RULE MAKING ACTIVITIES

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

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

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

Office of Alcoholism and Substance Abuse Services

EMERGENCY RULE MAKING

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

I.D. No. ASA-01-14-00008-E
Filing No. 1236
Filing Date: 2013-12-20
Effective Date: 2013-12-20

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 operated or certified by OASAS; investigation of allegations of abuse and neglect and significant incidents; and new requirements for pre-employment background checks in OASAS certified and operated service providers, persons credentialed by the Office, and applicants for new operating certificates.

The amendments to Part 836, effective June 30, 2013 and subsequently September 25, 2013 and December 20, 2013, are necessary to implement the incident reporting and management provisions required by the statute and to ensure compliance with the criminal history background check provisions to further enhance patient safety.

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

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

Subject: 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 investiga-

tion 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 March 19, 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.

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

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

2. Legislative Objectives:

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

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

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

3. Needs and Benefits:

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

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

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

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

4. Costs:

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

5. Paperwork:

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

6. Local Government Mandates:

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

7. Duplication:

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 and December 20, 2013 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

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

2. Compliance requirements:

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

The Rule sets forth criteria for incident reporting to the Justice Center,

investigations, corrective action and penalties for programs and individuals who are not compliant with these, or other applicable, regulations. Incidents will be reported electronically via a toll-free hotline.

3. Professional services:

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

4. Compliance costs:

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Small business and local government participation:

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

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

Rural Area Flexibility Analysis

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

OASAS services are provided in every county in New York State. 44 counties have a population less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, 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 of 2012) for the purpose of ensuring persons who receive services from OASAS certified providers are assured of receiving treatment from custodians who have been appropriately trained and screened for any prior abusive behavior. The proposed rule incorporates definitions and procedures for reporting incidents to the Justice Center and highlights the role of investigations and a provider Incident Review Committee to be responsible for quality assurance, implementing corrective action plans related to repetitive incidents or patterns of lack of oversight. It also strengthens the link to program certification through the requirement for staff background checks and record retention and the review by OASAS quality assurance staff.

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

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

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

Assessment of Public Comment

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

EMERGENCY RULE MAKING

Credentialing of Addictions Professionals

I.D. No. ASA-01-14-00009-E

Filing No. 1237

Filing Date: 2013-12-20

Effective Date: 2013-12-20

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; and Protection of People with Special Needs Act (L. 2012, ch. 501)

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

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

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

The amendments to Part 853, effective June 30, 2013 and subsequently September 25, 2013 and December 20, 2013, are necessary to implement the new process of criminal history background checks into the credentialing process for addictions professionals credentialed by OASAS. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification so OASAS will be more involved in credentialing decisions.

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

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

Subject: Credentialing of Addictions Professionals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 March 19, 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.

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

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

2. Legislative Objectives:

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

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

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

The proposed Rule requires persons who apply to the Office for a credential issued by the Office comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) regarding a criminal history information review prior to certifica-

tion, 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. Duplication:

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 and December 20, 2013 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

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

2. Compliance requirements:

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

3. Professional services:

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

4. Compliance costs:

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Small business and local government participation:

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

Rural Area Flexibility Analysis

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

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

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

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

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

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

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-01-14-00010-E

Filing No. 1238

Filing Date: 2013-12-20

Effective Date: 2013-12-20

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

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

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

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

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

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

The amendments to Part 810, effective June 30, 2013 and subsequently September 25, 2013 and December 20, 2013, are necessary to implement the criminal history background check provisions as this is a new process for OASAS. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification.

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

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

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

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

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

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

Amendments include:

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

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

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

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

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

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

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

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

§ 810.12 strengthens Office control of management contracts entered

into by providers of services; requires administrators of contractors to complete a criminal history information review; retains in the governing authority to authority to remove any custodian regardless of change in employment status.

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

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

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

§ 810.18 removes provisions for waiver; adds severability language.

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 19, 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. Duplication:

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 and December 20, 2013 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

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

2. Compliance requirements:

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

3. Professional services:

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

4. Compliance costs:

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Small business and local government participation:

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

Rural Area Flexibility Analysis

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

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

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

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

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

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

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

EMERGENCY RULE MAKING

Patient Rights

I.D. No. ASA-01-14-00011-E
Filing No. 1239
Filing Date: 2013-12-20
Effective Date: 2013-12-20

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 and December 29, 2013, is necessary to implement the criminal history background check provisions as this is a new process for OASAS and to make patients aware of additional rights. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification.

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

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

Subject: Patient Rights.

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

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

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

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

§ 815.2 sets forth the statutory authority for the promulgation of the

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire March 19, 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:

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. Duplication:

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 and December 20, 2013 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

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

2. Compliance requirements:

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

3. Professional services:

Providers will be required to retain documentation of fingerprint requests for employees, contractors of volunteers they ultimately employ; this will not be a significant additional recordkeeping requirement for

personnel records they are already required to retain. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location. No new professional services are required; no professional services will be lost.

4. Compliance costs:

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

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

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Small business and local government participation:

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

Rural Area Flexibility Analysis

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

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

The proposed regulation implements provisions of The Protection of People with Special Needs Act (Chapter 501 of the Laws 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. This regulation incorporates any relevant provisions into the OASAS Patient Rights regulation.

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

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

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

EMERGENCY RULE MAKING

Criminal History Information Reviews

I.D. No. ASA-01-14-00012-E

Filing No. 1240

Filing Date: 2013-12-20

Effective Date: 2013-12-20

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

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

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

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

The addition of Part 805, effective June 30, 2013, and subsequently effective September 25, 2013 and December 20, 2013 is necessary to implement the criminal history background check provisions as this is a new process for OASAS. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification.

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

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

Subject: Criminal History Information Reviews.

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

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

Amendments include:

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

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

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

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

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

§ 805.6 sets forth in regulation the process involving the Office, an applicant for certification or credentialing, the Justice Center and the Division in relation to acquiring fingerprints necessary for a criminal history information review by the Office; requires providers to establish policies and procedures consistent with this regulation 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 March 19, 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 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 and December 20, 2013 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the rule:

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

providers. The proposed Rule has been reviewed by OASAS in consideration of its impact on service providers of all sizes and on local governments, whether or not they are certified operators; additionally this regulation has been reviewed by the OASAS Advisory Council which consists of providers and stakeholders of all sizes and municipalities.

2. Compliance requirements:

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

3. Professional services:

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

4. Compliance costs:

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

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

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

5. Economic and technological feasibility:

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

6. Minimizing adverse impact:

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

7. Small business and local government participation:

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

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.

Office of Children and Family Services

EMERGENCY RULE MAKING

Protection of Vulnerable Persons

I.D. No. CFS-01-14-00004-E
Filing No. 1234
Filing Date: 2013-12-20
Effective Date: 2013-12-25

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

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

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

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

Specific reasons underlying the finding of necessity: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"). The Justice Center 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, recordkeeping, record production, administrative, and personnel requirements, among others.

The first category of regulations added or amended address jurisdictional of the newly created Vulnerable Persons Central Register (VPCR). Regulations will now reflect that reports of suspected abuse or neglect of persons receiving services in OCFS licensed, certified or operated 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 March 19, 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, N.Y. 12144, (518) 473-7793

Regulatory Impact Statement

1. Statutory authority:

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

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

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

2. Legislative objectives:

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

3. Needs and benefits:

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

4. Costs:

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

5. Local government mandates:

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

6. Paperwork:

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

7. Duplication

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

8. Alternatives:
These regulations are required to comply with Chapter 501 of the Laws of 2012.
9. Federal standards:
The regulatory amendments do not conflict with any federal standards.
10. Compliance schedule:
The regulations will be effective on December 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:
Authorized agencies, facilities and mandated reporters currently report suspected child abuse or maltreatment to the New York Statewide Central Register of Child Abuse and Maltreatment. Requirements in Social Services Law Section 490 and 491 now require mandated reporters to report all reportable incidents, which include but are not limited to those things currently falling within the definitions of abuse and neglect, to the Vulnerable Persons Central Register. Authorized agencies and facilities will maintain a current level of recordkeeping as it relates to prevention and remediation plans. Authorized agencies and facilities will have to comply with investigations and information requests as required by the Justice Center for the Protection of People with Special Needs, as defined in Executive Law Article 20.
3. Costs:
The proposed regulatory changes will require authorized agencies and facilities are currently subjected to reporting and recordkeeping requirements, costs would not be added to these current obligations. The statutory enhancements provided for by the Protection of People with Special Needs Act will create uniform standards across systems. There will be added costs with the implementation of standardization of responses and needs.
4. Economic and technological feasibility:
The proposed regulatory changes would not require any additional technology and should not have any adverse economic consequences for regulated parties.
5. Minimizing adverse impact:
The proposed changes to the regulations will require authorized agencies and facilities to conform to new reporting and recordkeeping requirements, however inconsistent and duplicative measures have been addressed by the regulations to minimize the impact. Trainings will be taking place across systems, as well as the dissemination of guidance documentation in advance of the effective date of the regulations.
6. Small business and local government participation:
Potential changes to the regulations governing the protection of people with special needs will be thoroughly addressed through statewide trainings and guidance documentation distributed to local representatives of social services, authorized agencies and facilities.

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:
Social services districts in rural areas and voluntary authorized agencies contracting with such social services districts to provide residential foster care services to children, authorized agencies providing juvenile detention services, runaway and homeless youth shelters and adult family type homes will be affected by the proposed regulations, as well as state operated juvenile justice facilities.
2. Reporting, recordkeeping and compliance requirements and professional services:
Authorized agencies, facilities and mandated reporters employed by the same are currently required 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, mandated reporters will be required to report all reportable incidents, which will include but not be limited to those things currently falling within the definitions of abuse and neglect, to the Vulnerable Persons Central Register. Authorized Agencies and facilities will be required to maintain the same level of practice as it relates to recordkeeping, and prevention and remediation plans. Authorized agencies and facilities will be required to comply with investigations and information requests as required by the Justice Center for the Protection of People with Special Needs, as defined in Article 20 of the Executive Law.
The proposed regulations and amendments conform current practice to meet statutory obligations set forth in Chapter 501 of the Laws of 2012.
3. Costs:
An authorized agency or facility is currently subject to requirements governing reporting, recordkeeping, management of approved procedures and policies, so the proposed regulations should not impose any additional costs associated with those functions. The statutory and regulatory requirements will necessarily require a reconfiguration of the current utilization of administrative costs to conform and comply with the requirements of the new law and conforming regulations. The statutory scheme provides for the enhancement of services for the protections of Vulnerable Persons, which will have added costs.
4. Minimizing adverse impact:
The proposed changes to the regulations require authorized agencies and facilities approved, licensed, certified or operated by the Office of Children and Family Services to protect Vulnerable Persons as defined by Social Services Law Section 488. The regulations are in direct response to the need to strengthen and standardize the protection of vulnerable people in residential care. The Protection of People with Special Needs Act creates uniform standards across systems to be implemented and monitored by the Justice Center.
5. Rural area participation:
Potential changes to the regulations governing implementation of the statutes and regulations governing the protection of people with special needs will be addressed through trainings and guidance documentation distributed to representatives of 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.

Division of Criminal Justice Services

NOTICE OF ADOPTION

Probation Case Record Management

I.D. No. CJS-32-13-00014-A
Filing No. 1231
Filing Date: 2013-12-18
Effective Date: 2014-01-08

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

Action taken: Amendment of Part 348 of Title 9 NYCRR.

Statutory authority: Executive Law, section 243(1)

Subject: Probation Case Record Management.

Purpose: To establish minimum state standards regarding probation case record management.

Text or summary was published in the August 7, 2013 issue of the Register, I.D. No. CJS-32-13-00014-P.

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

Text of rule and any required statements and analyses may be obtained from: Linda J. Valenti, Assistant Counsel, NYS Division of Criminal Justice Services, Alfred E. Smith Office Building, 80 South Swan Street, Albany, N.Y. 12210, (518) 457-8413, email: linda.valenti@dcjs.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 Division of Criminal Justice Services did not receive any formal written comments during the public comment period. However, there was a telephone call received from a staff person from the Assembly Administrative Review Commission which conveyed overall support of the proposed regulatory changes, yet raised an informal inquiry regarding

whether the Division would consider the feasibility of amending certain proposed regulatory language found in Rule Section 348.6(b)(6) to refer to certain Mental Health Law (MHL) sections added by Chapter 501 of the Laws of 2012, commonly referred to as the Protection of People With Special Needs Act. The regulatory language in the aforementioned Rule Section had been added to clarify existing statutory provisions which recognize that law enforcement, including probation departments, in accordance with Social Services Law section 378-a(2)(d) and Executive Law Section 845-b(5) (e) must cooperate in sharing information pertaining to any crime identified in criminal history which certain state agencies under prescribed circumstances have obtained from the Division so that these state agencies can better determine whether any ground exists relating to the crime/criminal conviction or pending criminal charge, for denying an application, renewal or employment.

The aforementioned Executive Law provision refers to authorized agencies, a term specifically defined in paragraph (a) of subdivision one of Executive Law section 845-b to a State agency authorized to check criminal history pursuant to subdivision two of such section. Subdivision two of this statutory section was not amended to explicitly refer to new MHL Sections 19.20 and 19.20-a, nor were similar amendments made to these MHL sections as noted above by which law enforcement are statutorily required to cooperate in sharing certain information.

After careful review and consideration, the Division is reluctant to expand upon the current regulatory language at the present time to refer to these specific MHL sections. There has been no advocacy of this change by any of the affected State agencies or record-sharing issues relative to such MHL sections which have been raised by local probation departments. Further, the Division believes that existing language in our agency regulatory provisions governing discretionary sharing of probation case record information recognizes instances whereby a probation director, or his/her designee, for public safety or case management purposes, may share certain relevant case record information to specific entities or individuals. Among regulatory examples are criminal investigations, victim safety, and professional licensing/certification. Notably, the enumerated list is not limited in nature. Therefore, there is already sufficient regulatory language by which record-sharing may occur for professional licensing/certification or other employment purposes under this new Act. Finally, to impose a new mandatory regulatory requirement for only probation departments, where the statutory law is silent, is substantive in nature and should be properly vetted through rulemaking procedures to solicit and consider any public comment before adoption.

Department of Environmental Conservation

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Transport of Aquatic Invasive Species to and from Department Boat Launches

I.D. No. ENV-01-14-00024-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 59.4; and amendment of section 190.24 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303-01, 11-0305-09, 11-2101, 3-0301(d), 9-0105(1) and 9-1709

Subject: Transport of aquatic invasive species to and from Department boat launches.

Purpose: To prevent boats carrying visible invasive species from launching at DEC facilities or leaving these facilities.

Text of proposed rule: A new section 59.4 is adopted to read as follows:

Section 59.4

Aquatic Invasive Species Control at State Boat Launching and Fishing Access Sites

The regulations in this section apply to all sites from which a watercraft can be launched that are under the jurisdiction of the New York State Department of Environmental Conservation and administered by the Division of Fish, Wildlife and Marine Resources.

(a) Purpose. The purpose of this section is to provide regulations that restrict the transport of plants and animals to and from state boating and fishing access facilities administered by the Division of Fish, Wildlife and Marine Resources to limit the spread of aquatic invasive species.

(b) Prohibitions.

1. No person shall launch, or attempt to launch a watercraft from a state boat launching site, a fishing access site, or any other site from which a watercraft may be launched, or leave from these sites with any plant or animal, or parts thereof, visible to the human eye, in, on, or attached to any part of the watercraft, including livewells and bilges, the motor, rudder, anchor or other appurtenants; any equipment or gear; or the trailer or any other device used to transport or launch a watercraft that may come into contact with the water, unless a written permit is obtained from the department.

2. No person shall launch, or attempt to launch a watercraft from a state boat launching site, a fishing access site, or any other site from which a watercraft may be launched, or leave from these sites without draining the watercraft, including bilge areas, livewells, bait wells and ballast tanks, unless a written permit is obtained from the department.

(c) Exceptions.

The provisions of this section shall not apply to:

(1) Plants not otherwise defined in law or regulation as invasive species affixed to or transported in watercraft for use as camouflage for hunting or wildlife viewing purposes.

(2) Bait, including baitfish, that can legally be used on a waterbody and is possessed consistent with all applicable law and regulations.

(3) Legally taken game as defined in section 11-0103(2) of the Environmental Conservation Law or fish as defined in section 11-0103(1)(a).

(4) The use of plants or animals for habitat restoration, weed control, scientific research, aquaculture, or other activity approved by the department, consistent with all applicable laws and regulations related to their use, possession or harvest.

(d) Definitions

As used in this section, the following terms have the following meanings:

(1) Animal includes every living and non-living creature except a human being, dog or other companion animal as defined in section 350 of the Agriculture and Markets Law.

(2) Watercraft includes every motorized or non-motorized boat or vehicle capable of being used or operated as a means of transportation or recreation in or on water.

(3) Launch means to place a watercraft into a waterbody for any purpose and any activity that takes place within fifty feet of the high water mark of the waterbody for the purpose of placing a watercraft into a waterbody, including moving by trailer or other device or carrying by hand a watercraft toward the waterbody, or entering a queue prior to launching.

Title 6 NYCRR Section 190.24 is amended to read as follows:

Section 190.24

BOAT LAUNCHING SITES *AND OTHER SITES FROM WHICH A WATERCRAFT MAY BE LAUNCHED*

(a) Applicability.

The following regulations in this section apply to all sites from which a watercraft may be launched that are under the jurisdiction of the New York State Department of Environmental Conservation and administered by the Division of Lands and Forests, or the Division of Operations, or both.

(b) Prohibitions.

[(a)] *(1)* No person shall use any boat launching site or any adjacent waters within 100 feet from the shore of a boat launching ramp or ramp area, including offshore and inshore approaches, for any purpose other than the launching, retrieval, hauling or loading of boats, fishing and, where provided, ice fishing access, unless a written permit is obtained from the department. Fishing, or other permitted non-boating use of these facilities, may in no way impair the launching or retrieval of boats, use of boarding docks by boaters, or navigation to and from the launch ramp.

