulations make revisions and in some cases enhance OMH's current requirements for incident management programs, which will necessitate some changes in compliance activities and result in additional costs and savings to providers, including those in rural areas. However, OMH is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, OMH considers that the improvements in protections for people served in the OMH system will help safeguard individuals from harm and abuse and that the benefits more than outweigh any potential negative impacts on all providers.

The geographic location of any given program (urban or rural) will not be a contributing factor to any additional costs to providers.

2. Compliance requirements: The regulations add some new requirements with which providers must comply. Amendments associated with the implementation of Chapter 501 include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries, and there is a requirement that, for a finding of psychological abuse to be substantiated, a clinical assessment is needed in order to demonstrate the impact of the conduct on the individual receiving services.

Current OMH regulations require reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate some changes, the basic requirements are conceptually unchanged. OMH therefore expects that additional compliance activities associated with these changes will be minimal. However, there will be additional compliance activities associated with checking the Staff Exclusion List.

Providers must comply with the new requirement to complete investigations within a 45-day timeframe. Providers must also comply with new requirements to enhance the independence of investigators and incident review committees. However, OMH expects that additional compliance activities will be minimal since providers are already required to comply with existing incident management program requirements; these revisions primarily enhance current requirements.

3. Professional services: There may be additional professional services required for rural providers as a result of these amendments. The amendments will not add to the professional service needs of rural providers.

4. Compliance costs: There may be modest costs for rural providers associated with the amendments. There also may be nominal costs for rural providers to comply with the expanded notification requirements. However, all providers may experience savings if the Justice Center or OMH assumes responsibility for investigations that were previously conducted by provider staff.

In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for both urban and rural area providers as well as benefits to the wellbeing of individuals receiving services.

5. Minimizing adverse impact: The amendments may result in an adverse economic impact for rural providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OMH expects that compliance with these enhanced regulations will result in savings in the long term and there may be some short-term savings as a result of the conduct of investigations by the Justice Center.

OMH has reviewed the regulations to determine if there were any viable approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act; none were readily identified. However, OMH did not consider the exemption of rural area providers from the amendments or the establishment of differing compliance or reporting requirements, since OMH considers compliance with the amendments to be crucial for the health, safety, and welfare of the individuals served by rural area providers.

6. Participation of public and private interests in rural areas: Chapter 501 of the Laws of 2012 was originally a Governor's Program Bill which received extensive media attention. Providers have had the opportunity to become familiar with its provisions since it was made available on various government websites last June. Furthermore, in accordance with statutory requirements, the rule was presented to the Mental Health Services Council for review and recommendations.

Job Impact Statement

A Job Impact Statement for these amendments is not being submitted because OMH does not anticipate a substantial adverse impact on jobs and employment opportunities.

The amendments incorporate a number of reforms to improve the quality and consistency of incident management activities throughout the OMH system. However, it is not anticipated that these reforms will negatively impact jobs or employment opportunities. The amendments that impose new requirements on providers, such as additional reporting requirements and the timeframe for completion of investigations, will not result in an adverse impact on jobs. OMH anticipates that there will be no effect on jobs as agencies will utilize current staff to perform the required compliance activities.

Chapter 501 of the Laws of 2012 and these implementing regulations will also mean that some functions that are currently performed by OMH staff will instead be performed by the staff of the Justice Center. OMH expects that the volume of incidents and occurrences investigated will be roughly similar. To the extent that the Justice Center performs investigations, oversees the management of reportable incidents, and manages requests for criminal history record checks, the result is expected to be neutral in that positions lost by OMH will be gained by the Justice Center.

It is therefore apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Mental Health Services - General Provisions

I.D. No. OMH-14-14-00015-P

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

Proposed Action: This is a consensus rule making to amend Part 501 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 31.01

Subject: Mental Health Services - General Provisions.

Purpose: To provide clarification with respect to outdated references within Title 14 NYCRR for providers of mental health services.

Text of proposed rule: Section 501.5 of Title 14 NYCRR is amended to read as follows:

§ 501.5. Obsolete *or Outdated* references.

(a) Commission on Quality of Care and Advocacy for Persons with Disabilities. Effective June 30, 2013, all references to the Commission on Quality of Care and Advocacy for Persons with Disabilities that appear in this Title, as applicable to the Office of Mental Health and facilities under its jurisdiction, shall be deemed to be references to the Justice Center for the Protection of People with Special Needs, established pursuant to Chapter 501 of the Laws of 2012.

(b) Diagnostic Manuals. All references in this Title, as applicable to the Office of Mental Health and facilities under its jurisdiction, to the International Classification of Diseases Manual (ICD) or Diagnostic and Statistical Manual of Mental Disorders (DSM) that refer to specific editions of such manuals shall be deemed to reference the most recent published editions of such manuals.

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

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

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

Consensus Rule Making Determination

This rule making is filed as a Consensus rule on the grounds that it is non-controversial and makes a technical correction. No person is likely to object to this proposed rule since it merely provides updated information and clarification within the Office of Mental Health's (OMH) regulations.

Many of OMH's regulations contain out-of-date references to the International Classification of Diseases Manual (ICD) and the Diagnostic and Statistical Manual of Mental Disorders (DSM). In an effort to avoid confusion for providers of mental health service, Section 501.5 of Title 14 NYCRR is being amended to include outdated references. Part 501 establishes general provisions related to mental health services for parties regulated by OMH and is the appropriate location to clarify for providers that when OMH regulations refer to the ICD and DSM, it is interpreted to mean the most recent published editions of such manuals.

Statutory Authority: 7.09 of the Mental Hygiene Law grant the Commissioner the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction. Section 31.01 of the Mental Hygiene Law charges the Commissioner with the responsibility to promulgate rules and regulations requiring the development of evaluation criteria and methods, including, but not limited to: uniform definitions of services for persons with mental disabilities; uniform financial and clinical reporting procedures; requirements for the generation and maintenance of uniform data for all individuals receiving services from any provider of services; uniform criteria for evaluating categories of need; and uniform standards for all comparable services and programs.

Job Impact Statement

A job impact statement is not being submitted with this notice because it is evident from the subject matter of the rule making that there will be no impact on jobs and employment opportunities. The consensus rule merely serves to provide clarification to providers of mental health services with respect to regulatory references to outdated manuals.

Office for People with Developmental Disabilities

EMERGENCY RULE MAKING

Implementation of the Protection of People with Special Needs Act and Reforms to Incident Management

I.D. No. PDD-14-14-00012-E

Filing No. 250

Filing Date: 2014-03-24

Effective Date: 2014-03-24

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

Action taken: Amendment of Parts 624, 633 and 687; and addition of Part 625 to Title 14 NYCRR.

Statutory authority: L. 2012, ch. 501; Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

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, the Governor signed the Protection of People with Special Needs Act (PPSNA). This new law created the Justice Center for the Protection of People with Special Needs (Justice Center) and established many new protections for vulnerable persons, including a new system for incident management in services operated or certified by OPWDD and new requirements for more comprehensive and coordinated pre-employment background checks.

