RULE MAKING ACTIVITIES

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

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

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

Department of Agriculture and Markets

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Updating Regulations That Apply to the Production and Processing of Milk and Milk Products

I.D. No. AAM-28-14-00004-P

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

Proposed Action: This is a consensus rule making to amend section 2.8; repeal Parts 10, 12 and 13 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 16, 18, 46-a, 47, 254 and 255

Subject: Updating regulations that apply to the production and processing of milk and milk products.

Purpose: To repeal unnecessary and obsolete regulations applicable to the production and processing of milk and milk products.

Text of proposed rule: Section 2.8 of Part 2 of Title 1 of the *Official Compilation of Codes, Rules and Regulations of the State of New York* is amended to read as follows:

Section 2.8 Quality Standards

Milk and milk products		Standards
Prepasteurized milk for Grade A use	Temperature	Cooled to 45°F (7°C) or less within two hours after milking, provided that the blend temperatures following subsequent milkings shall not exceed 50°F (10°C).
	Bacterial limits	Individual producer milk not to exceed 100,000 per ml. prior to commingling with other producer milk. Not to exceed 300,000 per ml. as commingled milk prior to pasteurization.
	[Sediment	Less than 1.5 mg. on individual producer milk; less than 1.0 mg. on commingled producer milk as determined by the provisions of 1 NYCRR Part 12.]
	Drugs	Not to exceed the applicable standard or tolerance set forth in transmittals supplementing the PMO bearing identification numbers M-1-94-4, IMS-a-30, M-1-91-6, M-1-92-1, M-1-92-10, M-1-92-14 and M-a-86, more fully described in section 2.2(kk)(14), (15), (16), (17), (20), (21) and (22) of this Part.
	Abnormalities	Milk to have normal odor and appearance.
	Somatic cells	[Not to exceed 1,000,000 per ml., except that after 7/1/93, not] *Not* to exceed 750,000 per ml. for prepasteurized milk from cows.
Prepasteurized milk for non-Grade A use	Temperature	In cans, cooled to 55°F (13°C) or lower within two hours after milking and delivered to the plant at 60°F (16°C) or lower. In bulk, cooled to 45°F (7°C) or less within two hours provided that the blend temperatures following subsequent milkings shall not exceed 50°F (10°C).
	Bacterial limits	Not to exceed 1,000,000 per ml. prior to commingling with other producer milk. Not to exceed 3,000,000 per ml. as commingled milk prior to pasteurization.
	Drugs	Not to exceed the applicable standard or tolerance set forth in transmittals supplementing the PMO bearing identification numbers M-1-94-4, IMS-a-30, M-1-91-6, M-1-92-1, M-1-92-10, M-1-92-14 and M-a-86, more fully described in section 2.2(kk)(14), (15), (16), (17), (20), (21) and (22) of this Part.
	[Sediment	Less than 1.5 mg. on individual producer milk; less than 1.0 mg. on commingled producer milk as determined by the provisions of 1 NYCRR Part 12.]
	Abnormalities	Has normal odor and appearance.
	Somatic cells	[Not to exceed 1,000,000 per ml. except that after 7/1/93, not] *Not* to exceed 750,000 per ml. for prepasteurized milk from cows.
Pasteurized milk, low fat milk, skim milk, milk products, goat milk, goat milk products, sheep milk and sheep milk products, melloream, frozen desserts and frozen dessert mix	Temperature	Cooled to 45°F (7°C) or less and maintained thereat.
	Bacterial limits*	20,000 per ml. except with respect to frozen desserts, not to exceed 100,000 per ml.
	Coliform	Not to exceed 10 per ml. except with respect to frozen desserts, not to exceed 20 per ml.; provided, that in the case of bulk milk transport tank shipments, shall not exceed 100 per ml.

	Phosphatase ……..	Less than 1 microgram per ml. by the Scharer Rapid Method or equivalent.
	Drugs……	Not to exceed the applicable standard or tolerance set forth in transmittals supplementing the PMO bearing identification numbers M-1-94-4, IMS-a-30, M-1-91-6, M-1-92-1, M-1-92-10, M-1-92-14 and M-a-86, more fully described in section 2.2(kk)(14), (15), (16), (17), (20), (21) and (22) of this Part.
Raw milk	Temperature…	Cooled to 45°F (7°C).
	Bacterial limits……..	30,000 per ml.
	Drugs……	Not to exceed the applicable standard or tolerance set forth in transmittals supplementing the PMO bearing identification numbers M-1-94-4, IMS-a-30, M-1-91-6, M-1-92-1, M-1-92-10, M-1-92-14 and M-a-86, more fully described in section 2.2(kk)(14), (15), (16), (17), (20), (21) and (22) of this Part.
	[Sediment……	Less than 1.5 mg. as determined by the provisions of 1 NYCRR Part 12.]
	Abnormalities.	Milk to have normal odor and appearance.
	Somatic cells…….	[Not to exceed 1,000,000 per ml. except that after 7/1/93, not] *Not* to exceed 750,000 per ml. for raw milk from cows.
Pasteurized cultured products	Temperature…	Same as pasteurized milk.
	Coliform…….	Same as pasteurized milk.
	Phosphatase….	Same as pasteurized milk.

*Not applicable to cultured products.

Butter, 80% cream, plastic cream, mixtures of butterfat, sugar or sweetening agent, moisture and flavoring shall conform to the following:

	SPC not to exceed 100,000 per gram, coliform count not to exceed 20 per gram, yeast and/or mold not to exceed 100 per gram
Nonpasteurized frozen desserts	SPC not to exceed 100,000 per gram, coliform count not to exceed 20 per gram
Whipped cream, instant whipped cream, instant vegetable topping, milkshake	SPC not to exceed 100,000 per gram, coliform count not to exceed 20 per gram

Dry whole milk when used as an ingredient in a frozen dessert or a Grade A non-storable milk product shall be U.S.D.A. extra grade or its equivalent. Nonfat dry milk, dry whey and dry buttermilk when used as an ingredient in a frozen dessert or a Grade A non-storable milk product shall meet the requirements of the U.S.D.A. extra grade or its equivalent. Fats and oils other than from milk shall conform to the applicable provisions of the United States Food, Drug and Cosmetic Act as amended or those of any applicable State regulation for fats and oils of food grade standard.

Condensed milk, condensed whey mixes, blends and similar products received in bulk shall conform to the following:	SPC not to exceed 100,000 per gram, coliform count not to exceed 100 per gram
Milk products and goat milk products separated from milk or goat milk heated between 45°F and 125°F	Not to exceed the temperature and drug standard and bacterial limit for prepasteurized milk for Grade A use
Milk products and goat milk products separated from milk or goat milk heated to a temperature greater than 125°F and less than 161°F	Not to exceed the temperature and drug standard and bacterial limit for pasteurized milk, lowfat milk, skim milk, milk products, goat milk, goat milk products and frozen desserts

Part 10 of Title 1 of the *Official Compilation of Codes, Rules and Regulations of the State of New York* is repealed.

Part 12 of Title 1 of the *Official Compilation of Codes, Rules and Regulations of the State of New York* is repealed.

Part 13 of Title 1 of the *Official Compilation of Codes, Rules and Regulations of the State of New York* is repealed.

Text of proposed rule and any required statements and analyses may be obtained from: Casey McCue, Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-1772, email: Casey.McCue@agriculture.ny.gov

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

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

Consensus Rule Making Determination

The Department has considered the proposed amendments to Parts 2, 10, 12 and 13 and has determined that no person is likely to object to the rule as written.

The proposed amendments to Section 2.8 and repeal of Part 12 would remove sediment testing requirements for milk. Sediment is organic matter that is not a natural component of milk, but which can become incorporated into the milk during harvest of the milk from the cow. However, modern milk production generally uses sealed lines, storage tanks and sanitary pumps that do not expose milk to the risk of sediment contamination. Additionally, milk producers and processors test milk for bacteria on a regular basis, and these tests reveal inadequate sanitation in facilities or contamination in milk before the milk would fail a sediment test. The United States Department of Agriculture repealed federal sediment-testing requirements for most dairy farms in Federal Register Vol. 77, No. 104, dated May 30, 2012. Likewise, milk inspectors working for the NYS Department of Agriculture and Markets stopped conducting sediment testing on farms producing Grade A milk in 2012. Repealing the sediment testing requirements in Parts 2.8 and 12 will conform New York State's regulations to the applicable federal regulations, as well as the realities of the modern dairy industry. Additionally, the amendment of Part 2.8 makes a technical change, by removing superfluous references to Somatic Cell standards that applied prior to July 1, 1993. No person is likely to object to these changes. Accordingly, a consensus rule making is appropriate under the State Administrative Procedure Act § 102(11)(a) and (c).

The proposed repeal of Part 10 would remove obsolete requirements governing the injection of steam into milk and cream. The requirements of Part 10 were enacted in 1960 to respond to concerns that milk companies would use steam to adulterate milk or cream with water. Since 1960, the industry has established a consistent track record of not adulterating dairy products using steam. Additionally, the use of steam in processing milk or cream is covered by portions of 1 NYCRR Part 2, such as 1 NYCRR 2.46(b)(7) and (8), and by requirements in the Grade "A" Pasteurized Milk Ordinance, 2009 revision, which is incorporated into state regulations in 1 NYCRR 2.1(b)(1). No one is likely to object to the repeal of the obsolete and superfluous requirements of Part 10. Accordingly, a consensus rule making is appropriate under the State Administrative Procedure Act § 102(11)(a) and (c).

The proposed repeal of Part 13 would remove obsolete requirements governing the sale and distribution of dry milk powder. When these regulations were promulgated, dry milk products were subject to a Dry Milk Ordinance, independent from the Grade "A" Pasteurized Milk Ordinance. In 2003, the Dry Milk Ordinance was incorporated into the Grade "A" Pasteurized Milk Ordinance. The Grade "A" Pasteurized Milk Ordinance, 2009 revision, is incorporated into state regulations in 1 NYCRR 2.1(b)(1). Accordingly, the requirements of Part 13 are now unnecessary. No one is likely to object to the repeal of the duplicative requirements of Part 13. Accordingly, a consensus rule making is appropriate under the State Administrative Procedure Act § 102(11)(a) and (c).

Job Impact Statement

The Department has reviewed the potential job impact of this rulemaking, and has determined that the amendments to Parts 2.8, 10, 12 and 13 will not have a substantial adverse impact on jobs and employment opportunities. It is evident from the subject matter of the rule making that the changes will not have a substantial adverse impact on jobs and employment opportunities. Rather, the rules seek to repeal superfluous or unenforced rules, and to conform state regulations to regulations of the United States Department of Agriculture. By removing superfluous rules and promoting uniformity between state and federal regulations, the amendments will have a slight positive or no impact on job and employment opportunities. Accordingly, a full job impact statement is not required pursuant to State Administrative Procedure Act § 201-a(2)(a).

Department of Environmental Conservation

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Regulations for Commercial and Recreational Harvest of American Eel

I.D. No. ENV-28-14-00001-P

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

Proposed Action: Amendment of Parts 10, 11, 19, 36, 37 and 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 11-0303,11-0305, 11-0306, 11-0317, 11-0319, 11-1301, 11-1303, 11-1305, 11-1319, 11-1501, 11-1503, 11-1505, 13-0105, 13-0339-a and 13-0371

Subject: Regulations for commercial and recreational harvest of American eel.

Purpose: Reduce fishing mortality of American eel in order to promote stable fish populations, and to remain in compliance with the ASMFC.

Text of proposed rule: Part 10 of 6 NYCRR is amended to read as follows:

Paragraph 10.1(b)(12) is amended to reads as follows:

(b) Table A. Sportfishing regulations

	Species	Open Season	Minimum length	Daily limit
(12)	American eel	All year	[6] *9*"	[50] *25 for individuals 50 for party/charter boat captain and crew*

Part 11 of 6 NYCRR is amended to read as follows:

Subdivision 11.1(b) is amended to read as follows:

(b) The taking, possessing, sale or exposure for sale of American eel from the Harlem or East River is prohibited, except that American eels may be possessed only when [less than 14 inches in length,] *total length is between 9 and 14 inches,* for use or sale as bait.

Paragraph 11.2(b)(1) is amended to read as follows:

(1) take or possess American eel, except when *greater than 9 inches in length and* less than 14 inches in length, for use as bait or for sale as bait;

Part 19 of 6 NYCRR is amended to read as follows:

Paragraph 19.2(b)(5) is amended to read as follows:

(5) American eel ('Anguilla rostrata'): Delaware River, [six-inch] *nine-inch* minimum size limit; and the Hudson River downstream from the Federal Dam at Troy to the Battery at the southern tip of Manhattan Island, between [6] *9* and 14 inches.

Part 36 of 6 NYCRR is amended to read as follows:

Paragraph 36.1(c)(1) is amended to read as follows:

(1) Size of eel pots. Eel pots shall not be more than six feet long, nor more than 12 inches in diameter if round, nor more than 12 inches square if in square form. The aperture or mouth of any eel pot shall be not more than two inches in its greatest diameter. Fixtures or wings of any kind attached to or used in connection with eel pots is prohibited. *Minimum mesh size must be 1 inch by ½ inch, unless such pots contain an escape panel that is at least four inches square with a mesh size of one inch by one-half inch located so that the panel is on a side, but not at the bottom of a pot.*

Part 37 of 6 NYCRR is amended to read as follows:

Paragraph 37.1(a)(12) is amended to read as follows:

(12) northern pike; [and]

Paragraph 37.1(a)(13) is amended to read as follows:

(13) channel catfish[.] *; and*

New paragraph 37.1(a)(14) is adopted to read as follows:

(14) American eel.

Subdivision 37.1(b) is repealed.

Part 40 of 6 NYCRR is amended to read as follows:

Existing subdivision 40.1(f) is amended to read as follows:

Species Striped bass through Tautog remain the same. Species American eel is amended to read as follows:

(f) Table A – Recreational fishing

Species	Open Season	Minimum Length	Possession Limit
American eel	All year	[6"]*9*" TL	[50] *25 for individuals 50 for party/charter boat captain and crew*

Species Pollock through Atlantic menhaden remain the same.

Subdivision 40.1(i) is amended to read as follows:

(i) Table B - Commercial Fishing.

Species Striped bass through Tautog remain the same. Species American eel is amended to read as follows:

Species	Open Season	Minimum Length	Trip Limit
American eel	All year	[6"]*9*" TL	no limit

Species Pollock through Anadromous river herring remain the same.

Text of proposed rule and any required statements and analyses may be obtained from: Carol Hoffman, NYSDEC, 205 N Belle Mead Road - Suite 1, East Setauket, NY 11733, (631) 444-0476, email: cjhoffma@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.

Additional matter required by statute: Pursuant to the State Environmental Quality Review act, a negative declaration is on file with the department.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) sections 3-0301, 11-0303,11-0305, 11-0306, 11-0317, 11-0319, 11-1301, 11-1303, 11-1305, 11-1319, 11-1501, 11-1503, 11-1505 and 13-0105, 13-0339-a, and 13-0371 authorize the Department of Environmental Conservation (DEC or the department) to establish, by regulation, the open season, size and catch limits, possession and sale restrictions and manner of taking American eel.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries to optimize resource use for commercial and recreational harvesters consistent with marine fisheries conservation and management policies, and interstate fishery management plans.

3. Needs and benefits:

These regulations are necessary for New York to maintain compliance with the Interstate Fishery Management Plan (FMP) for American eel. As a member state of Atlantic State Marine Fisheries Commission, New York must comply with the provisions of the Interstate Fishery Management Plans adopted by ASMFC. These FMPs are designed to promote the long-term sustainability of marine species, preserve the States' marine resources, and protect the interests of both commercial and recreational fishermen. All member states must promulgate regulations that implement the provisions of the FMPs to remain in compliance with the FMPs. If ASMFC determines a state to be in non-compliance with a specific FMP, the state may be subject to a complete prohibition on all fishing for the associated species in the waters of the non-compliant state until the state comes into compliance with the FMP.

In 2012, an (ASMFC) – benchmark stock assessment indicated that the American eel population was depleted. Addendum III of the ASMFC FMP for American Eel was approved in August 2013, with requirements to reduce eel fishing mortality. The requirements affect both marine and inland fisheries. States must implement measures by January 1, 2014, including a 9 inch minimum size limit for recreational, bait, and commercial fisheries, ½ inch by ½ inch minimum mesh sizes for eel pots, and a 25 fish recreational creel limit. The proposed rules must be in place so that New York remains in compliance with the ASMFC.

As a result of the ASMFC's FMP for American Eel, the department is proposing amendments to 6 NYCRR Parts 10, 11, 19, 36 and 40 which will implement possession and size limits for the recreational fishery and implement gear restrictions and size limits for the commercial and bait fisheries for American eel in inland and marine and coastal district waters, including the Hudson, Delaware, Harlem, and East Rivers and their tributaries.

The department is also proposing amendments to 6 NYCRR Part 37 which will repeal language allowing the possession of American eels less than 14 inches in length for use as bait or for sale as bait, and add American eel to the list of species that are prohibited from sale when taken from the St. Lawrence River, Lake Ontario, and its tributaries. Not only are there relatively few naturally recruited (i.e. non-stocked) American eel in the St. Lawrence River/Lake Ontario system, but there are extremely few individual American eels smaller than 14 inches total length. The Lake Ontario American eel commercial fishery in the Lake Ontario/St. Law-

rence River system was closed in 1985. There is currently no known harvest of American eel for use as bait or for sale as bait in this system.

4. Costs:

There are no new costs to state and local governments from this action. The department will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying commercial, bait, and recreational harvesters, party and charter boat operators and other support industries of the new rules.

Cost to private regulated parties:

Minimum mesh sizes or escape panels on eel pots or traps are already required in marine and coastal waters, and are more restrictive than the proposed required minimum ½ inch by½ inch mesh size stated in the ASMFC Fishery Management Plan. Requiring these gear changes for inland water fisheries, which currently only use pots to harvest American eels for use or sale as bait, may impose some initial costs to these fishers. The proposed increase in the minimum size for American eel may reduce the catch for an unknown number of commercial and recreational fishermen.

As there is no known harvest of American eel from the St. Lawrence River/ Lake Ontario and its tributaries for use as bait or for sale as bait, there is no cost to private regulated parties in this area.

Costs to the regulating agency for implementation and continued administration of the rule:

DEC will incur limited costs associated with both the implementation and administration of these rules, including the costs relating to notifying recreational and commercial harvesters and other support industries of the new rules.

Cost to State government as a whole:

Minor costs will be incurred by the regulating agency. See above.

Cost to local government:

There will be no costs to local governments.

5. Local government mandates:

The proposed rule does not impose any mandates on local government.

6. Paperwork:

None.

7. Duplication:

The proposed amendment does not duplicate any state or federal requirement.

8. Alternatives:

The following significant alternatives have been considered by the department and rejected for the reasons set forth below:

(1) No Action (no amendment to regulations).

The ''no action'' alternative would leave current regulations in place and jeopardize the fisheries for American eel in New York State. Compliance with ASMFC Addendum III to the Fishery Management Plan for American Eel is mandatory. If New York does not amend the regulations as proposed, the State will most likely be found out of compliance with Addendum III. The consequence of noncompliance is a state-wide moratorium for taking American eel. The "no action" alternative was rejected for this reason.

9. Federal standards:

The amendments to Parts 10, 11, 19, 36, 37, and 40 are in compliance with the ASMFC Fishery Management Plan for American Eel.

10. Compliance schedule:

The regulations will take effect when the Notice of Adoption is published by the Department of State. Regulated parties will be notified of the changes to the regulations by mail, through appropriate news releases and via the department's website.

Regulatory Flexibility Analysis

1. Effect of rule:

The Atlantic State Marine Fisheries Commission (ASMFC) facilitates cooperative management of marine and diadromous fish species among the fifteen Atlantic Coast member states. The principal mechanism for implementation of cooperative management of migratory fish is the ASMFC's Interstate Fishery Management Plans (FMPs) for individual species or groups of fish. The FMPs are designed to promote the long-term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

The department is proposing amendments to 6NYCRR in order to remain in compliance with Amendment III to the American Eel FMP. Amendments to 6 NYCRR Parts 10, 11, 19, 36 and 40 will implement possession and size limits for the recreational fishery; and implement gear restrictions and size limits for the commercial and bait fisheries for American eel, in both inland, and marine and coastal district, waters, including the Hudson, Delaware, Harlem, and East Rivers and their tributaries. Specifically, the proposed rule increases the American eel minimum size limit to 9 inches for recreational and commercial fisheries; implements a 1 inch by ½ inch minimum mesh size requirement for eel pots or traps in inland waters; and reduces the recreational creel limit to 25 fish, with a 50 fish exemption for party and charter boat captain and crew. Amendments to 6 NYCRR Part 37 will repeal language allowing the possession of American eels less than 14 inches in length for use as bait or for sale as bait, and add American eel to the list of species that are prohibited from sale when taken from the St. Lawrence River, Lake Ontario, and its tributaries. This rule making addresses both recreational and commercial fishing. The rule making may have an impact on the commercial and recreational fisheries, including bait fisheries and party/charter boat operations, and an indirect effect on their supporting industries. In 2012, the department issued 996 resident, and 38 nonresident, commercial food fish licenses; Twenty five (25) of those license holders reported harvest of American eel on their State vessel trip reports. The department also issued 25 commercial eel pot licenses for the Hudson River bait fishery, 468 food fish and crustacean dealer/shipper licenses, and 508 party/charter boat licenses. Approximately 515 bait licenses are sold state-wide each year; an unknown number of these license holders harvest American eel for bait. There are also an unknown number of bait and tackle shops in NY. Because there is currently no known harvest of Lake Ontario/St. Lawrence River American eel for use or sale as bait, this rule will not have any direct effects in that area.