[(b)] *(2)* No person shall moor, dock, beach, leave, abandon or park any boat, auto trailer, float, raft or vehicle of any type for more than 24 hours at any boat launching site, and no vehicle except one used in loading and unloading or launching a boat shall be left or parked within such area at any time.

[(c)] *(3)* No person shall erect or maintain a camp, tent or structure of any kind at a boat launching site.

[(d)] *(4)* No person shall conduct any business, buy, sell, offer or expose for sale, hire, lease or vend any article or merchandise of any kind at a boat launching site.

[(e)] *(5)* No person shall kindle, build, maintain or use a fire, except in an area provided for that purpose.

[(f)] *(6)* No person shall erect or post any sign or notice, except as permitted by the department.

[(g)] *(7)* No person shall dispose of any garbage, sewage, metal or glass containers, refuse, waste, fruit, vegetable, foodstuffs, paper or other litter, except in receptacles when provided for such purposes.

[(h)] *(8)* No person shall injure, deface, disturb or befoul any part of an area or building, sign, equipment or other property found thereon, nor shall any tree, flower, fern, shrub, rock or other plant or mineral be removed, injured or destroyed.

[(i)] *(9)* No person shall use threatening, abusive or insulting language; perform any obscene or indecent act; throw stones or other missiles; interfere with, encumber, obstruct or render dangerous any drive, path, dock, beach or public place; do any act tending to or amounting to a breach of the peace; enter or leave, except at established entrances or exits; engage in, instigate, aid or encourage a contention or fight; or assault any person.

[(j)] *(10)* No person shall at any time fail to comply with the reasonable demand or directions of any authorized person in using access roads, parking areas or launching sites, or fail to comply with directions or signs.

(11) No person shall launch, or attempt to launch a watercraft from a state boat launching site, a fishing access site, or any other site from which a watercraft may be launched, or leave from these sites with any plant or animal, or parts thereof, visible to the human eye, in, on, or attached to any part of the watercraft, including livewells and bilges; the motor, rudder, anchor or other appurtenants; any equipment or gear; or the trailer or any other device used to transport or launch a watercraft that may come into contact with the water, unless a written permit is obtained from the department.

(12) No person shall launch, or attempt to launch a watercraft from a state boat launching site, a fishing access site, or any other site from which a watercraft may be launched, or leave from these sites without draining the watercraft, including bilge areas, livewells, bait wells and ballast tanks, unless a written permit is obtained from the department.

(c) Exceptions.

The provisions of this section shall not apply to:

(1) Plants not otherwise defined in law or regulation as invasive species affixed to or transported in watercraft for use as camouflage for hunting or wildlife viewing purposes.

(2) Bait, including baitfish, that can legally be used on a waterbody and is possessed consistent with all applicable laws and regulations.

(3) Legally taken game as defined in section 11-0103(2) of the Environmental Conservation Law or fish as defined in section 11-0103(1)(a).

(4) The use of plants or animals for habitat restoration, weed control, scientific research, aquaculture, or other activity approved by the department, consistent with all applicable laws and regulations related to their use, possession or harvest.

(d) Definitions

As used in this section, the following terms have the following meanings:

(1) Animal includes every living and non-living creature except a human being, dog or other companion animal as defined in section 350 of the Agriculture and Markets Law.

(2) Watercraft includes every motorized or non-motorized boat or vehicle capable of being used or operated as a means of transportation or recreation in or on water.

(3) Launch means to place a watercraft into a waterbody for any purpose and any activity that takes place within fifty feet of the high water mark of the waterbody for the purpose of placing a watercraft into a waterbody, including moving by trailer or other device or carrying by hand a watercraft toward the waterbody, or entering a queue prior to launching.

Text of proposed rule and any required statements and analyses may be obtained from: Phil Hulbert, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8894, email: pxhulber@gw.dec.state.ny.us

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 proposed amendments to 6 NYCRR Part 59 and section 190.24 seek to control the introduction and spread of invasive species by prohibiting the launching of watercraft from boat launch facilities and fishing access sites under the jurisdiction of the Department of Environmental Conservation (Department or DEC) unless they are drained and have no visible plant or animal life attached to the watercraft, trailer or associated equipment. Environmental Conservation Law (ECL) Section 3-0301(d) provides for the care, custody and control of the Forest Preserve. ECL Section 9-0105(1) gives the Department the power, duty and authority to exercise care, custody and control of State lands. ECL Section 9-1709(1) directs the Department of Environmental Conservation, in cooperation with the Department of Agriculture and Markets, to restrict the sale, purchase, possession, propagation, introduction, importation, transport and disposal of invasive species. ECL Section 11-0303(1) provides that the Fish and Wildlife Law vests in the Department the efficient management of the fish and wildlife resources of the State, including the maintenance and improvement of such resources as natural resources of the State and the development and administration of measures for making them accessible to the people of the State. ECL Section 11-0305(9) empowers the Department to manage and control public fishing areas. ECL Section 11-2101 empowers the Department to make regulations for the use of State-owned boat launching sites and State-owned boat-access sites. DEC is also empowered to guarantee the beneficial use of the environment without risk to health and safety (ECL Section 1-0101(3)(b)), promote and coordinate the management of water, land, fish, wildlife, and air resources (ECL Section (1)(b)), provide for the propagation, protection, and management of fish and other aquatic life and wildlife (ECL Section 3-0301(1)(c)), provide for the protection and management of marine and coastal resources and of wetlands, estuaries and shorelines (ECL Section 3-0301(1)(f)), promote control of weeds and aquatic growth, and develop methods of prevention and eradication assuring the preservation and enhancement of natural beauty and man-made scenic qualities (ECL Section 3-0301(1)(k)).

2. Legislative Objectives

ECL Section 9-1701 states the findings of the New York State Legislature concerning the threat that invasive species represent to the environment and economy of New York State. Specifically, the legislature found that invasive species are having a detrimental effect upon the State's fresh and tidal wetlands, water bodies and waterways, forests, agricultural lands, meadows and grasslands, and other natural communities and systems by out-competing native species, diminishing biological diversity, altering community structure and, in some cases, changing ecosystem processes.

The proposed amendments to 6 NYCRR Part 59 and section 190.24 will provide a means by which DEC can control the transport of aquatic invasive species by watercraft, trailers and associated equipment used at DEC boat launches and fishing access sites. Watercraft, trailers and associated equipment are one of the primary pathways by which aquatic invasive species can be introduced from waterbody to waterbody. Currently, boaters and anglers are advised to follow clean, drain, dry protocols through various outreach mechanisms, but these measures are voluntary.

The proposed amendments to 6 NYCRR Part 59 and Section 190.24 will make the cleaning and draining of watercraft mandatory at DEC facilities by prohibiting the launching of watercraft from State lands or leaving these lands unless the watercraft is drained and no visible plant or animals are in it or attached to it. Due to the difficulty of removing zebra and quagga mussels from boat hulls, a special allowance will be granted by permit to individuals removing seasonally moored or docked watercraft from a zebra or quagga mussel infested waterbody at the completion of the boating season for cleaning at the location of storage. The proposed amendments will help DEC in its efforts to prevent further introduction and spread of aquatic invasive species transported between waterbodies in or on watercraft, trailers and associated equipment while allowing legitimate transport of watercraft from zebra or quagga mussel-infested waters to a storage location.

The proposed amendments to 6 NYCRR Part 59 and section 190.24 will complement the Department's efforts to develop regulations for the sale, importation, purchase, transportation or introduction of invasive species under Title 17, ECL Article 9. While those regulations are primarily aimed at commercial pathways for invasive species introduction and spread, the amendments to 6 NYCRR Part 50 and section 190.24 address non-commercial transport of invasive species by recreational watercraft, trailers and associated equipment. The amendments will help control the introduction and spread into new waterbodies of invasive plants and animals that already exist in New York State.

3. Needs and Benefits

Watercraft, trailers and associated equipment are one of the primary transport mechanisms for aquatic invasive species. Unless this equipment is properly cleaned, drained or dried before it is used in a new waterbody, there is a high risk that aquatic invasive species can be introduced into that waterbody. Once introduced to a waterbody aquatic invasive species such as zebra mussel and Eurasian watermilfoil are extremely difficult or impossible to control or eliminate. Additionally, efforts to control or eliminate invasive species once established are costly and may not achieve the intended results. Populations of aquatic invasive species can grow to the point that they have a severe impact on recreational and commercial use of a waterbody. Excessive growth of aquatic invasive species can also substantially impact the tourism-based economies associated with these waterbodies. It has been estimated that the ecological damage and control costs associated with aquatic invasive species amount to over nine billion dollars annually in the U.S.

The proposed regulations will strengthen DEC's ability to control the spread of aquatic invasive species associated with the use of watercraft, trailers and associated equipment at the boating and fishing access facilities it administers. Boaters are currently asked to voluntarily comply with

recommended advice on how to prevent the spread of aquatic invasive species as provided in various DEC publications and posted at the 390 boat launch facilities that DEC administers. The proposed regulations will allow DEC law enforcement staff to ticket any user of DEC boat launch facilities that does not drain a watercraft and remove any visible plants and animals attached to it, the trailer or associated equipment prior to launching at or leaving the site. Per ECL 71-0923, the penalty for violating this regulation is imprisonment for not more than 15 days, or a fine of not more than $250, or both fine and imprisonment.

The proposed regulations will allow boaters keeping boats in zebra or quagga mussel infested waters to obtain a free permit from the Department allowing them to depart from a launch site without removing all visible material. Such a permit would allow boaters to take their boat to a storage location (e.g. at the end of a boating season) or to an off-site boat washing station. The permit is not intended to free boaters from the obligation to remove plant or animal material associated with short term use on a body of water.

4. Costs

No cost to DEC or local governments.

5. Local Government Mandates

These amendments of 6 NYCRR will not impose any programs, services, duties or responsibilities upon any county, city, town, village, school district or fire district.

6. Paperwork

No additional paperwork or record keeping will result from these proposed regulations, except for the free permit that will allow boaters to transport boats from zebra or quagga mussel infested waters to a storage location.

7. Duplication

There are no other State or Federal regulations which govern the transportation of aquatic invasive species associated with boats, trailers and associated equipment that apply to all DEC boat launch sites.

8. Alternatives

DEC considered not amending Part 59 or section 190.24. Without the amendments, however, DEC will continue to rely on voluntary compliance with outreach directives to reduce the spread of aquatic invasive species. This alternative would likely result in the slow but continual expansion of aquatic invasive species introduction in New York State. Development of regulations restricting the transport of aquatic invasive species was a recommendation of the NY Invasive Species Advisory Committee in its final report titled "New York State Invasive Species Advisory Committee Recommendations of the Aquatic Invasive Species Transport Law Ad-Hoc Workgroup" completed in early 2010.

DEC considered the implication of amending Part 59 and section 190.24 without any provision for allowing boaters to leave a launch or access site with visible plant or animal material attached to the watercraft and associated equipment. This alternative would be impractical because it would prevent boaters from legally leaving lakes that harbor zebra mussels, for example, at the end of a boating season when juvenile mussels will be attached to the hull, motor and other equipment that has been submerged for a prolonged period of time. Removal of zebra mussels can best be accomplished with high pressure hot water which is not provided at DEC boating access sites.

Finally, DEC could close boat launch and fishing access facilities. While this would reduce the likelihood of the introduction of aquatic invasive species via these specific access locations, it would also have a significant negative impact on fishing and boating related recreation, particularly important to rural economies. It is estimated that recreational boating and fishing results in $4.2 billion of economic activity in New York state annually.

9. Federal Standards

There are no federal standards that apply to the transport of aquatic invasive species in New York State.

10. Compliance Schedule

These regulations, if adopted, will become effective immediately. There is no time needed to enable regulated persons to achieve compliance with this rule.

Regulatory Flexibility Analysis

The purpose of this rule making is to amend the Department of Environmental Conservation's (Department or DEC) regulations associated with State Boat-Launching Sites, Fishing-Access Sites and Fishing Rights Areas administered by the Division of Fish, Wildlife and Marine Resources (6 NYCRR Part 59) and with Boat Launching Sites administered by the Division of Lands and Forests and Division of Operations (6 NYCRR Section 190.24). The proposed amendments will prohibit persons with watercraft, trailers and associated equipment carrying visible plants and animals from launching at DEC facilities or leaving these facilities. It will also prohibit persons from launching at or leaving DEC facilities with watercraft that have not been properly drained of water. These amendments will help reduce the spread of aquatic invasive species via watercraft, trailers and associated equipment to and from waters DEC provides access to. Special allowance will be granted by permit to individuals removing seasonally moored or docked watercraft from a waterbody at the completion of the boating season for cleaning at the location of storage.

The Department has determined that the proposed rules will not impose an adverse impact as far as additional reporting, record-keeping, or other compliance requirements on small businesses or local governments. Watercraft owners and operators regulated by the proposed rule will have the ability to satisfy the requirements of the rule and thereby prevent the imposition of penalties as soon as the rule takes effect. No cure period or opportunity for ameliorative action beyond the language already contained in the rule is necessary to provide regulated entities with the ability to immediately comply with the rule.

The proposed amendment to 6 NYCRR Part 59 and section 190.24, by helping reduce the introduction and spread of aquatic invasive species by watercraft and trailers in New York State, will have a positive impact on water-based tourism. Prolific growth of aquatic invasive species can seriously impact tourism-based economies associated with waters throughout New York State.

Since the Department's proposed rule making will not impose an adverse impact on small businesses or local governments, including no effect on current reporting, record-keeping, or other compliance requirements, the Department has concluded that a regulatory flexibility analysis is not required for this regulatory proposal.

Rural Area Flexibility Analysis

The purpose of this rule making is to amend the Department of Environmental Conservation's (Department or DEC) regulations associated with State Boat-Launching Sites, Fishing-Access Sites and Fishing Rights Areas administered by the Division of Fish, Wildlife and Marine Resources (6 NYCRR Part 59) and with Boat Launching Sites administered by the Division of Lands and Forests and Division of Operations (6 NYCRR Section190.24). The proposed amendments will prohibit persons with watercraft, trailers and associated equipment carrying visible plants and animals from launching at DEC facilities or leaving these facilities. It will also prohibit persons from launching at or leaving DEC facilities with watercraft that have not been properly drained of water. As with the existing regulations under 6 NYCRR Part 59, these new regulations will be enforced through patrols of DEC boat launching facilities by DEC Law Enforcement personnel. These amendments will help reduce the spread of aquatic invasive species via watercraft, trailers and associated equipment to and from waters DEC provides access to. Special allowance will be granted by permit to individuals removing seasonally moored or docked boats from a waterbody at the completion of the boating season for cleaning at the location of storage.

The Department has determined that the proposed rules will not impose an adverse impact as far as additional reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Watercraft owners and operators regulated by the proposed rule will have the ability to satisfy the requirements of the rule and thereby prevent the imposition of penalties as soon as the rule takes effect. No cure period or opportunity for ameliorative action beyond the language already contained in the rule is necessary to provide regulated entities with the ability to immediately comply with the rule.

The proposed amendment to 6 NYCRR Part 59 and Section 190.24, by helping reduce the introduction and spread of aquatic invasive species by watercraft, trailers and associated equipment in New York State, will have a positive impact on rural water-based tourism. Prolific growth of aquatic invasive species can seriously impact tourism-based economies associated with waters in rural areas.

Since the Department's proposed rule making will not impose an adverse impact on public or private entities in rural areas and will have little effect on current reporting, record-keeping, or other compliance requirements, the Department has concluded that a rural area flexibility analysis is not required for this regulatory proposal.

Job Impact Statement

The purpose of this rule making is to amend the Department of Environmental Conservation's (Department or DEC) regulations associated with State Boat-Launching Sites, Fishing-Access Sites and Fishing Rights Areas administered by the Division of Fish, Wildlife and Marine Resources (6 NYCRR Part 59) and with Boat Launching Sites administered by the Division of Lands and Forests and Division of Operations (6 NYCRR Section 190.24). The proposed amendments will prohibit watercraft, trailers and associated equipment carrying visible plants and animals from launching at DEC facilities or leaving these facilities. It will also prohibit boats that have not been properly drained of water from launching at or leaving DEC facilities. These amendments will help reduce the spread of aquatic invasive species to waterbodies via watercraft, trailers and associated equipment.

Overall, the proposed regulations will not have an adverse impact on

jobs or employment in New York State. Reducing the spread of aquatic invasive species and maintaining quality aquatic recreation opportunities in New York will have a positive impact on jobs associated with this form of recreation. The Department therefore concludes that a job impact statement is not required.

Department of Financial Services

EMERGENCY RULE MAKING

Confidentiality Protocols for Victims of Domestic Violence and Endangered Individuals

I.D. No. DFS-41-13-00008-E
Filing No. 1241
Filing Date: 2013-12-20
Effective Date: 2013-12-20

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

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

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

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

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

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

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

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

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

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

Text of emergency rule: *Section 244.0 Preamble.*

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

Section 244.1 Applicability.

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

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

Section 244.2 Definitions.

As used in this Part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 244.3 Confidentiality protocol.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 244.4 Notice.

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

(1) a description of Insurance Law section 2612;

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-41-13-00008-EP, Issue of October 9, 2013. The emergency rule will expire February 17, 2014.

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

Regulatory Impact Statement

1. Statutory authority: Financial Services Law §§ 202 and 302 and Insurance Law §§ 301 and 2612. Financial Services Law §§ 202 and 302 and Insurance Law § 301 authorize the Superintendent of Financial Services (the "Superintendent") to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent under the Insurance Law.

Insurance Law § 2612 requires the Superintendent to promulgate rules to guide and enable insurers (as § 2612 defines that term, which includes health maintenance organizations as well as agents, representatives, and designees of the insurers that are regulated under the Insurance Law) to guard against the disclosure of confidential information protected by Insurance Law § 2612.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Regulatory Flexibility Analysis

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

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

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

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

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

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

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

low the protocol of the insurer, corporation, HMO, or provider, rather than develop its own protocol.