OPWDD filed emergency regulations effective June 30, 2013 through September 25, 2013, and replacement emergency regulations effective September 26, 2013 and December 25, 2013, to implement many of the provisions contained in the PPSNA. The December 25, 2013 replacement emergency regulations are now expiring. New emergency regulations are necessary to continue implementing regulations that are in conformance with the PPSNA. If OPWDD did not file new emergency regulations effective March 24, 2014, regulatory requirements would revert to the regulations that were in effect prior to June 30, 2013.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals with developmental disabilities who receive services in the OPWDD system. If OPWDD did not promulgate regulations on an emergency basis, many of the protections established by the PPSNA vital to the health, safety, and welfare of individuals with developmental disabilities would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from inconsistent requirements. For example, the emergency regulations change the categories of incidents to conform to the categories established by the PPSNA. Without the promulgation of these amendments, agencies would be required to report incidents based on one set of definitions to the Justice Center and incidents based on a different set of definitions to OPWDD. Requirements for the management of incidents would also be inconsistent. Especially concerning regulatory requirements related to incident management and pre-employment background checks, it is crucial that OPWDD regulations are changed to support the new requirements in the PPSNA so that this initiative is implemented in a coordinated fashion.

OPWDD was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes. OPWDD is making a number of revisions in the new emergency regulations, compared with the June 30, 2013; September 26, 2013; and December 25, 2013 regulations, based on input from the field and the Justice Center, and experience with the new systems and requirements gained over the past nine months. By filing new emergency regulations, OPWDD is able to revise the regulations to reflect recent input and current needs.

Subject: Implementation of the Protection of People with Special Needs Act and reforms to incident management.

Purpose: To enhance protections for people with developmental disabilities served in the OPWDD system.

Substance of emergency rule: The emergency regulations conform OPWDD regulations to Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act or PPSNA) by making a number of revisions. The major changes to OPWDD regulations made to implement the PPSNA are:

- Revisions to 14 NYCRR Part 624 (now titled "Reportable incidents and notable occurrences") to incorporate categories of "reportable incidents" as established by the PPSNA. Programs and facilities certified or operated by OPWDD must report "reportable incidents" to the Vulnerable Persons' Central Register (VPCR), a part of the Justice Center for the Protection of People with Special Needs (Justice Center). Part 624 is amended to incorporate other revisions related to the management of reportable incidents in conformance with various provisions of the PPSNA.
- Revisions to 14 NYCRR Section 633.7 concern the code of conduct adopted by the Justice Center in accordance with Section 554 of the Executive Law and impose requirements on programs certified or operated by OPWDD. The code of conduct must be read and signed by custodians who have regular and direct contact with individuals receiving services as specified in the regulations.
- Revisions to 14 NYCRR Section 633.22 reflect the consolidation of the criminal history record check function in the Justice Center. The Justice Center will receive requests for criminal history record checks and will process those requests, instead of OPWDD.
- A new 14 NYCRR Section 633.24 contains requirements for background checks (in addition to criminal history record checks).
- Revisions to Part 687 incorporate changes to criminal history record check and background check requirements in family care homes.

The regulations include numerous changes associated with incident management or the implementation of the PPSNA. These changes include:

- The amendments delete the current categories and definitions of events and situations that must be reported to agencies and OPWDD. The amendments add definitions of "reportable incidents." Types of reportable incidents are "abuse," "neglect," and "significant incidents." The amendments also add definitions of "notable occurrences." Part 624 includes requirements for reporting and investigating these types of events.
- The requirements of Part 624 are limited to events and situations that occur under the auspices of an agency.
- A new Part 625 contains requirements that apply to events and situations which are not under the auspices of an agency.
- The amendments mandate the use of OPWDD's Incident Report and

Management Application (IRMA), a secure electronic statewide incident reporting system, for reporting information about specified events and situations, and remove the current requirement to submit a paper based incident report to OPWDD in certain instances.

• The amendments make several changes to requirements for investigations. The amendments require that investigations of specified events and situations be initiated immediately following occurrence or discovery (with limitations when it is anticipated that the Justice Center or the Central Office of OPWDD will conduct the investigation). Investigations conducted by agencies must be completed no later than thirty days after the initiation of an investigation, unless the agency documents an acceptable justification for an extension of the thirty-day time frame. The amendments also add new requirements to enhance the independence of investigators, and require agency investigators to use a standardized investigative report format.

• The amendments make several changes regarding Incident Review Committees (IRC). The amendments change requirements concerning membership of the IRC and include specific provisions concerning shared committees, using another agency's committee or making alternative arrangements for IRC review. The amendments also modify the responsibilities of a provider agency's IRC when an incident is investigated by the Central Office of OPWDD or the Justice Center.

• The amendments expand on requirements for notification to service coordinators.

• The amendments contain an explicit requirement that providers must comply with OPWDD recommendations concerning a specific event or situation or must explain its reasons for not complying with a recommendation within a month of the recommendation being made.

• When the Justice Center makes findings concerning matters referred to its attention and the Justice Center issues a report and recommendations to the agency regarding such matters, the agency is required to make a written response, within ninety days of receipt of such report, of action taken regarding each of the recommendations in the report.

• The amendments add a requirement that agencies retain records pertaining to incidents and allegations of abuse for a minimum time period of seven years. In cases when there is a pending audit or litigation, the pertinent records must be retained throughout the pendency of the audit or litigation. The amendments specify what information must be retained.

• The amendments add requirements that agencies check the "Staff Exclusion List" of the Vulnerable Persons' Central Register as a part of the background check process.

• The amendments also include requirements concerning background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013. These requirements are added to implement section 16.34 on the Mental Hygiene Law as amended by the PPSNA.

• In accordance with changes in Section 424-a of the Social Services Law, the amendments extend requirements for checks of the Statewide Central Register of Child Abuse and Maltreatment to employees and others that have the potential for regular and substantial contact with individuals receiving services in programs certified or operated by OPWDD. Prior to June 30, 2013, providers were only required to request an SCR check for those who have the potential for regular and substantial contact with children.

• Definitions are changed in Parts 624 and 633 to conform to PPSNA definitions.

• The amendments include revisions to reflect the restructuring of entities within OPWDD and OPWDD's name change.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 21, 2014.

Text of rule and any required statements and analyses may be obtained from: Barbara Brundage, Director, Regulatory Affairs Unit, Office for People With Developmental Disabilities, 44 Holland Ave., 3rd floor, Albany, NY 12229, (518) 474-1830, email: RAU.Unit@opwdd.ny.gov

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

Regulatory Impact Statement

1. Statutory Authority:

a. Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act), added Article 20 to the Executive Law and Article 11 to the Social Services Law and amended other laws including the Mental Hygiene Law. Chapter 501 incorporates requirements for implementing regulations by "State Oversight Agencies," which include OPWDD.

b. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs and services in the area of care, treatment, rehabilitation, education, and training of persons with developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

c. OPWDD has the statutory authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the New York State Mental Hygiene Law Section 13.09(b).

d. OPWDD has the statutory authority to adopt regulations concerning the operation of programs, provision of services and facilities pursuant to the New York State Mental Hygiene Law Section 16.00.

2. Legislative Objectives: These emergency amendments further the legislative objectives embodied in Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act) and sections 13.07, 13.09(b), and 16.00 of the Mental Hygiene Law. The emergency amendments incorporate a number of reforms to OPWDD regulations in order to increase protections and improve the quality of services provided to people with developmental disabilities in OPWDD's system.