These regulations do not apply directly to local governments, and will not have any direct effects on local government.

2. Compliance requirements:

All commercial licensed fishers, as part of their mandatory reports to the department, are already required to maintain daily or trip level fishing records of catch and effort expended.

3. Professional services:

None.

4. Compliance costs:

This rule making will not impose any costs to DEC or local governments. Minimum mesh sizes or escape panels on eel pots or traps are already required in Marine and Coastal waters, and are more restrictive than the required minimum mesh size stated in the ASMFC Fishery Management Plan. Requiring these gear changes for inland water fisheries, which currently only use pots to harvest American eels for use or sale as bait, may impose some initial costs to these fishers. The proposed increase in the minimum size for American eel may reduce the catch for an unknown number of commercial and recreational fishers.

There are no other initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule. These regulations do not apply directly to local governments, and will not have any direct effects on local government.

5. Economic and technological feasibility:

Required minimum mesh sizes or escape panels on eel pots or traps may impose some initial costs to fishers in inland waters. This type of gear is already mandatory in marine and coastal waters. The proposed increase in the minimum size for American eel may reduce the catch for an unknown number of commercial and recreational fishermen.

There is no additional technology required for small businesses, and this action does not apply to local governments.

6. Minimizing adverse impact:

The promulgation of this regulation is necessary for the department to remain in compliance with the Atlantic States Marine Fisheries Commission Addendum III to the Fishery Management Plan (FMP) for American Eel. Failure to comply with the FMP and take required actions to protect the fishery could result in non-compliance to the ASMFC FMP, which carries a Federal sanction of a total fishing moratorium for American eel in state waters. The regulations are intended to protect the American eel resource and to avoid the adverse impacts that would be associated with closure of the fishery for non-compliance with the FMP. According to the National Marine Fisheries Service, the 2012 dockside value of the American eel commercial fishery in New York was $62,221. American eels are also a popular bait fish, especially for the recreational striped bass fishery. A moratorium would have a severe adverse impact on the commercial and recreational fisheries, as well as their supporting industries.

Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, as well as wholesale and retail outlets and other support industries.

7. Small business and local government participation:

ASMFC held public hearings on Draft Addendum III to the Fishery Management Plan for American Eel in East Setauket and in Port Jervis, NY. ASMFC posted a notice of these hearings and requests for public comment on their website. Marine and coastal district fishers were also informed of proposed regulatory changes at two Marine Resources Advisory Council (MRAC) meetings. The department also consulted the Hudson River Estuary Management Advisory Committee (HREMAC) regarding the proposed action. MRAC and HREMAC are comprised of representatives from recreational and commercial fishing interests, local government, educational and research institutions. The department maintains a regular dialogue with many fishers through public information meeting, telephone conversation, and e mail. The department will provide

a notice of the rulemaking to affected fishers through mailings, newspapers and other media outlets.

There was no special effort to contact local governments because the proposed rule does not affect them.

8. Cure period or other opportunity for ameliorative action:

Pursuant to SAPA 202-b(1-a)(b), no such cure period is included in the rule because of the potential adverse impact on the resource. Cure periods for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure the general welfare of the public and the resource is protected.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

There are no rural areas within the marine and coastal district. There are rural areas within the inland waters of New York State. Nine Hudson River watershed (includes the Hudson and Mohawk River valleys) counties fall into the rural area category: Columbia, Greene, Herkimer, Montgomery, Putnam, Rensselaer, Saratoga, Schenectady, and Ulster counties. Two Delaware River counties are also in the rural area category: Delaware and Sullivan counties. There is no known harvest of American eel in St. Lawrence or Jefferson counties in the Lake Ontario/St. Lawrence River watershed. The proposed regulations will affect individuals who participate in the American eel fishery.

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

All commercial licensed fishers in inland waters, as part of their mandatory report to the department, are required to maintain daily fishing records of catch and effort expended.

The marine and coastal district eel fisheries directly affected by the proposed rule are not located adjacent to any rural areas of the State, and will not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. There will also be no reporting, recordkeeping and other compliance requirements on public or private entities within the St. Lawrence River/Lake Ontario watershed.

3. Costs:

There will be no initial capital or annual costs to comply with the new regulations in the marine and coastal district, or in the St. Lawrence River/Lake Ontario eel fisheries. There may be unknown initial costs for inland fishers to comply with proposed required minimum mesh sizes on their eel pots.

4. Minimizing adverse impact:

The promulgation of this regulation is necessary in order for the department to comply with the Atlantic States Marine Fisheries Commission (ASMFC) Addendum III to the American Eel Interstate Fishery Management Plan (FMP). The regulations are intended to optimize resource use for commercial and recreational harvesters consistent with fisheries conservation and management policies and interstate fishery management plans. If the ASMFC determines a state to be in non-compliance with a specific FMP, the state may be subject to a complete prohibition on all fishing for the associated species in the waters of the non-compliant state until the state does come into compliance with the FMP. The proposed regulations are intended to avoid the adverse economic and social impacts that would be associated with closure of the fishery in rural areas.

5. Rural area participation:

Marine and Coastal District fishers were informed of proposed changes at the September 17 and November 12, 2013 Marine Resources Advisory Council (MRAC) meetings. The Hudson River Estuary Management Advisory Committee Fish Subcommittee was also informed of proposed regulatory changes. The department maintains a regular dialogue with many fishers through public information meeting, telephone conversation, and e mail. The department has and will continue to provide notice to affected fishers through mailings, newspapers and other media outlets, including those in rural counties and towns.

Job Impact Statement

1. Nature of impact: The promulgation of this regulation is necessary for the Department of Environmental Conservation (DEC) to maintain compliance with Addendum III to the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan (FMP) for American Eel. Amendments to 6 NYCRR Parts 10, 11, 19, 36 and 40 will implement possession and size limits for the recreational fishery and implement gear restrictions and size limits for the commercial and bait fisheries for American eel, in both marine and coastal district and inland waters, including the Hudson, Delaware, Harlem, and East Rivers and their tributaries. Specifically, the proposed rule increases the American eel minimum size limit to 9 inches for recreational and commercial fisheries, implements a 1 inch by ½ inch minimum mesh size requirement for eel pots in inland waters, and reduces the American eel recreational creel limit to 25 fish, with a 50 fish exemption for party and charter boat captain and crew.

Amendments to 6 NYCRR Part 37 will repeal language allowing the possession of American eels less than 14 inches in length for use as bait or for sale as bait, and add American eel to the list of species that are prohibited from sale when taken from the St. Lawrence River, Lake Ontario, and its tributaries.

This rule making addresses both recreational and commercial fishing. American eels are a popular bait fish, especially for the recreational striped bass fishery. Thus, the rulemaking may have an impact on the commercial and recreational fisheries, including bait fisheries and party/charter boat operations, and an indirect effect on their supporting industries. Requiring gear changes for inland water fisheries may impose some initial costs to these fishers. The proposed increase in the minimum size for American eel may reduce the catch for an unknown number of commercial and recreational fishers.

2. Categories and numbers affected: In 2012, the department issued 996 resident and 38 nonresident commercial food fish licenses; 25 of those license holders reported harvest of American eel on their State vessel trip reports. The department also issued 25 commercial eel pot licenses for the Hudson River bait fishery, 468 food fish and crustacean dealer/shipper licenses, and 508 party/charter boat licenses. There are approximately 515 bait licenses sold state-wide each year; an unknown number of these license holders harvest American eel for bait. The total number of bait and tackle shops in NY is also unknown.

Because there is currently no known harvest of Lake Ontario/St. Lawrence River American eel for use or sale as bait, this rule will not have any direct effects in that area.

Recreational and commercial fishing is a major generator of revenue in New York. According to the National Marine Fisheries Service, the 2012 dockside value of the American eel commercial fishery in New York was $62,221. According to the US Fish and Wildlife Service, in 2011, there were 1.9 million recreational anglers in all waters of New York, generating an estimated 2 billion dollars in total expenditures.

3. Regions of adverse impact: The proposed rule will affect American eel fishers in both marine and coastal district and inland waters, including the Hudson, Delaware, Harlem, and East Rivers and their tributaries.

4. Minimizing adverse impact: The promulgation of this regulation is necessary in order for the department to comply with the ASMFC Addendum III to the American Eel FMP. The regulations are intended to optimize resource use for commercial and recreational harvesters consistent with fisheries conservation and management policies and interstate fishery management plans. If the ASMFC determines a state to be in non-compliance with a specific FMP, the state may be subject to a complete prohibition on all fishing for the associated species in the waters of the non-compliant state until the state does come into compliance with the FMP. The proposed regulations are intended to avoid the adverse economic and social impacts that would be associated with closure of the fishery. A moratorium on the harvest of American eels would have a severe adverse impact on the commercial and recreational fisheries, as well as their supporting industries. Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, as well as wholesale and retail outlets and other support industries.

5. Self-employment opportunities: Most commercial fishers, including those involved in the bait fishery, are self-employed. A few individuals may work with or for local bait supply shops or marinas. The party and charter boat businesses, the bait and tackle shops, and the marinas are mostly small businesses that are self-owned and operated. Members of the recreational fishing industry are also mostly self-employed.

Department of Financial Services

EMERGENCY RULE MAKING

Mandatory Reporting of ATM Safety Act Compliance by Banking Institutions

I.D. No. DFS-28-14-00005-E
Filing No. 562
Filing Date: 2014-06-27
Effective Date: 2014-07-01

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

Action taken: Amendment of section 301.6 of Title 3 NYCRR.

Statutory authority: Banking Law, art. II-AA (ATM Safety Act)

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

Specific reasons underlying the finding of necessity: Changes reporting requirements in section 306.1 of the Superintendent's Regulations to be consistent with changes in the ATM Safety Act (Article II-AA of the Banking Law) made by Chapter 27 of the Laws of 2013. Emergency adoption is necessary in order to implement the changed reporting requirements prior to the first report under the amended statute, which is due January, 2014.

Subject: Mandatory reporting of ATM Safety Act Compliance by banking institutions.

Purpose: To amend section 301.6 of the Superintendent's Regulations to be consistent with changes in the ATM Safety Act (Article II-A of the Banking Law) made by chapter 27 of the Laws of 2013.

Text of emergency rule: Section 301.6. Report of compliance.

(a)

(1) The *semi*-annual report of compliance required to be filed pursuant to the provisions of section 75-g of the Banking Law shall be filed [within 75 days after the close of each calendar year covering the preceding calendar year] *with the Department of Financial Services no later than the fifteenth day of January and July of each year or the following business day if that day is not a business day*. This report shall be certified, under the penalties of perjury, and shall contain language substantially similar to the following:

I, _____, (person at the institution charged with enforcing compliance with article II-AA of the Banking Law) hereby certify, under the penalties of perjury, that all answers contained herein are true, accurate and complete.

[(2)] *(A)* All of the automated teller machine facilities operated by _____ (name of institution) which are subject to the provisions of article II-AA of the Banking Law (choose one or more of the following, as applicable):

(i) _____ are in full compliance with the provisions of that article; and/or

(ii) _____ are in full compliance with the variance or exemption (as the case may be) granted by the superintendent for the automated teller machine facility (or facilities) located at _____ (specific address); and/or

(iii) _____ are not in compliance with the provisions of article II-AA.

[(3)]*(B)* _____ (name of institution) uses and maintains only T-120 (commercial/industrial) grade video tapes, or better, in accordance with the provisions of section 301.5 of this Part.

[(i)]*(2)* In cases in which some or all of a banking institution's automated teller machine facilities are not in compliance with the provisions of article II-AA, the *semi*-annual report shall indicate the following additional information:

[(a)]*(A)* the specific address of each such facility;

[(b)]*(B)* the manner in which each such facility fails to meet the requirements of that article and the reasons for such non-compliance; and

[(c)]*(C)* a plan to remedy such non-compliance at each such facility*, including the expected correction date*.

(b) [Upon notification] *After notice* of any violation of the provisions of section 75-c of the Banking Law *is provided to the Department in any semi-annual report or such banking institution is notified of any violation of section 75-c of the Banking Law, such banking institution shall file* a report of corrective action [required] pursuant to section 75-[j]*g(2)* of the Banking Law [shall be filed within] *no later than* 10 business days [from] *following the filing of the semi-annual report or* receipt of such notification *of violation*. That report shall be certified, under the penalties of perjury, and shall contain language substantially similar to the following:

I, _____, (person at the institution charged with enforcing compliance with article II-AA of the Banking Law) hereby certify, under the penalties of perjury, that all answers contained herein are true, accurate and complete. The automated teller machine facility operated by _____ (name of institution) located at _____ (specific address) which is the subject of one or more violations of the provisions of section 75-c of the Banking Law, is (chose one of the following):

(1) _____ in full compliance with the provisions of section 75-c as of _____ (date); or

(2) _____ not presently in compliance with the provisions of section 75-c and the annexed remedial plan has been implemented and shall be completed by _____ [(date no later than 30 days after initial notification of violation from the Department of Financial Services)]; upon the date of completion of the remedial plan, _____ (name of institution) shall file a certified report of compliance with the Department of Financial Services stating that the location meets the requirements of section 75-c. Annexed hereto is a description of *the* remedial plan.

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 September 24, 2014.

Text of rule and any required statements and analyses may be obtained from: Sam L. Abram, Assistant Counsel, New York State Department of Financial Services, One State Street, New York, NY 10004-1417, (212) 709-1658, email: sam.abram@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority.

Section 227 of the laws of 2013 became effective on July 31, 2013. It made amendments to Banking Law Sections 75-g and 75-j. The changes to Subsection 301(6) of Part 301 made herein are intended to make the regulation consistent with the changes made to Section 75-g.

The ATM Safety Act (the "Act"), Article II-A of the Banking Law, is intended to protect members of the public by imposing lighting, security camera and other requirements on bank controlled ATM facilities operating in New York State. Section 75-n of the Banking Law grants the Superintendent with authority to adopt implementing regulations. Part 301 of the Superintendent's Regulations implements the Act.

Subsection 301(6) of Part 301 relates to periodic reporting obligations by banking institutions with respect to the compliance of their ATM facilities with the requirements of the Act. The changes made herein are intended to make the reporting process for banking institutions more efficient and less expensive. Changes are also made to make the regulation consistent with the newly amended law.

Chapter 227 made amendments to Subdivision 1 of Section 75-g of the Banking Law. It also added a new Subdivision 2 to the statute. The amendments to Subdivision 1 make clear that the reporting is to be on a semi-annual basis. It also made clear that all such reporting is to be done on an electronic basis. New Section 75-g(2) provides that any institution filing a semi-annual compliance report that shows noncompliance shall thereafter submit an additional report to the Department indicating whether the failure has been corrected, the reason for any failure that has not been corrected and the expected date of correction. Finally, for any violation not corrected within ten business days after the filing of the applicable compliance report, the institution also must report the date of completion of the corrective action.

2. Legislative Objectives.

As noted, the Act is intended to protect members of the public by imposing lighting, security camera and other requirements on bank controlled ATM facilities operating in New York State. The recent amendments are intended to automate the reporting of violations, thus enhancing the efficiency of the reporting process.

Part 301 implements the Act. The following is a summary of the major changes to Section 301(6) to implement Chapter 227:

1. The numbering of the section is changed to make the regulation consistent with the intent of the statute. Individuals who originate loans on manufactured homes will be subject to the regulation for the first time.

2. Paragraph (a) has been changed to make clear that compliance reporting is to be done on a semi-annual basis.

3. Clause (C) of subparagraph (2) of paragraph (a) has been changed to add a requirement that the banking institution indicate the expected date of completion of the corrective action.

4. Paragraph (b) has been modified to clarify that any banking institution that submitted a notice of violation in any semi-annual report or has otherwise been notified of any violation must file a report of corrective action no later than 10 business days following the filing of the semi-annual report or receipt of notice of a violation. This report must state whether the violation has been corrected or, if not, the expected date of completion. When the corrective action has been completed, Paragraph (b) also requires the banking institution to report the date of completion.

5. All reports must be certified.

3. Needs and Benefits.

Prior to the amendments described above, the Act required banking institutions to make annual reports to the Department regarding their ATM compliance with the Act. This reporting was supported by on-site examinations by employees of the Department. This reporting obligation has been changed to a semi-annual reporting process. The statute also was amended to allow the reporting to be done electronically. In effect, while the Department retains its examination authority, the compliance emphasis has been changed from a primarily examination-based system handled by the Department to a more comprehensive self-reporting system. Since banking institutions will have primary responsibility for monitoring and reporting, it is anticipated that the costs of compliance for both banks with ATMs and for the Department will be reduced.

The changes described herein are expected to simplify reporting and the

cost of reporting for banking institutions. In addition, it is expected that the changes to the regulation will facilitate reporting by making the process somewhat more straight forward. They will also conform the regulation to the statute.

4. Costs.

As under the existing Part 301, banking institutions remain primarily responsible for ensuring that their ATMs are in compliance with the Act. Nevertheless, the cost of demonstrating their compliance with Act in writing will be significantly simplified as all such reporting will now be done electronically. The Department is developing an online system to provide for such reporting. This system is expected to be in place for the first scheduled semi-annual reporting now set for January of 2014.

5. Local Government Mandates.

None.

6. Paperwork.

Going forward, reporting will be done electronically.

7. Duplication.

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

8. Alternatives.

The purpose of the regulation is to conform the regulation to changes in the statute and to carry out the statutory mandate to regulate bank controlled ATM facilities pursuant to the Act. Failure to act would result in regulations that are inconsistent with the statute.

9. Federal Standards.

None applicable.

10. Compliance Schedule.

Chapter 227 became effective on July 31, 2013. The first semi-annual report is due in January. The proposed emergency regulation would be effective immediately.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The revised regulation will not have any impact on local governments. However, a number of the banking institutions that maintain automatic teller facilities ("ATMs") and will be affected by revised regulation are considered small businesses. Overall, there are in excess of 5000ATMs regulated by the Department of Financial Services (the "Department") (formerly, the Banking Department).

2. Compliance Requirements:

As noted, the Department regulates over 5000ATMs in the state. Chapter 227 of the laws of 2013 became effective on July 31, 2013. It made amendments to Section 75-g and 75-j of the Banking Law. The changes to Subsection 301(6) of Part 301 made herein are intended to make the regulation more consistent with the statute and also make compliance easier.

The ATM Safety Act (the "Act") is intended to protect members of the public by imposing lighting, security camera and other requirements on bank controlled ATMs operating in New York State. Subsection 301(6) of Part 301 relates to periodic reporting obligations by banking institutions with respect to the compliance of their ATMs with the requirements of the Act. The changes made herein are intended to make the filing process for banking institutions more efficient and less expensive. Changes are also made to make the regulation more consistent with law and easier to follow.

3. Professional Services:

None.

4. Compliance Costs:

As under the existing Part 301, banking institutions remain primarily responsible for ensuring that their ATMs are in compliance with the Act. Nevertheless, the cost of demonstrating their compliance with Act will be significantly simplified as all such reporting will now be done electronically. The Department is developing an online system to provide for such reporting. This system is expected to be in place for the first scheduled semi-annual reporting now required for January of 2014.

5. Economic and Technological Feasibility:

The rule-making should impose no adverse economic or technological burden on small businesses. Indeed, banking institutions should benefit from new electronic systems for reporting.

6. Minimizing Adverse Impacts:

It is expected that electronic reporting will significantly reduce overall compliance costs for industry. Also, the cost to the Department of its supervision of compliance with the Act should similarly be reduced. Since the Department assesses industry for these costs, the changes contemplated by these regulations should assist in further reducing industry costs.

7. Small Business and Local Government Participation:

The Department is in regular contact with banking institutions, including those that are small businesses, and industry associations regarding compliance with the Act. Banking institutions are interested in both improving their compliance and reducing the costs of compliance. The proposed adoption should facilitate banking institutions in attaining both goals. This regulation does not impact local governments.

Rural Area Flexibility Analysis

Types and Estimated Numbers: The New York State Department of Financial Services (the "Department") (formerly the Banking Department) regulates over 5000 bank controlled automatic teller machines facilities ("ATMs") in the state, including numerous ATMs in rural area. The changes to Subsection 301(6) of Part 301 made herein are intended to make the regulation consistent with the changes made to Section 75-g.

The ATM Safety Act (the "Act"), Article II-A of the Banking Law, is intended to protect members of the public by imposing lighting, security camera and other requirements on ATMs operating in New York State. Section 75-n of the Banking Law grants the Superintendent with authority to adopt implementing regulations. Part 301 of the Superintendent's Regulations implements the Act.

Subsection 301(6) of Part 301 relates to periodic reporting obligations by banking institutions with respect to the compliance of their ATMs with the requirements of the Act. The changes made herein are intended to make the filing process for banking institutions more efficient and less expensive. Changes are also made to make the regulation more consistent with law and easier to follow.