7. Small business and local government participation: A proposed rule was published in the State Register on October 9, 2013, and the Department invited public comments on the rule from all interested parties including small businesses and local governments.

Rural Area Flexibility Analysis

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

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

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

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

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

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

5. Rural area participation: A proposed rule was published in the State Register on October 9, 2013, and the Department invited public comments on the rule from all interested parties including those located in rural areas.

Job Impact Statement

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

Assessment of Public Comment

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

EMERGENCY RULE MAKING

Business Conduct of Mortgage Loan Servicers

I.D. No. DFS-01-14-00001-E

Filing No. 1232

Filing Date: 2013-12-18

Effective Date: 2013-12-19

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

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

Statutory authority: Banking Law, art. 12-D

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

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

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

Subject: The business conduct of mortgage loan servicers.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 419.13 describes the books and records that Servicers are required to maintain as well as other reports the Superintendent may require Servicers to file in order to determine whether the Servicer is

complying with applicable laws and regulations. These include books and records regarding loan payments received communications with borrowers, financial reports and audited financial statements.

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

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

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

Regulatory Impact Statement

1. Statutory authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Legislative objectives.

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

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

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

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

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

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

3. Needs and benefits.

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

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

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

More than 2,000,000 loans on residential one-to-four family properties are being serviced in New York. Of these over 9% were seriously delin-

quent as of the first quarter of 2012. Despite various initiatives adopted at the state level and the creation of federal programs such as Making Home Affordable to encourage loan modifications and help at risk homeowners, the number of loans modified, have not kept pace with the number of foreclosures. Foreclosures impose costs not only on borrowers and lenders but also on neighboring homeowners, cities and towns. They drive down home prices, diminish tax revenues and have adverse social consequences and costs.

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

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

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

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

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

4. Costs.

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

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

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

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

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

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

5. Local government mandates.

None.

6. Paperwork.

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

7. Duplication.

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

8. Alternatives.

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

9. Federal standards.

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

10. Compliance schedule.

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

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "Mortgage Loan Servicer Business Conduct Regulations").

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

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

3. Professional Services:

None.

4. Compliance Costs:

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

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

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

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

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impacts:

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

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

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

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

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

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

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

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

Minimizing Adverse Impacts: As noted in the "Costs" section above, while mortgage loan servicers may incur some higher costs as a result of complying with the rules, the Department does not believe that the rule will impose any meaningful adverse economic impact upon private or public entities in rural areas. In addition, it should be noted that Part 418, which establishes the application and financial requirements for mortgage loan servicers, authorizes the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of mortgage loans servicers that service not more than 12 mortgage loans or more than $5,000,000 in aggregate mortgage loans in New York and which

do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden on mortgage loan servicers operating in rural areas.

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

Job Impact Statement

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

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

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

Department of Health

EMERGENCY RULE MAKING

Children's Camps

I.D. No. HLT-01-14-00014-E
Filing No. 1243
Filing Date: 2013-12-20
Effective Date: 2013-12-20

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 with 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 March 19, 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 Sec-

tion 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 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-01-14-00025-E
Filing No. 1252
Filing Date: 2013-12-24
Effective Date: 2013-12-24

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 regulations 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 March 23, 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 require-

ments 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.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Disclosure of Quality and Surveillance Related Information

I.D. No. HLT-01-14-00027-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 400.25 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2803 and 2805-t

Subject: Disclosure of Quality and Surveillance Related Information.

Purpose: To disclose identified nursing quality indicator information upon request to any member of the public.

Text of proposed rule: A new Section 400.25 is added to read as follows:

Section 400.25 Disclosure of nursing quality indicators.

(a) Definitions. For purposes of this section, the following terms shall have the following meanings:

(1) Acuity means the nursing care requirements of patients or residents.

(2) Case mix means the differences in patients or residents within a population in terms of their physical and mental conditions, and the resources that are used in their care.

(3) Fall means:

(i) For general hospitals, an unplanned descent to the floor with or without injury to the patient including unassisted and assisted descents whether they result from physiological or environmental reasons.

(ii) For nursing homes, an unintentional change in position coming to rest on the ground, floor or onto the next lower surface with or without injury to the resident including intercepted falls.

(4) Fall injury level means:

(i) For general hospitals, the degree of injury resulting from a fall and designated as moderate, major or fatal. For purposes of this subparagraph: moderate injuries involve suturing, application of steristrips/skin glue, splinting or muscle/joint strain; major injuries involve surgery, casting or traction, or require consultation to rule out neurological or internal injury or patients with coagulopathy that receive blood products as a result of the fall; and fatal falls involve injuries that cause the patient's death but do not include falls caused by physiologic events.

(ii) For nursing homes, the degree of injury resulting from a fall designated as major involves bone fractures, joint dislocations, closed head injuries with altered consciousness or subdural hematoma.

(5) Healthcare setting associated infection means any localized or systemic patient condition that:

(i) resulted from the presence of an infectious agent or its toxin(s) as determined by clinical examination or by laboratory testing; and

(ii) was not found to be present or incubating at the time of admission unless the infection was related to a previous admission to the same setting.

(6) Licensed Practical Nurse means a person who is licensed and currently registered as a Licensed Practical Nurse pursuant to Article 139 of the New York State Education Law.

(7) Patient includes a resident of a nursing home.

(8) Patient care staff means unit-based Registered Nurses, Licensed Practical Nurses and unlicensed personnel providing direct patient care greater than 50% of their shift.

(9) Patient day is the average number of patients a unit has per shift during a 24 hour period.

(10) Pressure ulcer means a localized injury to the skin and/or underlying tissue as a result of pressure or pressure in combination with shear acquired after admission to a healthcare facility.

(11) Registered Nurse means a person who is licensed and currently registered as a Registered Professional Nurse pursuant to Article 139 of the New York State Education Law.

(12) Shift means a 24 hour period of time as a whole or divided into parts as appropriate to the reporting facility.

(13) Unit means a distinct location providing patient care in a general hospital or nursing home distinguished from other distinct locations by name, number or other patient-specific factors.

(14) Unlicensed personnel means individuals trained to function in an assistive role to nurses in the provision of patient care, as assigned by and under the supervision of the Registered Nurse.

(b) Nurse Staffing Indicators are:

(1) The total number of productive hours of care provided by patient care staff per patient day for each unit, and the number and percentage of productive hours of care provided by Registered Nurses, Licensed Practical Nurses and unlicensed personnel each; and

(2) the average Registered Nurse and Licensed Practical Nurse to patient ratio for each unit and on each shift.

(c) Nurse-sensitive patient outcome indicators for general hospitals are:

(1) Falls with injury rate as indicated by the frequency in which falls result in a fall injury level of moderate, major or fatal per applicable unit calculated no less often than quarterly.

(2) Health care acquired pressure ulcers as indicated by the percentage of patients with facility-acquired pressure ulcer(s) of the skin that are determined to be stages II, III, IV, unstageable and suspected deep tissue injury per applicable unit calculated no less often than quarterly.

(3) Healthcare setting associated infection rates per applicable unit calculated no less often than quarterly for the following:

(i) Central line associated blood stream infection;

(ii) Catheter associated urinary tract infection; and

(iii) Ventilator associated (pneumonia) event.

(d) Nurse-sensitive patient outcome indicators for nursing homes are:

(1) Percent of long-stay residents who experienced one or more falls with major injury.

(2) Percentage of short-stay residents who have medical conditions that predispose them to developing a facility-acquired pressure ulcer with new or worsening pressure ulcers Stage II-IV.

(3) Percentage of long-stay residents with urinary tract health care setting associated infections.

(e) Within 30 days of a written request, general hospitals and nursing homes shall provide to the requester in hard copy or an electronic copy such as a portable document format (pdf) file, the following information for a three to twelve month period of time that is not more than one year prior to the date of the request:

(1) nurse staffing indicators and nurse-sensitive patient outcome indicators specified in this section;

(2) the procedures and processes used for determining and adjusting staffing levels based on patient case mix and acuity;

(3) the final conclusions of any complaint investigations filed with any state or federal regulatory agency or accrediting agency and any citations resulting from surveys; and

(4) the sources and dates for data disclosed.

(f) Facilities shall have policies and procedures for documentation and management of requests and responses to requests under this section. Documentation of requests and responses to requests under this section shall be kept for a period of no less than two years from the date the request for information was received.

Text of proposed 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

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

Statutory Authority:

The authority for the promulgation of this regulation is contained in Public Health Law (PHL) Sections 2803 and 2805-t.

PHL Section 2803 outlines the powers and duties of the Commissioner. It also authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend rules and regulations, subject to the approval of the Commissioner, to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Section 2805-t authorizes the Commissioner to promulgate regulations on the disclosure of nursing quality indicators including: (1) the number of hours of total direct nursing care per patient; (2) the percentage of such nursing care provided by Registered Nurses, Licensed Practical Nurses and unlicensed personnel; (3) the ratio of patients per Registered Nurse providing direct care; (4) the incidence of select adverse patient care occurrences; (5) the procedures and processes used to determine staffing based on patient or resident case mix and/or acuity and the facility's compliance with these methods; and (6) outcomes of complaint investigation(s) filed with any state or federal regulatory agency or accrediting agency and survey(s) resulting in citation(s), including but not limited to significant medication errors.

Legislative Objectives:

The legislative objective of PHL Article 28 includes the protection of the health of the residents of the State by assuring the efficient provision and proper utilization of health services, of the highest quality at a reasonable cost. The objective of PHL Section 2805-t is to provide the public with information regarding nursing staffing levels and nursing-sensitive patient outcome indicators.

Needs and Benefits:

The Nursing Care Quality Protection Act (Chapter 422 of the Laws of 2009), effective March 15, 2010, added PHL Section 2805-t and requires Article 28 facilities to disclose identified nursing quality indicator information upon request to any member of the public, and to the Commissioner of any State agency responsible for licensing the facility or responsible for overseeing the delivery of services by the facility, or any organization accrediting the facility. PHL Section 2805-t authorizes the Commissioner to promulgate regulations regarding disclosure of nursing quality indicators to such requesters. This regulation is to provide, consistent with PHL Section 2805-t, standards for the collection and disclosure of data regarding nursing staffing levels and nursing-sensitive patient

outcome indicators. These regulations require the use of established, standardized definitions and measurement criteria that are, to the extent possible, already being collected by facilities.

COSTS:

Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:

The Nursing Care Quality Protection Act (Chapter 422 of the Laws of 2009), became effective March 15, 2010, 180 days after it was signed into law. Initial compliance was facilitated by guidance documents developed collaboratively with stakeholders and communicated to facilities via Dear Administrator letters. At this point, facilities have been complying with the requirements of the Nursing Care Quality Protection Act for over three years. In addition: (1) CMS utilizes and makes information regarding a number of these indicators available to the public on the Nursing Home Compare website as measures of quality; (2) prior to this law becoming effective over 50% of hospitals already participated in the National Database for Nursing Quality Indicators (NDNQI) which requires measurement and reporting of the nursing quality indicators included in this regulation; and (3) a CMS hospital requirement recently became effective that requires measurement and reporting of a number of these same indicators. Costs associated with collecting and maintaining data have already been borne. Ongoing costs of implementation will be small but variable, relative to the number and complexity of requests for information received. It is estimated that an average size facility would expend $5.00 per request to make 5, 10-page reports available per year, for a total annual cost of $25.00.

Costs to Local and State Government:

Article 28 facilities that fall under the jurisdiction of local or state government such as county nursing homes, clinics, or hospitals are affected and incur costs the same as any other Article 28 facilities. Ongoing costs of implementation will be small but variable, relative to the number and complexity of requests for information received.

Costs to the Department of Health:

There will be no additional costs to the Department of Health in enforcing this regulation. Implementation and surveillance of these provisions will be accomplished utilizing existing staff.

Article 28 facilities operated by the Department of Health (Helen Hayes Hospital and Four Veterans' Nursing Homes) are affected and incur costs the same as any other Article 28 facilities. Ongoing costs of implementation will be small but variable, relative to the number and complexity of requests for information received.

Local Government Mandates:

Article 28 facilities that fall under the jurisdiction of local government such as county nursing homes or general hospitals will be affected and be subject to the same requirements as any other Article 28 facilities.

Paperwork:

New paperwork associated with this regulation is minimal. Tracking and measurement of staffing data for payroll purposes is routine in all Article 28 facilities. One hundred fifty-one (151) hospitals currently measure staffing and nursing-sensitive patient outcome indicators in the manner required by these regulations as a result of their voluntary participation in the National Database for Nursing Quality Indicators (NDNQI). In addition, many other hospitals measure and track these indicators without formal participation in NDNQI in order to benchmark their nursing quality against other facilities. Nursing homes currently report nursing quality indicator measures/information through Minimum Data Set (MDS) submissions, so a substantial amount of new paperwork is also not expected for these providers. Maintenance of requests for nursing quality indicator information for the required two year period of time will be new but should not create considerable paperwork for Article 28 providers.

Duplication:

This proposal does not duplicate any New York State regulation. In an effort to avoid duplication of work for regulated facilities, when appropriate, efforts have been made to define nursing staffing and patient outcome indicator measurement and calculation in the same way as defined by the Center for Medicaid and Medicare Services (CMS), Centers for Disease Control and Prevention (CDC), New York State Department of Health (NYSDOH), National Quality Forum (NQF) and/or the National Database of Nursing Quality Indicators (NDNQI)—entities where these indicators are either already required for submission or, a submission plan is under development or, in the case of NDNQI, have been elected voluntarily for submission by NYS hospitals and/or LTC facilities.

There is a CMS initiative requiring hospitals to participate in a nursing registry and submit nursing quality indicators consistent with this proposed regulation. The planned acknowledgement of submission of 2012 structural measures data was April 1, 2013 through May 15, 2013.

Alternative Approaches:

These regulations are authorized by PHL Section 2805-t. Efforts have been made to minimize any adverse impact by requiring standardized indicators that in many cases are already being collected by the facilities. Acceptable methods of disclosure include facility report cards, website displays, information included in patient information materials, and tailored reports based on submitted requests for this information.

Federal Requirements:

CMS Hospital Inpatient Quality Reporting (IQR) Program requires that certain measures are reported that assess the characteristics and capacity of the provider to deliver quality healthcare. This includes Participation in a Systematic Clinical Database Registry for Nursing Sensitive Care. A hospital's Annual Payment Update is affected when the hospital does not answer all required questions indicating participation or non-participation in a registry. For FFY 2014 dates for acknowledging collection of IQR data were April 1, 2013, through May 15, 2013.

The Centers for Medicare & Medicaid Services (CMS) began a national Nursing Home Quality Initiative (NHQI) in 2002. The nursing home quality measures come from resident assessment data that nursing homes routinely collect on the residents at specified intervals during their stay. These measures assess the resident's physical and clinical conditions and abilities, as well as preferences and life care wishes. These assessment data are converted to develop quality measures that show how well nursing homes are caring for their residents' physical and clinical needs. The Minimum Data Set (MDS) is currently in use to collect resident assessment data.

Compliance Schedule:

This regulation will take effect upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

Effect of Rule:

The provisions of this regulation will apply to hospital and nursing homes authorized to operate pursuant to Public Health Law Article 28. Such facilities include: 228 general hospitals, and 635 nursing homes. Three general hospitals and 84 nursing homes are considered small businesses. Local governments operate 18 hospitals and 40 nursing homes.

Compliance Requirements:

General hospitals and nursing homes will be required to disclose identified nursing quality indicators, including information associated with complaint investigations and surveys, and methods used to determine and adjust staffing levels upon request. Records of requests and facility response must be kept for a period of no less than two years in order for organizations to be able to track and show evidence of their compliance with requests for this information.

Cure Period:

Chapter 524 of the Laws of 2011 requires agencies to include a "cure period" or other opportunity for ameliorative action to prevent the imposition of penalties on the party or parties subject to enforcement when developing a regulation or explain in the Regulatory Flexibility Analysis why one was not included. This regulation creates no new penalty or sanction. Hence, a cure period is not necessary.

Professional Services:

There are no additional professional services required as a result of this regulation.

Compliance Costs:

At this point, facilities have been complying with the requirements of the Nursing Care Quality Protection Act for over three years. Ongoing costs of implementation will be small but variable, relative to the number and complexity of requests for information received.

Economic and Technological Feasibility:

It is economically and technologically feasible for small businesses and local governments to comply with these regulations.

Minimizing Adverse Impact:

The regulations will require standardized measurement of nursing quality indicators and limit indicators to those that have been established as valid and reliable. The Department will not require hospitals and nursing homes to create additional reports to comply with these provisions. In order to minimize any adverse impact, the Department will allow facilities to use as acceptable methods of disclosure: facility report cards, website displays, information included in patient information materials, and tailored reports based on submitted requests for this information.

Small Business and Local Government Participation:

Outreach to the affected parties was and continues to be conducted. Affected parties were given the opportunity to contribute to the pre-publication development of the content and processes involved in implementation of this regulation. Organizations that represent the affected parties are given notice of this proposal by its inclusion on the agenda of the Codes and Regulations Committee of the Public Health and Health Planning Council. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

The proposed amendment will apply Statewide, including the 43 rural

counties with less than 200,000 inhabitants, and the 10 urban counties with a population density of 150 per square mile or less.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services and Costs:

This proposal specifies that "facilities shall have policies and procedures for documentation and management of requests and responses to requests under this section. Records must be kept for a period of no less than two years from the date the information was received." At this point, facilities have been complying with the requirements of the Nursing Care Quality Protection Act for over three years. Ongoing costs of implementation will be small but variable, relative to the number and complexity of requests for information received.

Minimizing Adverse Impact:

The regulations will require standardized measurement of nursing quality indicators and limit indicators to those that have been established as valid and reliable. The Department will not require hospitals and nursing homes to create additional reports to comply with these provisions. In order to minimize any adverse impact, the Department will allow facilities to use as acceptable methods of disclosure: facility report cards, website displays, information included in patient information materials, and tailored reports based on submitted requests for this information.