3. Needs and Benefits: The majority of the amendments include extensive new and modified requirements for OPWDD regulations in 14 NYCRR Part 624 pertaining to incident management. Additional amendments add and revise requirements in other OPWDD regulations in order to implement the Protection of People with Special Needs Act (PPSNA).

The PPSNA requires the establishment of comprehensive protections for vulnerable persons, including people with developmental disabilities, against abuse, neglect, and other harmful conduct. The PPSNA created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems. The Justice Center operates a 24/7 hotline for reporting abuse, neglect, and significant incidents in accordance with the PPSNA's provisions for uniform definitions, mandatory reporting, and minimum standards for incident management programs. In collaboration with OPWDD, the Justice Center is also charged with developing and delivering appropriate training for caregivers, their supervisors, and investigators. Additionally, the Justice Center is responsible for conducting criminal background checks for applicants in the OPWDD system.

The PPSNA creates a Vulnerable Persons' Central Register (VPCR). This register will contain the names of custodians found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All custodians found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Custodians having committed egregious or repeated acts of abuse or neglect are prohibited from future employment in providing services for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

Pursuant to the PPSNA, the Justice Center is charged with recommending policies and procedures to OPWDD for the protection of people with developmental disabilities; this effort involves the development of requirements and guidelines in areas including but not limited to incident management, rights of people receiving services, criminal background checks, and training of custodians. In accordance with the PPSNA, these requirements and guidelines must be reflected, wherever appropriate, in OPWDD's regulations. Consequently, these amendments incorporate the requirements in regulations and guidelines developed by the Justice Center.

The amendments also make numerous changes to OPWDD's incident management process to strengthen the process and to provide further protection to people receiving serves from harm and abuse. For example, the amendments make changes related to definitions, reporting, investigation, notification, and committee review of events and situations both under and not under the auspices of OPWDD or a provider agency. It is OPWDD's expectation that implementation of the emergency amendments will enhance safeguards for people with developmental disabilities, which will in turn allow individuals to focus on achieving maximum independence and living richer lives.

The amendments also include requirements addressing background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law. These requirements, applicable to all programs and services operated, certified, approved, and/or funded by OPWDD, will augment the protections provided to people receiving services by the PPSNA.

4. Costs:

a. Costs to the Agency and to the State and its local governments: OPWDD will not incur significant additional costs as a provider of services. While the regulations impose new requirements on providers, OPWDD expects that they will comply with the new requirements with no

additional staff. Furthermore, OPWDD has already implemented some of the new requirements contained in the regulations in state-operated services through implementation of policy/procedure changes. There may be minimal one-time costs associated with notification and training of staff.

The PPSNA creates the Justice Center, which will assume designated functions that are now performed by OPWDD. The Justice Center will manage the criminal background check process and will conduct some investigations that had previously been conducted by OPWDD. OPWDD will experience savings associated with the reduction in staff performing these functions; however, the staff will be shifting to the Justice Center so the net effect will be cost neutral. Minimal additional OPWDD staff will be needed to implement some provisions of the PPSNA and implementing regulations, such as staff to coordinate MHL 16.34 background checks.

Any costs or savings will have no impact on Medicaid rates, prices or fees. Therefore, there is no impact on New York State in its role paying for Medicaid services.

There are no costs to local governments as there are no changes to Medicaid reimbursement and even if there were, the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

b. Costs to private regulated parties: It is difficult to estimate the cost impact on private regulated parties, however, OPWDD expects that cost to providers will be minimal. OPWDD already requires the reporting and investigation of incidents. The implementation of these reforms in general will not result in costs. There may be costs associated with the amendment of Section 424-a of the Social Service Law (as reflected in these regulations) which requires background checks of the Statewide Central Register of Child Abuse and Maltreatment (which cost $25 per check). However, OPWDD cannot estimate how many additional checks will be required. There may also be additional costs associated with the need for clinical assessments needed to demonstrate psychological abuse. There may be costs associated with the requirement that agencies conduct a "reasonably diligent search" for records of past abuse/neglect related to background checks required in accordance with Section 16.34 of the Mental Hygiene Law. Again, OPWDD is not able to estimate these cost impacts. Concerning the reforms to Part 624 that are in addition to the changes needed to implement the PPSNA, most of the amendments have either already been implemented by OPWDD policy directives (e.g. mandate to use IRMA), merely clarify existing requirements or interpretive guidance, or can be implemented without cost to the agency (e.g. restrictions on committee review).

There may be minor costs as a result of other amendments; however, OPWDD anticipates that generally any potential costs incurred would be mitigated by savings that the provider will realize from the improvements to the incident management process. OPWDD expects that in the long-term the amendments will ultimately reduce incidents and abuse in its system and increase efficiency and quality in the reporting, investigation, notification, and review of such events. OPWDD is not able to quantify the minor potential costs or the savings that might be realized by the promulgation of these amendments.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village, or school, fire, or other special district.

6. Paperwork: The new regulations require additional paperwork to be completed by providers. Examples of additional paperwork are found in new requirements pertaining to reporting reportable incidents to the Justice Center and making additional notifications. The regulations require that all custodians with regular and direct contact in programs certified or operated by OPWDD review and sign the Justice Center's code of conduct on an annual basis. In addition, new paperwork is associated with the requirements for additional background checks (Staff Exclusion List, MHL 16.34 and Statewide Central Register of Child Abuse and Maltreatment). However, the regulations remove paperwork requirements in other ways, such as the deletion of the requirement for the completion of a paper based incident report for specified events or situations.

7. Duplication: The amendments do not duplicate any existing State or Federal requirements that are applicable to services for persons with developmental disabilities. In some instances, the regulations reiterate requirements in NYS law.

8. Alternatives: Current definitions of incidents in OPWDD regulations that require reporting and investigation exceed the criteria in the new statutory definitions in the PPSNA. OPWDD considered reducing or eliminating requirements applying to events and situations that do not meet the criteria in the statutory definitions for "reportable incidents," but OPWDD decided to include the continuation of protections associated with these events and situations as reflected in the definitions of notable occurrences.

9. Federal Standards: The emergency amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

10. Compliance Schedule: The regulations will be effective on March 24, 2014 to ensure continued compliance with Chapter 501 of the Laws of 2012. The emergency regulations replace prior emergency regulations which were effective December 25, 2013 and expired on March 23, 2014.

Regulatory Flexibility Analysis

1. Effect on small business: OPWDD has determined, through a review of the certified cost reports, that most OPWDD-funded services are provided by non-profit agencies that employ more than 100 people overall. However, some smaller agencies that employ fewer than 100 employees overall would be classified as small businesses. Currently, there are approximately 700 agencies providing services which are certified, authorized or funded by OPWDD. OPWDD is unable to estimate the portion of these providers that may be considered to be small businesses.

The amendments have been reviewed by OPWDD in light of their impact on small businesses. The regulations make extensive changes to OPWDD's requirements for incident management that will necessitate significant changes in compliance activities and result in additional costs and savings to providers, including small business providers. However, OPWDD is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, OPWDD considers that the improvements in protections for people served in the OPWDD system will help safeguard individuals from harm and abuse and that the benefits more than outweigh any potential negative impacts on providers.

2. Compliance requirements: The regulations add a number of new requirements with which providers must comply. Amendments associated with the implementation of the PPSNA include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries. For psychological abuse, a clinical assessment could be needed in order to demonstrate the impact of suspected psychological abuse. While OPWDD anticipates that providers are already obtaining examinations of physical injuries, clinical assessments of suspected psychological abuse are not generally obtained.