Chapter 227 made amendments to Subdivision 1 of Section 75-g of the Banking law. It also added a new Subdivision 2 to the statute. The amendments to Subdivision 1 make clear that the reporting was to be on a semi-annual basis. It also made clear that all such reporting was to be done on an electronic basis. New Section 75-g(2) provides that any institution filing a semi-annual compliance report that shows noncompliance shall thereafter submit an additional report to the Department indicating whether the failure has been corrected, the reason for any failure that has not been corrected and the expected date of correction. Finally, for any violation not corrected within ten business days after the filing of the applicable compliance report, the institution also must report the date of completion of the corrective action.

Compliance Requirements: Prior to the amendments described above, the Act required banking institutions to make annual reports to the Department regarding their ATMs' compliance with the Act. This reporting was supported by on-site examinations by employees of the Department. In effect, while the Department retains its examination authority, the compliance emphasis has been changed from a primarily examination-based system handled by the Department to a more comprehensive self-reporting system. This reporting obligation has been changed to a semi-annual reporting process. The statute also was amended to allow the reporting to be done electronically. Since banking institutions will have primary responsibility for monitoring and reporting, it is anticipated that the costs of compliance for both banks with ATMs and for the Department will be reduced.

Costs: Banking institutions in rural areas should experience a more efficient compliance reporting system going forward. Indeed, expenses for compliance will remain the same as banking institutions will continue to have the primary responsibility for ensuring that there ATMs comply with Act. However, ongoing reporting costs should be reduced as banks will have both a more streamlined reporting system and the ability to report electronically.

Minimizing Adverse Impacts: It is expected that electronic reporting will significantly reduce overall compliance costs for industry. Also, the cost to the Department of its supervision of compliance with the Act should similarly be reduced. Since the Department assesses industry for these costs, the changes contemplated by these regulations should assist in further reducing industry costs.

Rural Area Participation: The Department is in regular contact with banking institutions, including those that are small businesses, and industry associations regarding compliance with the Act. Banking institutions are interested in both improving their compliance and reducing the costs of compliance. The proposed adoption should facilitate banking institutions in attaining both goals. This regulation does not impact local governments.

Job Impact Statement

The requirement to comply with this regulation is not expected to have a significant adverse effect on jobs or employment. Section 227 of the laws of 2013 became effective on July 31, 2013. It made amendments to Banking Law Sections 75-g and 75-j. The changes to Subsection 301(6) of Part 301 made herein are intended to make the regulation consistent with the changes made to Section 75-g.

The ATM Safety Act (the "Act"), Article II-A of the Banking Law, is intended to protect members of the public by imposing lighting, security camera and other requirements on ATMs operating in New York State. Section 75-n of the Banking Law grants the Superintendent with authority to adopt implementing regulations. Part 301 of the Superintendent's Regulations implements the Act.

Subsection 301(6) of Part 301 relates to periodic reporting obligations by banking institutions with respect to the compliance of their ATMs with the requirements of the Act. The changes made herein are intended to

make the filing process for banking institutions more efficient and less expensive. Changes are also made to make the regulation more consistent with law and easier to follow.

Chapter 227 made amendments to Subdivision 1 of Section 75-g of the Banking law. It also added a new Subdivision 2 to the statute. The amendments to Subdivision 1 make clear that the reporting was to be on a semi-annual basis. It also made clear that all such reporting was to be done on an electronic basis. New Section 75-g(2) provides that any institution filing a semi-annual compliance report that shows noncompliance shall thereafter submit an additional report to the Department indicating whether the failure has been corrected, the reason for any failure that has not been corrected and the expected date of correction. Finally, for any violation not corrected within ten business days after the filing of the applicable compliance report, the institution also must report the date of completion of the corrective action.

Banking institutions have and will continue to have primary responsibility for ensuring compliance with the Act. Indeed, the associated costs of reporting should be reduced as all reporting going forward is to be completed electronically. This compliance with the amended regulation is not expected to have an adverse effect on employment.

EMERGENCY RULE MAKING

Assessment of Entities Regulated by the Banking Division of the Department of Financial Services

I.D. No. DFS-28-14-00007-E

Filing No. 565

Filing Date: 2014-06-27

Effective Date: 2014-07-01

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

Action taken: Addition of Part 501 to Title 3 NYCRR.

Statutory authority: Banking Law, section 17; Financial Services Law, section 206

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

Specific reasons underlying the finding of necessity: Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision (including examination) of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of in the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

Litigation commenced in June, 2011 challenged the methodology used by the Banking Department to assess mortgage bankers. On May 3, 2012, the Appellate Division invalidated this methodology for the 2010 State Fiscal Year, finding that the former Banking Department had not followed the requirements of the State Administrative Procedures Act.

In response to this ruling, the Department has determined to adopt this new rule setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

The emergency adoption of this regulation is necessary to implement the requirements of Section 17 of the Banking Law and Section 206 of the Financial Services Law in light of the determination of the Court and the ongoing need to fund the operations of the Department without interruption.

Subject: Assessment of entities regulated by the Banking Division of the Department of Financial Services.

Purpose: To set forth the basis for allocating all costs and expenses attributable to the operation of the Banking Division of the Department of Financial Services.

Text of emergency rule: *Superintendent's Regulations*

Part 501

§ 501.1 Background.

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated on October 3, 2011 into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL. Effective October 3, 2011, assessments are governed by Section 206 of the FSL, provided that Section 17 of the BL continues to apply to assessments for the fiscal year commencing on April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (including, but not limited to, compensation, lease costs and other overhead costs) of the Department attributable to institutions subject to the BL are to be charged to, and paid by, such regulated institutions. These institutions ("Regulated Entities") are now regulated by the Banking Division of the Department. Under both Section 17 of the BL and Section 206 of the FSL, the Superintendent is authorized to assess Regulated Entities for its total costs in such proportions as the Superintendent shall deem just and reasonable.

The Banking Department has historically funded itself entirely from industry assessments of Regulated Entities. These assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This regulation sets forth the basis for allocating such expenses among Regulated Entities and the process for making such assessments.

§ 501.2 Definitions.

The following definitions apply in this Part:

(a) "Total Operating Cost" means for the fiscal year beginning on April 1, 2011, the total direct and indirect costs of operating the Banking Division. For fiscal years beginning on April 1, 2012, "Total Operating Cost" means (1) the sum of the total operating expenses of the Department that are solely attributable to regulated persons under the Banking Law and (2) the proportion deemed just and reasonable by the Superintendent of the other operating expenses of the Department which under Section 206(a) of the Financial Services Law may be assessed against persons regulated under the Banking Law and other persons regulated by the Department.

(b) "Industry Group" means the grouping to which a business entity regulated by the Banking Division is assigned. There are three Industry Groups in the Banking Division:

(1) The Depository Institutions Group, which consists of all banking organizations and foreign banking corporations licensed by the Department to maintain a branch, agency or representative office in this state;

(2) The Mortgage-Related Entities Group, which consists of all mortgage brokers, mortgage bankers and mortgage loan servicers; and

(3) The Licensed Financial Services Providers Group, which consists of all check cashers, budget planners, licensed lenders, sales finance companies, premium finance companies and money transmitters.

(c) "Industry Group Operating Cost" means the amount of the Total Operating Cost to be assessed to a particular Industry Group. The amount is derived from the percentage of the total expenses for salaries and fringe benefits for the examining, specialist and related personnel represented by such costs for the particular Industry Group.

(d) "Industry Group Supervisory Component" means the total of the Supervisory Components for all institutions in that Industry Group.

(e) "Supervisory Component" for an individual institution means the product of the average number of hours attributed to supervisory oversight by examiners and specialists of all institutions of a similar size and type, as determined by the Superintendent, in the applicable Industry Group, or the applicable sub-group, and the average hourly cost of the examiners and specialists assigned to the applicable Industry Group or sub-group.

(f) "Industry Group Regulatory Component" means the Industry Group Operating Cost for that group minus the Industry Group Supervisory Component and certain miscellaneous fees such as application fees.

(g) "Industry Financial Basis" means the measurement tool used to distribute the Industry Group Regulatory Component among individual institutions in an Industry Group.

The Industry Financial Basis used for each Industry Group is as follows:

(1) For the Depository Institutions Group: total assets of all institutions in the group;

(2) For the Mortgage-Related Entities Group: total gross revenues from New York State operations, including servicing and secondary market revenues, for all institutions in the group; and

(3) For the Licensed Financial Services Providers Group: (i.) for

budget planners, the number of New York customers; (ii.) for licensed lenders, the dollar amount of New York assets; (iii.) for check cashers, the dollar amount of checks cashed in New York; (iv.) for money transmitters, the dollar value of all New York transactions; (v.) for premium finance companies, the dollar value of loans originated in New York; and (vi.) for sales finance companies, the dollar value of credit extensions in New York.

(h) "Financial Basis" for an individual institution is that institution's portion of the measurement tool used in Section 501.2(g) to develop the Industry Financial Basis. (For example, in the case of the Depository Institutions Group, an entity's Financial Basis would be its total assets.)

(i) "Industry Group Regulatory Rate" means the result of dividing the Industry Group Regulatory Component by the Industry Financial Basis.

(j) "Regulatory Component" for an individual institution is the product of the Financial Basis for the individual institution multiplied by the Industry Group Regulatory Rate for that institution.

§ 501.3 Billing and Assessment Process.

The New York State fiscal year begins April 1 and ends March 31 of the following calendar year. Each institution subject to assessment pursuant to this Part is billed five times for a fiscal year: four quarterly assessments (each approximately 25% of the anticipated annual amount) based on the Banking Division's estimated annual budget at the time of the billing, and a final assessment (or "true-up"), based on the Banking Division's actual expenses for the fiscal year. Any institution that is a Regulated Entity for any part of a quarter shall be assessed for the full quarter.

§ 501.4 Computation of Assessment.

The total annual assessment for an institution shall be the sum of its Supervisory Component and its Regulatory Component.

§ 501.5 Penalties/Enforcement Actions.

All Regulated Entities shall be subject to all applicable penalties, including late fees and interest, provided for by the BL, the FSL, the State Finance law or other applicable laws. Enforcement actions for nonpayment could include suspension, revocation, termination or other actions.

§ 501.6 Effective Date.

This Part shall be effective immediately. It shall apply to all State Fiscal Years beginning with the Fiscal Year starting on April 1, 2011.

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 September 24, 2014.

Text of rule and any required statements and analyses may be obtained from: Gene C. Brooks, First Assistant Counsel, Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1641, email: gene.brooks@dfs.ny.gov

Regulatory Impact Statement

1. Statutory Authority.

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department (the "Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services (the "Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

In response to a court ruling, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012)("Homestead"), that held that the Department should adopt changes to its assessment methodology for mortgage bankers through a formal assessment rule pursuant to the requirements of the State Administrative Procedures Act ("SAPA"), the Department has determined to adopt this new regulation setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

2. Legislative Objectives.

The BL and the FSL make the industries regulated by the former Banking Department (and now by the Banking Division of the new Department) responsible for all the costs and expenses of their regulation by the State. The assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This reflects a long-standing State policy that the regulated industries are the appropriate parties to pay for their supervision in light of the financial benefits it provides to them to engage in banking and other regulated businesses in New York. The statute specifically provides that these costs are to be allocated among such institutions in the proportions deemed just and reasonable by the Superintendent.

While this type of allocation had been the practice of the former Banking Department for many decades, Homestead found that a change to the methodology for mortgage bankers to include secondary market and servicing income should be accomplished through formal regulations subject to the SAPA process. Given the nature of the Banking Division's assessment methodology - - the calculation and payment of the assessment is ongoing throughout the year and any period of uncertainty as to the applicable rule would be extremely disruptive - - the Department has determined that it is necessary to adopt the rule on an emergency basis so as to avoid any possibility of disrupting the funding of its operations.

3. Needs and Benefits.

The Banking Division regulates more than 250 state chartered banks and licensed foreign bank branches and agencies in New York with total assets of over $2 trillion. In addition, it regulates a variety of other entities engaged in delivering financial services to the residents of New York State. These entities include: licensed check cashers; licensed money transmitters; sales finance companies; licensed lenders; premium finance companies; budget planners; mortgage bankers and brokers; mortgage loan servicers; and mortgage loan originators.

Collectively, the regulated entities represent a spectrum, from some of the largest financial institutions in the country to the smallest, neighborhood-based financial services providers. Their services are vital to the economic health of New York, and their supervision is critical to ensuring that these services are provided in a fair, economical and safe manner.

This supervision requires that the Banking Division maintain a core of trained examiners, plus facilities and systems. As noted above, these costs are by statute to be paid by all regulated entities in the proportions deemed just and reasonable by the Superintendent. The new regulation is intended to formally set forth the methodology utilized by the Banking Division for allocating these costs.

4. Costs.

The new regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division. Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities.

5. Local Government Mandates.

None.

6. Paperwork.

The regulation does not change the process utilized by the Banking Division to determine and collect assessments.

7. Duplication.

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

8. Alternatives.

The purpose of the regulation is to formally set forth the process employed by the Department to carry out the statutory mandate to assess and collect the operating costs of the Banking Division from regulated entities. In light of Homestead, the Department believes that promulgating this formal regulation is necessary in order to allow it to continue to assess all of its regulated institutions in the manner deemed most appropriate by the Superintendent. Failing to formalize the Banking Division's allocation methodology would potentially leave the assessment process open to further judicial challenges.

9. Federal Standards.

Not applicable.

10. Compliance Schedule.

The emergency regulations are effective immediately. Regulated institutions will be expected to comply with the regulation for the fiscal year beginning on April 1, 2011 and thereafter.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The regulation does not have any impact on local governments.

The regulation simply codifies the methodology used by the Banking Division of the Department of Financial Services (the "Department") to

assess all entities regulated by it, including those which are small businesses. The regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division.

Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities. It is expected that the effect of this change will be that larger members of the mortgage banking industry will pay an increased proportion of the total cost of regulating that industry, while the relative assessments paid by smaller industry members will be reduced.

2. Compliance Requirements:

The regulation does not change existing compliance requirements. Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the Banking Law are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division. Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

3. Professional Services:

None.

4. Compliance Costs:

All regulated institutions are currently subject to assessment by the Banking Division. The regulation simply formalizes the Banking Division's assessment methodology. It makes only one change from the allocation methodology used by the Banking Department in the previous state fiscal years. That change affects only one of the industry groups regulated by the Banking Division. Regulatory costs assessed to the mortgage banking industry are now divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. Even within the one industry group affected by the change, additional compliance costs, if any, are expected to be minimal.

5. Economic and Technological Feasibility:

All regulated institutions are currently subject to the Banking Division's assessment requirements. The formalization of the Banking Division's assessment methodology in a regulation will not impose any additional economic or technological burden on regulated entities which are small businesses.

6. Minimizing Adverse Impacts:

Even within the mortgage banking industry, which is the one industry group affected by the change in assessment methodology, the change will not affect the total amount of the assessment. Indeed, it is anticipated that this change may slightly reduce the proportion of mortgage banking industry assessments that is paid by entities that are small businesses.

7. Small Business and Local Government Participation:

This regulation does not impact local governments.

This regulation simply codifies the methodology which the Banking Division uses for determining the just and reasonable proportion of the Banking Division's costs to be charged to and paid by each regulated institution, including regulated institutions which are small businesses. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those that are small businesses.

Thereafter, the Banking Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Banking Department changed its overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market and servicing activities. Litigation was commenced challenging this latter change, and in a recent decision, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012), the court determined that the Department should adopt a change to its assessment methodology for mortgage bankers through a formal assessment rule promulgated pursuant to the requirements of the State Administrative Procedures Act. The challenged change in methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants, including those which are small businesses.

Rural Area Flexibility Analysis

Types and Estimated Numbers: There are entities regulated by the New York State Department of Financial Services (formerly the Banking Department) located in all areas of the State, including rural areas. However, this rule simply codifies the methodology currently used by the Department to assess all entities regulated by it. The regulation does not alter that methodology, and thus it does not change the cost of assessments on regulated entities, including regulated entities located in rural areas.

Compliance Requirements: The regulation would not change the current compliance requirements associated with the assessment process.

Costs: While the regulation formalizes the assessment process, it does not change the amounts assessed to regulated entities, including those located in rural areas.

Minimizing Adverse Impacts: The regulation does not increase the total amount assessed to regulated entities by the Department. It simply codifies the methodology which the Superintendent has chosen for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution.

Rural Area Participation: This rule simply codifies the methodology which the Department currently uses for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution, including regulated institutions located in rural areas. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those located in rural areas. It followed the loss of several major banking institutions that had paid significant portions of the former Banking Department's assessments.

Thereafter, the Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Department changed this overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market income and servicing income. This latter change was challenged by a mortgage banker, and in early May, the Appellate Division determined that the latter change should have been made in conformity with the State Administrative Procedures Act. The challenged part of the methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants.

Job Impact Statement

The regulation is not expected to have an adverse effect on employment.

All institutions regulated by the Banking Division (the "Banking Division") of the Department of Financial Services are currently subject to assessment by the Department. The regulation simply formalizes the assessment methodology used by the Banking Division. It makes only one change from the allocation methodology used by the former Banking Department in the previous state fiscal years.

That change affects only one of the industry groups regulated by the Banking Division. It somewhat alters the way in which the Banking Division's costs of regulating mortgage banking industry are allocated among entities within that industry. In any case, the total amount assessed against regulated entities within that industry will remain the same.

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Debt Collection by Third-Party Debt Collectors and Debt Buyers

I.D. No. DFS-34-13-00002-RP

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

Proposed Action: Addition of Part 1 to Title 23 NYCRR.

Statutory authority: Financial Services Law, sections 202, 302 and 408

Subject: Debt collection by third-party debt collectors and debt buyers.

Purpose: Establishes the oversight of debt collectors and sets basic rules for debt collection in New York.

Substance of revised rule: This rule sets forth rules for the third-party debt collectors and debt buyers collecting certain debts from New York consumers.

Section 1.1 provides definitions applicable to the rule.

Section 1.2 describes disclosures debt collectors must provide to consumers when the debt collector initially communicates with a consumer. The section also describes additional disclosures that must be provided when the debt collector is communicating with a consumer regarding a charged-off debt.

Section 1.3 requires debt collectors to disclose to consumers when the statute of limitations on a debt has expired. The section outlines specific information that must be disclosed and offers debt collectors optional model language that can be used to comply with this section.

Section 1.4 outlines a process where consumers can request additional documentation from a debt collector proving the validity of the charged-off debt and the debt collector's right to collect the charged-off debt. This

section provides processes debt collectors should use to determine if a request for such substantiation of the debt is requested and the timing in which to respond to such requests.

Section 1.5 requires debt collectors to provide consumers written confirmation of debt settlement agreements and regular accounting of the debt while the consumer is paying off a debt pursuant to a settlement agreement. Debt collectors must also provide consumers with important disclosures of their rights when settling a debt.

Section 1.6 allows debt collectors to correspond with consumers by electronic mail in limited circumstances.

Section 1.7 sets the effective dates of the rules.

Revised rule compared with proposed rule: Substantive revisions were made in sections 1.1-1.7.

Text of revised proposed rule and any required statements and analyses may be obtained from Max Dubin, Department of Financial Services, One State Street, New York, NY 10004-1511, (212) 480-7232, email: FSLReg@dfs.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

No new Regulatory Impact Statement is needed. The Revised Rule is substantively similar and addresses the same debt collection practices. The amendments clarify the Proposed Rule. The Revised Rule addresses the same legislative objectives and should have similar impacts to costs and paperwork.

Revised Regulatory Flexibility Analysis

No new Regulatory Flexibility Analysis for Small Businesses and Local Governments is needed. The Revised Rule is substantively similar and addresses the same debt collection practices. The amendments clarify the Proposed Rule. For small businesses, the amendments make clear that some small businesses that mistakenly thought they may be subject to the Proposed Rule were not.

Revised Rural Area Flexibility Analysis

No new Rural Area Flexibility Analysis is needed. The Revised Rule is substantively similar and addresses the same debt collection practices. The amendments clarify the Proposed Rule.

Revised Job Impact Statement

No new Job Impact Statement Analysis is needed. The Revised Rule is substantively similar and addresses the same debt collection practices. The amendments clarify the Proposed Rule. Any job impact should be the same.

Assessment of Public Comment

The New York State Department of Financial Services (the "Department") received many comments on proposed rule 23 NYCRR 1. The following report summarizes the comments and describes the substantive revisions to the proposed rule.

Organizations Commenting

During the public comment period, the Department received written comments from a wide variety of commenters, including bar associations, law schools, professors, legal service providers, industry associations, law firms, investors, medical providers, debt collection firms, consumer advocacy groups, and regulators.

Summary of Comments

The comments were generally supportive of the Department's regulation of the collection of debt arising from consumer credit transactions. The comments focused primarily on how the rules could be improved to better correspond to the structure of the collection industry. Another major request was for the Department to clarify the meaning of certain provisions. Further, commenters proposed improvements to consumer disclosures. However, some comments criticized the rules outright for being unnecessary or overly burdensome to debt collectors and asserted that the regulations would increase the cost of collecting valid debts. The summary of comments is organized by section.