Rural Area Participation:

Outreach to the affected parties, including those in rural areas is being conducted. Organizations that represent the affected parties have been given notice of this proposal by its inclusion on the agenda of the Codes and Regulations Committee of the Public Health and Health Planning Council. The public, including any affected party, is invited to comment during the Codes and Regulations Committee meeting.

Job Impact Statement

Pursuant to the State Administrative Procedure Act (SAPA) Section 201-a(2)(a), a Job Impact Statement for this amendment is not required because it is apparent from the nature and purposes of the proposed rules that they will not have a substantial adverse impact on jobs and employment opportunities.

Division of Housing and Community Renewal

NOTICE OF ADOPTION

Regulations Govern the Implementation of the New York City Rent Control Law

I.D. No. HCR-17-13-00004-A
Filing No. 1246
Filing Date: 2013-12-23
Effective Date: 2014-01-08

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

Action taken: Amendment of sections 2200.2(q), (r), 2202.16(e)(3), 2204.2(a)(1), 2205.1(b), 2208.12, 2209.1 and 2211.2 of Title 9 NYCRR.

Statutory authority: Omnibus Housing Act, L. 1983, ch. 403, section 28(not subdivided); and Administrative Code of the City of New York, section 26-405(g)(1); L. 2011, ch. 97, section 44, part B

Subject: Regulations govern the implementation of the New York City Rent Control Law.

Purpose: Modification based on DHCR's experience, court cases and input from regulated parties since last major amendments in 2000.

Text or summary was published in the April 24, 2013 issue of the Register, I.D. No. HCR-17-13-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Gary R. Connor, General Counsel, Division of Housing and Community Renewal, 25 Beaver Street, 7th Floor, New York, New York 10004, (212) 480-6707, email: gconnor@nyshcr.org

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 agency received no public comment.

NOTICE OF ADOPTION

Regulations Govern the Implementation of the Emergency Tenant Protection Act

I.D. No. HCR-17-13-00005-A
Filing No. 1247
Filing Date: 2013-12-23
Effective Date: 2014-01-08

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

Action taken: Amendment of sections 2500.3(b)-(f), 2500.9(s), 2501.2(b), (c), 2502.4(a)(2)(vi)(22), (a)(7), (b)(3)(iii), 2502.5(c), 2502.6(a), 2503.4(a)(2), (b), (c)(2), 2503.5(b)(2), (3), 2504.3(c)(1), (2), 2505.6, 2506.1(a), (g), 2507.9(a), 2508.1, 2509.2, 2509.3, 2510.11, 2510.12, 2511.2 and 2511.4(b) of Title 9 NYCRR.

Statutory authority: Emergency Tenant Protection Act of 1974, L. 1974, ch. 576, section 10a; L. 2011, ch. 97, part B, section 44

Subject: Regulations govern the implementation of the Emergency Tenant Protection Act.

Purpose: Modification based on DHCR's experience, court cases and input from regulated parties since last major amendments in 2000.

Text or summary was published in the April 24, 2013 issue of the Register, I.D. No. HCR-17-13-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Gary R. Connor, General Counsel, Division of Housing and Community Renewal, 25 Beaver Street, 7th Floor, New York, New York 10004, (212) 480-6707, email: gconnor@nyshcr.org

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

A Notice of Proposed Rule Making was published in the State Register on April 24, 2013. The Division of Housing and Community Renewal ("DHCR") received comments submitted to it and/or presented at the public hearing held on the proposed rules by the agency for the Tenant Protection Regulations ("TPR") on June 10, 2013. Comments on specific sections of the proposed rules and DHCR's response are discussed below:

9 NYCRR 2500.3(c)

Several commenters stated that the Tenant Protection Unit ("TPU") is an additional burden on landlords as it adds costs and harasses and treats landlords like criminals.

DHCR's Response:

As noted in the Regulatory Impact Statement ("RIS"), the inclusion of this regulation demonstrates DHCR's commitment to the TPU and proactive enforcement which is authorized by the Emergency Tenant Protection Act ("ETPA").

9 NYCRR 2501.2(c)

One commenter stated that eliminating the four year statute of limitation on preferential rent is not authorized by law.

DHCR's Response:

As noted in the RIS, the analogue of present TPR provision on the Rent Stabilization Code has, in effect, been stricken by the courts.

9 NYCRR 2502.4(a)(7)

One commenter stated that filing for major capital improvements ("MCI") is hard enough and DHCR should not put further restrictions on it.

DHCR's Response:

The substantive standards for MCI denial (based on the presence of immediately hazardous violations and what constitutes remediation) have not been modified by these amendments.

9 NYCRR 2502.5(c)

One commenter stated that requiring landlords to prepare and attach lease riders detailing the calculation of rent and IAIs is not authorized by law and will result in more confusion and questions by tenants which will lead to more work for the landlords.

DHCR's Response:

The RIS noted DHCR's authorization for this provision as well as weighing the needs and benefits. DHCR will give interested parties an opportunity to comment as to the specifics of the new form. As noted in the RIS, greater transparency as to the nature of any claimed IAI's and their cost, as well as other increases above the prior rents is certainly more cost effective than administrative and court litigation to obtain that information.

9 NYCRR 2502.6(a)

One commenter stated that the default formula is unfair, outrageous and illegal.

DHCR's Response:

A default formula is legal and of long standing; its use has met with judicial approval.

9 NYCRR 2503.4(a)(2), (b) and (c)(2)

Several commenters expressed the opinion that a majority of complaints which tenants file with landlords get addressed and corrected without tenants having to resort to any DHCR intervention and removing the notice requirement will only lead to less reasonable dealings between tenants and landlords. In addition, several commenters objected to the change giving owners only twenty days to respond complaints.

DHCR's Response:

In the RIS, DHCR has already explained the legal underpinnings and policy rationale for the changes which are the subject of this regulation. The changes are neither illegal nor improvident. Additional time as well as extensions of such time can still be provided to owners as appropriate pursuant to TPR 2507.4 and 2507.5 within the context of the administrative proceeding itself. The regulation still encourages prior notification, but without making it a procedural preclusion to filing.

9 NYCRR 2503.5(b)(2) and (3)

Several commenters stated that eliminating the "deemed lease" concept is not authorized by the law and that tenants are responsible for returning lease renewals and should not be allowed to become month-to-month tenants. One commenter questioned whether if a tenant does not sign a renewal lease, the month-to-month tenancy is on the same terms and conditions as the original lease.

DHCR's Response:

The modification of this regulation is required by case law. 9 NYCRR 2504.2(f) still authorizes actions to recover possession based on a tenant's failure or refusal to renew an expiring lease. However, Samson v. Hubert and this regulatory change places DHCR back in its more traditional role of ascertaining overcharges based on the existence of "deemed leases" a fact based resolution concerning the conduct of both parties. However the reliance on the unilateral actions of an owner to ascertain whether such a rental agreement exists where an owner commences a holdover proceeding or sues for additional rent is not appropriate for inclusion in the TPR after the Samson decision.

9 NYCRR 2506.1(a)(2)

One commenter stated that DHCR is essentially eliminating the four year statute of limitations on overcharge claims and all that is needed to pierce the four-year limitation is a mere allegation of fraud which will now require owners to maintain all rental records indefinitely.

DHCR's Response:

The RIS responds to the above comment. The regulation follows the Grimm decision by the Court of Appeals and DHCR will apply the "fraud" exception in conformance with the standards set forth there and any subsequent court or administrative precedent based on that decision.

NOTICE OF ADOPTION

Regulations Govern the Implementation of the State Rent Control Law

I.D. No. HCR-17-13-00006-A

Filing No. 1248

Filing Date: 2013-12-23

Effective Date: 2014-01-08

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

Action taken: Amendment of sections 2100.3(c), 2102.4(h)(3), 2104.2(a), 2105.8, 2108.13, 2109.1 and 2110.2 of Title 9 NYCRR.

Statutory authority: Emergency Housing Rent Control Law, L. 1946, ch. 274, subd. 4(a), as amd. by L. 1950, ch. 250, as amd., as transferred to the Division of Housing and Community Renewal by L. 1964, ch. 244 and L. 2011, ch. 97, part B, section 44

Subject: The regulations govern the implementation of the State Rent Control Law.

Purpose: Modification based on DHCR's experience, court cases and input from regulated parties since last major amendments in 2000.

Text or summary was published in the April 24, 2013 issue of the Register, I.D. No. HCR-17-13-00006-P.

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

Text of rule and any required statements and analyses may be obtained from: Gary R. Connor, General Counsel, Division of Housing and Community Renewal, 25 Beaver Street, 7th Floor, New York, New York 10004, (212) 480-6707, email: gconnor@nyshcr.org

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 agency received no public comment.

NOTICE OF ADOPTION

Regulations Govern the Implementation of the Rent Stabilization Law

I.D. No. HCR-17-13-00007-A

Filing No. 1245

Filing Date: 2013-12-23

Effective Date: 2014-01-08

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

Action taken: Amendment of sections 2520.5(o), 2520.11(u), 2521.1, 2521.2(b), (c), 2522.4(a)(3)(22), (a)(13), (d)(3)(iii), 2522.5(c)(1), (3), 2522.6(b), 2523.4(a)(1), (2), (c), (d)(2), 2523.5(c), 2524.3(a), (e), (g), 2525.5, 2526.1(a), (g), 2527.9, 2528.3, 2528.4, 2529.12, 2530.1 and 2531.2 of Title 9 NYCRR.

Statutory authority: L. 1974, ch. 576, section 10a; NYC Admin Code section 26-511(b), as recodified by L. 1985, ch. 907, section 1 as added by L. 1985, ch. 888, section 8; and L. 2011, ch. 97, section 44, part B

Subject: The regulations govern the implementation of the Rent Stabilization Law.

Purpose: Modification based on DHCR's experience, court cases and input from regulated parties since last major amendments in 2000.

Substance of final rule: 9 NYCRR § 2520.5 paragraphs (o) and (p) are relettered (p) and (q) and a new paragraph (o) is added to designate the Tenant Protection Unit (TPU) as a distinct unit under DHCR.

9 NYCRR § 2520.11 new paragraph (u) is added to provide that an owner will be required to provide the first tenant of a deregulated unit an exit notice explaining how the unit became deregulated, how the rent was computed and what the last regulated rent was. A copy of the rent registration indicating deregulated rent must be provided to the tenant.

9 NYCRR § 2521.1 is amended to add a new subdivision (l) to establish the criteria for setting the initial legal regulated rent for housing accommodations located in properties that were or continue to be owned by housing development fund companies (HDFC).

9 NYCRR 2521.2(b) is amended, 9 NYCRR § 2521.2(b)(2) is repealed, and 9 NYCRR § 2521.2(c) amended to provide that where a preferential rent is charged, the legal rent can only be preserved by disclosure in a tenant's lease; a rent registration indicating a preferential rent will not be dispositive. The owner shall be required to maintain and submit where required by DHCR the rental history immediately preceding a preferential rent to the present which may be prior to the four–year period preceding the filing of a complaint.

9 NYCRR § 2522.4(a)(3)(22) is amended to provide there will be no MCI rent increases for conversions from master to individual metering; however, electrical wiring for the building can be subject to an MCI rent increase.

9 NYCRR § 2522.4(a)(13) is amended to provide that when an MCI rent increase application is received, DHCR will initiate its own search to determine if there is an "immediately hazardous" violation in a building and, if there is such a violation, the application will be rejected with leave to renew once the violation is remedied.

9 NYCRR § 2522.4(d)(3)(iii) is amended to provide that a tenant receiving DRIE (disabled) benefits will not be subject to electrical sub-metering conversions; this conforms to how SCRIE (senior citizens) tenants are treated.

9 NYCRR § 2522.5(c)(1) and 9 NYCRR § 2522.5(c)(3) are amended to provide the following: Required lease riders attached to leases will have greater detail as to how the rent was calculated, including details about how any IAI rent increase was calculated; tenants will be able to request documentation from owners to support an IAI increase; if the lease rider and/or any requested IAI documents are not provided, there can be no rent increase until the rider/documentation is provided unless the owner can prove the rent charged is otherwise legal; if the rent charged is above the legal rent during period when rider/documentation is not provided, there can be a rent overcharge proceeding and no rent increase can be collected until the rider/documentation is provided.

9 NYCRR § 2522.6(b) is amended and 9 NYCRR § 2526.1(g) is relettered (h) and new subdivision (g) is added to provide that when the rent

on base date for establishing rent under the four-year look-back period cannot be determined or the rent set on the base date was the subject of a fraudulent scheme to deregulate, the 3-part, court-sanctioned default formula for setting rents, e.g., lowest rent for comparable unit in building, will be used and a general catch-all, e.g. data compiled by DHCR or sampling method, will be available.

9 NYCRR § 2523.4(a)(1), (a)(2), (c) and (d)(2) are amended to provide:

A tenant complaint of a service decrease will not be dismissed if the tenant failed to provide the owner with notice of the problem prior to filing a complaint with DHCR; any decrease in rent based upon a service decrease order will include a bar to future MCI and vacancy bonus rent increases; an owner's time to respond to a service decrease complaint will be reduced to 20 days if the tenant, in fact, gives prior notice, otherwise the response time is 60 days; if the tenant is forced to vacate, a 5 day response time is required and; if the complaint is for lack/reduction in heat/hot water then a 20 day response time is required.

9 NYCRR § 2523.5(c)(2) and (3) are amended to provide that tenants holding over after the lease expires (they failed to renew their lease) will be treated as month-to-month tenants and not held to a new full lease term.

9 NYCRR § 2524.3(a), (e), and (g) are amended to amend certain notice requirements.

9 NYCRR § 2525.5 is amended to redefine harassment to include certain false filings and false statements designed to interfere with tenant's quiet enjoyment or rights.

9 NYCRR § 2526.1(a)(2)(ii) is amended and 9 NYCRR § 2526.1(a)(2) adds new subparagraphs (iii), (iv), (v), (vi), (vii), (viii) and (ix) and 9 NYCRR § 2526.1(a)(3)(iii) is amended to provide a more comprehensive list of exceptions to the rule that when examining rent overcharges the look-back period to determine an overcharge is four years. The list of exceptions includes: when there is an allegation of a fraudulent scheme to deregulate the unit; prior to base date there is an outstanding rent reduction order based upon a decrease in services; it is determined that there is a willful rent overcharge; there is a vacant or exempt unit on the four-year base date, in which case DHCR may also look at the last rent registration, or; there is a need to determine whether a preferential rent exists.

9 NYCRR § 2527.9 is amended by adding new subdivisions (c) and (d) to amend certain notice requirements.

9 NYCRR § 2528.3(a) is amended to clarify that registration information may be collected as required by DHCR, RSC, or 2527.11.

9 NYCRR § 2528.3 is amended to add paragraph (c) to provide that owners will not be able to amend a rent registration without going through an administrative proceeding with notice to the tenant unless the change is governed by another government agency.

9 NYCRR § 2528.4(a) is amended to clarify that a rent freeze for failing to register will include MCI increases and vacancy bonus increases.

9 NYCRR § 2529.12 is amended to clarify filing requirements for Article 78 proceedings.

9 NYCRR § 2530.1 is amended to clarify the 60 day statute of limitations from date of mailing of an order.

9 NYCRR § 2531.2 is amended to prohibit luxury decontrol filings on SCRIE and DRIE tenants.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 2522.5(c)(3).

Text of rule and any required statements and analyses may be obtained from: Gary R. Connor, General Counsel, Division of Housing and Community Renewal, 25 Beaver Street, 7th Floor, New York, New York 10004, (212) 480-6707, email: gconnor@nyshcr.org

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

This statement is in explanation as to why a revised RIS, RFA, RAFA and JIS are not required.

The proposed amendment of 9 NYCRR 2522.5(c)(3) was previously written incorrectly in that some words in the beginning of the paragraph that were being deleted were erroneously left out instead of being bracketed and several words that should have been underlined as new language were erroneously not underlined. The comments received on this section indicate that the commenters realized the error and commented on the substantive change as if the brackets and underlining were correctly in place. Therefore, this is a nonsubstantive change and no modification of the RIS, RFA, RAFA or JIS is required.

Initial Review of Rule

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

Assessment of Public Comment

A Notice of Proposed Rule Making was published in the State Register on April 24, 2013. The Division of Housing and Community Renewal ("DHCR") received comments submitted to it and/or presented at the public hearing held on the proposed changes to the Rent Stabilization Code ("RSC") on June 10, 2013. The comments were from individual tenants, tenant advocacy organizations or representatives, owners, and owner advocacy organizations, public officials and other interested members of the public.

A vast majority of the comments received on the proposed changes were positive and expressed support for the proposed rules. In addition, there were numerous suggestions that were not specifically related to the proposed amendments which DHCR will take into consideration for any future amendments.

A more full assessment of public comments appears on DHCR's website. This synopsis of major comments has been truncated to meet the word limitation required for publication in the State Register.

9 NYCRR 2520.5 - Comments

The Tenant Protection Unit ("TPU") has no basis in law and that the codification is unprecedented.

DHCR's Response:

The inclusion of this regulation demonstrates DHCR's commitment to the TPU and proactive enforcement. The RSC vests the Commissioner with authority to delegate any of his duties granted to him by Rent Stabilization Law ("RSL"), including to TPU.

9 NYCRR 2520.11 - Comments

There is no statutory authorization or legal basis for this regulation. The regulation should provide the notice to all subsequent tenants.

DHCR's Response:

The express statutory basis for this is referenced in the Regulatory Impact Statement ("RIS") and is essentially taken from the Rent Stabilization Law.

9 NYCRR 2521.2(b) - Comments

This provision creates an extra burden on owners. DHCR should require the lease of a tenant to explain the consequences of a preferential rent.

DHCR's Response:

The RIS explains the needs, benefits and basis of this amendment. DHCR will consider additional language for the standard form lease rider.

9 NYCRR 2521.2(c) - Comments

The proposed regulation contradicts the RSL's four-year rule and case law.

DHCR's Response:

Case law on the RSL supports the change.