The regulations impose requirements that all new custodians with regular and direct contact in such programs must read and sign the code of conduct at the time of employment or affiliation, and that all custodians with regular and direct contact in such programs must read and sign the code of conduct at on an annual basis.

The PPSNA expanded requirements to obtain background checks of the Statewide Central Register of Child Abuse and Maltreatment to require checks of employees (and others) who have the potential for regular and substantial contact with individuals receiving services in programs that are certified or operated by OPWDD. Prior to June 30, 2013 the statute limited this requirement to employees who have the potential for regular and substantial contact with children. The emergency regulations reflect the statutory changes to section 424-a of the Social Services Law in the PPSNA. While many providers that also serve children have been obtaining these checks, the new requirements clearly expand the pool of employees and others who must be checked. Further, OPWDD regulations require that agencies conduct SCR checks of applicants when the check is permitted by the Social Services Law.

The regulations also include requirements addressing background checks for potential employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law.

Prior OPWDD regulations already required reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate many changes and reforms, the basic requirements are conceptually unchanged. OPWDD therefore expects that additional compliance activities (except as noted above) will be minimal. Aside from the provisions related to implementation of the PPSNA, and section 16.34 of the Mental Hygiene Law, the amendments have either already been implemented by OPWDD policy directives, clarify existing requirements or interpretive guidance, or can be implemented without cost to the agency.

Agencies must comply with the new requirement to complete investigations within a 30 day timeframe. Agencies must also comply with new requirements to enhance the independence of investigators and agency incident review committees. However, OPWDD expects that additional compliance activities will be minimal since agencies are already required to comply with existing requirements that prohibit situations which compromise the independence of investigators and committee members.

The new requirements pertaining to the dissemination of agency policies and procedures, OPWDD incident management regulations, and written information specified by OPWDD add new compliance activities; however, the regulations minimize compliance activities by requiring that providers offer to provide such information in electronic format (unless paper copies are specifically requested) as opposed to requiring the provision of paper copies only. The amendments require that information be

provided in conjunction with training that is mandated by current regulations in order to consolidate efforts, increase efficiency, and reduce compliance activities.

Enhancements in required notification to service coordinators will also add compliance activities for providers because providers will have to make additional notifications and/or provide subsequent information about an incident or occurrence to these parties.

The amendments that add a new requirement that agencies enter minutes of their incident review committee meetings into IRMA within three weeks of the meeting for serious incidents, allegations of abuse, and all deaths, may result in a minimal amount of additional clerical work. OPWDD expects that most agencies have adopted an electronic recordkeeping system to maintain their minutes and that these agencies would only have to copy and paste their minutes into IRMA. Agencies that do not have an electronic recordkeeping system and that maintain handwritten or typed minutes will have to assign staff to type the minutes into IRMA. OPWDD expects that these agencies will add this task to the duties of clerical staff who are trained and experienced in data entry and who can perform this function in an efficient manner.

The amendments extend access to information in accordance with Jonathan's Law and add a new requirement that agencies retain records pertaining to incidents and allegations of abuse for a minimum time period of seven years. In cases when there is a pending audit or litigation, the pertinent records must be retained throughout the pendency of the audit or litigation. The amendments specify what information must be retained. OPWDD considers that the new requirements will not add any additional compliance activities for agencies. OPWDD expects that generally most agencies have been implementing agency specific policies on record retention and that the new required record retention schedule merely standardizes existing policies/procedures. The amendments will have no effect on local governments.

3. Professional services: There may be additional professional services required for small business providers as a result of these amendments. The definition of psychological abuse references specific impacts on an individual receiving services that must be supported by a clinical assessment. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There may be modest costs for small business providers associated with the amendments. There may be costs associated with obtaining a clinical assessment in the case of suspected psychological abuse. Additionally, there may be nominal costs for agencies to comply with the expanded notification requirements and requirements for the provision of policies and procedures when it is necessary to provide paper copies of information to the appropriate parties upon request. There are costs associated with the change to Section 424-a of the Social Services Law and OPWDD regulations which will require agencies to obtain additional background checks for employees and other individuals associated with the agencies. These checks cost $25 per check. However, OPWDD is unable to estimate how many additional checks will be needed and therefore cannot estimate the cost impact. There may be costs associated with new background check requirements in MHL 16.34, including costs associated with the requirement that agencies conduct a "reasonably diligent search" for past records of abuse/neglect. There may also be costs associated with requirements that agencies request a search of the "Staff Exclusion List." There may be costs associated with the requirement to train members of the Incident Review Committee.

Providers may experience savings if the Justice Center or OPWDD assume responsibility for investigations that were previously conducted by provider agency staff.

In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Economic and technological feasibility: The amendments may impose the use of new technological processes on small business providers. Providers have already been reporting incidents and abuse in IRMA in accordance with an existing OPWDD policy directive so the new requirements related to IRMA do not impose the use of new technological processes on small business providers. However, requirements to report reportable incidents to the Justice Center in the manner specified by the Justice Center may impose a requirement to use an electronic reporting system for that purpose, if that is the manner specified by the Justice Center. Currently the Justice Center is directing that reports be made either by telephone or by using a Web form, so the use of the Web form is optional.

6. Minimizing adverse economic impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OPWDD expects that compliance with these new regulations will result in savings in the long term and there may be some short term savings as a result of the conduct of investigations by the Justice Center. Further, OPWDD expects that the amendments will provide some relief to providers by the removal of the previous requirement for a paper based incident report for reporting serious reportable incidents, allegations of abuse, and all deaths. OPWDD expects that these provisions will mitigate any adverse economic impact that results from complying with other new requirements.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. OPWDD modified several requirements to minimize adverse economic impact. As noted above, OPWDD eliminated the requirement that agencies complete paper forms when information about incidents is submitted electronically. In addition, the new regulations allow agencies to provide instructions on how to access information on incident management electronically to individuals, families and others, rather than requiring the provision of paper copies in all instances. Agencies are only required to make paper copies available upon request. OPWDD did not consider the exemption of small businesses from the amendments or the establishment of differing compliance or reporting requirements since OPWDD considers compliance with the emergency amendments to be crucial for the health, safety, and welfare of the individuals served by small business providers. Related to the requirement to conduct background checks in accordance with Section 16.34 of the Mental Hygiene Law, OPWDD has implemented several significant measures to streamline the process, such as the use of web-based forms.

7. Small business participation: The PPSNA was originally a Governor's Program Bill which received extensive media attention. Providers have had opportunities to become familiar with its provisions since it was made available on various government websites last June. Related to the components of the regulations that are unrelated to implementation of the PPSNA, draft regulations containing these components were sent out for review and comment to representatives of providers, including the New York State Association of Community and Residential Agencies (NYSACRA), on March 12, 2012. Some of the members of NYSACRA have fewer than 100 employees. OPWDD carefully considered the comments received and made some suggested changes to the amendments (e.g. eliminated the paper based incident report and allowed for the provision of policies and procedures in electronic format). OPWDD also presented the reforms at a widely-attended provider training in the fall of 2012. OPWDD also hosted many informational sessions regarding the requirements in the prior emergency regulations during the spring and summer of 2013, including in-person sessions, webinars and state-wide videoconferences. OPWDD informed providers about the new requirements and invited public comment on the requirements. OPWDD has also responded to numerous questions and comments on prior emergency regulations. Finally, OPWDD has posted extensive information about the new requirements on its website.