Section 1.1 Definitions:

• Expand the definition of "debt" beyond an obligation that arises out of a transaction wherein credit has been offered or extended to a consumer. Commenters suggested including credit offered by the seller of a product or service and non-credit debts, such as rental arrears. Further, debt collectors explained that limiting the regulations to debts arising from the extension of credit is an artificial distinction that will be difficult to track. Other comments point out that this definition parallels language in the New York Financial Services Law.

• Clarify and/or change to the definition of "debt collector." Some comments suggested that the rules exempt attorneys and debt collection law firms while others urged that the definition of "debt collector" explicitly include attorneys and debt collection law firms. Commenters inquired as to whether the definition of "debt collector" includes original (in-house) creditors, debt servicers and continuing care service providers. Commenters suggested including exemptions from the federal Fair Debt Collection Practices Act (15 U.S.C. § 1692 et seq.) (the "FDCPA") to make clear that, for the purposes of this regulation, "debt collector" is limited to any person engaged in a business the principal purpose of which is the collection of any debts, or any person who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another.

• Clarify or replace the definition of "default," since there is no standard definition of when a debt is in default. Some comments suggested using "charge-off" as a more uniform demarcation of the status of a debt.

Section 1.2 Required initial disclosures by debt collectors:

• Require the disclosure of additional information concerning consumers' rights under the FDCPA, including the right request that collectors cease communication. Debt collection industry commenters suggested including a link to a Department website where consumers could find this information.

• Simplify or amend the exempt income disclosure to make it more helpful to consumers, or remove it completely. Some debt collectors argued that providing this disclosure could be considered a threat to sue the consumer regardless of whether the collector had the intent to do so.

• Disclosures should require only post-charge-off itemization because credit card issuers generally do not maintain pre-charge-off account information.

• Some commenters were concerned that disclosures would be overly burdensome to collectors and overwhelm consumers. Further, mailing this information could endanger consumers' privacy.

• Some debt collectors requested that they not be required to send the initial disclosures if the consumer pays off the debt within five days of the initial communication since subsequent disclosures would be unnecessary and confusing. Others suggest that these disclosures are not needed because consumers know what debts they owe and to whom.

Section 1.3 Disclosures for debts in which the statute of limitations may be expired:

• Simplify the statute of limitations disclosure requirements. Commenters felt that the disclosure explaining that the expiration of the statute of limitations is an affirmative defense to suit in New York was overly complicated. Further, commenters felt that this language suggested to consumers that it is legal to sue on a time-barred debt. Debt collectors suggested a shortened disclosure with a link to a Department website where consumers could find additional information.

• Include this disclosure in every communication to consumers after the statute of limitations has passed.

• Inform consumers that suing past the statute of limitations is a violation of the FDCPA.

• Include a clear standard to determine when a debt collector has actual or constructive knowledge that a debt is time-barred.

• Both consumer advocates and the collection industry urged the Department to exclude the warning that non-payment of a time-barred debt may impact one's credit score, since this may not always be true and could be interpreted as a prohibited threat of suit under the FDCPA.

Section 1.4 Verification of debts:

• Make clear that a consumer should be notified of his or her rights under this section regardless of whether a dispute of a debt is made orally or in writing. Debt collectors, however, were concerned that it would be difficult to identify which oral requests would trigger the disclosure requirements in this section.

• Require creditors to maintain records of prior requests for verification.

• Consumer advocates requested that the Department require additional documentation to verify a debt since a final account statement is not always sufficient. However, debt collectors argued that the proposed requirements may be overly burdensome, adding that all the required documentation may not be necessary in every dispute or may be too difficult or expensive to obtain.

• Debt collectors also suggested that a judgment should suffice to verify of a debt.

• The disclosure of account numbers could endanger consumer privacy, since often these numbers contain personal information such as Social Security numbers.

Section 1.5 Debt payment procedures:

• Require debt collectors to furnish a written debt settlement agreement within five days of reaching an agreement. Debt collectors explained that the requirement to furnish a written settlement agreement before accepting payment would frustrate the settlement process as a consumer may wish to make a payment at the time that an agreement is reached.

• Require that a written settlement agreement include only the "material" provisions agreed to in the settlement negotiation, since many boilerplate terms would never be discussed during a negotiation.

• Include a "grace period" where a consumer who was late on a settlement payment could cure the delinquency without penalty.
• Debt collectors expressed concern that the disclosure of consumer rights under the Exempt Income Protection Act is not appropriate here.
• Include a Department approved model agreement.
Section 1.6 Communication through electronic mail:
• Eliminate the requirement that an email address must be secure, since this is difficult to determine.
• Include an opt-out procedure in every electronic communication so that consumers may choose to revoke authorization to communicate by electronic mail.
Section 1.7 Effective date:
• Delay the effective date of the rule to allow additional time for compliance.
• Exempt from the rules all debts placed or sold for collection before the effective date of the rules.
Changes Made to Proposed Rule:
Following a review of the comments, the Department made the following changes to the proposed rule.
The rule was renamed to "Debt collection by third-party debt collectors and debt buyers."
Section 1.1 Definitions:
• The definition for "charge-off" was added. The Department determined that some information that debt collectors must provide to consumers is inexorably tied to the date of charge-off, not default. Charge-off represents a uniform accounting action in the life of all consumer debts.
• The definition of "collection efforts" was removed, since the term is no longer used in the proposed rule.
• The Department modified the definition of "debt collector" in order to exempt entities that the Department never intended to be subject to the proposed rule. The definition includes any person in a business the principal purpose of which is the collection of any debts, including debt buyers and third-party debt collectors. However, exceptions, primarily taken directly from the FDCPA, were included to clarify the scope of this definition. Based on a recommendation from the Commercial Lawyers Conference of New York, the Department explicitly excludes from the definition of debt collector any person taking collection action relating to or during litigation. This revision makes clear that the proposed rules are intended to target abusive and deceptive non-litigation consumer debt collection practices.
Section 1.2 Required initial disclosures by debt collectors:
• If the consumer pays a debt in full within five days of the initial communication, a debt collector does not need provide a consumer the initial communications required by Section 1.2. Many comments stated that there is no need for such a mailing after a consumer satisfies the debt.
• At the request of consumer advocates and the debt collection industry, the exempt income disclosure was simplified.
• Some documentation must be provided only if the original creditor has charged-off the debt. The required documentation has been revised to reflect this change, such as requiring an itemization of each additional charge or fee accrued from the charge-off of the debt. This change was made to match industry customs of using charge-off as a uniform recordkeeping standard. Further, this will ensure that the information will not be overly burdensome for industry or consumers by excluding an itemization of charges and payments made prior to charge-off.
Section 1.3 Disclosures for debts in which the statute of limitations may be expired:
• This section was revised to more clearly explain to consumers that while the expiration of the statute of limitations on a debt is an affirmative defense, suing to collect on an expired debt violates the FDCPA.
• This section more clearly conveys that while the Department is requiring debt collectors to disclose certain information to consumers, debt collectors can choose to either use the proposed language or draft a disclosure that incorporates the required information.
• Both the industry and consumer advocates requested that the Department remove the warning regarding the potential impact of failure to pay an expired debt on a consumer's credit score. The concern was that this warning would be threatening to consumers and could, in some cases, be misleading. This disclosure was removed.
Section 1.4 Verification of debts:
• This section was revised to address debt collectors' concern that the procedures for "verification," now renamed "substantiation," left debt collectors unsure of when a consumer was requesting this additional proof of indebtedness. Debt collectors were also concerned that consumers could repeatedly request substantiation. As amended, the rule allows collectors of charged-off debts to treat any dispute as a request for substantiation or provide consumers clear instructions for how to request substantiation in writing. This change provides debt collectors with procedural options to ensure that the collector can definitively determine whether a consumer has made a triggering substantiation request. To prevent abuse, a debt collector must only provide a consumer substantiation of the debt one time pursuant to this Section.
• The revisions also clarify that substantiation must be provided within 60 days of a debt collector receiving a request.
Section 1.5 Debt payment procedures:
• This section was revised after learning that consumers who agree to a debt payment plan may wish to make an initial payment on the phone, and not wait five days before paying. The revision allows the debt collector to accept this first payment and provide the consumer their written contract within five days.
• At the request of consumer advocates and the debt collection industry, the exempt income disclosure was simplified.
Section 1.6 Communication through electronic mail:
• This section was amended to allow electronic communication only if the consumer affirms that the email provided is not an account furnished or owned by the consumer's employer.
• An opt-out notice to stop electronic communications was not included because this option is required for all commercial electronic communication under federal law.
Section 1.7 Effective date:
• Most of the rules will be effective 90 days after publication in the State Register. Sections 1.2(b) and 1.4(a) will be effective 180 days after publication, to provide debt collectors time to comply.

New York State Gaming Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Implementation of Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application

I.D. No. SGC-28-14-00006-EP
Filing No. 563
Filing Date: 2014-06-27
Effective Date: 2014-06-27

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

Proposed Action: Addition of Part 5300 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1305(20) and 1307(2)

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

Specific reasons underlying the finding of necessity: The Gaming Commission ("Commission") has determined that immediate adoption of these rules is necessary for the preservation of the general welfare. On March 31, 2014, the Gaming Facility Location Board, which the Commission established pursuant to section 109-a of the Racing, Pari-Mutuel Wagering and Breeding Law, issued a Request for Applications ("RFA") for applicants seeking a license to develop and operate a gaming facility in New York State pursuant to the Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of 2013 (the "Act"). The Act authorizes four upstate destination gaming resorts to enhance economic development in upstate New York, completed applications are due to the Gaming Facility Location Board by June 30, 2014. The immediate re-adoption of these rules is necessary to prescribe the form of the RFA and the information required to be submitted in response to the RFA. Standard rule making procedures would prevent the Commission from commencing the fulfillment of its statutory duties.

Subject: Implementation of rules pertaining to gaming facility request for application and gaming facility license application.

Purpose: To facilitate a fair and transparent process for applying for a license to operate a gaming facility.

Substance of emergency/proposed rule (Full text is posted at the following State website:http://www.gaming.ny.gov/): This addition of Part 5300 of Subtitle T of Title 9 NYCRR will add new Sections 5300.1 through 5300.5 to allow the New York State Gaming Commission ("Commission") to prescribe the form of the application for a gaming facility license.
The new Part of the Gaming Commission regulations describes the form

of application for applicants seeking a gaming facility license and the information the applicant must provide. Section 5300.1 sets forth the form of the application including disclosure of identifying information, finance and capital structure of the proposed gaming facility, economic and market analysis, proposed land and design of facility space, assessment of local support and plans to address regional tourism, problem gambling, workforce development and resource management. Section 5300.2 describes the scope of background information the applicant and related parties must provide in three disclosure forms, the Gaming Facility License Application Form, the Multi-Jurisdictional Personal History Disclosure Form and the Multi-Jurisdictional Personal History Disclosure Supplemental Form. Section 5300.3 describes the process by which all applicants for a gaming facility license shall submit fingerprints as part of a background investigation. Section 5300.4 describes the applicant's duty to update its application as necessary, following submission of the application. Section 5300.5 describes the application fee and procedure for refunding a portion of such fee in certain circumstances.

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 August 25, 2014.

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301-7500, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1305(2) grants rule making authority to the Commission to implement, administer and enforce the provisions of Racing Law Article 13.

Racing Law section 1306(1) and section 1312(1) prescribe that the Gaming Facility Location Board ("Board"), which is established by the Commission, shall issue a request for applications ("RFA") for applicants seeking a license to develop and operate gaming facilities in New York State. On March 31, 2014, the Gaming Facility Location Board issued the RFA.

Racing Law section 1307(2) prescribes that the Commission regulate, among other things, the method and form of the application; the methods, procedures and form for delivery of information concerning an applicant's family, habits, character, associates, criminal record, business activities, and financial affairs; and the procedures for the fingerprinting of an applicant.

2. LEGISLATIVE OBJECTIVES: This rule making carries out the legislative objectives of the above-referenced statutes by implementing the requirements of Racing Law section 1307(2).

3. NEEDS AND BENEFITS: This rule making is necessary to enable the Board to carry out its statutory duty of issuing the RFA for applicants seeking a license to develop and operate a gaming facility in New York State.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rule: Those parties who choose to seek a gaming facility license will bear some costs. There is an application fee of $1 million that is prescribed by Racing Law section 1316(8) to defray the costs of processing the application and investigating the applicant. The extent of other costs incurred by applicants will depend upon the efforts that they put into completing and submitting the application.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The rules will impose some costs on the Commission in reviewing gaming facility applications and in issuing licenses, but it is anticipated that the $1 million application fee paid by each applicant will offset such costs. The rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. PAPERWORK: The rules set forth the content of the application for a gaming facility license. The requirements apply only to those parties that choose to seek a gaming facility license.

6. LOCAL GOVERNMENT: The rules do not impose any mandatory program, service, duty, or responsibility upon local government because the licensing of gaming facilities is strictly a matter of State law.

7. DUPLICATION: The rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission is required to create these rules under Racing Law section 1307(2). Therefore, no alternatives were considered.

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York because such licensing is solely in accordance with New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that affected parties will be able to achieve compliance with the rules upon the adoption of the rules, which will occur upon filing.

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

This rule making will not have any adverse impact on small businesses, local governments, jobs or rural areas. The rules prescribe the method and form of the application for a gaming facility license; the methods, procedures and form for delivery of information concerning an applicant's family, habits, character, associates, criminal record, business activities, and financial affairs; and the procedures for fingerprinting an applicant. It is not expected that any small business or local government will apply for a gaming facility license.

The rules impose no adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. It is anticipated that the opening of up to four gaming facilities in upstate New York will create new job opportunities. The rules apply uniformly throughout the State to any applicant seeking a license to develop and operate a gaming facility in the State.

The proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, or Job Impact Statement.

New York Gaming Facility Location Board

EMERGENCY RULE MAKING

Rules Pertaining to Gaming Facility Request for Application and Related Fees and Related Hearings

I.D. No. GFB-21-14-00008-E

Filing No. 564

Filing Date: 2014-06-27

Effective Date: 2014-06-27

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

Action taken: Addition of Parts 600 and 601 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 1306(4), (9) and 1319

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

Specific reasons underlying the finding of necessity: The New York State Gaming Facility Location Board (the "Board") has determined that immediate re-adoption of these rules is necessary for the preservation of the general welfare. On March 31, 2014, the Board, which was established by the New York State Gaming Commission ("Commission"), issued a Request for Applications ("RFA") for applicants seeking a license to develop and operate a gaming facility in New York State pursuant to the Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of 2013 (the "Act"). The Act authorizes four upstate destination gaming resorts to enhance economic development in Upstate New York. The immediate re-adoption of these rules is necessary to prescribe required fee information for applicants that plan to submit an application in response to the RFA, due June 30, 2014 and to enable the Board to have hearing procedures in place before any potential public hearing occurs. Standard rule making procedures would prevent the Board from commencing the fulfillment of its statutory duties.

Subject: Rules pertaining to gaming facility request for application and related fees and related hearings.

Purpose: To facilitate a fair and transparent process for applying for a license to operate a gaming facility.

Text of emergency rule: Subtitle R of Title 9, Executive, of the NYCRR is amended to name such Subtitle "Gaming Facility Location Board" and add new Parts 600 and 601 as follows:

PART 600
PUBLIC HEARINGS
§ 600.1. Public Hearings.
(a) If the New York Gaming Facility Location Board conducts a public hearing, it shall cause the New York State Gaming Commission to post a notice of such hearing on the Gaming Commission's website a reasonable period of time before such hearing.
(b) Any member of the New York Gaming Facility Location Board may preside over a public hearing as chair of the meeting. The conduct of the meeting shall be in the sole and absolute discretion of the chair, who may decide whom to recognize to speak and limit the time allowed to any speaker and the number of speakers. The chair of the meeting may receive written testimony in the discretion of the chair.
PART 601
GAMING FACILITY LICENSE FEES
§ 601.1. Gaming Facility License Fees.
(a) The license fee for a gaming facility license issued by the Gaming Commission pursuant to subdivision 4 of section 1315 of the Racing, Pari-Mutuel Wagering and Breeding Law shall be as follows, unless a gaming facility licensee has agreed to pay an amount in excess of the fees listed below:
(1) In Zone Two, Region One (Counties of Columbia, Delaware, Dutchess, Greene, Orange, Sullivan and Ulster), as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law, the following fees will apply to counties as designated below:
(i) $70,000,000 for a gaming facility in Dutchess or Orange Counties;
(ii) $50,000,000 for a gaming facility in Columbia, Delaware, Greene, Sullivan or Ulster Counties, if no license is awarded for a gaming facility located in Dutchess or Orange Counties; and
(iii) $35,000,000 for a gaming facility in Columbia, Delaware, Greene, Sullivan or Ulster Counties, if a license is awarded for a gaming facility located in Dutchess or Orange Counties.
(2) $50,000,000 in Zone Two, Region Two (Counties of Albany, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Schoharie and Washington), as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law;
(3) In Zone Two, Region Five (Counties of Broome, Chemung (east of State Route 14), Schuyler (east of State Route 14), Seneca, Tioga, Tompkins, and Wayne (east of State Route 14)), as such zone and region are defined in section 1310 of the Racing, Pari-Mutuel Wagering and Breeding Law, the following fees will apply to counties as designated below:
(i) $35,000,000 for a gaming facility in Broome, Chemung, Schuyler, Tioga or Tompkins Counties;
(ii) $50,000,000 for a gaming facility in Wayne or Seneca Counties; and
(iii) $20,000,000 for a gaming facility in Broome, Chemung, Schuyler, Tioga or Tompkins Counties, if a license is awarded for a gaming facility located in Wayne or Seneca Counties.
(b) A gaming facility licensee shall pay the required license fee by electronic fund transfer according to directions issued by the Gaming Commission.

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. GFB-21-14-00008-P, Issue of May 28, 2014. The emergency rule will expire August 25, 2014.

Text of rule and any required statements and analyses may be obtained from: Corey Callahan, New York State Gaming Commission, One Broadway Center, P.O. Box 7500, Schenectady, New York 12301-7500, (518) 388-3408, email: sitingrules@gaming.ny.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 1306(1) and section 1312(1) prescribe that the Gaming Facility Location Board ("Board"), which is established by the Gaming Commission ("Commission"), shall issue a request for applications ("RFA") for applicants seeking a license to develop and operate a gaming facility in New York State. On March 31, 2014, the Gaming Facility Location Board issued the RFA.

Racing Law section 1306(4) authorizes the Board to determine a gaming facility license fee to be paid by an applicant.

Racing Law 1306(9) authorizes the Board to promulgate any rules and regulations that it deems necessary to carry out its responsibilities.

Racing Law section 1319 authorizes the Board to conduct hearings concerning the conduct of gaming and applicants for gaming facility licenses.

2. LEGISLATIVE OBJECTIVES: This emergency rule making carries out the legislative objectives of the above referenced statutes by implementing the requirements of Racing Law section 1306(4) and section 1319.

3. NEEDS AND BENEFITS: This emergency rule making is necessary to enable the Board to carry out its statutory duty to prescribe the license fee for a gaming facility license issued by the Commission and prescribe public hearing procedures for the Board to follow in the event the Board conducts a public hearing concerning the conduct of gaming and applicants for gaming facility licenses.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rules: Those parties who choose to seek a gaming facility license will bear some costs, including the fee for the gaming facility license and the capital investment necessary to construct and operate a gaming facility.

(b) Costs to the regulating agency, the State, and local government: The rules will impose some costs on the Board to review gaming facility license applications and to conduct hearings, where necessary. The Board will rely on Commission staff to assist in these matters and the costs to the Commission are expected to be defrayed by the license fee and the $1 million application fee that each applicant will pay as required by Racing Law section 1316(8). The rules will not impose any additional costs on local government.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. PAPERWORK: The rules are not expected to impose any significant paperwork requirements for gaming facility applicants and licensees.

6. LOCAL GOVERNMENT: The rules do not impose any mandatory program, service, duty, or responsibility upon local government because the licensing of gaming facilities is strictly a matter of State law.

7. DUPLICATION: The rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Board is required to create these rules under Racing Law section 1306(4) and section 1319. Therefore, no alternatives were considered.

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York because such licensing is solely in accordance with New York State law.

10. COMPLIANCE SCHEDULE: The Board anticipates that affected parties will be able to achieve compliance with the emergency rules upon the adoption of the rules, which will occur upon filing.

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

This emergency rule making will not have any adverse impact on small businesses, local governments, jobs, or rural areas. The rules prescribe the license fee for a gaming facility license issued by the New York State Gaming Commission and prescribe public hearing procedures that the Gaming Facility Location Board must follow in the event the Gaming Facility Location Board ("Board") conducts a public hearing concerning gaming and applicants for gaming facility licenses. It is not expected that any small business or local government will apply for a gaming facility license. To the extent that a small business or local government might participate in a Board hearing, each would be treated equally with any other participant in such hearing.

The rules impose no adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. It is anticipated that the opening of up to four gaming facilities in upstate New York will create new job opportunities. The rules apply uniformly throughout the State to any applicant seeking a license to develop and operate a gaming facility in the State.

The rules will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, or Job Impact Statement.