9 NYCRR 2522.4(a)(3)(22) - Comments

The provision contradicts longstanding public policy to make tenants more accountable for their energy consumption. MCIs should be prohibited for rewiring.

DHCR's Response:

The change does not make tenants less accountable for their energy costs. Treating meters like a major capital improvement skews the rent reduction afforded tenants. The amendment strikes an appropriate balance between energy conservation and tenant protection.

9 NYCRR 2522.4(a)(13) - Comments

This change is not authorized by law and violates due process; the language is vague as to what are immediately hazardous violations; and the regulation needs to define "remedied." The two-year MCI filing requirement should be automatically stayed by any filing even if later rejected.

MCIs should be denied where there are hazardous violations.

DHCR's Response:

The standard for MCI denial has not been modified by this amendment.

DHCR may extend the sixty day refiling provision for good cause shown.

9 NYCRR 2522.5(c)(1) - Comments

"Detailed description" should be defined. Allowing tenants to request supporting documentation is a violation of DHCR's authority. Suggestions were made as to the format to be prescribed by DHCR. Documentation should be automatically provided to tenants instead of by request or alternatively tenants should have the right to request it for four years.

DHCR's Response:

DHCR is preparing the changes to the form lease and will give interested parties an opportunity to comment prior to its issuance as a new form. The lease form will require disclosure of the nature of any claimed IAI's and their cost, as well as other increases above the prior rent.

The time period for direct demand of documentation gives tenants the opportunity, as contemporaneously as possible to the execution of their lease, to make inquiries without jeopardizing their right of occupancy, but when documentation should still be readily and easily available to any reputable owner who is already required to retain and produce them, as the commenters note, for a much more extensive period.

9 NYCRR 2522.5(c)(3) - Comments

The change is not authorized by statute and violates due process. The removal of "upon complaint of the tenant" allows tenants to unilaterally assess owner compliance without a DHCR order.

Allowing the owner to otherwise establish that the rent collected would be legal" makes the amendment lose its force.

DHCR's Response:

This amendment is not an invitation for unilateral action. DHCR will be issuing orders. The removal of "upon complaint of the tenant" is in recognition of DHCR's ability to investigate and commence proceedings on its own initiative.

The possible non imposition of the penalty is patterned on registration.

9 NYCRR 2522.6(b) and 9 NYCRR 2526.1(g) - Comments

A default formula should not treat cases where an owner fails to provide evidence in the same manner as where there is fraud or other prohibited activities. Nothing in the RSL requires or authorizes the use of such a formula. The elimination of the language concerning registration violates the RSL.

"Fraudulent scheme" needs to be defined.

DHCR's "sampling methods" should use only regulated apartments and rents charged rather than rents registered.

DHCR's Response:

A default formula is legal and of long standing; its recent application to illusory prime tenancies and other fraudulent schemes, builds on that usage. The elimination of language complained about by the commenters does not preclude its applicability where appropriate, as it still remains in the RSL.

DHCR will use the fraud standard as articulated by the Court of Appeals. DHCR will reject falsely registered rents as dispositive, but in most cases registration information will need to be the data of choice, if not the only data available which will usually be limited to rent stabilized apartments. In using "registered" rents, DHCR will not use the higher of two rents even if both are registered.

9 NYCRR 2523.4(a)(1), (a)(2), (c) and (d)(2) - Comments

DHCR is discouraging tenants from communicating with owners and removing due process protections afforded owners.

The bar to MCI and vacancy rent increases based upon a service decrease is in conflict with the RSL.

DHCR's Response:

In the RIS, DHCR has already explained the legal underpinnings and policy rationale for the changes which are the subject of this regulation. The changes are neither illegal nor improvident. Additional time as well as extensions of such time can still be provided to owners as appropriate pursuant to RSC 2527.4 and 2527.5 within the context of the administrative proceeding itself. Elimination of the "pre-notice" as a proscription against filing service complaints does not deprive owners of due process as notice and opportunity to respond to the complaints which is provided as part of the administrative proceeding itself. DHCR is not precluded from affording such notices to owners by this regulation.

9 NYCRR 2523.5(c)(2) and (3) - Comments

The amendment eliminates the ability of owners to deem leases as renewed, which has been used for the benefit of both owners and tenants for many years. DHCR should define what factors could be taken into account under Real Property Law section 232-c as to when a renewal lease exists.

DHCR should amend the RSC section to provide a notice to cure prior to lease termination for failing to execute a renewal lease.

DHCR's Response:

This modification is needed to conform to case law and statute. There may still be "deemed leases" but their existence requires a fact based resolution concerning the conduct of both parties. DHCR is back to its more traditional role of determining overcharges based on this standard.

Requiring a notice to cure is beyond the scope of this proposal.

9 NYCRR 2525.5 – Comments

The amendment does not take into account whether the erroneous information is intentional or material, that the term "false document" needs to be defined, and that the amendment is without legal authority.

DHCR's Response:

"False document" does not need a definition. DHCR should not limit itself by anticipating the facts that may relate to every potential improper action. The rule does take into account intentionality and materiality. Through DHCR's enforcement framework, owners will have significant opportunities to present their position. Specific instances of possible harassment referenced by other commenters could also be actionable.

9 NYCRR 2526.1(a)(2) - Comments

The regulation expands the exception for fraudulent schemes in Grimm v. DHCR, by failing to reference language in the decision regarding the standards of proof.

Determining the willfulness of an owner in overcharging a tenant or the propriety of a rent increase based on the longevity of a prior tenancy beyond four years violates the RSL. Going beyond the four-year period in situations involving preferential rent is invalid.

DHCR should acknowledge that the RSL allows examination of records prior to the base date to determine the rent stabilized status of an apartment even in cases of high rent/vacancy decontrol except in cases of decontrol.

DHCR's Response:

DHCR is following Grimm. There is no need or ability to promulgate a regulation anticipating every possible fraudulent scheme, nor to articulate every possible defense or burden shifting analysis which is implicated in the Grimm decision.

Review of the preceding four years in the other circumstances listed has already met with court approval or is based on such case law.

DHCR will not presently accede to the request to expand the list of exceptions to all apartments that have been deregulated pursuant to high rent vacancy deregulation as it sees this matter as insufficiently settled for inclusion.

9 NYCRR 2526.1(a)(3)(iii) - Comments

The proposed amendment is not authorized by the RSL or case law. Charging a first rent brings an apartment back into the market. Allowing imputing guideline increases during a vacancy rewards landlords for keeping apartments off the market.

DHCR's Response:

The needs and benefits are discussed in the RIS and generally outweigh the concerns noted by the commenters. DHCR always reserves the right to consider appropriate equities in determining the proper rent and can use the rules in effect prior to these amendments where there is undue hardship.

9 NYCRR 2528.3(a) and (c) - Comments

The amendment is unnecessary and a misuse of resources and invalid under the RSL.

Code should explicitly state tenants will be given notice of proceeding to amend registration statements.

Amended registrations should be subject to the same penalties as failing to previously register the unit altogether or filing late. Late filings should also be subject to these provisions.

DHCR's Response:

The RIS explains the basis, needs and benefits of this amendment and why this specific option was selected although other alternatives such as those suggested by the comments were considered. There is nothing in the RSL that requires a position that registrations can be amended at any time without proper regulatory oversight or without application. Tenants will be given notice and an opportunity to comment as part of any application to amend registrations or finalize the propriety of such amendments.

9 NYCRR 2528.4(a) – Comments

There is no basis in the statute for this provision and it is not authorized by law.

The amended provision needs to eliminate the bar on looking beyond the base date where an owner has failed to file a registration.

DHCR's Response:

The RIS sets forth the basis, needs and benefits of this amendment. The comments with respect to treating the failure to register as a continuing obligation that subjects the apartment to a rent freeze for registrations preceding the four-year period have been dealt with elsewhere in the RIS in the discussion regarding the industry comments under 9 NYCRR 2522.6(b).

9 NYCRR 2531.2 – Comments

NYC, in administering the SCRIE and DRIE exemption, do not do a good job in ascertaining income.

DHCR's Response:

The basis, needs and benefits are explained in the RIS. DHCR will not modify the amendment based on an allegation that New York City improperly administers DRIE and SCRIE.

Department of Law

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Procedures for Requesting Extensions of Time to File Annual Reports with the Attorney General by Charitable Entities

I.D. No. LAW-01-14-00003-P

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

Proposed Action: Repeal of section 91.5(f)(3); and addition of new section 91.5(f)(3) to Title 13 NYCRR.

Statutory authority: Executive Law, section 177(1); and Estates, Powers and Trusts Law, section 8-1.4(h)

Subject: Procedures for requesting extensions of time to file annual reports with the Attorney General by charitable entities.

Purpose: To clarify and simplify procedures for requesting extensions of time to file charitable organizations' annual financial reports.

Text of proposed rule: *13 NYCRR Section 91.5(f)(3)*

(3) Extension of Time to Submit an Annual Filing.

(i) Upon request, submitted prior to the filing deadline, the time to submit an annual filing pursuant to section 8-1.4 of the Estates, Powers and Trusts Law and/or Article 7-A of the Executive Law may be extended by the Attorney General for a period or periods in the aggregate not to exceed one hundred eighty days. Extension requests shall be sent by means and form, manual or electronic, as designated by the Attorney General. No other filing, application or fees shall be submitted with a request for an extension of time to submit an annual filing.

(ii) Any charitable organization that has submitted a request to the Internal Revenue Service for an extension of time to file an annual filing and/or has received approval of such request shall keep such documents as part of its financial records for at least three years after the end of the period of registration for which they relate.

(iii) The Attorney General has the sole discretion to deny any extension request, regardless of whether a corresponding extension request has been approved by the IRS.

Text of proposed rule and any required statements and analyses may be obtained from: Karin Kunstler Goldman, Department of Law, 129 Broadway, New York, NY 10271, (212) 416-8392, email: karin.goldman@ag.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. Article 7-A of the Executive Law (hereinafter "Article 7-A") and Article 8 of the Estates, Powers & Trusts Law (hereinafter "EPTL") require certain organizations and trusts (hereinafter ''charitable organizations'') to file annual financial reports and other disclosures with the Department of Law and require the Attorney General to establish and maintain a register of such reports. Section 177(1) of the Executive Law and section 8-1.4(h) of the EPTL empower the Attorney General to make rules and regulations necessary for the administration of these provisions.

2. Legislative Objectives. Under current rules, charitable organizations registered with the Attorney General are permitted to submit up to two requests for an extension of the time to file required annual financial reports and, if the organization applied to the United States Internal Revenue Service for an extension of time to file, the second request must be accompanied by a copy of the Internal Revenue Service's approval of that request. The proposed rule continues to require submission of requests for extension of time to file but simplifies the process by permitting charitable organizations to submit a single request for a six-month extension of time to file annual financial reports instead of two separate requests. The rule also eliminates the requirement that charitable organizations submit to the Attorney General copies of extension requests submitted to the Internal Revenue Service.

3. Needs and Benefits. Currently charitable organizations seeking a six-month extension of time to file their annual reports must submit two separate requests. The second request must be as accompanied by a similar request to the Internal Revenue Service. The rule will simplify the process by which charitable organizations must request extensions of time to file. By reducing the number of required requests for extensions of time to file and the number of required documents and by authorizing electronic submission of all extension requests, the rule will also reduce the resources of the Attorney General needed to process such requests.

4. Costs. The rule will not impose any additional costs on charitable organizations. Rather, by reducing the number of required requests for extension of time to file and eliminating the requirement to file additional documents, their costs should be reduced. Likewise, reduction of the number of requests for extension of time to file will result in a reduction of processing costs to the Department of Law.

5. Local Government Mandates. None.

6. Paperwork. No additional forms will be required by this rule. By reducing the number of required requests for extension of time to file annual reports, eliminating the requirement that copies of similar requests to the Internal Revenue Service be submitted, and by permitting electronic submission of such requests, paper filings will be substantially reduced.

7. Duplications. The rule does not require duplication of any filings. Rather, it reduces burdens on charitable organizations by reducing the number of required requests for an extension of time to file annual reports and eliminating the requirement to submit additional documents with such requests.

8. Alternatives. There were no significant alternatives to be considered.

9. Federal Standards. The rule does not exceed any minimum standards of the federal government applicable to charitable organizations required to file annual financial reports with the Attorney General.

10. Compliance Schedule. Regulated organizations will be able to comply with the rule immediately.

Regulatory Flexibility Analysis

The proposed regulations will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The proposed regulations apply to only charitable organizations, trusts and estates required to register with the Attorney General pursuant to Article 8 of the Estates, Powers and Trusts Law and\or Article 7-A of the Executive Law. Neither of those statutes nor the proposed regulations apply to or require any compliance by local governments. The proposed regulations concern the procedures applicable to charitable organizations that seek extensions of time to file annual financial reports and contain no provisions applicable to small businesses or local governments. Accordingly, the proposed regulations will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

The proposed regulations will not impose any adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. The current and proposed regulations apply only to charitable organizations, trusts and estates (hereinafter ''charitable organizations'') required to file annual financial reports with the Attorney General pursuant to Article 8 of the Estates, Powers and Trusts Law and\or Article 7-A of the Executive Law. The proposed regulations simplify the procedures applicable to charitable organizations that seek extensions of time to file annual financial reports by reducing the number of extension requests required and authorizing electronic rather than paper filing of requests for such extensions. Accordingly, the proposed regulations will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Long Island Power Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Authority's Tariff for Electric Service (''Tariff'')

I.D. No. LPA-01-14-00023-P

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

Proposed Action: The Authority is considering a proposal to modify its Tariff for Electric Service to authorize the purchase of 20 MW of renewable resources (other than solar photovoltaic) from customers.

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

Subject: The Authority's Tariff for Electric Service (''Tariff'').

Purpose: To authorize the purchase of 20 MW of renewable resources under Service Classification No. 11 — Buy-Back Service.

Public hearing(s) will be held at: 10:00 a.m., February 24, 2014 at H. Lee Dennison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; and 2:00 p.m., February 24, 2014 at Long Island Power Authority, 333 Earle Ovington Blvd., 4th Fl., Uniondale, NY.

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

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

Substance of proposed rule: The Long Island Power Authority ("Authority") is considering a proposal to modify its Tariff for Electric Service ("Tariff") to authorize the purchase of an additional 20 MW of renewable resources other than solar photovoltaic ("PV") from customers for a fixed term of 10 years at a fixed price for the entire term. The proposed purchase offer would be included under Service Classification No. 11 – Buy-Back

Service. The Authority may approve, modify, or reject, in whole or part, the proposal.

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

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

Public comment will be received until: Five days after the last scheduled public hearing.

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

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

Office of Mental Health

EMERGENCY RULE MAKING

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

I.D. No. OMH-01-14-00007-E

Filing No. 1235

Filing Date: 2013-12-20

Effective Date: 2013-12-20

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

Action taken: Repeal of Part 524 and 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 March 19, 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 com-

mitted such acts have the right to a hearing before an administrative law judge to challenge those findings. Custodians having committed egregious or repeated acts of abuse or neglect are prohibited from future employment in providing services for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Job applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

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

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

4.Costs:

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

Chapter 501 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 50-day timeframe, to enable OMH to submit results to the Justice Center within 60 days. Providers must also comply with new requirements to enhance the independence of investigators and incident review committees. However, OMH expects that additional compliance activities associated with these enhanced requirements will be minimal.

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

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

5. Economic and technological feasibility: The amendments may impose the use of new technological processes on small business providers. Providers have already been reporting incidents and abuse in NIMRS, and

that technology will continue to be used. However, statutory requirements to report reportable incidents to the Justice Center in the manner specified by the Justice Center may impose new technology requirements if that is the manner specified by the Justice Center. However, this is not a direct impact caused by the regulations.

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

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

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

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

Rural Area Flexibility Analysis

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

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

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

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

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

Providers must comply with the new requirement to complete investigations within a 50-day timeframe, to enable OMH to submit results to the Justice Center within 60 days. Providers must also comply with new requirements to enhance the independence of investigators and incident review committees. However, OMH expects that additional compliance activities will be minimal since providers are already required to comply with existing incident management program requirements; these revisions primarily enhance current requirements.

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

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

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

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

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

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

Job Impact Statement

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

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

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

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

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rates of Reimbursement - Hospitals Licensed by the Office of Mental Health

I.D. No. OMH-01-14-00013-EP
Filing No. 1242
Filing Date: 2013-12-20
Effective Date: 2013-12-20

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

Proposed Action: Amendment of Part 577 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09 and 43.02

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

Specific reasons underlying the finding of necessity: The amendments are the result of an administrative action consistent with Chapter 56 of the Laws of 2013 (the 2013-2014 enacted State Budget). Effective January 1, 2014, the proposal reduces the growth rate of Medicaid reimbursement for private psychiatric hospitals licensed pursuant to Article 31 of the Mental Hygiene Law. These regulatory amendments are the result of an extensive review of the rate methodology and cost reports by not only the Office of Mental Health, but also the Department of Health, in its role as the new rate setting entity. Therefore, OMH was not able to use the regular rule making process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations prior to January 1, 2014. Because all health care providers need to operate within the constraints of the enacted State budget, managing the growth of Medicaid is critical to maintaining essential health services during the budget year. Therefore, this rule is being adopted on an emergency basis until such time as it has been formally adopted through the SAPA rule promulgation process.

Subject: Rates of Reimbursement - Hospitals Licensed by the Office of Mental Health.

Purpose: Remove the 2014 trend factor for article 31 private psychiatric hospitals effective January 1, 2014.

Text of emergency/proposed rule: 1. Paragraph (1) of subdivision (e) of Section 577.7 is amended to read as follows:

(1) Allowable operating costs in the rate year are calculated by choosing the lower of the base year cost computed on a per diem basis or the limitation cost computed on a per diem basis, and trending this amount forward two years by the inflation factor, except for the rate period effective January 1, 2010, to December 31, 2010, when the inflation factor used to trend costs will be limited to the inflation factor for the first year of the two-year period*, and the rate period effective January 1, 2014, to December 31, 2014, when there will be no inflation factor used to trend costs*. Administration costs, as contained in and part of operating costs, shall be subject to an administrative cost screen. Two separate administrative cost screens shall be calculated, one for hospitals with greater than 100 beds (group one), and one for hospitals with 100 or less beds (group two). The administrative cost screen is derived from the costs in the fiscal year one year prior to the base year (i.e., the same cost year from which the limitation is derived), and shall be the group average per diem cost plus 10 percent.