8. (IF APPLICABLE): For rules that either establish or modify a violation or penalties associated with a violation: The emergency amendments do not establish or modify a violation or penalties associated with a violation.

Rural Area Flexibility Analysis

1. Description of the types and estimation of the number of rural areas in which the rule will apply: OPWDD services are provided in every county in New York State. 43 counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. Additionally, 10 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

The amendments have been reviewed by OPWDD in light of their impact on rural areas. The regulations make extensive changes to OPWDD's requirements for incident management that will necessitate significant changes in compliance activities and result in additional costs and savings to providers, including small business providers. However, OPWDD is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, OPWDD considers that the improvements in protections for people served in the OPWDD system will help safeguard individuals from harm and abuse and that the benefits more than outweigh any potential negative impacts on providers.

The geographic location of any given program (urban or rural) will not be a contributing factor to any additional costs to providers.

2. Compliance requirements: The regulations add a number of new requirements with which providers must comply. Amendments associated with the implementation of the PPSNA include a requirement that provid-

ers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries. For psychological abuse, a clinical assessment could be needed in order to demonstrate the impact of suspected psychological abuse. While OPWDD anticipates that providers are already obtaining examinations of physical injuries, clinical assessments of suspected psychological abuse are not generally obtained.

The regulations impose requirements that all new custodians with regular and direct contact in such programs must read and sign the code of conduct at the time of employment or affiliation, and that all custodians with regular and direct contact in such programs must read and sign the code of conduct on an annual basis.

The PPSNA expanded requirements to obtain background checks of the Statewide Central Register of Child Abuse and Maltreatment to require checks of employees (and others) who have the potential for regular and substantial contact with individuals receiving services. Prior to June 30, 2013 the statute limited this requirement to employees who have the potential for regular and substantial contact with children. The emergency regulations reflect the statutory changes to section 424-a of the Social Services Law in the PPSNA. While many providers that also serve children have been obtaining these checks, the new requirements clearly expand the pool of employees who must be checked. Further, OPWDD regulations require that agencies conduct SCR checks of applicants when the check is permitted by the Social Services Law.

The regulations also include requirements addressing background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law. Agencies are also required to request a check of the Staff Exclusion List maintained by the Justice Center.

Prior OPWDD regulations already required reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate many changes and reforms, the basic requirements are conceptually unchanged. OPWDD therefore expects that additional compliance activities (except as noted above) will be minimal. Aside from the provisions related to implementation of the PPSNA, and section 16.34 of the Mental Hygiene Law, the amendments have either already been implemented by OPWDD policy directives, clarify existing requirements or interpretive guidance, or can be implemented without cost to the agency.

Agencies must comply with the new requirement to complete investigations within a 30 day timeframe. Agencies must also comply with new requirements to enhance the independence of investigators and agency incident review committees. However, OPWDD expects that additional compliance activities will be minimal since agencies are already required to comply with existing requirements that prohibit situations which compromise the independence of investigators and committee members.

The new requirements pertaining to the dissemination of agency policies and procedures, OPWDD incident management regulations, and written information specified by OPWDD add new compliance activities; however, the regulations minimize compliance activities by requiring that providers offer to provide such information in electronic format (unless paper copies are specifically requested) as opposed to requiring the provision of paper copies only. The amendments require that information be provided in conjunction with training which is mandated by current regulations in order to consolidate efforts, increase efficiency, and reduce compliance activities.

Enhancements in required notification to service coordinators will also add compliance activities for providers because providers will have to make additional notifications and/or provide subsequent information about an incident or occurrence to these parties.

The amendments that add a new requirement that agencies enter minutes of their incident review committee meetings into IRMA within three weeks of the meeting for serious incidents, allegations of abuse, and all deaths, may result in a minimal amount of additional clerical work. OPWDD expects that most agencies have adopted an electronic recordkeeping system to maintain their minutes and that these agencies would only have to copy and paste their minutes into IRMA. Agencies that do not have an electronic recordkeeping system and that maintain handwritten or typed minutes will have to assign staff to type the minutes into IRMA. OPWDD expects that these agencies will add this task to the duties of clerical staff who are trained and experienced in data entry and who can perform this function in an efficient manner.

The amendments extend access to information in accordance with Jonathan's Law and add a requirement that agencies retain records pertaining to incidents and allegations of abuse for a minimum time period of seven years. In cases when there is a pending audit or litigation, the pertinent records must be retained throughout the pendency of the audit or litigation. The amendments specify what information must be retained. OPWDD considers that the new requirements will not add any additional compliance activities for agencies. OPWDD expects that generally most agencies have been implementing agency specific policies on record retention and that the new required record retention schedule merely standardizes existing policies/procedures. The amendments will have no effect on local governments.

3. Professional services: There may be additional professional services required for small business providers as a result of these amendments. The definition of psychological abuse references specific impacts on an individual receiving services that must be supported by a clinical assessment. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There may be modest costs for small business providers associated with the amendments. There may be costs associated with obtaining a clinical assessment in the case of suspected psychological abuse. Additionally, there may be nominal costs for agencies to comply with the expanded notification requirements and requirements for the provision of policies and procedures when it is necessary to provide paper copies of information to the appropriate parties upon request. There are costs associated with the change to Section 424-a of the Social Services Law and OPWDD regulations which will require agencies to obtain additional background checks for employees and other individuals associated with the agencies. These checks cost $25 per check. However, OPWDD is unable to estimate how many additional checks will be needed and therefore cannot estimate the cost impact. There may be costs associated with new background check requirements in MHL 16.34, including costs associated with the requirement that agencies conduct a "reasonably diligent search" for past records of abuse/neglect. There may also be costs associated with requirements that agencies request a search of the "Staff Exclusion List." There may be costs associated with the requirement to train members of the Incident Review Committee.

Providers may experience savings if the Justice Center or OPWDD assumes responsibility for investigations that were previously conducted by provider agency staff.

In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Minimizing adverse impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OPWDD expects that compliance with these new regulations will result in savings in the long term and there may be some short term savings as a result of the conduct of investigations by the Justice Center. Further, OPWDD expects that the amendments will provide some relief to providers by the removal of the previous requirement for a paper based incident report for reporting serious reportable incidents, allegations of abuse, and all deaths. OPWDD expects that these provisions will mitigate any adverse economic impact that results from complying with other new requirements.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act. OPWDD modified several requirements to minimize adverse economic impact. As noted above, OPWDD eliminated the requirement that agencies complete paper forms when information about incidents is submitted electronically. In addition, the new regulations allow agencies to provide instructions on how to access information on incident management electronically to individuals, families and others, rather than requiring the provision of paper copies in all instances. Agencies are only required to make paper copies available upon request. Related to the requirement to conduct background checks in accordance with Section 16.34 of the Mental Hygiene Law, OPWDD has implemented several significant measures to streamline the process, such as the use of web-based forms.

OPWDD did not consider the exemption of small businesses from the emergency amendments or the establishment of differing compliance or reporting requirements since OPWDD considers compliance with the emergency amendments to be crucial for the health, safety, and welfare of the individuals served by providers in rural areas.