Department of Health

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rate Rationalization—Intermediate Care Facilities for Persons with Developmental Disabilities

I.D. No. HLT-28-14-00015-EP
Filing No. 571
Filing Date: 2014-07-01
Effective Date: 2014-07-01

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

Proposed Action: Amendment of Subpart 86-11 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 201

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

Specific reasons underlying the finding of necessity: The emergency adoption of these amendments is necessary to protect the health, safety, and welfare of individuals receiving services in the OPWDD system.

The amendments are necessary to properly implement a new rate methodology for ICFs/DD. OPWDD and DOH made commitments to the Centers for Medicare and Medicaid Services (CMS) in order to qualify for substantial federal funding, including its commitment to implement the new ICF/DD rate methodology in July, 2014. To fulfill its commitment, OPWDD and DOH adopted proposed regulations to implement the new methodology effective July, 2014 through the regular rulemaking process. However, OPWDD and DOH became aware that substantive changes were necessary to properly implement the methodology subsequent to the proposal of the regulations, which was too late to incorporate the amendments through the regular rulemaking process. The State Administrative Procedure Act (SAPA) sets forth timeframes for the promulgation of regulations (including a mandatory public comment period) and prohibits the adoption of rules containing substantive changes in the terms of proposed regulations. SAPA requires additional rulemaking activities to make substantive changes through the regular rulemaking process which delays the effective date. The only way that the substantive amendments necessary to properly implement the new methodology could be promulgated at the same time that the original regulation is adopted is through the emergency rulemaking process.

If DOH did not promulgate these regulations on an emergency basis, DOH would fail to meet its commitment to CMS and would risk loss of the substantial federal funding that is contingent on this commitment. The loss of this federal funding could jeopardize the health, safety, and welfare of individuals receiving services in the OPWDD system, as without it, individuals would be at risk of receiving services that are inadequate or insufficient in meeting their needs.

Subject: Rate Rationalization—Intermediate Care Facilities for Persons with Developmental Disabilities.

Purpose: To amend the new rate methodology effective July 1, 2014.

Substance of emergency/proposed rule (Full text is posted at the following State website:www.health.ny.gov): This emergency/proposed regulation amends the newly-adopted 10 NYCRR subpart 86-11 concerning the rate methodology for ICF/DD facilities. (Note that the text of the newly adopted regulation is the same as the text of the proposed regulation published in the spring of 2014.) The changes include the following:

1) A clarification that the "initial period" of the methodology is July 1, 2014 through June 30, 2015.

2) A clarification in the definitions of the "regional average general and administrative component" and the "provider average general and administrative component" to specify that the administrative allocation for the base year is agency administration, that depreciation is equipment depreciation and that program administration property is not part of the formula.

3) A clarification in the definition of "provider direct care hours", "provider salary clinical hours" and the "provider contracted clinical hours" to indicate that the formulas are based on rate sheet capacities rather than billed units and that the formula quotient is multiplied by rate sheet capacities rather than units.

4) A change in the "provider facility reimbursement" definition to indicate that depreciation is equipment depreciation and that the formula utilizes provider rate sheet capacities rather than billed units or units.

5) Clarification to the "alternative operating component" to indicate that this section applies to providers that did not submit a cost report or submitted a cost report that was incomplete. The previous language applied the section in a more narrow set of circumstances, i.e., only when providers did not provide services during the base year.

6) The "day program services component" was revised by changing the word "and" to "plus" to add clarity to the intent of the section.

7) A note was added to the "capital component" section to indicate that the capital component language was not applicable to capital approved by OPWDD prior to July 1, 2014.

8) The "capital component" section was changed to clarify that start-up costs for ICFs/DD may be amortized over a one-year period beginning with certification.

9) Numerous changes were made to the capital threshold schedules to add clarity including the elimination of references to non-ICF/DD programs; the elimination of the non-relevant "architect/engineer design fee schedule for ground-up construction", and to standardize definitions, including that of soft costs.

10) A clarification was made to the "transition to new methodology" section to indicate that the described base rate is specifically the base operating rate.

11) A "rate correction" section was added to specify the policies and procedures for the correction of arithmetic or calculation errors.

12) A new section is added governing funding for those individuals identified as qualifying for template or auspice funding. The funding for ICF/DD services provided to these individuals will be determined in accordance with that section instead of the methodology that is generally applicable.

13) Various non-substantive technical corrections were added to correct inconsistencies, grammatical errors, etc.

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 September 28, 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

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

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

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

Regulatory Impact Statement

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law (PHL) section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objective:

These emergency/proposed regulations further the legislative objectives embodied in sections 363-a of the Social Services Law and section 201(1)(v) of the Public Health Law. The emergency/proposed regulations amend the newly adopted methodology for reimbursement of Intermediate Care Facilities for Persons with Developmental Disabilities (ICFs/DD).

Needs and Benefits:

The Office for People With Developmental Disabilities (OPWDD) and the Department of Health (DOH) recently finalized a new reimbursement methodology, which complements existing OPWDD requirements concerning ICFs/DD, to satisfy commitments included in OPWDD's transformation agreement with the federal Centers for Medicare and Medicaid Services (CMS).

Prior to final adoption of the rule, OPWDD and DOH became aware of amendments that were needed to properly implement the new methodology. Many of the corrections and clarifications contained in these amendments are in response to concerns noted in public comments about the proposed regulations and questions submitted to OPWDD and DOH about the new methodology. The changes in these amendments clarify the new methodology and contain corrections that are necessary for its proper implementation.

Costs:

Costs to the Agency and to the State and its Local Governments:

The emergency/proposed regulations are necessary to enable the State to properly implement the new methodology. There are no material fiscal changes that result from the amendments compared to the intent of the original methodology. The amendments, building on the original method-

ology, will be cost neutral to the state as the overall monies expended for such services will remain constant.

The new methodologies do not apply to the state as a provider of services.

There will be no savings or costs to local governments as a result of these regulations because pursuant to Social Services Law sections 365 and 368-a, either local governments incur no costs for these services or the State reimburses local governments for their share of the cost of Medicaid funded programs and services.

Costs to Private Regulated Parties:

The emergency/proposed regulations will amend the new reimbursement methodology for ICFs/DD and facilitate its proper implementation. Application of the new methodology (as amended) is expected to result in increased rates for some non-state operated providers and decreased rates for others. However, overall reimbursement to providers will not be changed. The amendments themselves may result in a minor increase or decrease in rates for some providers, but will have no overall impact on provider rates because budget neutrality is built into the new methodology.

Local Government Mandates:

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

Paperwork:

The emergency/proposed amendments are not expected to increase paperwork to be completed by providers.

Duplication:

The emergency/proposed regulations do not duplicate any existing State or federal requirements that are applicable to services for persons with developmental disabilities.

Alternatives:

The amendments include a statement to clarify that the provisions of the capital component do not apply to capital approved by OPWDD prior to July 1, 2014. This statement reflects the intent of the original regulations although this was not explicit in the original language. The statement is included in the amendments in response to concerns raised that the regulations could be construed to permit the prior approval of capital to be subject to inappropriate review. OPWDD and DOH considered the inclusion of the statement to be unnecessary but after consideration decided to include it to make its intent explicit and the regulations clear.

Federal Standards:

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

Compliance Schedule:

DOH is adopting the amendments on an emergency basis effective July 1, 2014 to coincide with the final adoption of the proposed regulations which it is amending. During the spring of 2014, DOH and OPWDD trained providers on the new methodology as amended and issued rate sheets, guidance documents and training materials which reflected the anticipated amendments. DOH expects to finalize the amendments as soon as possible within the timeframes established by the State Administrative Procedure Act.

Regulatory Flexibility Analysis

Effect of Rule:

The emergency/proposed amendments make changes to the newly-adopted regulations that revise the rate methodology for ICF/DD facilities. The changes in these amendments clarify the new methodology and contain corrections that are necessary for its proper implementation.

Many of the amendments correct technical errors in the original text or add clarifying material. In general, these provisions do not change the impact of the original regulations on providers, including providers that are small businesses, or have positive impacts. However, several technical amendments make changes to the original text that may translate into a minor increase or decrease in the rates and may have a modest negative impact on some small business providers of ICFs/DD. For example, the change from "billed units" to "rate sheet capacities" in the methodology may result in immaterial positive or negative differences in the final rates. These immaterial differences will not impose an adverse economic impact on small business providers and in any case, the overall funding to providers will remain the same because of budget neutrality. The amendments do not change any requirements for record-keeping or other compliance requirements that are contained in the original regulations.

Finally, these amendments do not impose any requirements on local governments, and (as noted in the Regulatory Impact Statement) have no fiscal impact on local governments.

Compliance Requirements:

There are no new compliance activities imposed by these amendments.

Professional Services:

No additional professional services will be required as a result of these regulations and the regulations will not add to the professional service needs of local governments.

Compliance Costs:

There are no compliance costs since there are no new compliance activities imposed by these amendments.

Economic and Technological Feasibility:

The emergency/proposed amendments do not impose on regulated parties the use of any new technological processes.

Minimizing Adverse Impact:

Some of the technical changes may affect the rates either positively or negatively. DOH does not expect that these immaterial differences would impose an adverse economic impact on small business providers. In any case, the overall funding to providers will remain the same because of budget neutrality.

DOH has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. The emergency/proposed regulations minimize adverse economic impact in several ways. First, the anticipated fiscal impact of the amendments is expected to be slight because only minor changes in the rates result from the technical amendments. In addition, DOH notes that the rate sheets distributed to providers in June anticipated the promulgation of these amendments by incorporating the technical changes into the methodology underlying the rate calculation, and providers have therefore already been developing plans to implement the new rate methodology based on the incorporation of these amendments. Therefore, providers will not need to make any additional adjustments in fiscal plans as a result of the minor fiscal impact of the amendments.

The amendments also contain several changes that will be positive for providers. The amendments include changes which explicitly state that the new provisions related to the calculation of the capital component do not apply to capital approved prior to July 1, 2014. While this reflects the original intention and is not a change per se, the inclusion of this specific language helps providers to keep faith with financial institutions who can rest assured that anticipated capital reimbursement will continue to be received for projects. In addition, new language was added to explicitly address the correction of arithmetic or calculation errors. In the event that such errors occur, providers have a referenced mechanism to request corrections of these errors. Finally, related to the calculation of the capital component, new items were added to the chart of thresholds for "soft costs," such as security and clerk of the works, which will permit the reimbursement of these items up to the threshold amount. This corrects the inadvertent exclusion of these items in the original proposed regulations.

Small Business and Local Government Participation:

OPWDD and DOH met with representatives of providers to discuss the new methodology (including provider concerns) at numerous meetings beginning in August 2013, including the New York State Association of Community and Residential Agencies (NYSACRA) (which represents some providers that have fewer than 100 employees). OPWDD and DOH posted material about the original proposed regulations on the respective agencies' websites, and OPWDD notified all providers affected by proposed regulation of the materials posted. In addition, OPWDD and DOH conducted six training sessions for providers by videoconference throughout NYS during April-May 2014. As noted above, DOH sent each provider affected by the new methodology the rate sheet and documents that described the impact of the new regulations (including the emergency/proposed amendments) on the specific provider. OPWDD and DOH received public comments on the original regulations and answered numerous questions. Many of the changes contained in these emergency/proposed amendments were made as a result of the concerns raised by the regulated parties through one or more of these vehicles. OPWDD is also posting materials about these emergency/proposed amendments on its website and is notifying all affected providers about the availability of these materials.

Rural Area Flexibility Analysis

Effect on Rural Areas:

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 that 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 emergency/proposed amendments make changes to the newly-adopted regulations that revise the rate methodology for ICF/DD facilities. The changes in these amendments clarify the new methodology and contain corrections that are necessary for its proper implementation.

Many of the amendments correct technical errors in the original text or

add clarifying material. In general, these provisions do not change the impact of the original regulations on providers, including providers in rural areas, or have positive impacts. However, several technical amendments make changes to the original text that may translate into a minor increase or decrease in the rates and may have a modest negative impact on some providers of ICFs/DD in rural areas. For example, the change from "billed units" to "rate sheet capacities" in the methodology may result in immaterial positive or negative differences in the final rates. These immaterial differences will not impose an adverse economic impact on providers in rural areas and in any case, the overall funding to providers will remain the same because of budget neutrality. The amendments do not change any requirements for recordkeeping or other compliance requirements that are contained in the original regulations.

Finally, these amendments do not impose any requirements on local governments, and (as noted in the Regulatory Impact Statement) have no fiscal impact on local governments, including local governments in rural areas.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

There are no additional reporting, recordkeeping and other compliance requirements and professional services imposed by these amendments. The Department does not anticipate that regulated entities will require new professional services as a result of this new rule.

Costs:

The proposed rule imposes no new costs on regulated entities.

Minimizing Adverse Impact:

As noted above, some of the technical changes may affect the rates either positively or negatively. DOH does not expect that these immaterial differences would impose an adverse economic impact on providers in rural areas. In any case, the overall funding to providers will remain the same because of budget neutrality.

DOH has reviewed and considered the approaches for minimizing adverse impact on providers in rural areas as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act. The emergency/proposed regulations minimize adverse economic impact in several ways. First, the anticipated fiscal impact of the amendments is expected to be slight because only minor changes in the rates result from the technical amendments. In addition, DOH notes that the rate sheets distributed to providers in June anticipated the promulgation of these amendments by incorporating the technical changes into the methodology underlying the rate calculation, and providers have therefore already been developing plans to implement the new rate methodology based on the incorporation of these amendments. Therefore, providers will not need to make any additional adjustments in fiscal plans as a result of the minor fiscal impact of the amendments.

The amendments also contain several changes that will be positive for providers. The amendments include changes which explicitly state that the new provisions related to the calculation of the capital component do not apply to capital approved prior to July 1, 2014. While this reflects the original intention and is not a change per se, the inclusion of this specific language helps providers to keep faith with financial institutions who can rest assured that anticipated capital reimbursement will continue to be received for projects. In addition, new language was added to explicitly address the correction of arithmetic or calculation errors. In the event that such errors occur, providers have a referenced mechanism to request corrections of these errors. Finally, related to the calculation of the capital component, new items were added to the chart of thresholds for "soft costs," such as security and clerk of the works, which will permit the reimbursement of these items up to the threshold amount. This corrects the inadvertent exclusion of these items in the original proposed regulations.

Rural Area Participation:

Participation of public and private interests in rural areas: OPWDD and DOH met with representatives of providers to discuss the new methodology (including provider concerns) at numerous meetings beginning in August 2013, including providers in rural areas, such as NYSARC, the NYS Association of Community and Residential Agencies, NYS Catholic Conference, and CP Association of NYS. OPWDD and DOH posted material about the original proposed regulations on the respective agencies' websites, and OPWDD notified all providers affected by the proposed regulation of the materials posted. In addition, OPWDD and DOH conducted six training sessions for providers by videoconference throughout NYS during April-May 2014. As noted above, DOH sent each provider affected by the new methodology the rate sheet and documents that described the impact of the new regulations (including the emergency/proposed amendments) on the specific provider. OPWDD and DOH received public comments on the original regulations and answered numerous questions. Many of the changes contained in these emergency/proposed amendments were made as a result of the concerns raised by the regulated parties through one or more of these vehicles. OPWDD is also posting materials about these emergency/proposed amendments on its website and is notifying all affected providers about the availability of these materials.

Job Impact Statement

A Job Impact Statement is not being submitted for this emergency/proposed rulemaking because this rulemaking will not have a substantial adverse impact on jobs or employment opportunities.

The emergency/proposed amendments make changes to the newly-adopted regulations that revise the rate methodology for ICF/DD facilities. The changes in these amendments clarify the new methodology and contain corrections that are necessary for its proper implementation.

As noted in the Regulatory Flexibility Analysis, the emergency/proposed amendments have no adverse economic impact on providers and do not impose any changes to record-keeping or other compliance activities. While some providers may experience an immaterial adverse economic impact as a result of these amendments, the effect on jobs as a result is expected to be negligible. In any case, other providers would experience a commensurate slight increase in funding and there will be no overall economic impact (and jobs impact) because the methodology is budget neutral. The amendments are therefore expected to have no impact on jobs and employment opportunities with providers.

As noted in the emergency justification, if these amendments were not promulgated, a substantial amount of federal funding would be lost. This loss of substantial funds could adversely impact jobs and employment opportunities in New York State. This potential adverse effect on jobs and employment opportunities is avoided by the promulgation of these amendments.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Rate Rationalization for Community Residences/Individualized Residential Alternatives Habilitation and Day Habilitation

I.D. No. HLT-28-14-00016-EP

Filing No. 572

Filing Date: 2014-07-01

Effective Date: 2014-07-01

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

Proposed Action: Amendment of Subpart 86-10 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 201

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

Specific reasons underlying the finding of necessity: The emergency adoption of these amendments is necessary to protect the health, safety, and welfare of individuals receiving services in the OPWDD system.

The amendments are necessary to properly implement a new rate methodology for residential habilitation provided in Individualized Residential Alternatives (IRAs) and Community Residences (CRs) and day habilitation services. OPWDD and DOH made commitments to the Centers for Medicare and Medicaid Services (CMS) in order to qualify for substantial federal funding, including its commitment to implement the new rate methodology in July, 2014. To fulfill its commitment, OPWDD and DOH adopted proposed regulations to implement the new methodology effective July, 2014 through the regular rulemaking process. However, OPWDD and DOH became aware that substantive changes were necessary to properly implement the methodology subsequent to the proposal of the regulations, which was too late to incorporate the amendments through the regular rulemaking process. The State Administrative Procedure Act (SAPA) sets forth timeframes for the promulgation of regulations (including a mandatory public comment period) and prohibits the adoption of rules containing substantive changes in the terms of proposed regulations. SAPA requires additional rulemaking activities to make substantive changes through the regular rulemaking process which delays the effective date. The only way that the substantive amendments necessary to properly implement the new methodology could be promulgated at the same time that the original regulation is adopted is through the emergency rulemaking process.

If DOH did not promulgate these regulations on an emergency basis, DOH would fail to meet its commitment to CMS and would risk loss of the substantial federal funding that is contingent on this commitment. The loss of this federal funding could jeopardize the health, safety, and welfare of individuals receiving services in the OPWDD system, as without it,

individuals would be at risk of receiving services that are inadequate or insufficient in meeting their needs.

Subject: Rate Rationalization for Community Residences/Individualized Residential Alternatives Habilitation and Day Habilitation.

Purpose: To amend the new rate methodology effective July 1, 2014.

Substance of emergency/proposed rule (Full text is posted at the following State website:www.health.ny.gov): The emergency/proposed regulations amend the newly-adopted 10 NYCRR Subpart 86-10, concerning the rate methodology for Residential Habilitation delivered in IRAs and Community Residences and Day Habilitation. (Note that the text of the newly adopted regulation is the same as the text of the proposed regulation published in the spring of 2014.) The changes include the following:

1) A clarification that the "initial period" of the methodology is July 1, 2014 through June 30, 2015.

2) A definition was added for "total reimbursement". The definition total reimbursement is the provider's final reimbursement as calculated on its rate sheets inclusive of SSI/SNAP adjustments and any State supplement add-on.

3) A clarification in the definitions of the "regional average general and administrative component" and the "provider average general and administrative component" to specify that the administrative allocation for the base year is agency administration, that depreciation is equipment depreciation and that program administration property is not part of the formula.

4) A clarification in the definition of "provider direct care hours", "provider salary clinical hours" and the "provider contracted clinical hours" to indicate that the formulas are based on rate sheet capacities rather than billed units and that the formula quotient is multiplied by rate sheet capacities rather than units.

5) A change in the "provider facility reimbursement" definition to indicate that depreciation is equipment depreciation and that the formula utilizes provider rate sheet capacities rather than billed units or units.

6) A clarification to the "alternative cost component" and to the "alternative facility cost component" (specific to IRAs and Community Residences) to indicate that this section applies to providers that did not submit a cost report or submitted a cost report that was incomplete. The previous language applied these components in a more narrow set of circumstances, i.e., only when providers did not provide services during the base year.

7) The "budget neutrality" formula was changed for Supervised and Supportive IRAs and Community Residences. Budget neutrality was eliminated on the "facility cost component" and a "statewide budget neutrality for State supplement factor" was added to the methodology.

8) A note was added to the "capital component" section to indicate that the capital component language was not applicable to capital approved by OPWDD prior to July 1, 2014.

9) The "capital component" section for both Supervised and Supportive IRAs and Community Residences was changed to clarify that start-up costs may be amortized over a one-year period beginning with certification.

10) Numerous changes were made to the capital threshold schedules to add clarity including the elimination of references to incorrect programs; the elimination of the non-relevant "architect/engineer design fee schedule for ground-up construction" and to standardize definitions, including that of soft costs.

11) The "adjustments" section (specific to Supervised and Supportive IRAs and Community Residences) was revised to clarify that the supplemental security income offset is an annualized figure.

12) A "rate correction" section was added to specify the policies and procedures for the correction of arithmetic or calculation errors.

13) Within the "transition periods and reimbursement" section, it was clarified that retainer days, specific to Supervised IRAs and Community Residences, will be reconciled at the mid-point and the end-point of the rate period ending June 30, 2015. It was further clarified that Supervised IRA and Community Residence providers shall not be paid for more than 14 retainer days per annual period for any one individual.