2. Paragraph (4) of subdivision (h) of Section 577.7 is amended to read as follows:

(4) The operating cost component of the rate will be updated annually, except for the period January 1, 2010, to December 31, 2010*, and the period January 1, 2014, to December 31, 2014,* with the Medicare inflation factor for hospitals and units excluded from the prospective payment system, until the hospital has operated for six months at a minimum occupancy level of at least 75 percent and files its first cost report for that same period in accordance with section 577.5 of this Part.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire March 19, 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

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

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

Regulatory Impact Statement

1. Statutory authority: Section 7.09 of the Mental Hygiene Law grants the Commissioner of the Office of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his/her jurisdiction.

Section 43.02 of the Mental Hygiene Law provides that the Commissioner has the power to establish standards and methods for determining rates of payment made by government agencies pursuant to Title 11 of Article 5 of the Social Services Law for services provided by facilities, including hospitals, licensed by the Office of Mental Health.

2. Legislative objectives: Article 7 of the Mental Hygiene Law reflects the Commissioner's authority to establish regulations regarding mental health programs. The amendments to Part 577 are needed to reduce the growth rate of Medicaid reimbursement for private psychiatric hospitals licensed pursuant to Article 31 of the Mental Hygiene Law. (Note: These amendments are not applicable to psychiatric hospitals which are jointly licensed pursuant to Article 31 of the Mental Hygiene Law, as well as Article 28 of the Public Health Law.) These amendments are the result of an administrative action consistent with Chapter 56 of the Laws of 2013 (the 2013-2014 enacted State Budget).

3. Needs and benefits: Effective January 1, 2014, the amendments remove the 2014 trend factor of 5.216 percent in developing the 2014 per diem Medicaid rates for Article 31 private psychiatric hospitals. Normally, under the Commissioner's authority, OMH trends base year costs forward two years to the rate year by using two annual trend factors (representing a trend factor for the year preceding the rate year and another trend factor for the rate year). But for the 2014 rate year, OMH will not use a trend factor. This action is consistent with the elimination of the inflationary adjustments and trends applied to rates for community mental health programs in 2013-2014. As a result, the rate of growth in Medicaid expenditures for the private psychiatric hospitals will be slowed, but the expectation is that the level of services provided by such hospitals will be maintained. OMH will be recognizing a more current cost report period in the calculation of the 2014 rates, after having frozen rates in prior periods, which will allow for more current actual expenditures to be recognized in the rate calculation.

4. Costs:

(a) cost to State government: These regulatory amendments will not result in any additional costs to State government. These amendments are expected to result in a savings to State government of $1.12 million.

(b) cost to local government: These regulatory amendments will not result in any additional costs to local government.

(c) cost to regulated parties: This regulatory amendment will not result in any additional cost to regulated parties, but will reduce the rate of growth in Medicaid payments that the Article 31 private psychiatric hospitals would have received, projected to be 5.216 percent. Currently there are six such providers. It is estimated that this action will result in an annual reduction in Medicaid growth of approximately $1.12 million State share of Medicaid ($2.23 million gross Medicaid).

5. Local government mandates: These regulatory amendments will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule should not substantially increase the paperwork requirements of affected providers.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: As noted above, this amendment is consistent with the 2013-2014 enacted State Budget and the budgetary constraints included therein. The elimination of the 2014 trend factor of 5.216 percent is consistent with the elimination of the inflationary adjustments and trends applied to rates for community mental health programs in 2013-2014, and reflects the serious fiscal condition of the State. The only alternative to this rule making would have been to make budgetary cuts to another program which may have already sustained previous cuts and could have the potential for putting those providers at financial risk. Therefore, that alternative was not considered. It should be noted that OMH has not applied a trend factor to other cost-based reimbursement programs in the 2013-14 fiscal year, nor have cost of living adjustments been made to other payments in this year.

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

10. Compliance schedule: The regulatory amendments would become effective immediately upon adoption.

Regulatory Flexibility Analysis

The rule making will reduce the rate of growth in Medicaid reimbursement associated with private psychiatric hospitals licensed pursuant to Article 31 of the Mental Hygiene Law. The proposed change is consistent with the 2013-2014 enacted State Budget. This change removes the 2014 trend factor in the development of the 2014 per diem Medicaid rates for Article 31 private psychiatric hospitals, and, as a result, slows the rate of growth in Medicaid expenditures. There will be no adverse economic impact on small businesses or local governments; therefore, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis is not submitted with this notice because the rule making, which serves to reduce the growth rate of Medicaid reimbursement associated with private psychiatric hospitals licensed pursuant to Article 31 of the Mental Hygiene Law, will not impose any adverse economic impact on rural areas. The proposed change is consistent with the 2013-2014 enacted State Budget. This change removes the 2014 trend factor in the development of the 2014 per diem Medicaid rates for Article 31 private psychiatric hospitals, and, as a result, slows the rate of growth in Medicaid expenditures.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because the regulation eliminates the 2014 trend factor in the development of the 2014

per diem Medicaid rates for Article 31 private psychiatric hospitals, and, as a result, slows the rate of growth in Medicaid expenditures. The proposed change is consistent with the 2013-2014 enacted State Budget. No adverse impact on jobs and employment opportunities is expected as a result of this rule making.

Department of Motor Vehicles

NOTICE OF ADOPTION

Enforcement of Dealer Related Regulations

I.D. No. MTV-25-13-00004-A
Filing No. 1249
Filing Date: 2013-12-24
Effective Date: 2014-01-08

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

Action taken: Amendment of section 78.32 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 415(9)(b)

Subject: Enforcement of dealer related regulations.

Purpose: To authorize DMV to take action against dealers who file misleading or false statements in relation to lien satisfaction filing.

Text or summary was published in the June 19, 2013 issue of the Register, I.D. No. MTV-25-13-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Proof of Satisfaction of Lien by Dealers

I.D. No. MTV-25-13-00005-A
Filing No. 1250
Filing Date: 2013-12-24
Effective Date: 2014-01-08

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

Action taken: Amendment of section 20.17 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 2121(a) and (b)

Subject: Proof of satisfaction of lien by dealers.

Purpose: To establish procedures for dealers to demonstrate that they have satisfied a lien in order to obtain a clear title.

Text or summary was published in the June 19, 2013 issue of the Register, I.D. No. MTV-25-13-00005-RP.

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

Text of rule and any required statements and analyses may be obtained from: Heidi Bazicki, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 526, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

Assessment of Public Comment

The American Financial Services Association (AFSA) submitted two comments about the revised rule.

Comment: AFSA, as it did in response to the original proposed rule, suggests that the rule should require a standard form in prominent type alerting the lienholder that its security interest will be released unless the lienholder objects. The required notice in Section 20.17(b)(3) of the rule should be incorporated in the standard form.

Response: The Department continues to believe that a standardized form is unnecessary because Section 20.17(b)(3) of the rule explicitly sets forth the language that must be used in the dealer's notice to the lienholder about the pending release of its lien. In addition, the rule provides that the notice shall be in 14-point type or larger, which should be sufficiently prominent to distinguish the notice from other correspondence. If the Department determines, based on experience after the rule has been in effect, that a standardized form is necessary, the Department always has the option of producing such a form.

Comment: AFSA requests the Department to clarify the meaning of the term "good funds" in Section 20.17(b) of the rule and suggests that the term should not include a check unless it is certified.

Response: This comment appears to conflate two separate issues: (i) the meaning of the term "good funds" and (ii) the acceptable forms of payment to satisfy a lien. As to the first issue, the term "good funds" is not defined in statute, and the Department declines the invitation to define the term in the rule. "Good funds" is a widely used term in commercial transactions and is generally understood to mean that the money tendered in payment of a debt has value equal to the amount of the debt. For example, a payment in cash must be legal tender and not counterfeit. A check or similar instrument tendered in payment must not be forged and there must be sufficient money in the account to pay the instrument. In any event, a requirement that funds be "good" does not dictate the particular form in which a payment must be made.

As to the second issue, acceptable forms of payment to satisfy a lien are dictated by the statute and described further in the rule. Section 2121(b) of the Vehicle and Traffic Law states, in pertinent part, that "evidence that a security interest has been satisfied shall include: (i) evidence that an interbank or electronic transfer of funds has been made; or (ii) evidence that a copy of a cashier's or bank check has been delivered; or (iii) other evidence as determined to be satisfactory by the commissioner." In conformance with the statute, Section 20.17(b)(5) of the rule provides that the only acceptable forms of evidence that payment has been made to satisfy the lien are (i) a transmission receipt for an interbank or electronic funds transfer, (ii) a copy of a bank or cashier's check, or (iii) a written statement from the lienholder acknowledging that the lien has been satisfied. The Department therefore believes the rule is sufficiently clear on this point.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Appeals Board Procedures

I.D. No. MTV-01-14-00002-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 155 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 261, 469 and 471-a(5)

Subject: Appeals Board procedures.

Purpose: To conform Part 155 to the Appeals Board's current policies and procedures.

Text of proposed rule: Subdivisions (a), (c) and (d) of section 155.1 are amended to read as follows:

155.1 Administrative appeals board.

(a) The appeals board as established by section 228, article 2-A of the Vehicle and Traffic Law shall also constitute the administrative appeals board under article 3-A of such law. Each appeal shall be considered by members of the board, sitting as a panel. Each panel shall consist of three members designated as hereinafter provided. Hearing officers may be designated as members of each panel. At least two votes shall be required for a decision. (Appeals arising from determinations made pursuant to article 2-A of the Vehicle and Traffic Law, adjudication of traffic infractions, shall be considered and determined in accordance with regulations prescribed in Part [125] *126* of the regulations of the commissioner.)

(c) General direction and supervision of the administrative appeals board shall be exercised by the [Chairman] Chairperson of the Motor Vehicle Appeals Board who shall designate the individual members and presiding officers of the various panels and shall be the presiding officer of any panel of which he *or she* is a member. [The vice-chairman of the motor vehicle appeals board shall assist the chairman in the general direction and supervision of the administrative appeals board, perform the functions of the chairman in the absence of the chairman and, unless the chairman shall also be a member of the panel, shall be the presiding officer of any panel of which he is a member.]

(d) Members of the public, attorneys, and interested parties may obtain information or make submissions or requests concerning administrative appeals by writing to *the Appeals Board at*:

Appeals Board
Department of Motor Vehicles
P.O. Box 2935
Albany, NY 12220-0935
Information may be obtained by telephone at 518-474-1052.

Subdivisions (a) and (b) of section 155.2 are amended and a new subdivision (c) is added to read as follows:

155.2 [Fees, procedures in appeals involving no hearings]. *Appeal fees, forms, and filing deadlines.*

(a) A fee of $10*,* which shall not be refundable*,* must be paid at the time the appeal *form* is filed [from a determination not based upon a hearing]. *An appeal shall be rejected for failure to pay the $10.00 appeal fee within the required time to file an appeal.*

(b) Appeals [from a determination not based upon a hearing at which testimony was taken may be submitted on a form] *must be submitted on the form* and in the manner prescribed for such purpose. [not later than 60 days from the date after written notice was given of the determination appealed from, excluding the date of the determination.] *No appeal of a determination shall be considered if it is filed more than 60 days after the date of the Department's order of suspension or revocation, decision letter, or other notice of determination.* A copy of the written determination from which the appeal is taken must be filed with the appeal form.

(c) An appeal of a determination not based upon a hearing shall be considered filed for consideration by the Board upon the filing of the completed appeal form and appeal fee. An appeal from a determination based upon a hearing shall be considered filed for consideration by the Board upon the filing of the completed appeal form, appeal fee, completed transcript, if applicable, and arguments in support of the appeal. Any arguments in support of an appeal that are based upon a hearing transcript must be submitted within 30 days of the date the transcript was sent to the appellant.

Sections 155.3 and 155.4 are repealed and new sections 155.3 and 155.4 are added to read as follows:

155.3 *Hearing transcripts.*

(a) If the determination being appealed was based upon a DMV hearing, the Appeals Board shall not review the hearing transcript unless the appellant requests review of the transcript on the appeal form and pays for the transcript in a timely manner.

(b) If a transcript has been properly ordered prior to filing an appeal, the appellant must notify the Appeals Board upon filing an appeal that such transcript has been ordered and include the date the transcript was ordered and received.

(c) Transcripts can only be obtained from the firm which holds the contract to produce transcripts of Department hearings. The cost of such transcript, which is payable by the appellant, shall be the price for such transcripts as contained in the contract between the Department and the independent contractor.

(e) A transcript will be considered to have been submitted in timely fashion if proof that the transcript has been paid for not later than thirty (30) days after the Board has mailed an acknowledgement of receipt of the appeal with instructions for ordering the transcript is submitted to the appeals board. Proof that the transcript has been ordered and paid for shall consist of acknowledgment of receipt of timely transcript payments by the transcription firm.

(f) If a request for review of the transcript is made, and the transcript is not submitted in timely fashion in accordance with subdivision (d) of this section, the appeal will be deemed untimely and will not be considered.

155.4 Procedures.

(a) Presumption of mailing and delivery. All necessary notices may be mailed from the Appeals Board to the address provided on the appeal form, or if notice of change of address is delivered via certified mail to the Appeals Board, to the address specified in such notice. Mailing in the regular course of business shall be presumed to have occurred on the date shown in the records of the Appeals Board as the date of any notice, bill or other correspondence addressed to appellant or his representative.

(b) Arguments and materials. Oral arguments of the appeal are not permitted. Evidence, exhibits or documents not submitted to and considered by the hearing officer may not be filed with the appeal and will not be reviewed by the Appeals Board. A brief or written argument in support of the appeal may be submitted and must be filed with the Appeals Board within 30 days after the transcript has been sent to the appellant. At such time, the appeal will be considered fully submitted and ready for consideration by the Appeals Board (Section 155.2(c) of this Part). Upon written request and for good cause shown, the chairperson of the Appeals Board may grant an extension of time in writing to the appellant for submission of additional arguments in support of the appeal. In the event that an extension is granted to submit such argument, the time for determination of the appeal shall automatically be extended by a like period.

(c) Proof of mailing and payment. All papers actually received at the office of the Board will be treated as timely if the mailing bears a legible postmark evidencing receipt by the post office within the required time. All mail received by the Board will be date stamped and, in the absence of legible postmark or other U.S. postal record, will be treated according to the actual date of receipt demonstrated by the records of the Board. Proof of payment of required fees and costs may be made only by actual receipts issued by the Board or by production of payment instruments actually presented to and collected by the Board.

Subdivisions (b) and (c) of section 155.5 are amended to read as follows:

155.5 Determinations and stays.

(b) If a final disposition is not made within 30 days after an appeal has been finally submitted, any suspension or revocation order being appealed will be [automatically] *deemed* stayed until a final disposition is made. *Upon request by the appellant, the appeals board chairperson may grant a* [A] stay *pending determination of the appeal* [may also be granted], in *his or her* discretion, [by the appeals board upon the request of the appellant,] as prescribed in section 262 of the Vehicle and Traffic Law.

(c) A stay, which takes effect pursuant to section 463(2)(e)(1) of the Vehicle and Traffic Law, shall remain in effect through the pendency of an appeal and any subsequent judicial action, authorized by section 469 of such Law.

A new section 155.8 is added to read as follows:

155.8 Appeals pursuant to the Franchised Motor Vehicle Dealer Act. Section 471-a(5) of the Vehicle and Traffic Law provides that any party may file an appeal of a determination made pursuant to such section in accordance with section 261 of such Law. No such determination shall be reviewed in any court unless an appeal has been filed and determined by the Appeals Board.

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

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

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

Consensus Rule Making Determination

Vehicle and Traffic Law § 260(1) provides that the Appeals Board established pursuant to Article 2-A shall also constitute the Appeals Board for the purpose of Article 3-A. Vehicle and Traffic Law § 261(3) also provides that any person desiring to file an appeal pursuant to Article 3-A shall do so in a form and manner provided by the Commissioner. The proposed revisions would make technical revisions to Part 155 of the Commissioner's Regulations, pertaining to appeals filed pursuant to Article 3-A. The revisions would clarify the appeal process for Article 3-A appeals and conform procedures to existing regulations and practice. The proposal would benefit the agency and the public by eliminating any confusion about the appeal process and creating clear, uniform procedures and standards that are in accord with law.

The proposed rule provides reflects current statutory provisions and procedures. For example, it clarifies the procedures related to how an appeal may be filed, when it must be timely filed, the proper submission of transcripts, proof of mailing, and determination of stays. In addition, the regulation makes clear that a stay which takes effect pursuant to Franchised Motor Vehicle Dealer Act shall remain in effect through the pendency of the appeal and any subsequent judicial action.

Since the proposed amendments reflect current law and procedure, a consensus rulemaking is appropriate.

Job Impact Statement

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

License Plates for Persons with Disabilities

I.D. No. MTV-01-14-00005-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 24 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 404-a

Subject: License plates for persons with disabilities.

Purpose: To conform part 24 to statutory provisions regarding license plates for persons with disabilities.