6. Participation of public and private interests in rural areas: The PPSNA was originally a Governor's Program Bill that received extensive media attention. Providers have had opportunities to become familiar with its provisions since it was made available on various government websites last June. Related to the components of the regulations that are unrelated to implementation of the PPSNA, draft regulations containing these components were sent out for review and comment to representatives of providers, including NYSARC, the NYS Association of Community and Residential Agencies, NYS Catholic Conference, and CP Association of NYS, which represent providers in rural areas, on March 12, 2012. OPWDD carefully considered the comments received and made some suggested changes to the amendments (e.g. eliminated the paper based

incident report and allowed for the provision of policies and procedures in electronic format). OPWDD also presented the reforms at a widely-attended provider training in the fall of 2012. OPWDD also hosted many informational sessions regarding the requirements in the prior emergency regulations during the spring and summer of 2013, including in-person sessions, webinars, and state-wide videoconferences. OPWDD informed providers about the new requirements and invited public comment on the requirements. OPWDD has also responded to numerous questions and comments on the prior emergency regulations. Finally, OPWDD has posted extensive information about the new requirements on its website.

Job Impact Statement

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

The amendments incorporate a number of reforms to improve the quality and consistency of incident management activities throughout the OPWDD system. Most of these reforms have already been implemented by OPWDD policy directive, such as the mandates to use IRMA and a standardized investigation format. Consequently these amendments will not affect jobs or employment opportunities.

The amendments that impose new requirements on providers, such as additional reporting requirements, the timeframe for completion of investigations, notification to the service coordinator and other parties of subsequent information about incidents and abuse, retention of records, and the provision of policies and procedures to specified parties, will not result in an adverse impact on jobs. OPWDD anticipates that there will be no effect on jobs as agencies will use current staff to perform the required compliance activities.

The PPSNA and these implementing regulations will require that providers request additional checks from the Statewide Central Register of Child Abuse and Maltreatment. The regulations also include requirements addressing background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law. OPWDD anticipates that the requests and checks will be made using current staff.

The PPSNA and these implementing regulations will also mean that some functions that are currently performed by OPWDD staff will instead be performed by the staff of the Justice Center. OPWDD expects that the volume of incidents and occurrences investigated will be roughly similar. To the extent that the Justice Center performs investigations, oversees the management of reportable incidents, and manages requests for criminal history record checks, the result is expected to be neutral in that positions lost by OPWDD will be gained by the Justice Center. OPWDD may add minimal new staff to perform functions required by the regulations, such as the requirements for MHL 16.34 checks.

It is therefore apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Whether to Permit the Use of the Leviton Series 8000 Electric Submeter

I.D. No. PSC-14-14-00016-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by Leviton Manufacturing Co., Inc. for approval to use the Leviton Series 8000 electric submeter.

Statutory authority: Public Service Law, sections 67(1)

Subject: Whether to permit the use of the Leviton Series 8000 electric submeter.

Purpose: Pursuant to 16 NYCRR Parts 93 and 96, is necessary to permit the use of the Leviton Series 8000 electric submeter.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Leviton Manufacturing Co., Inc. to use the Leviton Series 8000 electric submeter in residential submetering applications.

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, Three Empire State Plaza, Albany, New York 10007, (518) 486-2659, email: Deborah.Swatling@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, Three Empire State Plaza, Albany, NY 10007, (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.

(14-E-0081SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Identify and Rebill All Similarly Situated SC No. 2 Accounts

I.D. No. PSC-14-14-00017-P

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

Proposed Action: The Commission is considering whether Brooklyn Union Gas and KeySpan Gas East d/b/a National Grid should be required to identify all SC No. 2 customers in accordance with the determination in Case 10-G-0527 and rebill such customer accounts accordingly.

Statutory authority: Public Service Law, sections 65, 66 and 113

Subject: To identify and rebill all similarly situated SC No. 2 accounts.

Purpose: To identify and rebill all similarly situated SC No. 2 accounts.

Substance of proposed rule: The Commission is considering whether Brooklyn Union Gas Company d/b/a National Grid and KeySpan Gas East d/b/a National Grid should be required to identify the accounts of all current SC No. 2 customers to determine which customers were billed at the heating rate of that service classification for one or more past 12-month periods back to billing cycles after March 1, 2008, but would have qualified for the non-heating rate for one or more of those 12-month periods had the SC No. 2 rate assignment test (to distinguish customers qualifying for the heating from those qualifying for the non-heating rate) been done properly; and rebill such identified customers at the non-heating rate for each such period, with interest consistent with our regulations (16 NYCRR Part 277). The Commission may also consider related matters.

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

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(14-G-0091SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Water Rates and Charges

I.D. No. PSC-14-14-00018-P

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

Proposed Action: The Public Service Commission is considering a petition by the Village of Tuckahoe, requesting approval to have costs for

infrastructure maintenance and access to be included in the rates charged to all customer classes within the Village of Tuckahoe.

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

Subject: Water rates and charges.

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

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

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.

(14-W-0100SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Transfer of Property by O&R with an Original Cost of Less Than $100,000

I.D. No. PSC-14-14-00019-P

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

Proposed Action: The Commission is considering whether to approve a proposed transfer of property from Orange and Rockland Utilities, Inc (O&R) to Warwick Valley 13 Forester, LLC.

Statutory authority: Public Service Law, section 70(1)

Subject: Transfer of property by O&R with an original cost of less than $100,000.

Purpose: To determine whether to approve O&R's proposed transfer of property.

Substance of proposed rule: In filing made with the Public Service Commission on January 29, 2014, Orange and Rockland Utilities, Inc (O&R) gave notice, pursuant to Public Service Law (PSL) § 70, of a proposed transfer of property it owns to Warwick Valley 13 Forester, LLC. The property to be transferred is a 1.09 acre parcel located in Warwick, New York, including a retired substation building located on the site. O&R states that the sales price is $500,000, and that the original book cost of the property is approximately $17,315. O&R proposes to allocate the sales proceeds between customer and shareholders at roughly 10%/90%. The Commission is considering, pursuant to PSL § 70(1)(a), whether the public interest requires its review and written consent for the proposed transfer, and, upon a review, it may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

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

(14-E-0099SP1)

Susquehanna River Basin Commission

INFORMATION NOTICE

Notice of Final Rulemaking
18 CFR Part 806

Review and Approval of Projects

SUMMARY: This document contains final rules that would amend the project review regulations of the Susquehanna River Basin Commission (Commission) to modify provisions relating to the issuance of emergency certificates by the Executive Director.

DATES: Effective June 1, 2014.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110-1788.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: 717-238-0423, ext. 1306; fax: 717-238-2436; email: rcairo@srbc.net. Also, for further information on the final rulemaking, visit the Commission's Web site at www.srbc.net.

SUPPLEMENTARY INFORMATION:

Comments and Responses to Proposed Rulemaking

Notice of proposed rulemaking was published in the Federal Register on December 26, 2012 (77 FR 75915); the New York Register on January 2, 2013; the Pennsylvania Bulletin on February 2, 2013; and the Maryland Register on January 11, 2013. The Commission convened a public hearing on February 14, 2013, in Harrisburg, Pennsylvania and a written comment period was held open through February 25, 2013. In addition to proposing modifications to 18 CFR 806.34, the Commission regulation authorizing the issuance of emergency certificates, the proposed rulemaking also advanced a new provision to include in the Commission's project review regulations that would impose limitations on surface and groundwater withdrawals in headwater areas. The Commission received numerous comments on the headwaters proposal. The Commission continues to evaluate those comments and will make an appropriate determination at a future date. Meanwhile, however, for the reasons articulated in the proposed rulemaking notice, the Commission is now proceeding with finalization of the provision in the proposed rulemaking related to the issuance of emergency certificates under 18 CFR 806.34.