14) Also, within the "transition periods and reimbursement" section, specific to Supervised IRAs and Community Residences, it was clarified that therapeutic leave days include vacation absences and that therapeutic leave days will be reimbursed at the provider's Supervised IRA or Community Residence rate.

15) Additionally, within the "transition periods and reimbursement" section, specific to Supervised IRAs and Community Residences, it was further clarified that the payment for vacant bed days, through the period ending June 30, 2015, would be 75 percent of the provider's Supervised IRA or Community Residence rate up to a maximum of 90 such vacant bed days.

16) A new section is added governing funding for those individuals identified as qualifying for template or auspice funding. The funding for IRA/CR residential habilitation and day habilitation provided to these individuals will be determined in accordance with that section instead of the methodology that is generally applicable.

17) Various non-substantive technical corrections were added to correct inconsistencies, grammatical errors, etc.

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 September 28, 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

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

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

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

Regulatory Impact Statement

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law (PHL) section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objective:

These proposed regulations further the legislative objectives embodied in section 363-a of the Social Services Law and section 201(1)(v) of the Public Health Law. The emergency/proposed regulations amend the newly adopted methodology for reimbursement of residential habilitation delivered in Individualized Residential Alternatives (IRAs) and Community Residences (CRs) and day habilitation services.

Needs and Benefits:

OPWDD and the Department of Health (DOH) recently finalized a new reimbursement methodology for residential habilitation in IRAs/CRs and day habilitation, which complements existing OPWDD requirements concerning these programs, to satisfy commitments included in OPWDD's transformation agreement with the federal Centers for Medicare and Medicaid Services (CMS).

Prior to final adoption of the rule, OPWDD and DOH became aware of amendments that were needed to properly implement the new methodology. Many of the corrections and clarifications contained in these amendments are in response to concerns noted in public comments about the proposed regulations and questions submitted to OPWDD and DOH about the new methodology. The changes in these amendments clarify the new methodology and contain corrections that are necessary for its proper implementation.

Costs:

Costs to the Agency and to the State and its Local Governments:

The emergency/proposed regulations are necessary to enable the State to properly implement the new methodology. In general, there are no material fiscal changes that result from the amendments compared to the intent of the original methodology. The amendments, building on the original methodology, will be cost neutral to the state as the overall monies expended overall for such services will remain constant.

The new methodology and the accompanying amendments do not apply to the state as a provider of services.

There will be no savings or costs to local governments as a result of these regulations because pursuant to Social Services Law sections 365 and 368-a, either local governments incur no costs for these services or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. In addition, even if the amendments lead to an increase in Medicaid expenditures in a particular county, these amendments will not have any fiscal impact on local governments, as 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.

Costs to Private Regulated Parties:

The emergency/proposed regulations will amend the new reimbursement methodology for residential habilitation in IRAs/CRs and day habilitation and facilitate its proper implementation. Application of the new methodology (as amended) is expected to result in increased rates for some non-state operated providers and decreased rates for others. However, overall reimbursement to providers will not be changed. The amendments themselves may result in a minor increase or decrease in rates for some providers, but will have no overall impact on provider rates because budget neutrality is built into the new methodology.

Local Government Mandates:

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

Paperwork:

The emergency/proposed regulations are not expected to increase paperwork to be completed by providers.

Duplication:

The emergency/proposed regulations do not duplicate any existing State or federal requirements that are applicable to services for persons with developmental disabilities.

Alternatives: The amendments include a statement to clarify that the provisions of the capital component do not apply to capital approved by OPWDD prior to July 1, 2014. This statement reflects the intent of the original regulations although this was not explicit in the original language. The statement is included in the amendments in response to concerns raised that the regulations could be construed to permit the prior approval of capital to be subject to inappropriate review. OPWDD and DOH considered the inclusion of the statement to be unnecessary but after consideration decided to include it to make its intent explicit and the regulations clear.

Federal Standards:

The emergency/proposed amendments do not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

DOH is adopting the amendments on an emergency basis effective July 1, 2014 to coincide with the final adoption of the proposed regulations which it is amending. During the spring of 2014, DOH and OPWDD trained providers on the new methodology as amended and issued rate sheets, guidance documents and training materials which reflected the anticipated amendments. DOH expects to finalize the amendments as soon as possible within the timeframes established by the State Administrative Procedure Act.

Regulatory Flexibility Analysis

Effect of Rule:

The changes in these amendments clarify the new methodology and contain corrections that are necessary for its proper implementation.

Many of the amendments correct technical errors in the original text or add clarifying material. In general, these provisions do not change the impact of the original regulations on providers, including providers that are small businesses, or have positive impacts. However, several technical amendments make changes to the original text that may translate into a minor increase or decrease in the rates and may have a modest negative impact on some small business providers of residential habilitation in IRA/CRs and/or day habilitation. For example, the change from "billed units" to "rate sheet capacities" in the methodology may result in immaterial positive or negative differences in the final rates. These immaterial differences will not impose an adverse economic impact on small business providers and in any case, the overall funding to providers will remain the same because of budget neutrality. Changes made to the budget neutrality component of the methodology may have a slight impact on all providers of residential habilitation in IRA/CRs. The amendments do not change any requirements for recordkeeping or other compliance requirements that are contained in the original regulations.

Finally, these amendments do not impose any requirements on local governments, and (as noted in the Regulatory Impact Statement) have no fiscal impact on local governments.

Compliance Requirements:

There are no new compliance activities imposed by these amendments.

Professional Services:

No new professional services will be required as a result of these regulations and the regulations will not add to the professional service needs of local governments.

Compliance Costs:

There are no compliance costs since there are no new compliance activities imposed by these amendments.

Economic and Technological Feasibility:

The proposed amendments do not impose on regulated parties the use of any technological processes.

Minimizing Adverse Impact:

As noted above, some of the technical changes may affect the rates either positively or negatively. DOH does not expect that these immaterial differences would impose an adverse economic impact on small business providers. In any case, the overall funding to providers as a result of these technical amendments will remain the same because of budget neutrality.

DOH has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. The proposed regulations minimize adverse economic impact in several ways. First, the anticipated fiscal impact of the amendments is expected to be slight because only minor changes in the rates result from the technical amendments. In addition, DOH notes that the rate sheets distributed to providers in June anticipated the promulgation of these amendments by incorporating the technical changes into the methodology underlying the rate calculation (except for the change in budget neutrality), and providers have therefore already been developing plans to implement the new rate methodology based on the incorporation of these amendments. Therefore, providers will only need to make minimal adjustments in fiscal plans as a result of the minor change in budget neutrality. DOH considered the impact of the change in budget neutrality on providers but determined that the changes incorporated in these amendments were necessary to properly implement the methodology. The potential loss of federal funds that could result from non-compliance would have had far more serious consequences to providers than the minor decrease in rates that result from these changes.

The amendments also contain several changes that will be positive for providers. The amendments include changes which explicitly state that the new provisions related to the calculation of the capital component do not apply to capital approved prior to July 1, 2014. While this reflects the original intention and is not a change per se, the inclusion of this specific language helps providers to keep faith with financial institutions who can rest assured that anticipated capital reimbursement will continue to be received for projects. In addition, new language was added to explicitly address the correction of arithmetic or calculation errors. In the event that such errors occur, providers now have a referenced mechanism to request corrections of these errors. Related to the calculation of the capital component, new items were added to the chart of thresholds for "soft costs," such as security and clerk of the works, which will permit the reimbursement of these items up to the threshold amount. This corrects the inadvertent exclusion of these items in the original proposed regulations.

There are several additional positive changes for providers which are specific to the provision of residential habilitation services in supervised IRAs/CRs. Changes were made in the definition of "therapeutic leave days" to include days when the individual receiving services is on vacation. This corrected an inadvertent omission in the original regulations (which only permitted therapeutic leave days for the purpose of visiting with family and friends). Because of this change, providers may receive reimbursement for days when the individual is on vacation but the vacation is not for the purpose of visiting with family and friends. Finally, changes were made related to the reconciliation of therapeutic leave days and retainer days, which positively affect the cash flow to providers. The amendments eliminate the reconciliation requirement for therapeutic leave days and state that the determination of reimbursement for retainer days will happen at the mid-point of the stated period as well as the conclusion of the period.

Small Business and Local Government Participation:

OPWDD and DOH met with representatives of providers to discuss the new methodology (including provider concerns) at numerous meetings beginning in August 2013, including the New York State Association of Community and Residential Agencies (NYSACRA) (which represents some providers that have fewer than 100 employees). OPWDD and DOH posted material about the original proposed regulations on the respective agencies' websites, and OPWDD notified all providers affected by proposed regulation of the materials posted. In addition, OPWDD and DOH conducted six training sessions for providers by videoconference throughout NYS during April-May 2014. As noted above, DOH sent each provider affected by the new methodology the rate sheet and documents that described the impact of the new regulations (including the emergency/proposed amendments) on the specific provider. OPWDD and DOH received public comments on the original regulations and answered numerous questions. Many of the changes contained in these emergency/proposed amendments were made as a result of the concerns raised by the regulated parties through one or more of these vehicles. OPWDD is also posting materials about these emergency/proposed amendments on its website and is notifying all affected providers about the availability of these materials.

Rural Area Flexibility Analysis

Effect on Rural Areas:

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. Forty three counties have a population of less that 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 changes in these amendments clarify the new methodology and contain corrections that are necessary for its proper implementation.

Many of the amendments correct technical errors in the original text or

add clarifying material. In general, these provisions do not change the impact of the original regulations on providers, including providers in rural areas, or have positive impacts. However, several technical amendments make changes to the original text that may translate into a minor increase or decrease in the rates and may have a modest negative impact on some providers of residential habilitation in IRA/CRs and/or day habilitation in rural areas. For example, the change from "billed units" to "rate sheet capacities" in the methodology may result in immaterial positive or negative differences in the final rates. These immaterial differences will not impose an adverse economic impact on providers in rural areas and in any case, the overall funding to providers will remain the same because of budget neutrality. Changes made to the budget neutrality component of the methodology may have a slight impact on all providers of residential habilitation in IRA/CRs. The amendments do not change any requirements for recordkeeping or other compliance requirements that are contained in the original regulations.

Finally, these amendments do not impose any requirements on local governments, and (as noted in the Regulatory Impact Statement) have no fiscal impact on local governments, including local governments in rural areas.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

There are no additional reporting, recordkeeping, other compliance requirements or professional services imposed by these amendments. The Department does not anticipate that regulated entities will require new professional services as a result of this new rule.

The amendments will have no effect on local governments.

Costs:

There are no compliance costs since there are no new compliance activities imposed by these amendments.

Minimizing Adverse Impact:

As noted above, some of the technical changes may affect the rates either positively or negatively. DOH does not expect that these immaterial differences would impose an adverse economic impact on providers in rural areas. In any case, the overall funding to providers as a result of these technical amendments will remain the same because of budget neutrality.

DOH has reviewed and considered the approaches for minimizing adverse impact on providers in rural areas as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act. The emergency/proposed regulations minimize adverse impact in several ways. First, the anticipated fiscal impact of the amendments is expected to be slight because only minor changes in the rates result from the technical amendments. In addition, DOH notes that the rate sheets distributed to providers in June anticipated the promulgation of these amendments by incorporating the technical changes into the methodology underlying the rate calculation (except for the change in budget neutrality), and providers have therefore already been developing plans to implement the new rate methodology based on the incorporation of these amendments. Therefore, providers will only need to make minimal adjustments in fiscal plans as a result of the minor change in budget neutrality. DOH considered the impact of the change in budget neutrality on providers but determined that the changes incorporated in these amendments were necessary to properly implement the methodology. The potential loss of federal funds to OPWDD that could result from non-compliance would have had far more serious consequences to providers than the minor decrease in rates that result from these changes.

The amendments also contain several changes that will be positive for providers. The amendments include changes which explicitly state that the new provisions related to the calculation of the capital component do not apply to capital approved prior to July 1, 2014. While this reflects the original intention and is not a change per se, the inclusion of this specific language helps providers to keep faith with financial institutions who can rest assured that anticipated capital reimbursement will continue to be received for projects. In addition, new language was added to explicitly address the correction of arithmetic or calculation errors. In the event that such errors occur, providers now have a referenced mechanism to request corrections of these errors. Related to the calculation of the capital component, new items were added to the chart of thresholds for "soft costs," such as security and clerk of the works, which will permit the reimbursement of these items up to the threshold amount. This corrects the inadvertent exclusion of these items in the original proposed regulations.

There are several additional positive changes for providers which are specific to the provision of residential habilitation services in supervised IRAs/CRs. Changes were made in the definition of "therapeutic leave days" to include days when the individual receiving services is on vacation. This corrected an inadvertent omission in the original regulations (which only permitted therapeutic leave days for the purpose of visiting with family and friends). Because of this change, providers may receive reimbursement for days when the individual is on vacation but the vacation is not for the purpose of visiting with family and friends. Finally, changes were made related to the reconciliation of therapeutic leave days and retainer days, which positively affect the cash flow to providers. The amendments eliminate the reconciliation requirement for therapeutic leave days and state that the determination of reimbursement for retainer days will happen at the mid-point of the stated period as well as the conclusion of the period.

Rural Area Participation:

Participation of public and private interests in rural areas: OPWDD and DOH met with representatives of providers to discuss the new methodology (including provider concerns) at numerous meetings beginning in August 2013, including providers in rural areas, such as NYSARC, the NYS Association of Community and Residential Agencies, NYS Catholic Conference, and CP Association of NYS. OPWDD and DOH posted material about the original proposed regulations on the respective agencies' websites, and OWPDD notified all providers affected by the proposed regulation of the materials posted. In addition, OPWDD and DOH conducted six training sessions for providers by videoconference throughout NYS during April-May 2014. As noted above, DOH sent each provider affected by the new methodology the rate sheet and documents that described the impact of the new regulations (including the emergency/proposed amendments) on the specific provider. OPWDD and DOH received public comments on the original regulations and answered numerous questions. Many of the changes contained in these emergency/proposed amendments were made as a result of the concerns raised by the regulated parties through one or more of these vehicles. OPWDD is also posting materials about these emergency/proposed amendments on its website and is notifying all affected providers about the availability of these materials.

Job Impact Statement

A job impact statement is not being submitted for this emergency/proposed rulemaking because this rulemaking will not have a substantial adverse impact on jobs or employment opportunities.

The emergency/proposed amendments make changes to the newly-adopted regulations that revise the rate methodology for residential habilitation in IRA/CRs and day habilitation. The changes in these amendments clarify the new methodology and contain corrections that are necessary for its proper implementation.

As noted in the Regulatory Flexibility Analysis, the emergency/proposed amendments have a minor potential adverse economic impact on some providers, but otherwise have no overall impact or a positive impact. The amendments do not impose any changes to recordkeeping or other compliance activities. While some providers may experience a minor adverse economic impact as a result of these amendments (while experiencing positive effects from other amendments), the effect on jobs as a result is expected to be negligible. Other providers are expected to experience a commensurate slight increase in funding. The amendments are therefore expected to have no significant adverse impact on jobs and employment opportunities with providers.

As noted in the emergency justification, if these regulations were not promulgated, a substantial amount of federal funding would be lost. This loss of substantial funds could adversely impact jobs and employment opportunities in New York State. This potential adverse effect on jobs and employment opportunities is avoided by the promulgation of these amendments.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Immediate Needs for Personal Care Services

I.D. No. HLT-28-14-00008-P

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

Proposed Action: Amendment of sections 360-3.7 and 505.14 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 363-a(2) and 365-a(2)(e); Public Health Law, section 201(1)(v)

Subject: Immediate Needs for Personal Care Services.

Purpose: To provide for meeting the immediate needs of Medicaid applicants and recipients for personal care services.

Text of proposed rule: Subdivision (f) is added to Section 360-3.7 to read as follows:

(f) Presumptive eligibility for immediate temporary personal care services. An individual who, upon application for Medical Assistance, has an immediate need for personal care services will be presumed eligible for immediate temporary personal care services as provided in this subdivision.

(1) Definitions. The following definitions apply to this subdivision:

(i) Immediate need for personal care services means a need for assistance with one or more personal care functions, as set forth in clause (a)(6)(ii)(a) of Section 505.14 of this title, that, unless met within five business days, is reasonably expected to seriously jeopardize the individual's health and safety such that the individual would require temporary placement in a hospital or nursing facility to protect the individual's health and safety.

(ii) Immediate temporary personal care services means assistance with one or more personal care functions, as set forth in clause (a)(6)(ii)(a) of Section 505.14 of this title, that is authorized pursuant to this subdivision to an individual who is presumptively eligible for such services.

(2) Presumptive eligibility for immediate temporary personal care services.

(i) An individual is presumptively eligible for immediate temporary personal care services when:

(a) The individual has applied to the social services district for Medical Assistance;

(b) The individual reasonably appears, based on preliminary information, to be financially and otherwise eligible for Medical Assistance including, if the individual is a nonimmigrant, having a satisfactory immigration status;

(c) The individual has submitted a written request for immediate temporary personal care services explaining the need for such services including why the individual is unable to meet that need;

(d) The individual has submitted a physician's order for personal care services and the physician's order documents an immediate need for personal care services, as defined in subparagraph (1)(i) of this subdivision;

(e) The individual has a stable medical condition, as defined in subparagraph (a)(4)(i) of Section 505.14 of this title;

(f) The individual is self-directing, as defined in subparagraph (a)(4)(ii) of Section 505.14 of this title, or, if non self-directing, meets the requirements of clause (a), (b), or (c) of such subparagraph;

(g) The individual can self-administer needed medications or, if unable to self-administer needed medications, has an informal or formal support that is able to administer such medications; and

(h) The social services district determines that the individual has an immediate need for personal care services that cannot be met, in whole or in part, by one or more alternative means to meet the individual's need including, but not limited to, the following:

(1) The individual's available income and resources; the available income and resources of the individual's legally responsible relatives, if any; or the available income and resources of any other person including, but not limited to, a non-legally responsible relative of the individual;

(2) Informal supports, including family members or friends, or community supports that are available to the individual including any home care or other services that are currently being provided to the individual;

(3) Available third party health insurance or benefits under Title XVIII of the Social Security Act; or

(4) The Protective Services for Adults program.

(ii) An individual who has an immediate need for personal care services is not presumptively eligible for immediate temporary personal care services to the extent that the individual's need can be met, in whole or in part, by one or more alternative means of meeting the individual's need, as specified in clause (2)(i)(h) of this subdivision.

(3) Assessment and Authorization Process. As expeditiously as possible, but no later than five business days after receipt of the Medical Assistance application and physician's order, the social services district must:

(i) Obtain or complete a social assessment, a nursing assessment and an assessment of other services pursuant to subparagraphs (b)(3)(ii) through (b)(3)(iv), respectively, of Section 505.14 of this title;

(ii) If the case involves the provision of continuous personal care services, refer the case to the local professional director or designee for an independent medical review pursuant to paragraph (b)(4) of Section 505.14 of this title, except that the local professional director's or designee's final determination must be made as soon as possible after receipt of the physician's order and the required assessments;

(iii) Determine whether the individual is presumptively eligible for immediate temporary personal care services;

(iv) Provide notice to the individual of the district's determination whether the individual is presumptively eligible for immediate temporary personal care services and, if so, the number of hours of immediate temporary personal care services for which the individual has been determined to be presumptively eligible; and

(v) With respect to those individuals determined to be presumptively eligible for immediate temporary personal care services, issue an authorization for, and arrange for the provision of, immediate temporary personal care services.

(4) Presumptive eligibility period.

(i) An individual's period of presumptive eligibility for immediate temporary personal care services begins on the day that the social services district determines that the individual is presumptively eligible for immediate temporary personal care services.

(ii) An individual's period of presumptive eligibility for immediate temporary personal care services ends:

(a) with respect to a presumptively eligible individual who is determined ineligible for Medical Assistance, on the day that the social services district makes such determination; and

(b) with respect to a presumptively eligible individual who is determined eligible for Medical Assistance; who is subject to enrollment in a managed long term care plan operating pursuant to Section 4403-f of the Public Health Law, a managed care provider operating pursuant to Section 364-j of the Social Services Law, or any other similar entity that provides care and services, including personal care services, to Medical Assistance recipients; and who has submitted a service request for personal care services to such entity, on the day that the managed long term care plan, managed care provider or other entity determines whether the individual is eligible for personal care services.

(5) Fair hearings and aid-continuing.

(i) An individual who is determined not to be presumptively eligible for immediate temporary personal care services may request a fair hearing pursuant to Part 358 of this title to appeal the denial of presumptive eligibility.

(ii) An individual who has been determined to be presumptively eligible for immediate temporary personal care services may request a fair hearing pursuant to Part 358 of this title to appeal the amount and scope of the immediate temporary personal care services for which the individual has been determined to be presumptively eligible.

(iii) An individual who has been determined to be presumptively eligible for immediate temporary personal care services but is subsequently determined to be ineligible for Medical Assistance may request a fair hearing pursuant to Part 358 of this title to appeal the denial of Medical Assistance; however, the individual's presumptive eligibility period will not be extended by such request and there is no right to aid-continuing of immediate temporary personal care services after the individual's presumptive eligibility period has ended.