Text of proposed rule: Paragraph (3) of subdivision (a) of section 24.2 is amended to read as follows:

(3) has a physical or mental impairment or condition which is other than those specified above, but is of such nature as to impose unusual hardship in utilization of public transportation facilities and such condition is certified by a podiatrist *or an optometrist* who is certified by the Education Department of the State of New York or a physician*, physician assistant or nurse practitioner, to the extent authorized by law, including the education law, and consistent with any applicable written practice agreement,* duly licensed to practice medicine in this state*,* as constituting an equal degree of disability (specifying the particular condition) so as to prevent such person from getting around without great difficulty; or

Section 24.4 is amended to read as follows:

24.4 Proof of severe disability. (a) Upon an original registration issued on or after April 1, 1981, or upon the renewal of a registration, the original of which was issued prior to April 1, 1981, proof of severe disability will be required and may be required upon subsequent renewals. Such proof shall consist of a letter signed by a physician*, physician assistant, nurse practitioner, optometrist, or podiatrist* on his *or her* letterhead (if licensed outside of this state, must include state of licensure and license or certification number) or of a statement from the Commission for the Blind and Visually Handicapped, or a certification from the Office of Vocational Rehabilitation, or from a hospital, clinic or medical facility. A copy of the letter or statement is acceptable as is a copy of a physician's*, physician assistant's, nurse practitioner's, optometrist's, or podiatrist's* letter submitted to obtain a New York State Handicapped Parking Permit or a New York City Special Vehicle Identification Permit. The letter or statement shall have been issued within the preceding year, except at the discretion of the district director or county clerk. The letter, certification or statement must certify that the applicant has one or more of the permanent disabilities or conditions listed in Section 24.2 of this Part.

(i) Certification of disability by a podiatrist. A podiatrist duly licensed to practice podiatry in this state may certify only those conditions which he or she treats in the course of the practice of podiatry, as defined by section seventy hundred one of the education law.

(ii) Certification of disability by an optometrist. An optometrist duly licensed to practice optometry in this state may certify only those conditions which he or she treats in the course of the practice of optometry, as defined in section seventy-one hundred one of the education law.

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

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

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

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

Consensus Rule Making Determination

The purpose of this consensus rule is to conform 15 NYCRR 24 to the provisions of Vehicle and Traffic Law section 404-a, which deals with license plates for persons with severe disabilities.

Section 404-a of the VTL provides that a physician, a physician's assistant, a nurse practitioner, a podiatrist or an optometrist are authorized to certify to the persons disability, so that such person may a obtain a license plate or, under VTL section 1203-a, handicapped parking permit for persons with disabilities. Such plates and permits allow persons with disabilities to park in a handicapped parking space. In accordance with the statute, the proposed rule also provides that a podiatrist duly licensed to practice podiatry in this state may certify only those conditions which he or she treats in the course of the practice of podiatry, as defined by section seventy hundred one of the education law. Similarly, an optometrist duly licensed to practice optometry in this state may certify only those conditions which he or she treats in the course of the practice of optometry, as defined in section seventy-one hundred one of the education law.

Since this proposed amendment merely conforms the regulation to existing statutory provisions, a consensus rule is appropriate.

Job Impact Statement

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Personalized Plates for Historical Motor Vehicles

I.D. No. MTV-01-14-00006-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 16 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, section 404

Subject: Personalized plates for historical motor vehicles.

Purpose: To permit the issuance of personalized plates to persons who own historical motor vehicles.

Text of proposed rule: Subdivision (c) of Part 16.5 is repealed, and subdivisions (d), (e) and (f) are relettered (c), (d) and (e):

No plate shall be issued under this Part which:

(a) does not have at least one letter. This provision shall not apply to plates issued to public officers.

(b) has numbers and letters, or any combination thereof, arranged in a format reserved for issuance to specific classes of vehicles other than passenger vehicles.

[(c) is assigned for issuance to historical motor vehicles.

(d)] *(c)* consists of six numbers followed by one letter.

[(e)] *(d)* is, in the discretion of the commissioner, obscene, lewd, lascivious, derogatory to a particular ethnic or other group, or patently offensive.

[(f)] *(e)* would lead one to believe that the owner of a particular vehicle is connected with or operating in an official capacity for a governmental organization or function.

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

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

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

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

Consensus Rule Making Determination

Section 404 of the Vehicle and Traffic Law authorizes the Commissioner of Motor Vehicles to issue special number plates upon payment of the appropriate fees. Part 16 of the Commissioner's Regulations establishes the criteria for the issuance of special number plates, which include personalized plates.

Since 2010, the Department has been issuing personalized plates to the owners of historical motor vehicles. The Department has issued over 500 personalized plates for such motor vehicles. Currently, Section 16.5 prohibits the issuance of personalized plates for historical vehicles. This amendment makes conforming amendments to Section 16.5 to reflect the Department's current practice of issuing personalized plates to owners of historical vehicles.

Because this proposed rule is a non-controversial, minor amendment, a consensus rule is appropriate.

Job Impact Statement

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

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-01-14-00026-E

Filing No. 1253

Filing Date: 2013-12-24

Effective Date: 2013-12-25

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 the addition of Part 625 to Title 14 NYCRR.

Statutory authority: L. 2012, ch. 501; and 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, to implement many of the provisions contained in the PPSNA. These 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 December 25, 2013, 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 and September 26, 3013 regulations, based on input from the field and the Justice Center, and experience with the new systems and requirements gained over the past six 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 investigation report format that contains elements specified by OPWDD.
- 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 March 23, 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 it will comply with the new requirements with no additional staff. Furthermore, OPWDD has already implemented some of the new requirements contained in the regulations in state-operated services through implementation of policy/procedure changes. There may be minimal one-time costs associated with notification and training of staff.

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

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

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

b. Costs to private regulated parties: It is difficult to estimate the cost impact on private regulated parties, however, OPWDD expects that cost to providers will be minimal. OPWDD already requires the reporting and investigation of incidents. The implementation of these reforms in general will not result in costs. There may be costs associated with the amendment of Section 424-a of the Social Service Law (as reflected in these regulations) which requires background checks of the Statewide Central Register of Child Abuse and Maltreatment (which cost $25 per check). However, OPWDD cannot estimate how many additional checks will be required. There may also be additional costs associated with the need for clinical assessments needed to demonstrate psychological abuse. 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 December 25, 2013 to ensure continued compliance with Chapter 501 of the Laws of 2012. The emergency regulations replace prior emergency regulations which were effective September 26, 2013 and expired on December 24, 2013.

Regulatory Flexibility Analysis

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

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

2. Compliance requirements:

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

The regulations impose requirements that all 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 ac-

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

The regulations impose requirements that all 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 record-

keeping system to maintain their minutes and that these agencies would only have to copy and paste their minutes into IRMA. Agencies that do not have an electronic recordkeeping system and that maintain handwritten or typed minutes will have to assign staff to type the minutes into IRMA. OPWDD expects that these agencies will add this task to the duties of clerical staff who are trained and experienced in data entry and who can perform this function in an efficient manner.

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

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

4. Compliance costs: There may be modest costs for small business providers associated with the amendments. There may be costs associated with obtaining a clinical assessment in the case of suspected psychological abuse. 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

NOTICE OF ADOPTION

Approving, in Part, HQ's Petition for Rehearing

I.D. No. PSC-30-13-00007-A

Filing Date: 2013-12-23

Effective Date: 2013-12-23

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

Action taken: On 12/19/13, the PSC adopted an order approving, in part, a petition for rehearing filed by HQ Energy Services (U.S), Inc. (HQ) regarding the Commission's May 22, 2013 Order Modifying Renewable Portfolio Standard Program Eligibility Requirements.

Statutory authority: Public Service Law, sections 4(1), 5(2), 20(1), 22, 23 and 66(1)

Subject: Approving, in part, HQ's petition for rehearing.

Purpose: To approve, in part, HQ's petition for rehearing.

Substance of final rule: The Commission, on December 19, 2013, adopted an order approving, in part, a petition filed by H.Q. Energy Services (U.S.) Inc., regarding the Commission Order Modifying Renewable Portfolio Standard Program Eligibility issued on May 22, 2013, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(03-E-0188SA41)

NOTICE OF ADOPTION

Authorizing O&R to Issue and Sell Securities

I.D. No. PSC-33-13-00030-A

Filing Date: 2013-12-20

Effective Date: 2013-12-20

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

Action taken: On 12/19/13, the PSC adopted an order approving a petition by Orange and Rockland Utilities, Inc. (O&R) for authority to issue and sell securities.

Statutory authority: Public Service Law, section 69

Subject: Authorizing O&R to issue and sell securities.

Purpose: To authorize O&R to issue and sell securities.

Substance of final rule: The Commission, on December 19, 2013, adopted an order approving a petition filed by Orange and Rockland Utilities, Inc. to issue and sell unsecured debt obligations having a maturity of more than one year, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-M-0304SA1)

NOTICE OF ADOPTION

Approving the Relocation of a Call Center

I.D. No. PSC-37-13-00006-A

Filing Date: 2013-12-20

Effective Date: 2013-12-20

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

Action taken: On 12/19/13, the PSC adopted an order approving a notice of intent filed by KeySpan Gas East Corporation d/b/a National Grid to relocate a call center to another part of New York State.

Statutory authority: Public Service Law, sections 5 and 65

Subject: Approving the relocation of a call center.

Purpose: To approve the relocation of a call center.

Substance of final rule: The Commission, on December 19, 2013, adopted an order approving a notice of intent filed by KeySpan Gas East Corporation d/b/a National Grid to relocate a call center to another part of New York State, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-G-0371SA1)

NOTICE OF ADOPTION

Authorizing Rainbow and Sunrise to Establish a Temporary Customer Surcharge

I.D. No. PSC-37-13-00008-A

Filing Date: 2013-12-19

Effective Date: 2013-12-19

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

Action taken: On 12/19/13, the PSC adopted an order approving a petition filed by Rainbow Water Company, Inc. (Rainbow) and Sunrise Ridge Water Company (Sunrise) authorizing a temporary surcharge to recover costs incurred due to a well collapse.

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

Subject: Authorizing Rainbow and Sunrise to establish a temporary customer surcharge.

Purpose: To authorize Rainbow and Sunrise to establish a temporary customer surcharge.

Substance of final rule: The Commission, on December 19, 2013, adopted an order approving a petition filed by Rainbow Water Company, Inc. and Sunrise Ridge Water Company authorizing the establishment of a temporary customer surcharge to recover expenses incurred due to a well collapse, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-W-0374SA1)

NOTICE OF ADOPTION

Allowing NYSERDA to Allocate Uncommitted SBC III Funds to Support PEMC

I.D. No. PSC-39-13-00011-A

Filing Date: 2013-12-20

Effective Date: 2013-12-20

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

Action taken: On 12/19/13, the PSC adopted an order approving a petition by New York State Energy and Research Development (NYSERDA) to allocate uncommitted System Benefits Charge III (SBC) funds to support the Power Electronics Manufacturing Consortium (PEMC).

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Allowing NYSERDA to allocate uncommitted SBC III funds to support PEMC.

Purpose: To allow NYSERDA to allocate uncommitted SBC III funds to support PEMC.

Substance of final rule: The Commission, on December 19, 2013, adopted an order approving a petition filed by New York State Energy Research and Development Authority to allocate $7.5 million in uncommitted System Benefit Charge funds to support the Power Electronics Manufacturing Consortium initiative, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(10-M-0457SA6)

NOTICE OF ADOPTION

Granting, in Part, the Waiver of Certain Requirements Under PSC Article VII

I.D. No. PSC-39-13-00014-A

Filing Date: 2013-12-23

Effective Date: 2013-12-23

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

Action taken: On 12/19/13, the PSC adopted an order granting, in part, a motion by Poseidon Transmission I, LLC, to waive certain requirements under PSC article VII for Certificates of Environmental Compatibility and Public Need.

Statutory authority: Public Service Law, sections 4 and 122

Subject: Granting, in part, the waiver of certain requirements under PSC article VII.

Purpose: To grant, in part, the waiver of certain requirements under PSC article VII.

Substance of final rule: The Commission, on December 19, 2013, adopted an order granting, in part, the motion of Poseidon Transmission I, LLC, to waive certain of the Commission's regulations relating to Public Service Law Article VII applications, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-T-0391SA1)

NOTICE OF ADOPTION

Authorizing the Redesign of the Solar Photovoltaic Programs and the Reallocation of the Main Tier Unencumbered Funds

I.D. No. PSC-39-13-00017-A

Filing Date: 2013-12-19

Effective Date: 2013-12-19

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

Action taken: On 12/19/13, the PSC adopted an order authorizing the redesign of the solar photovoltaic programs and the reallocation of the Main-Tier unencumbered funds.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66

Subject: Authorizing the redesign of the solar photovoltaic programs and the reallocation of the Main Tier unencumbered funds.

Purpose: To authorize the redesign of the solar photovoltaic programs and the reallocation of the Main Tier unencumbered funds.

Substance of final rule: The Commission, on December 19, 2013, adopted an order approving a petition authorizing the redesign of the solar photovoltaic programs and the reallocation of Main-Tier unencumbered funds, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(03-E-0188SA43)

NOTICE OF ADOPTION

Approving the Establishment of the New York Green Bank and Providing Initial Capitalization

I.D. No. PSC-39-13-00020-A

Filing Date: 2013-12-19

Effective Date: 2013-12-19

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

Action taken: On 12/19/13, the PSC adopted an order establishing the New York Green Bank and providing initial capitalization.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Approving the establishment of the New York Green Bank and providing initial capitalization.

Purpose: To approve the establishment of the New York Green Bank and providing initial capitalization.

Substance of final rule: The Commission, on December 19, 2013, adopted an order establishing the New York Green Bank and providing initial capitalization, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-M-0412SA1)

NOTICE OF ADOPTION

Authorizing National Grid to Issue Aggregate Long-Term Debt of Up to $300 Million

I.D. No. PSC-41-13-00014-A

Filing Date: 2013-12-20

Effective Date: 2013-12-20

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

Action taken: On 12/19/13, the PSC adopted an order approving a petition by National Grid Generation LLC (National Grid) for authority to issue debt securities in an aggregate amount not to exceed $300 million.

Statutory authority: Public Service Law, section 69

Subject: Authorizing National Grid to issue aggregate long-term debt of up to $300 million.

Purpose: To authorize National Grid to issue aggregate long-term debt of up to $300 million.

Substance of final rule: The Commission, on December 19, 2013, adopted an order approving a petition filed by National Grid Generation, LLC to issue up to a total of $300 million of long term debt securities to finance the construction of turbine efficiency improvement systems and nitrogen oxide control systems at its generation facilities and to refinance maturing issues of long-term debt, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-E-0390SA1)

NOTICE OF ADOPTION

Authorizing Corning to Recover Deferrals Through the Delivery Rate Adjustment

I.D. No. PSC-43-13-00019-A

Filing Date: 2013-12-19

Effective Date: 2013-12-19

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

Action taken: On 12/19/13, the PSC adopted an order authorizing Corning Natural Gas Corporation (Corning) to recover both the property tax expense deferral and the non-firm revenue deferral commencing on January 1, 2014.

Statutory authority: Public Service Law, sections 4, 5, 65 and 66

Subject: Authorizing Corning to recover deferrals through the Delivery Rate Adjustment.

Purpose: To authorize Corning to recover deferrals through the Delivery Rate Adjustment.

Substance of final rule: The Commission, on December 19, 2013, adopted an order approving a petition filed by Corning Natural Gas Corporation authorizing recovery, though the Delivery Rate Adjustment clause, $441,528, to offset both the property tax expense deferral (by $284,504) and the non-firm revenue deferral (by $157,024), commencing on January 1, 2014, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-G-0465SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Rates of National Fuel Gas Distribution Corporation (NFG)

I.D. No. PSC-01-14-00015-P

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

Proposed Action: On 12/6/13, National Fuel Gas Distribution Corporation filed a Joint Proposal supported by four other parties intended to resolve all issues. In establishing permanent gas rates for NFG, the Commission may adopt, modify, or may reject the Joint Proposal.

Statutory authority: Public Service Law, sections 66, 72 and 114

Subject: Rates of National Fuel Gas Distribution Corporation (NFG).

Purpose: To establish a new permanent rate plan for NFG considering temporary rates and other elements of the company's cost of service.

Substance of proposed rule: By Order issued April 19, 2013, the Public Service Commission (Commission) instituted a proceeding to examine the need to revise the gas rates of National Fuel Gas Distribution Corporation (NFG) and to provide ratepayers with appropriate and concomitant adjustments to the company's deferred accounts. By Order issued June 14, 2013, the Commission set temporary rates for NFG, subject to refund, to ensure that its rates remain just and reasonable pending a Commission determination on permanent gas rates in this proceeding. On December 6, 2013, several parties, including NFG, Department of Public Service Staff, Multiple Intervenors, People United for Sustainable Housing (PUSH) Buffalo, and the Utility Intervention Unit, N.Y.S. Department of State filed a Joint Proposal intended to resolve all aspects of NFG's earnings in the Commission proceeding instituted by the April 19, 2013 Order, including Public Service Law § 66(20), temporary rates, and other elements of NFG's cost of service, and establishes a new permanent rate plan (Summary of Joint Proposal, attached). The Commission may adopt or modify the terms and conditions of the Joint Proposal, or may reject the Joint Proposal.

Case 13-G-0136 – Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of National Fuel Gas Distribution Corporation for Gas Service

SUMMARY OF JOINT PROPOSAL[1]

Effective Date – Retroactive to October 1, 2013, unless otherwise specified therein. Two -year Rate Plan: October 1, 2013 through September 30, 2014 ("Rate Year One"), and October 1, 2014 through September 30, 2015 ("Rate Year Two").

Rate Year Revenue Requirements.

No change in base delivery rates during the Rate Years until changed by order of the Commission;

A return on equity ("ROE") of 9.1 percent; common equity ratio of 48 percent;

The calculation of the revenue requirements over the two Rate Years results in net excess revenue in the amount of $1,083,000, which the Company will credit against the deferred balance of carrying charges owed on the pension internal reserve debit balance;

(Stay out) No new base rates to go into effect before October 1, 2015.

Earnings Sharing Mechanism – Earnings sharing threshold begins at 9.5%, 50/50 to 10.5%, 80/20 over that. Any allocation of excess earnings to customers will be applied to write down Distribution's SIR deferral balance for the benefit of customers, Carrying Charges owed on Pension Internal Reserve Debit Balance, Pension Deferrals, and OPEBs Deferrals, in that order.