The two main comments received on the proposed modifications to the emergency regulation were as follows:

1. The criteria for issuance of an emergency certificate should not be limited to human health and safety, or that of livestock, but should include all animal, aquaculture, agronomic, and horticultural operations for the production of fiber or forage crops.

2. Preservation of employment should be an additional consideration in the issuance of an emergency certificate.

The Commission has made revisions to the final rules in response to these comments, by including the protection of food, fiber or forage crops and the avoidance of significant disruptions in employment as eligible criteria.

List of Subjects in 18 CFR Part 806

Administrative practice and procedure, Water resources.

Accordingly, for the reasons set forth in the preamble, the Susquehanna River Basin Commission amends 18 CFR part 806 as follows:

PART 806--REVIEW AND APPROVAL OF PROJECTS

1. The authority citation for Part 806 continues to read as follows:

Authority: Secs. 3.4, 3.5(5), 3.8, 3.10 and 15.2, Pub. L. 91-575, 84 Stat. 1509 et seq.

Subpart D – Terms and Conditions of Approval

2. In § 806.34, revise paragraphs (a), (b) introductory text, (b)(2) introductory text, and (b)(2)(iii) to read as follows:

§ 806.34 Emergencies

(a) Emergency certificates. The other requirements of these regulations notwithstanding, in the event of an emergency requiring immediate action to protect the public health, safety and welfare or to avoid substantial and irreparable injury to any person, property, or water resources when circumstances do not permit a review and determination in the regular course of the regulations in this part, the Executive Director, with the concurrence of the chairperson of the Commission and the commissioner from the affected member state, may issue an emergency certificate authorizing a project sponsor to take such action as the Executive Director may deem necessary and proper in the circumstances, pending review and determination by the Commission as otherwise required by this part. In the exercise of such authority, consideration should be given to actions deemed necessary to sustain human life, health and safety, or that of livestock or food, fiber or forage crops, the maintenance of electric system reliability to serve such needs, to avoid significant disruption of employment, or any other such priorities that the Commission may establish from time to time utilizing its authority under Section 11.4 of the Compact related to drought emergencies.

(b) Notification and application. A project sponsor shall notify the Commission, prior to commencement of the project, that an emergency certificate is needed. In the case of a project operating under an existing Commission approval seeking emergency approval to modify, waive or partially waive one or more conditions of such approval, notice shall be provided to the Commission prior to initiating the operational changes associated with the request. If immediate action, as defined by this section, is required by a project sponsor and prior notice to the Commission is not possible, then the project sponsor must contact the Commission within one (1) business day of the action. Notification may be by certified mail, facsimile, telegram, mailgram, electronic mail or other form of written communication. This notification must be followed within one (1) business day by submission of the following:

* * * * *

(2) At a minimum, the application shall contain:

* * * * *

(iii) Location map and schematic of proposed project, or in the case of a project operating under an existing Commission approval, the project approval reference and a description of the operational changes requested.

* * * * *

Dated: March 21, 2014.
Stephanie L. Richardson
Secretary to the Commission.

Office of Temporary and Disability Assistance

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

State Supplement Program (SSP)

I.D. No. TDA-14-14-00014-P

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

Proposed Action: Repeal of Part 398; and addition of new Part 398 and section 358-5.12 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 22(8), 207, 211 and 212

Subject: State Supplement Program (SSP).

Purpose: To set forth the process for OTDA's administration of the SSP and allow for telephone hearings to challenge SSP determinations.

Substance of proposed rule (Full text is posted at the following State website:http://otda.ny.gov/legal/): The proposed regulations will add a new Part 398 to Title 18 NYCRR in relation to Supplemental Security Income Additional State Payments.

Subpart 398-1 provides the scope and the purpose of the rule, which is to provide the framework for the State Supplement Program (SSP).

Subpart 398-2 contains definitions for the terms used in this Part.

Subpart 398-3 sets forth the eligibility requirements and the payment levels for the State Supplement Personal Needs Allowance (SSPNA).

Subpart 398-4 sets forth the eligibility requirements and the payment provisions for SSP benefits. The subpart also contains provisions for designated representatives to act on behalf of recipients of SSP benefits.

Subpart 398-5 governs continuing eligibility for SSP or SSPNA and the recipients' responsibility to furnish information.

Subpart 398-6 sets forth the reporting responsibilities of applicants and recipients of SSP or SSPNA.

Subpart 398-7 provides the ramifications for failing or refusing to comply, without good cause, with the requirements for SSP or SSPNA.

Subpart 398-8 sets forth the Office of Temporary and Disability Assistance's (OTDA's) responsibility to issue notices of action for SSP or SSPNA.

Subpart 398-9 addresses the replacement of lost or stolen benefits.

Subpart 398-10 provides that applicants and recipients have the right to request an administrative fair hearing to appeal an OTDA action pertaining to SSP or SSPNA.

Subparts 398-11 and 398-12 address the recovery of overpayments and equivalent benefits of SSP or SSPNA.

Subparts 398-13 and 398-14 set forth OTDA's responsibilities concerning the confidentiality, the retention and the maintenance of SSP and SSPNA records.

The proposed regulations also will add a new section 358-5.12 to Title 18 NYCRR to allow for telephone hearings to challenge SSP or SSPNA determinations.

A copy of the full text of the regulatory proposal is available on OTDA's website at www.otda.ny.gov/legal.

Text of proposed rule and any required statements and analyses may be obtained from: Jeanine S. Behuniak, NYS Office of Temporary and Disability Assistance, 40 North Pearl Street, Floor 16C, Albany, New York 12243-0001, (518) 474-9779, email: Jeanine.Behuniak@otda.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:

Social Services Law (SSL) § 20(3)(d) authorizes the Office of Temporary and Disability Assistance (OTDA) to promulgate regulations to carry out its powers and duties.

SSL § 22(8) requires OTDA to promulgate regulations as may be necessary to administer its fair hearings process.

SSL § 207 establishes a Statewide program of additional State payments for eligible aged, blind and disabled persons.

Additional State payments for eligible aged, blind and disabled persons are currently made pursuant to an agreement for the federal administration of the State Supplement Program under SSL § 211. Subdivision 2 of that section provides that such agreement "shall contain conditions of eligibility for such additional state payments, including the requirement of current residence and amounts of earned or unearned income to be disregarded in determining eligibility, in accordance with the provisions of this title, regulations of the department and federal law and regulations."

SSL § 211(4) authorizes termination of the federal agreement with the approval of the New York State Director of the Budget. It further provides that any "modification or termination of the agreement shall be considered the adoption of a rule, as defined in [Executive Law § 101-a]."

SSL § 212 provides that OTDA shall be responsible for providing such additional State payments to eligible residents of New York if there is no agreement in effect with the Social Security Administration (SSA) for federal administration and shall take all "actions necessary to effectuate the provisions of this title."