(6) Recoupment and reimbursement. If an individual is determined to be presumptively eligible for immediate temporary personal care services pursuant to this subdivision and is subsequently determined to be ineligible for Medical Assistance, any sums expended for such services during the period of presumptive eligibility may be recouped from the individual. Any sums expended for such services that are unable to be recouped from the individual are a charge upon the social services district for which State reimbursement is not available.

Subparagraph (b)(5)(iv) of Section 505.14 is repealed and a new subparagraph (b)(5)(iv) is added to read as follows:

(iv) When a patient has an immediate need for personal care services, the district must conduct an expedited assessment pursuant to this subparagraph.

(a) An immediate need for personal care services means a need for assistance with one or more personal care functions set forth in clause (a)(6)(ii)(a) of this Section that, unless met within five business days, is reasonably expected to seriously jeopardize the patient's health and safety such that the patient would require temporary placement in a hospital or nursing facility to protect the patient's health and safety.

(b) The physician's order must document an immediate need for personal care services.

(c) As expeditiously as possible, but no later than five business days after receipt of the physician's order, the district must:

(1) Obtain or complete a social assessment, nursing assessment, and an assessment of other services pursuant to subparagraphs (b)(3)(ii) through (b)(3)(iv), respectively, of this Section;

(2) If the case involves the provision of continuous personal care services, refer the case to the local professional director or designee for an independent medical review pursuant to paragraph (b)(4) of this Section, except that the local professional director's or designee's final determination must be made as soon as possible after receipt of the physician's order and the required assessments;

(3) Determine whether the patient is eligible for personal care services and provide notice to the patient of the district's determination; and

(4) With respect to those patients determined to be eligible for personal care services, issue an authorization for, and arrange for the provision of, such services.

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.

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

Regulatory Impact Statement

Statutory Authority:

Social Services Law ("SSL") § 363-a(2) and Public Health Law § 201(1)(v) empower the Department to adopt regulations implementing the State's Medical Assistance ("Medicaid") program. Under SSL § 365-a(2)(e), the Medicaid program includes personal care services.

Legislative Objectives:

In 1940, the Legislature adopted SSL § 133, which provided for "temporary pre-investigation grants" for persons who appear in "immediate need." These "temporary pre-investigation grants" were to be provided to persons in "immediate need" until social services districts complete the investigation into their eligibility for assistance. It has been the Department's position that this statute, which predates the existence of the Medicaid program, does not apply to benefits under the Medicaid program or even to medical care generally, but rather to cash public assistance grants to indigent individuals.

In Konstantinov v. Daines, Justice Joan Madden, State Supreme Court, New York County, held that SSL § 133 applies to personal care services and that "applicants for Medicaid, and Medicaid recipients are entitled to request immediate, temporary personal care attendant services" pending the completion of an investigation into their eligibility. By order dated July 20, 2010 ("July 2010 Order"), Justice Madden directed the Department:

to draft and implement regulations that will outline the steps a Medicaid applicant must take to request immediate temporary personal care services and which will provide for performance of an expedited assessments [sic], including a physicians [sic], social assessment and/or nursing assessment and thereafter, will provide for expedited review of the application for such services. . .

In 2012, the Appellate Division, First Department, affirmed Justice Madden's July 2010 Order.

In response to the Konstantinov decision, the Department proposed and the Legislature adopted SSL § 364-(i)(7), effective April 1, 2013, to clarify that, notwithstanding the expansive judicial interpretations of SSL § 133, the only circumstances in which the Medicaid program would reimburse for care and services individuals obtain before the date they are determined eligible for Medicaid are when: (a) the care or services are received during the three months preceding the month of Medicaid application, and the individual is determined to have been eligible for Medicaid in the month the services were received; or (b) as otherwise provided in SSL § 364-i, which sets forth the groups, such as pregnant women and children, to whom the Legislature has granted presumptive eligibility for Medicaid, or in the Department's regulations.

In April 2013, the Department moved to vacate Justice Madden's July 2010 Order based on new SSL § 364-i(7).

By decision and order dated March 12, 2014 ("March 2014 Order"), Justice Madden denied the Department's motion to vacate her July 2010 Order. In her view, SSL § 364-i(7) merely apportions responsibility for the cost of "immediate temporary personal care services" provided to Medicaid applicants who are ultimately determined ineligible for Medicaid.

Specifically, Justice Madden rejected the Department's explanation of the legislative intent behind SSL § 364-(i)(7), and instead interpreted the new language to mean only that:

to the extent that a person who received temporary personal care services is later found to be ineligible for medical assistance during the time period the local social service [sic] district provided or paid for the temporary assistance, no reimbursement will be paid from the state Medical Assistance program. In other words, the local social services district is obligated to pay for such temporary services, whether or not the local social services district receives reimbursement from the state. Konstantinov v. Daines, 2014 N.Y. Misc. LEXIS 1137; 2014 NY Slip Op 30657(U), emphasis added.

The Office of the New York State Attorney General has filed a notice of appeal of Justice Madden's March 2014 Order, but that appeal does not stay her July 2010 Order.

The proposed regulations set forth procedures by which Medicaid applicants and recipients may obtain "immediate temporary personal care services," in order to comply with Justice Madden's decision regarding the Court's interpretation of SSL §§ 133 and 364-i(7).

The proposed regulations also provide that State reimbursement is not available to social services districts for "immediate temporary personal care services" provided to presumptively eligible Medicaid applicants in the event that such applicants are ultimately determined to be financially or otherwise ineligible for Medicaid. Instead, the social services districts must bear the costs of these "immediate temporary personal care services" unless the districts are successful in recouping the costs from the Medicaid ineligible individuals themselves. The proposed regulations are thus consistent with the court's holding that SSL § 364-i(7) absolves the State from any financial liability for the cost of "immediate temporary personal care services" provided to Medicaid ineligible individuals.

Needs and Benefits:

The proposed regulations are necessary to comply with Justice Madden's July 2010 and March 2014 Orders, which directed the Department to draft and implement regulations setting forth the steps that Medicaid applicants and Medicaid recipients may take to request "immediate temporary personal care services," and also provide for the performance of expedited assessments.

The proposed regulations would:

- Amend 18 NYCRR § 360-3.7 by adding new subdivision (f), entitled "[p]resumptive eligibility for immediate temporary personal care services," which would apply to Medicaid applicants seeking "immediate temporary personal care services";
- Provide that social services districts must pay the cost of any "immediate temporary personal care services" provided to presumptively eligible individuals who are subsequently found ineligible for Medicaid;
- Repeal 18 NYCRR § 505.14(b)(5)(iv), which has long provided for an expedited assessment process for Medicaid recipients (i.e. persons who have been found financially and otherwise eligible for Medicaid) who have an immediate need for personal care services; and
- Add a new Section 505.14(b)(5)(iv) to provide for an expedited assessment process for Medicaid recipients that essentially mirrors the expedited assessment process for Medicaid applicants who seek "immediate temporary personal care services."

Costs to State Government:

The proposed regulations do not impose costs on State government.

Costs to Local Government:

Justice Madden's March 2014 Order imposes costs upon social services districts. The proposed regulations are consistent with that Order. The Department estimates that the annual costs to districts could be nearly $18 million and possibly as much as $35 million.

Under the Medicaid "cap" statute, social services districts are responsible for paying their local shares of Medicaid expenditures; however, the amount of each district's local share is fixed or "capped" to a sum certain for each State fiscal year. A district's Medicaid "cap" amount is the maximum amount that the district can be compelled to pay for services provided to its Medicaid recipients. The State, not social services districts, is normally responsible for Medicaid costs that exceed social services districts' cap amounts.

However, the March 2014 Order, by directing that it is social services districts, and not the State, that are responsible for the cost of any "immediate temporary personal care services" provided to presumptively eligible Medicaid applicants who are subsequently determined to be ineligible for Medicaid, has effectively interpreted SSL § 364-i(7) as creating an exception to the Medicaid "cap" statute. Therefore, the social services districts are responsible to pay for the costs of such "immediate temporary personal care services" in addition to their usual Medicaid "cap" contribution.

The proposed regulations are consistent with Justice Madden's March 2014 Order. They provide that the cost of "immediate temporary personal care services" that is authorized for presumptively eligible individuals who are subsequently determined to be ineligible for Medicaid is a charge upon the social services district for which State reimbursement is not available.

The Department estimates that the potential annual costs to social services districts could be nearly $18 million and possibly as much as $35 million.

This fiscal estimate assumes that "immediate temporary personal care services" in the form of continuous personal care services ("split-shift" services) would be authorized for 45 days for 913 presumptively eligible individuals subsequently determined to be ineligible for Medicaid.

Based on 2013 data available to the Department, approximately 30,000 individuals were receiving fee-for-service personal care services in 2013 and that, of this total, approximately 11.7 percent (or 3,510 individuals), first applied for personal care services in 2013. Data for 2013 also indicate that, on a Statewide basis, approximately 231,827 Medicaid applications for Case Type 20 Medicaid were denied. This denial rate represents approximately 26 percent of the total Medicaid applications filed in 2013 for

Case Type 20 coverage. Were one to assume that each of the approximately 3,510 individuals who seeks personal care services is also an applicant for Medicaid itself, this would mean that approximately 913 individuals (or 26% of 3,510 Medicaid applicants) would subsequently be determined to be ineligible for Medicaid.

The fiscal estimate assumes that each of these 913 individuals would be determined presumptively eligible for "immediate temporary personal care services" at the continuous personal care services level (i.e. "split-shift" services). This fiscal estimate also assumes that each of these 913 individuals would receive "split-shift" services for approximately 45 days until they are determined ineligible for Medicaid. Under Department regulation 18 NYCRR § 360-2.4, social services districts must generally determine Medicaid eligibility within 45 days, with certain exceptions. If the applicant's Medicaid eligibility depends on disability status, the social services district is permitted as many as 90 days to determine Medicaid eligibility.

Continuous personal care services costs approximately $18 per hour, or $432 per day. The cost of continuous personal care services provided to 913 individuals for 45 days is nearly $18 million. ($432 x 45 days x 913 individuals). To the extent that social services districts are permitted 90 days to determine Medicaid eligibility based on disability, district costs could be nearly $35 million.

The potential cost to social services districts would decrease to the extent that districts authorize less than split-shift care, expedite their Medicaid eligibility determinations, or are able to recoup the cost of "immediate temporary personal care services" from presumptively eligible individuals who are found ineligible for Medicaid.

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

Consistent with Justice Madden's July 2010 and March 2014 Orders, the proposed regulations would impose new mandates on social services districts. The proposed regulations would require districts to assess whether personal care services should be authorized for Medicaid applicants, which districts have never done. Moreover, the proposed regulations would also require that districts bear the cost of services provided to presumptively eligible individuals who are subsequently determined ineligible for Medicaid.

Social services districts may no longer have adequate staff to assess Medicaid applicants and recipients for "immediate temporary personal care services" nor sufficient contracts with personal care vendors to provide the services. Since 2011, there has been a gradual transition of the personal care services benefit to managed long term care plans and mainstream managed care plans. These managed care entities have gradually assumed responsibility from districts for authorizing personal care services, other than Level I housekeeping services, for most Medicaid recipients.

Paperwork:

The proposed regulations require districts to conduct expedited assessments but would not impose new paperwork requirements.

Duplication:

The proposed regulations do not duplicate any existing federal, state or local regulations.

Alternatives:

There are no alternatives to the proposed regulations. Justice Madden's July 2010 Order directed the Department to adopt regulations. The Department does not have a stay of that order. Further, by order dated June 16, 2014, Justice Madden directed the Department to submit proposed regulations to implement her July 2010 Order to the Secretary of State for publication by July 16, 2014.

Federal Standards:

The proposed regulations do not exceed any minimum federal standards.

Compliance Schedule:

Social services districts should be able to comply with the regulations when they become effective.

Regulatory Flexibility Analysis

Effect of Rule:

The proposed regulations would affect social services districts. There are 58 social services districts in New York State. There are 57 county social services districts and one city social services district, the City of New York.

Compliance Requirements:

The proposed regulations would impose compliance requirements on social services districts. These compliance requirements are consistent with orders issued on July 20, 2010, and March 12, 2014, by Justice Joan Madden, State Supreme Court, New York County, in Konstantinov v. Daines.

The proposed regulations would add new 18 NYCRR § 360-3.7(f), entitled "[p]resumptive eligibility for immediate temporary personal care services." Pursuant to Section 360-3.7(f), social services districts would be required to determine whether Medical Assistance ("Medicaid") applicants who assert that they have an "immediate need" for personal care services are "presumptively eligible" for "immediate temporary personal care services" pending completion of the applicants' Medicaid eligibility determination.

Social services districts would be required to determine whether, based on preliminary information, Medicaid applicants "reasonably appear" to be financially and otherwise eligible for Medicaid.

Social services districts would also be required to conduct expedited assessments of Medicaid applicants' eligibility for "immediate temporary personal care services." As expeditiously as possible, but no later than five business days after receipt of the Medicaid application and physician's order, social services districts would be required to:

- Obtain or complete a social assessment, a nursing assessment and an assessment of other services pursuant to existing regulations;
- Refer the case to the local professional director, if the case involves the provision of continuous personal care services ("split-shift" services);
- Determine whether the Medicaid applicant is presumptively eligible for "immediate temporary personal care services";
- Notify the individual of the district's determination; and
- For those individuals determined to be presumptively eligible for "immediate temporary personal care services," issue an authorization for, and arrange for the provision of, the services.

A social services district's determination whether to grant presumptive eligibility for "immediate temporary personal care services" would be based, in part, on the district's determination that the Medicaid applicant "reasonably appears," based on preliminary information, to be financially and otherwise eligible for Medicaid. If, after completion of the Medicaid eligibility process, the social services district determines that the presumptively eligible applicant is financially or otherwise ineligible for Medicaid, the district is responsible for the cost of any "immediate temporary personal care services" authorized for the individual during the individual's presumptive eligibility period.

The proposed regulations would also amend the Department's personal care services regulations to provide for an expedited assessment of Medicaid recipients who assert that they have an immediate need for personal care services. The Department's regulations at 18 NYCRR § 505.14(b)(5)(iv) have long provided for an expedited assessment process for Medicaid recipients (i.e. individuals who social services districts have determined are financially and otherwise eligible for Medicaid) with an immediate need for personal care services. The proposed regulations would repeal existing Section 505.14(b)(5)(iv) and add a new Section 505.14(b)(5)(iv) that essentially mirrors the expedited assessment process for Medicaid applicants who seek "immediate temporary personal care services."

Professional Services:

Social services districts may need to secure additional professional services to comply with the proposed regulations. Social services districts may have neither sufficient caseworker staff nor contracts with sufficient personal care services vendors to comply timely with the proposed regulations. Since 2011, there has been a gradual transition of the personal care services benefit to managed long term care plans and mainstream managed care plans. These managed care entities have gradually assumed responsibility from districts for authorizing personal care services, other than Level I housekeeping tasks, for most Medicaid recipients.

Compliance Costs:

No capital costs would be imposed as a result of the proposed regulations.

The proposed regulations could impose annual compliance costs upon social services districts. This provision of the proposed regulations is consistent with Justice Madden's March 12, 2014, order, which directed that social services districts, not the State, are responsible for the cost of any "immediate temporary personal care services" provided to presumptively eligible Medicaid applicants who are subsequently determined to be financially or otherwise ineligible for Medicaid. Consistent with that order, the proposed regulations provide that social services districts must pay the cost of any "immediate temporary personal care services" that districts authorize for presumptively eligible individuals who are subsequently determined ineligible for Medicaid.

The Department estimates that the potential annual costs to social services districts could be nearly $18 million and possibly as much as $35 million.

The estimated cost of $18 million assumes that "immediate temporary personal care services" in the form of continuous personal care services ("split-shift" services) would be authorized for up to 45 days for 913 presumptively eligible individuals who districts determine, on the 45th day after Medicaid application, are financially or otherwise ineligible for

Medicaid. The estimated costs of up to $35 million assumes that these services are authorized for up to 90 days for 913 presumptively eligible individuals who districts determine, after completion of a disability determination, to be financially or otherwise ineligible for Medicaid.

The potential costs to social services districts would vary depending upon several factors. These factors include the number of Medicaid applicants who seek immediate temporary personal care services as well as the number of Medicaid applicants determined presumptively eligible for such services who are ultimately found financially or otherwise ineligible for Medicaid. Other factors affecting social services districts' costs include the extent to which districts authorize fewer hours of personal care services than continuous personal care services, expedite their Medicaid eligibility determinations, or are able to recoup any costs from presumptively eligible individuals who are determined ineligible for Medicaid.

Economic and Technological Feasibility:

With regard to the economic feasibility of compliance with the proposed regulations, the proposed regulations are consistent with the March 12, 2014, order of Justice Madden. That order effectively interprets SSL § 364-i(7) as creating an exception to the Medicaid "cap" statute. Under this judicially created exception, social services districts are responsible to pay the cost of any "immediate temporary personal care services" provided to presumptively eligible Medicaid applicants who are subsequently determined ineligible for Medicaid. This fiscal liability is in addition to social services districts' usual Medicaid "cap" contributions.

There are no technological requirements associated with the proposed regulations.

Minimizing Adverse Impact:

The proposed regulations were designed to minimize any adverse economic effects on social services districts. They provide that Medicaid applicants who seek "immediate temporary personal care services" must "reasonably appear" based on "preliminary information" to be financially and otherwise eligible for Medicaid. In addition, the proposed regulations provide that, when a presumptively eligible individual is subsequently determined ineligible for Medicaid, the individual may request a fair hearing to appeal the denial of Medicaid eligibility; however, the individual's presumptive eligibility period is not extended by the fair hearing request and there is no aid-continuing of the "immediate temporary personal care services" the individual had received during his or her presumptive eligibility period. The proposed regulations also provide that social services districts may recoup the cost of "immediate temporary personal care services" provided to presumptively eligible individuals who are subsequently determined ineligible for Medicaid.

Social services districts may also minimize any adverse economic effect by expediting their Medicaid eligibility determinations for presumptively eligible individuals. By expediting Medicaid eligibility determinations for such individuals, social services districts would shorten the time period for which they could be liable for the cost of "immediate temporary personal care services" provided to presumptively eligible individuals subsequently found ineligible for Medicaid.

Small Business and Local Government Participation:

As a result of recent activity in this litigation, Justice Madden directed, by order dated June 16, 2014, that the Department submit to the Secretary of State for publication by July 16, 2014, proposed regulations conforming to her July 2010 Order. The Department was thus unable to ensure that social services districts had an opportunity to participate in the rulemaking process. However, the New York City Human Resources Administration ("HRA"), is a party to the Konstantinov litigation. It is the social services district that the proposed regulations would most directly affect since it has historically had the highest personal care services caseload.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, include towns with population densities of 150 or fewer persons per square mile.

The following 43 counties have populations of less than 200,000:

Allegany	Hamilton	Schenectady
Cattaraugus	Herkimer	Schoharie
Cayuga	Jefferson	Schuyler
Chautauqua	Lewis	Seneca
Chemung	Livingston	Steuben
Chenango	Madison	Sullivan
Clinton	Montgomery	Tioga
Columbia	Ontario	Tompkins
Cortland	Orleans	Ulster
Delaware	Oswego	Warren
Essex	Otsego	Washington
Franklin	Putnam	Wayne
Fulton	Rensselaer	Wyoming
Genesee	St. Lawrence	Yates
Greene		

The following nine counties have certain townships with population densities of 150 or fewer persons per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

The proposed regulations would impose compliance requirements on rural as well as urban social services districts. These compliance requirements are consistent with orders issued on July 20, 2010, and March 12, 2014, by Justice Joan Madden, State Supreme Court, New York County, in Konstantinov v. Daines.

The proposed regulations would add new 18 NYCRR § 360-3.7(f), entitled "[p]resumptive eligibility for immediate temporary personal care services." Pursuant to Section 360-3.7(f), all social services districts would be required to determine whether Medical Assistance ("Medicaid") applicants who assert that they have an "immediate need" for personal care services are "presumptively eligible" for "immediate temporary personal care services" pending completion of the applicants' Medicaid eligibility determination.

Rural, as well as urban, social services districts would be required to determine whether, based on preliminary information, Medicaid applicants "reasonably appear" to be financially and otherwise eligible for Medicaid.

Rural, as well as urban, social services districts would also be required to conduct expedited assessments of the Medicaid applicants' eligibility for "immediate temporary personal care services." As expeditiously as possible, but no later than five business days after receipt of the Medicaid application and physician's order, rural, as well as urban, social services districts would be required to:

- Obtain or complete a social assessment, a nursing assessment and an assessment of other services pursuant to existing regulations;
- Refer the case to the local professional director, if the case involves the provision of continuous personal care services ("split-shift" services);
- Determine whether the Medicaid applicant is presumptively eligible for "immediate temporary personal care services";
- Notify the individual of the district's determination; and
- For those individuals determined to be presumptively eligible for "immediate temporary personal care services," issue an authorization for, and arrange for the provision of, the services.