Refund Provision – Resolves all PSL 66(20) claims and refunds due to customers under the Temporary Rates Order. The Company will fund $7.5 million into a deferred credit account. The account will be distributed as follows: (a) $1,773,154 will be refunded to non-residential customers; (b) $1,750,000 will be allocated, as additional funding, to the Company's Low Income Usage Reduction Program, administered by NYSERDA for weatherization projects in the Company's service territory; (c) $250,000 will be allocated to a furnace replacement program for HEAP customers in Year Two; and (d) $3,726,846 million will be refunded to residential customers. Company will discontinue its appeal of the Temporary Rate Order.

Deferral And Reconciliation Mechanisms – The pension deferral balance has been reduced by $2.702 million for the calculated adjustment of RDM recovered sales volumes. There will be a one-way net plant true-up mechanism for capital investment effective in each Rate Year.

Gas Safety Performance – The Company's gas safety performance mechanism will be effective on January 1, 2014, and will be measured for each calendar year ("CY") against the Gas Safety Performance Metrics described in the JP. A total of 100 basis points in CY 2014 and 150 basis points in CY 2015 and any subsequent CY will be at risk. High risk and Other risk regulation violation metric instituted with negative revenue adjustments.

Service Quality and Low Income Discount Program - The Service Quality Performance Mechanism metrics established in Case 07-G-0141 will continue. The existing LICAAP program will be reduced through attrition and reduced enrollments and benefits. A new Low Income Discount Program will provide a bill discount of $12.50 per month, applied to the Minimum Bill to all HEAP recipients, except those customers participating in LICAAP.

Area Development Program ("ADP") - will be funded at an annual level of $1.250 million.

Gas Expansion and PACE collaborative - The Company will develop a pilot Gas Expansion Plan detailing how it will attempt to expand its system to provide service to new customers. Also, within 90 days of an order approving this Joint Proposal, the Company will convene a collaborative to determine the viability of expanding the county-administered, low-income aggregation program known as Public Assistance for Cooperative Energy

(PACE), to include additional customers receiving heating assistance, i.e., HEAP recipients.

[1] This summary is intended solely for the convenience of the Administrative Law Judges and any other person seeking a quick summary of the Joint Proposal. It is not intended to supplement or replace the Joint Proposal and may not be used in any way, nor is it intended by the signatories to the Joint Proposal, to vary the terms of the Joint Proposal.

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

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

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

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

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

(13-G-0136SP3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Demand Response Programs

I.D. No. PSC-01-14-00016-P

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

Proposed Action: The Commission is considering a filing by Consolidated Edison Company of New York, Inc. proposing revisions to the rules and regulations contained in P.S.C. No. 10 — Electricity regarding its Demand Response Programs.

Statutory authority: Public Service Law, section 66(12)

Subject: Demand Response Programs.

Purpose: To revise Rider S – Commercial System Relief Program and Rider U – Distribution Load Relief Program.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Consolidated Edison Company of New York, Inc. (Con Edison) revising its Demand Response Programs contained in P.S.C. No. 10 – Electricity. Specifically, Con Edison proposes to modify Rider S – Commercial System Relief Program and Rider U – Distribution Load Relief Program to clarify and/or streamline tariff language, make Rider S language consistent with similar provisions in Rider U, change program definitions affecting the terms of service and modify program rules to increase customer participation and encourage improved customer performance during demand response events. Con Edison also proposes revisions to clarify and streamline tariff language in Rider P – Purchases of Installed Capacity Program and Rider V – Emergency Demand Response Program. The filing has an effective date of April 1, 2014.

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

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

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

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

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

(13-E-0573SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Residential Time-of-Use Rates

I.D. No. PSC-01-14-00017-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 a filing by Niagara Mohawk Power Corporation d/b/a National Grid proposing revisions to the rules and regulations contained in P.S.C. No. 220 — Electricity regarding residential time-of-use rates.

Statutory authority: Public Service Law, section 66(12)

Subject: Residential Time-of-Use Rates.

Purpose: To establish residential optional time of use delivery and commodity rates.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid (NMPC) establishing voluntary time-of-use electricity rates for Service Classification (SC) No. 1. The proposed filing is being made in accordance with the March 15, 2013 Commission Order in Case 12-E-0201 (2012 Rate Case). In the Order, the Commission directed NMPC to file a report summarizing the appropriateness and feasibility of improved time differentiated commodity and delivery rates for residential customers. On December 20, 2013 NMPC filed the report with tariff amendments establishing Residential SC-1 Voluntary Time of Use. The proposed tariff amendments have an effective date of April 1, 2014.

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.

(12-E-0201SP4)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Tariff Language

I.D. No. PSC-01-14-00018-P

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

Proposed Action: The Commission is considering a filing by Rochester Gas and Electric Corporation (RG&E) proposing revisions to its tariff schedules, PSC No. 16—Gas and PSC No. 19—Electric to become effective April 1, 2014.

Statutory authority: Public Service Law, section 66(12)

Subject: Tariff Language.

Purpose: To make tariff language consistent between RG&E and NYSEG where both Company's processes are the same.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposal filed by Rochester Gas and Electric Corporation (RG&E) to make revisions to its electric and gas tariff schedules, PSC No. 16–Gas and PSC No. 19–Electric. RG&E proposes to make tariff language consistent between RG&E and New York State Electric and Gas Corporation's electric and gas tariff schedules for certain terms and conditions where the Companies' processes are consistent. The filing has a proposed effective date of April 1, 2014.

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

Albany, New York 12223-1350, (518) 486-2659, email: deborah.swatling@dps.ny.gov

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

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

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

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

(13-M-0551SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Tariff Language

I.D. No. PSC-01-14-00019-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 a filing by New York State Electric & Gas Corporation (NYSEG) proposing revisions to the Company's rules and regulations contained in P.S.C. Nos. 119 and 120 Electricity and P.S.C. Nos. 87, 88 and 90 Gas.

Statutory authority: Public Service Law, section 66(12)

Subject: Tariff Language.

Purpose: To make tariff language consistent between NYSEG and RG&E where both Companies processes are the same.

Substance of proposed rule: The Commission is considering whether to approve, modify or reject, in whole or in part, a proposal filed by New York State Electric & Gas Corporation (NYSEG) to make revisions to its electric and gas tariff schedules, P.S.C. Nos. 119 and 120 – Electricity and P.S.C. Nos. 87, 88 and 90 – Gas. NYSEG proposes to make tariff language consistent between NYSEG and Rochester Gas and Electric Corporation's electric and gas tariff schedules for certain terms and conditions where the Companies' processes are consistent. The filing has a proposed effective date of April 1, 2014.

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

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

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

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

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

(13-M-0551SP3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. PSC-01-14-00020-P

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

Proposed Action: The Public Service Commission is considering a petition of New York State Electric & Gas Corporation seeking authorization of the issuance of approximately $865 million of long-term securities and to enter into derivative instruments.

Statutory authority: Public Service Law, section 69

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

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

Substance of proposed rule: The Commission is considering whether to approve or reject in whole or in part or modify a request sought in a petition filed by New York State Electric & Gas Corporation authorizing the issuance of approximately $865 million of long-term indebtedness, preferred stock and hybrid securities and to enter into derivative instruments. The Commission shall consider all other 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.

(13-M-0554SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver of 16 NYCRR Sections 894.1 Through 894.4(b)(2)

I.D. No. PSC-01-14-00021-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 to approve, modify, or reject a petition from the Town of Long Lake, Hamilton County, to waive 16 NYCRR sections 894.1 through 894.4 pertaining to the franchising process.

Statutory authority: Public Service Law, section 216(1)

Subject: Waiver of 16 NYCRR sections 894.1 through 894.4(b)(2).

Purpose: To allow the Town of Long Lake, NY, to waive certain preliminary franchising procedures to expedite the franchising process.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify, or reject the Petition of the Town of Long Lake, Hamilton County, to waive the requirements of 16 NYCRR sections 894.1 through 894.4 to expedite the franchising process.

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

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

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

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

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

(13-V-0552SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Water Rates and Charges

I.D. No. PSC-01-14-00022-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 Hastings-on-Hudson, requesting approval to have costs for infrastructure maintenance and access to be included in the rates charged to all customer classes within the village.

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 Hastings-on-Hudson, requesting approval per the Laws of New York, Chapter 433, requiring the Commission to issue an order to United Water New Rochelle 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 Hastings-on-Hudson. 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 Hastings-on-Hudson.

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

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

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

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

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

(13-W-0553SP1)

Workers' Compensation Board

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Independent Medical Examinations

I.D. No. WCB-12-13-00004-RP

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

Proposed Action: Amendment of section 300.2 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 117, 137 and 141

Subject: Independent Medical Examinations.

Purpose: Regulate the process for conduct and reporting of independent medical examinations.

Substance of revised rule: The proposed amendments to section 300.2 of 12 NYCRR modify the rules governing independent medical examinations (IME), independent medical examiners, IME entities and reports made without physical examination.

Paragraphs (1) and (2) of subdivision (b) of section 300.2 of 12 NYCRR are amended to clarify that a physician or provider who has examined the claimant for the sole purpose of a consultation or diagnostic examination or test is not an attending physician or provider within the meaning of the Workers' Compensation Law, and to clarify that a physician or provider who conducts a records review must be authorized by the Chair or the Workers' Compensation Board (Board).

Paragraph (6) of subdivision (b) of section 300.2 of Title 12 NYCRR is repealed and a new paragraph (6) is added to provide a definition for an IME entity.

Paragraphs (9) and (11) of subdivision (b) are amended. Paragraph (9) requires that when an authorized provider is not available for a records review, then a qualified provider must be selected. Paragraph (11) has been amended to clarify that a "substantive communication" for the purposes of determining whether a request for information must be filed with the Board does not include documents that are already part of the Board's file.

Paragraph (12) of subdivision (b) has been added to supply a definition for "Reports made without physical examination" or "Records review."

Paragraph (3) of subdivision (c) sets forth the procedures for retaining authorization privileges and removal of a provider from the list of authorized examiners.

Paragraph (1) of subdivision (d) is amended to provide that notice of an independent medical examination must be mailed to the Board on the same day it is mailed to the claimant, that an overnight delivery service may be used, and sets forth rules for use of an overnight delivery service.

Paragraph (3) of subdivision (d) is repealed and new paragraphs (3), (4), (5) and (6) are added. Paragraphs (4) and following are renumbered. Paragraph (3) of subdivision (d) requires that information, as that term is defined, that is supplied to an independent medical examiner must be part of the Board file. The information must be submitted to the Board no later than the day that information is first sent to an independent medical examiner or IME entity. Paragraph (4) of subdivision (d) sets forth the requirements for the contents and service of the report of independent medical examination. Paragraph (5) of subdivision (d) sets for the requirements for service of requests for information. Paragraph (6) of subdivision (d) sets forth the requirement for reports filed by an IME entity, as well as stating what services may be supplied by an IME entity.

Newly renumbered paragraphs (7), (8), (10), (12) and (14) of subdivision (d) of Title 12 NYCRR are amended. Paragraph (7) of subdivision (d) clarifies the process for videotaping an examination. Paragraph (8) of subdivision (d) addresses the limited patient-physician or provider relationship that exists between a claimant and the examiner. Paragraph (10) of subdivision (d) clarifies that the reasons for use of a qualified provider are also applicable to records reviews. Paragraph (12) of subdivision (d) is amended to require that an objection that a report does not substantially comply with Workers' Compensation Law section 137 or this section must be raised in a timely manner. Paragraph (14) states that a report must be filed within 10 business days of the examination and that a report is filed with the Board when it has been received by the Board.

Paragraph (1) of subdivision (e) is repealed and a new paragraph (1) added that describes the mandatory registration process for IME entities. Mandatory registration must occur every three years. Paragraphs (2), (3), (4) and (5) of subdivision (e) have been amended. The changes are minor and include a requirement in Paragraph (3) that an IME entity comply fully with any investigation by the Chair. New paragraph (6) has been added to subdivision (e). It describes the basis and procedures for removal of a registered IME entity. New paragraph (7) provides for imposition of a $10,000 penalty and revocation of an IME entity's registration when the Chair finds that an IME entity has materially altered an IME report or caused a material alteration.

Revised rule compared with proposed rule: Substantial revisions were made in section 300.2(b)(4).

Text of revised proposed rule and any required statements and analyses may be obtained from Heather MacMaster, Workers' Compensation Board, 328 State Street, Schenectady, NY 12305-2318, (518) 486-9564, email: regulations@wcb.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

A revised Regulatory Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text clarify that exams conducted at occupational health clinics established by section 151 of the Workers' Compensation Law are not independent medical examinations within the meaning of section 300.22 of 12 NYCRR. This change does not affect the meaning of any statements in the document.

Revised Regulatory Flexibility Analysis

A revised Regulatory Flexibility Analysis for Small Business and Local Governments is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text clarify that exams conducted at occupational health clinics established by section 151 of the Workers' Compensation Law are not independent medical examinations within the meaning of section 300.2 of 12 NYCRR. This change does not affect the small businesses and local governments and thus do not affect the meaning of any statements in the document.

Revised Rural Area Flexibility Analysis

A revised Rural Area Flexibility Analysis is not required because the changes made to the last published rule do not necessitate revision to the

previously published document. The changes to the text clarify that exams conducted at occupational health clinics established by section 151 of the Workers' Compensation Law are not independent medical examinations within the meaning of section 300.2 of 12 NYCRR. This change does not affect people living in rural areas and thus does not affect the meaning of any statements in the document.

Revised Job Impact Statement

A revised Statement in Lieu of Job Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. The changes to the text clarify that exams conducted at occupational health clinics established by section 151 of the Workers' Compensation Law are not independent medical examinations within the meaning of section 300.2 of 12 NYCRR. This change does not affect jobs in New York State and thus does not affect the meaning of any statements in the document.

Assessment of Public Comment

The Chair and Board received formal written comments from eleven individuals or entities.

All of the comments received were reviewed and assessed. The full Assessment of Public Comment summarized, analyzed, and responded to the comments received and it exceeds 2,000 words. This document is a summary of the full Assessment of Public Comment. A copy of the full assessment is posted on the Board's website at http://www.wcb.ny.gov/content/main/wclaws/newlaws.jsp

Two claimants' attorneys and a group of claimants' attorneys objected to the addition of language to the definition of "attending physician" in subdivision (b), subparagraph (1) that stated that an attending provider does not include a provider who has examined the claimant solely for the purpose of consultation or diagnostic testing. This sentence has been moved to subsection (4) (iii) of subdivision (d) to clarify its intent. The intention of this sentence is to address which attending providers should receive copies of the report of independent medical examination, and ensure that the list of providers who must receive a copy of a report of independent medical examination is not overly broad.

Two IME entities commented that adding "records reviews" to the tasks performed by an "authorized examiner" creates confusion as to whether an examiner conducting a records review must abide by the subdivisions of the regulation applicable to independent medical examiners. The Board has not made any changes to the proposed regulation based on these comments.

A group of chiropractors commented that they were the only group of medical providers required to have two years of pre-professional study. The Board has not made any changes to the proposed regulation based on this comment.

A group of claimants' attorneys commented that a "qualified physician" should not be permitted to conduct a records review as there is no need for a records review to be conducted outside of New York State. The Board has not made any changes to the proposed regulation based on this comment.

A group of insurers commented that the definition of "IME entity" should not permit individuals who perform independent medical examinations to register as an IME entity. The Board has not made any change to the proposed regulation in response to this comment.

Several IME entities and a group representing insurance carriers commented that the Board should clarify that the rules governing IMEs and records reviews do not apply to the carrier's medical professionals who conduct variance reviews and optional prior approval reviews pursuant to Part 324 of 12 NYCRR. Language has been added at several places in the regulation to clarify that an authorized examiner does not include the insurance carrier's medical professional as that term is defined in subdivision (c) of section 324.1 of 12 NYCRR.

Groups representing chiropractors commented that records reviews should not be permitted at all as such reviews are inferior to a physical examination of an injured worker. The Board has not made any change to the proposed regulation in response to this comment.

Several groups commented on the addition of a new subdivision (d), subparagraph (3) that requires that information provided to an independent medical examiner in connection with an IME shall be part of the Board file at the time it is provided to the independent medical examiner. The Board has not made any changes to the regulation based on these comments.

Two IME entities commented that the additional certification requirements required by an examiner are unnecessary as the cover sheet for the report of independent medical examination already has a certification on it. A group of claimant's attorneys commented that the certification changes are good. The Board has not made any changes to the regulation.

The State Insurance Fund commented that requiring that records reviews be supplied 10 business days before the hearing where they will be used conflicts with the requirement in section 300.33 that requires a report of independent medical examination to be supplied within 3 days of the pre-hearing conference. To avoid the confusion of having unnecessary differing timelines, the Board has accepted this change.

A group of claimants' attorneys commented that the failure to comply with the requirements for filing a request for information should require preclusion of the report of independent medical examination. The Board did not make any changes in response to this comment.

The Board received a number of comments on subdivision (6) governing the process for submission of reports of independent medical examinations by an IME entity. The Board did not make any changes in response to these comments.

The Board received several comments regarding the claimant's right to videotape the independent medical examination. The Board has not made any changes to the proposed regulation in response to these comments.

The Board received several comments regarding the limited physician-patient relationship between the examiner and the claimant. The Board has not made any changes to the proposed regulation in response to these comments.

The Board received several comments regarding the time to raise an objection to a report of independent medical examination. The Board has not made any changes to the proposed regulation in response to these comments.

Several IME entities objected to the requirements for IME entities registration with the Board. The Board has not made any changes to the proposed regulation in response to these comments.

The chiropractors groups commented that an IME entity should be required to disclose if it, or an owner, officer or partner, has been the subject of any disciplinary action in any other state and that penalties for material alteration of a report of independent medical examination should be increased from ten thousand dollars to fifty thousand dollars per occurrence. The Board has not made any changes to the proposed regulation in response to these comments.

The chiropractors groups made several other comments regarding the independent medical examination process not related to a specific subdivision in the proposed regulation. The Board has not made any changes to the proposed regulation in response to these comments.