2. Legislative Objectives:

It was the intent of the Legislature in enacting SSL §§ 20(3)(d), 207, 211 and 212 that OTDA establish rules, regulations and policies to effectuate the purposes of the State Supplement Program, which will administer SSI State supplement payments. Also SSL §§ 20(3)(d) and 22(8) enable OTDA to establish rules in order to ensure that the due process rights of applicants and recipients are adequately protected during OTDA's fair hearings process.

3. Needs and Benefits:

In 1972, Congress enacted the federal Supplemental Security Income (SSI) program to provide payments to aged, blind and disabled individuals and couples based on uniform federal eligibility standards and a national base payment level. The program replaced the former programs of Old Age Assistance, Aid to the Blind, and Aid to the Disabled, which were State and federal matching programs with payments based on standards of need that varied widely among the states.

The federal SSI standards did not account for variations in living costs from one state to another, and in some cases provided less assistance than the previous programs. Consequently, the SSI program required States to maintain the levels of payment for individuals and couples who were recipients of Old Age Assistance, Assistance to the Blind, Aid to the Dis-

abled, or the combined program of Aid to the Aged, Blind and Disabled Persons as of December 31, 1973. In addition to this mandatory supplement, the SSI program allowed a mechanism for states to provide additional optional payments to supplement the basic federal SSI payment.

New York State chose to establish such an optional program of supplemental State payments. There are two kinds of additional State payments: the State Supplement Payment and the State Supplement Personal Needs Allowance (SSPNA).

Federal law allows the State to contract with the SSA to administer its additional State payments. If there is no agreement in effect for federal administration of the additional State payments, then the Commissioner of OTDA is responsible for the administration of such payments.

The proposed regulations will add a new Part to Title 18 NYCRR setting forth the process for OTDA's administration of the State Supplement Program. The proposed regulations provide the initial and continuing eligibility requirements for additional State payments. They set forth the reporting responsibilities of applicants and recipients and the ramifications if they fail to comply with the requirements. The proposed regulations address the issuance of notices of action and provide for administrative fair hearings. They also address when OTDA will replace additional State payments for recipients and when OTDA will recover overpayments and equivalent benefits from recipients. Lastly, the proposed regulations address OTDA's administrative responsibilities including confidentiality and document retention requirements. This new Part will provide the framework for OTDA's administration of the State Supplement Program.

The proposed regulations also will add a new section 358-5.12 to Title 18 NYCRR allowing applicants and recipients of additional State payments to request telephone hearings. The telephone hearings not only will accord these applicants and recipients all of the due process rights of in-person fair hearings, but also the telephone hearings will allow them to participate in the hearings process from their homes or another location that is convenient for them.

4. Costs:

Pursuant to the SSI program, states were permitted to enter into agreements with the Social Security Administration (SSA) under which the latter would act on behalf of the states to determine eligibility for the additional State payments and add them to the federal payment. New York contracts with the SSA to administer its additional State payments, and the SSA currently determines eligibility for New York's mandatory and optional payments, charging the State an administrative fee to cover processing and issuance costs.

In 1993, the SSA began assessing a processing fee of $1.67 per check per month. By October 2003, the processing fee had increased to $8.77 per check per month and is subject to continued increases based on the Consumer Price Index. Based on projected costs, OTDA determined that it is no longer cost-effective to pay the SSA to administer its additional State payments. Assuming responsibility for the administration and issuance of the additional State payments will result in both immediate and long-term savings to the State.

It is projected that the fee will increase to $11.96 by State Fiscal Year 2015-16. State enabling legislation was enacted in SFY 2012-13 to effectuate termination of the federal agreement and provide for State administration of SSP payments. It is expected that there will be $90 million in full annual savings from State administration of these payments.

In addition, New York will not incur costs as a result of the proposed telephone hearings. OTDA already has the necessary hardware to conduct the telephone hearings, and the hearings will be held by hearings officers who are currently employed by OTDA.

5. Local Government Mandates:

The proposed regulations will not impose mandates on social services districts. The SSP will be administered entirely by State staff.

6. Paperwork:

The social services districts will not need to complete any reporting requirements, including forms or other paperwork, as a result of the rule.

7. Duplication:

The proposed regulations do not duplicate, overlap or conflict with any existing federal or State statutes or regulations.

8. Alternatives:

There are no significant alternatives to consider because the proposed regulations are consistent with federal and State statutes and regulations.

9. Federal Standards:

The proposed regulations do not exceed federal minimum standards for the same or similar subject areas.

10. Compliance Schedule:

The proposed regulations codify requirements and definitions currently used by the SSA in its administration of SSP payments. It is anticipated that OTDA will be in compliance with the proposed regulations on their effective date of October 1, 2014.

Regulatory Flexibility Analysis

1. Effect of Rule

None of the 58 social services districts in New York will be significantly affected by the proposed regulations. There may be some indirect but minor effect on social services districts caused by recipients of benefits seeking information and requiring referral to the Office of Temporary and Disability Assistance (OTDA).

2. Compliance Requirements

The proposed regulations will provide for a State system to administer the State Supplement Program (SSP) benefit payments. Currently, SSP benefit payments are administered by the federal government pursuant to contract with the State. Under the new system, the SSP benefits will be administered by the State. Social services districts are not currently, nor will they in the future be involved in the system, and the amendments therefore impose no compliance burden.

3. Professional Services

No new professional services will be imposed on social services districts or small businesses.

4. Compliance Costs

The proposed regulations will not require the social services districts or small businesses to incur any initial capital costs or any annual costs to comply with this rule.

5. Economic and Technological Feasibility

OTDA will assume all administrative costs and responsibility for the SSP. Technological feasibility is not a concern for social services districts or small businesses.

6. Minimizing Adverse Impact

The proposed regulations will not have an adverse economic impact on social services districts or small businesses.

7. Small Business and Local Government Participation

Staff of OTDA have met with recipient advocacy groups to discuss the SSP and will be providing information to social services districts.

Rural Area Flexibility Analysis

1. Type and estimated numbers of rural areas:

The proposed regulations will affect recipients of the State Supplement Program (SSP) in the 44 rural social services districts in the State.

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

Recipients of SSP benefits in the 44 rural social services districts in the State will receive their benefit payments from the State instead of receiving them from the federal Social Security Administration (in conjunction with their federal SSI benefit payments). This will result in their receipt of two payments instead of the current one each month.

Administrative fair hearings, recordkeeping and other compliance requirements will be borne by the State through the Office of Temporary and Disability Assistance (OTDA). No new professional services will be required in rural areas to comply with the rule.

3. Costs:

The proposed regulations will not require the social services districts in rural areas to incur any initial capital costs or any annual costs to comply with the rule.

4. Minimizing adverse impact:

The proposed regulations will not have an adverse economic impact on social services districts in rural areas.

5. Rural area participation:

Staff of OTDA have met with recipient advocacy groups who represent persons living in rural areas of the State to discuss the SSP transition process. OTDA will be providing information to social services districts in both urban and rural areas.

Job Impact Statement

A job impact statement has not been prepared for the proposed regulations because the rule will not have a substantial adverse impact on jobs and employment opportunities in either the public or private sector. The proposed regulations will have a positive impact on jobs and employment opportunities in New York, since tasks formerly performed by the federal Social Security Administration will be performed by the Office of Temporary and Disability Assistance.