Rural, as well as urban, social services districts' determinations whether to grant presumptive eligibility for "immediate temporary personal care services" would be based, in part, on the districts' determination that Medicaid applicants "reasonably appear," based on preliminary information, to be financially and otherwise eligible for Medicaid. If, after completion of the Medicaid eligibility process, a social services district determines that the presumptively eligible applicant is financially or otherwise ineligible for Medicaid, the district is responsible for the cost of any "immediate temporary personal care services" authorized for the individual during the individual's presumptive eligibility period.

The proposed regulations would also amend the Department's personal care services regulations to provide for an expedited assessment of Medicaid recipients who assert that they have an immediate need for personal care services. This would apply to rural as well as urban social services districts. The Department's regulations at 18 NYCRR § 505.14(b)(5)(iv) have long provided for an expedited assessment process for Medicaid recipients (i.e. individuals who social services districts have determined are financially and otherwise eligible for Medicaid) with an immediate need for personal care services. The proposed regulations would repeal existing Section 505.14(b)(5)(iv) and add a new Section 505.14(b)(5)(iv) that mirrors the expedited assessment process for Medicaid applicants who seek "immediate temporary personal are services."

Rural, as well as urban, social services districts may need to secure additional professional services to comply with the proposed regulations. Social services districts may have neither sufficient caseworker staff nor contracts with sufficient personal care services vendors to comply timely with the proposed regulations. Since 2011, there has been a gradual transition of the personal care services benefit to managed long term care plans

and mainstream managed care plans. These managed care entities have gradually assumed responsibility from districts for authorizing personal care services, other than Level I housekeeping tasks, for most Medicaid recipients.

Costs:

There are no new capital costs associated with the proposed regulations.

The proposed regulations could impose annual compliance costs upon rural as well as urban social services districts. The Department estimates that the potential annual costs to social services districts could be nearly $18 million and possibly as much as $35 million.

Minimizing Adverse Impact:

The proposed regulations were designed to minimize any adverse economic effects on rural as well as urban social services districts. They provide that Medicaid applicants who seek "immediate temporary personal care services" must "reasonably appear" based on "preliminary information" to be financially and otherwise eligible for Medicaid. In addition, the proposed regulations provide that, when a presumptively eligible individual is subsequently determined ineligible for Medicaid, the individual may request a fair hearing to appeal the denial of Medicaid eligibility; however, the individual's presumptive eligibility period is not extended by the fair hearing request and there is no aid-continuing of the "immediate temporary personal care services" the individual had received during his or her presumptive eligibility period. In addition, the proposed regulations provide that social services districts may recoup the cost of "immediate temporary personal care services" from presumptively eligible individuals who are subsequently determined to be ineligible for Medicaid.

Rural social services districts may also minimize any adverse economic effect by expediting their Medicaid eligibility determinations for presumptively eligible individuals. By expediting Medicaid eligibility determinations for such individuals, social services districts would shorten the time period for which they could be liable for the cost of "immediate temporary personal care services" provided to presumptively eligible individuals subsequently determined ineligible for Medicaid.

Rural Area Participation:

The Department did not seek rural area participation with regard to the proposed regulations. As a result of recent activity in this litigation, Justice Madden directed that the Department submit a Notice of Proposed Rulemaking to the Department of State for publication by July 16, 2014. The Department was thus unable to ensure that rural social services districts had an opportunity to participate in the rulemaking process.

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 regulations, that they would not have a substantial adverse impact on jobs and employment opportunities.

Higher Education Services Corporation

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

New York State Young Farmers Loan Forgiveness Incentive Program

I.D. No. ESC-28-14-00022-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 2201.14 to Title 8 NYCRR.

Statutory authority: Education Law, sections 653, 655 and 679-f

Subject: New York State Young Farmers Loan Forgiveness Incentive Program.

Purpose: To implement the New York State Young Farmers Loan Forgiveness Incentive Program.

Text of proposed rule: New section 2201.14 is added to Title 8 of the New York Code, Rules and Regulations to read as follows:

Section 2201.14 New York State Young Farmers Loan Forgiveness Incentive Program.

(a) Definitions. The following definitions apply to this section:

(1) "Approved New York state college or university" shall mean a college or university located within New York State that is accredited by an agency recognized by the United States secretary of education, or by a successor federal agency.

(2) "Award" shall mean a New York State Young Farmers Loan Forgiveness Incentive Program award pursuant to section 679-f of the New York State Education Law.

(3) "Corporation" shall mean the New York State Higher Education Services Corporation.

(4) "Degree" shall mean an undergraduate degree.

(5) "Economically disadvantaged" and "economic need" shall mean applicants who demonstrate the greatest need by dividing their household income by their outstanding student loan debt; the lowest resulting quotient evidences the greatest need.

(6) "Full time" shall mean employment devoted to the operation of a farm in New York State in accordance with the employer's or proprietor's policy, practice, and standard for defining full time employment.

(7) "Household income" shall mean the federal Adjusted Gross Income (AGI) for individuals or married couples filing jointly, or the aggregate AGI of married couples filing separately, reduced by a cost of living allowance, which shall be equal to the applicant's eligible New York State standard deductions plus their eligible New York State dependent exemptions for personal income tax purposes.

(8) "Operate" and "operation" shall mean employment in a managerial position.

(9) "Outstanding student loan debt" shall mean the total cumulative student loan balance required to be paid by the applicant at the time of selection for an award under this program. Such outstanding student loan debt shall include the outstanding principal and any accrued interest covering the cost of attendance to obtain an undergraduate degree from an approved New York State college or university.

(10) "Program" shall mean the New York State Young Farmers Loan Forgiveness Incentive Program.

(b) Eligibility. An applicant must satisfy the requirements provided in section 679-f of the Education Law.

(c) Administration.

(1) An applicant for an award shall:

(i) apply for program eligibility on forms and in a manner prescribed by the corporation. The corporation may require applicants to provide additional documentation evidencing eligibility; and

(ii) postmark or electronically transmit an application for program eligibility to the corporation on or before the date prescribed by the corporation.

(2) A recipient of an award shall:

(i) execute a service contract prescribed by the corporation;

(ii) apply for payment annually on forms prescribed by the corporation;

(iii) confirm annually his or her operation of a farm in New York State on a full time basis by submitting a certification from his or her employer attesting to the recipient's job title, job duties, full-time employment status (including a copy of the employer's policy, practice, and standard for defining full time employment), and any other information necessary for the corporation to determine eligibility. Said submission shall be on forms and in a manner prescribed by the corporation; and

(iv) not receive more than ten thousand dollars per year for not more than five years in duration and not to exceed the total amount of such recipient's outstanding student loan debt.

(3) The outstanding student loan debt shall:

(i) include New York State student loans, federal government student loans, and private student loans for the purpose of financing undergraduate studies made by commercial entities subject to governmental examination.

(ii) exclude federal parent PLUS loans; loans cancelled under any program; private loans given by family or personal acquaintances; student loan debt paid by credit card; loans paid in full, or in part, on or before the first successful application for program eligibility under this program; loans for which documentation is not available; loans without a promissory note; or any other loan debt that cannot be verified by the corporation.

(iii) be reduced by any reductions to student loan debt that an applicant has received or shall receive.

(d) Award selection.

(1) For the first year of this program's operation, awards shall be granted to applicants who are economically disadvantaged with a priority given to those applicants completing the second, third, fourth or fifth year of full time farm operation.

(2) For the second year of this program's operation and thereafter, awards shall be made in the following order of priority:

(i) applicants who received an award in a prior year and are reapplying to receive an award under this program;

(ii) applicants who are economically disadvantaged, but did not receive an award during the first year of this program's operation, with a priority given to those applicants completing the second, third, fourth or fifth year of full time farm operation.

(3) All awards are contingent upon annual appropriations.

(e) Abandonment or revocation. Upon prior notice to a recipient, an award may be revoked by the corporation if the corporation determines that the recipient has abandoned their award. Abandonment of an award can be evidenced by:

(1) a failure to apply for payment or reimbursement;

(2) a lack of any contact or communication with the corporation;

(3) a failure to respond to a request for information; or

(4) any other information known to the corporation reasonably evidencing an indication of abandonment by a program participant.

Text of proposed rule and any required statements and analyses may be obtained from: Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.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

Statutory authority:

The New York State Higher Education Services Corporation's ("HESC") statutory authority to promulgate regulations and administer the New York State Young Farmers Loan Forgiveness Incentive Program ("Program") is codified within Article 14 of the Education Law. In particular, Part Y of Chapter 56 of the Laws of 2014 created the Program by adding a new section 679-f to the Education Law. Pursuant to subdivision 1 of section 679-f of the Education Law, HESC is required to promulgate rules and regulations for the administration of this Program.

Pursuant to Education Law § 652(2), HESC was established for the purpose of improving the post-secondary educational opportunities of eligible students through the centralized administration of New York State financial aid programs and coordinating the State's administrative effort in student financial aid programs with those of other levels of government.

In addition, Education Law § 653(9) empowers HESC's Board of Trustees to perform such other acts as may be necessary or appropriate to carry out the objects and purposes of the corporation including the promulgation of rules and regulations.

HESC's President is authorized, under Education Law § 655(4), to propose rules and regulations, subject to approval by the Board of Trustees, governing, among other things, the application for and the granting and administration of student aid and loan programs; the repayment of loans or the guarantee of loans made by HESC; and administrative functions in support of State student aid programs. Also, consistent with Education Law § 655(9), HESC's President is authorized to receive assistance from any Division, Department or Agency of the State in order to properly carry out his or her powers, duties and functions. Finally, Education Law § 655(12) provides HESC's President with the authority to perform such other acts as may be necessary or appropriate to carry out effectively the general objects and purposes of HESC.

Legislative objectives:

The Education Law was amended to add a new section 679-f to create the "New York State Young Farmers Loan Forgiveness Incentive Program" (Program). This Program is aimed at increasing the number of new farmers in New York State by alleviating the student loan debt burden for recent college graduates entering the agricultural profession.

Needs and benefits:

New York State law provides various loan forgiveness programs to encourage individuals to pursue careers in a needed area or profession. Taking steps to recruit college graduates to the agricultural profession serves to help address a shortage in an occupation of strategic importance to the State.

Agriculture is the leading industry in New York, yet New York's farm community is aging. It has become increasingly difficult to attract young people to farming and to encourage younger generations to consider farming as a career. The average age of farm operators in New York is 59, and is expected to continue to increase unless steps are taken to reverse this trend. The U.S. Secretary of Agriculture has set a goal of recruiting 100,000 new farmers across the country to replace those who are retiring. By enacting a loan forgiveness program for young farmers, New York can take one small step at helping that recruitment effort.

Farming is a difficult business and there are many barriers to younger farmers who might consider entering the profession. In fact, less than 1,000 students were awarded degrees in agriculture by colleges in New York State. Yet the agricultural industry has a substantial impact on the overall economic health and wellbeing of the State. It is in the best interest of the State to ensure that enough producers are recruited and retained in the agricultural field. Additionally, the recent increase in demand for quality fresh locally grown foods and beverages highlights the importance of assisting new farmers to enter the profession.

Costs:

a. There are no application fees, processing fees, or other costs to the applicants of this Program.

b. It is anticipated that there will be no costs to the agency for the implementation of, or continuing compliance with this rule.

c. It is anticipated that there will be no costs to local governments for the implementation of, or continuing compliance with, this rule.

d. Costs to the State shall not exceed available New York State budget appropriations for the Program. The 2014-15 State Budget contained an appropriation for this Program in the sum of $100,000.

Local government mandates:

No program, service, duty or responsibility will be imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

This proposal will require applicants to file an electronic web supplement to determine eligibility and an electronic application for each year they wish to receive an award up to and including five years of eligibility.

Duplication:

No relevant rules or other relevant requirements duplicating, overlapping, or conflicting with this rule were identified.

Alternatives:

Given the statutory language as set forth in section 679-f(1) of the Education Law, a "no action" alternative was not an option.

Federal standards:

This proposal does not exceed any minimum standards of the Federal government.

Compliance schedule:

The agency will be able to comply with the regulation immediately upon its adoption.

Regulatory Flexibility Analysis

This statement is being submitted pursuant to subdivision (3) of section 202-b of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's ("HESC") Notice of Proposed Rule Making, seeking to add a new section 2201.14 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have a negative impact on small businesses or local governments. HESC finds that this rule will not impose any compliance requirement or adverse economic impact on small businesses or local governments. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides loan forgiveness benefits to individuals who operate a farm on a full time basis in New York State for five years after graduating from a New York State college or university, thereby encouraging employment in the field of agriculture within New York State.

Rural Area Flexibility Analysis

This statement is being submitted pursuant to subdivision (4) of section 202-bb of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Notice of Proposed Rule Making, seeking to add a new section 2201.14 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have a negative impact on rural areas. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides loan forgiveness benefits to individuals who operate a farm on a full time basis in New York State for five years after graduating from a New York State college or university, thereby encouraging employment in the field of agriculture within New York State.

This agency finds that this rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Higher Education Services Corporation's Notice of Proposed Rule Making seeking to add a new section 2201.14 to Title 8 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

It is apparent from the nature and purpose of this rule that it will not have a negative impact on jobs or employment opportunities. Rather, it has potential positive economic impacts inasmuch as it implements a statutory student financial aid program that provides loan forgiveness benefits to individuals who operate a farm on a full time basis in New York State for five years after graduating from a New York State college or university, thereby encouraging employment in the field of agriculture within New York State.

Department of Motor Vehicles

NOTICE OF ADOPTION

DMV Road Test

I.D. No. MTV-18-14-00004-A
Filing No. 570
Filing Date: 2014-07-01
Effective Date: 2014-07-16

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

Action taken: Amendment of Part 3 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 502(4)(f) and 508(4)

Subject: DMV Road Test.

Purpose: Prohibit the use of recording equipment in vehicles used during a DMV road test.

Text or summary was published in the May 7, 2014 issue of the Register, I.D. No. MTV-18-14-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Michelle Seabury, Department of Motor Vehicles, 6 Empire State Plaza, Room 522A, Albany, NY 12228, (518) 474-0871, email: mseabury@dmv.ny.gov

Assessment of Public Comment
The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Colored Lights on Fire Vehicles, Ambulances, Emergency Ambulance Service Vehicles and County Emergency Medical Service Vehicles

I.D. No. MTV-28-14-00010-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 44 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 375(41)

Subject: Colored lights on fire vehicles, ambulances, emergency ambulance service vehicles and county emergency medical service vehicles.

Purpose: To conform the regulation to existing statutory provisions.

Text of proposed rule: Paragraph (1) of subdivision (a) of section 44.4 is amended to read as follows:

(1) One or more blue lights or combination blue and red lights or combination blue, red and white lights may be affixed to a police vehicle*, fire vehicle, ambulance, emergency ambulance service vehicle, and county emergency medical services vehicle* for rear projection only. In the event that the trunk or rear gate of a police vehicle*, fire vehicle, ambulance, emergency ambulance service vehicle and county emergency medical services vehicle* obstructs or diminishes the visibility of other emergency lighting on such vehicle, a blue light may be affixed to and displayed from the trunk, rear gate or interior of such vehicle. Such lights may be displayed on a police vehicle*, fire vehicle, ambulance, emergency ambulance service vehicle and county emergency medical services vehicle* when such vehicle is engaged in an emergency operation. Nothing contained in this subdivision shall be deemed to authorize the use of blue lights on a police vehicle*, fire vehicle, ambulance, emergency ambulance service vehicle and county emergency medical services vehicle* unless such vehicle also displays one or more red, or combination red and white lights as otherwise authorized in this section.

Paragraph (10) of subdivision (k) of Section 44.4 is amended to read as follows:

(10) The provisions of this subdivision shall not apply to a police vehicle [.]*, fire vehicle, ambulance, emergency ambulance service vehicle, and county emergency medical services vehicles.*

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: Sean J. Martin, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: sean.martin@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

This proposed regulation would allow the following types of motor vehicles to have affixed on such vehicles, blue lights, or combination blue and red lights or combination blue, red and white lights: fire vehicles, ambulances, emergency ambulance service vehicles and county emergency medical service vehicles. Prior to the enactment of Chapter 143 of the Laws of 2011, which amended Section 375(41) of the Vehicle and Traffic Law, only police vehicles were authorized to affix such combination of lights.

This is a consensus rule because it merely conforms Part 44 to the above-referenced statutory provision.

Job Impact Statement

A Job Impact Statement is not submitted because this rule will have no adverse impact on job creation or job development in New York State.

Office for People with Developmental Disabilities

EMERGENCY
RULE MAKING

Rate Setting for Non-State Providers—IRA/CR Residential Habilitation and Day Habilitation

I.D. No. PDD-28-14-00019-E
Filing No. 575
Filing Date: 2014-07-01
Effective Date: 2014-07-01

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

Action taken: Addition of Part 641 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b) 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 emergency adoption of these amendments is necessary to protect the health, safety and general welfare of individuals receiving services in the OPWDD system. Working with the Federal government to transform its service delivery system, OPWDD made a number of commitments to the Centers for Medicare and Medicaid Services (CMS) as outlined in a transformation agreement. Among these commitments was a change in methodology for specified OPWDD services. However, it was not possible to promulgate regulations that achieve the required July 1, 2014 effective date using the regular rulemaking process established by the State Administrative Procedure Act (SAPA). If OPWDD did not promulgate these regulations on an emergency basis, OPWDD would fail to meet its commitment to CMS and would risk loss of the substantial federal funding that is contingent on this commitment. The loss of this federal funding could jeopardize the health, safety, and welfare of individuals receiving services in the OPWDD system, as without it, individuals would be at risk of receiving services that are inadequate or insufficient in meeting their needs.

In addition, these regulations include a change in the unit of service from monthly to daily for residential habilitation delivered in supervised Individualized Residential Alternatives (IRAs) and supervised Community Residences (CRs). The old methodology required that providers deliver services on 11 days to receive reimbursement for a half month and 22 days to receive reimbursement for a full month. There was no mechanism in the old methodology for a provider to receive reimbursement for supervised residential habilitation delivered less than 11 days a month. The emergency regulations are therefore necessary to provide reimbursement for services delivered on July 1, 2014. Without these emergency regulations, providers would be unable to receive reimbursement for these services

and would suffer the loss of significant revenue with potential adverse consequences on the health, safety and welfare of individuals receiving services.

Subject: Rate Setting for Non-State Providers—IRA/CR residential habilitation and day habilitation.

Purpose: To establish a new rate methodology effective July 1, 2014.

Substance of emergency rule: This regulation establishes a new reimbursement methodology for Supervised and Supportive Individualized Residential Alternatives (IRAs) and Community Residences (CRs) and Day Habilitation programs which will be effective July 1, 2014.

The methodology for these programs will include the following elements:

1) The use of a base period Consolidated Fiscal Report (CFR) for the period of January 1, 2011 – December 31, 2011 for calendar year filers or the period of July 1, 2010 through June 30, 2011 for fiscal year filers.

2) The assignment of geographic location, based on CFR information and consistent with Department of Health regions.

3) Operating, facility and capital components. The operating component recognizes a blend of actual provider costs and average regional costs. The facility component recognizes actual provider costs. The methodology for the capital component has not been significantly changed from that of the previous reimbursement methodology. One adjustment to the methodology for the capital component is that initial reimbursement will only remain in the rate for two years from the date of site certification unless actual costs are verified with the Office for People With Developmental Disabilities. The other adjustment to the methodology is that the thresholds identified are the maximum allowable amounts and will not be exceeded for property approved by OPWDD on/or after July 1, 2014.

4) Wage Equalization factors.

5) A Budget Neutrality factor.

6) A three year phase-in period for transition to the methodology.

7) A new section is added governing funding for those individuals identified as qualifying for template or auspice funding. The funding for IRA/CR residential habilitation and day habilitation provided to these individuals will be determined in accordance with that section instead of the methodology that is generally applicable.

For Supervised and Supportive Community Residences (including IRAs) only, the methodology will include:

An acuity factor developed through a regression analysis and based on Developmental Disabilities Profile information.

For Supervised Community Residences (including IRAs) only, the methodology will incorporate:

1) A change in the unit of service from monthly to daily. Commensurate with that change, the methodology will recognize retainer days, therapeutic leave days and vacant bed days.

2) The recognition of an evacuation score factor.

For Day Habilitation programs only, the methodology will include:

The recognition of actual provider to-from transportation costs.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires September 28, 2014.

Text of rule and any required statements and analyses may be obtained from: 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. 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).

b. OPWDD has the statutory responsibility for setting Medicaid rates and fees for other services in facilities licensed or operated by OPWDD as stated in section 43.02 of the Mental Hygiene Law.

2. Legislative objective: These emergency regulations further the legislative objectives embodied in sections 13.09(b) and 43.02 of the Mental Hygiene Law. The emergency regulations concern changes in the methodology for reimbursement of residential habilitation services delivered in Community Residences (CRs) and Individualized Residential Alternatives (IRAs), and for day habilitation services.

3. Needs and benefits: OPWDD and the Department of Health (DOH) are implementing a new reimbursement methodology, which complements existing OPWDD requirements concerning residential and day habilitation services, and satisfies commitments included in OPWDD's transformation agreement with the federal Centers for Medicare and Medicaid Services (CMS).

The methodology, which combines regional average cost components, provider specific cost experiences, and other factors, including the needs of individuals served, is expected to result in rates that are consistent with efficiency and economy and that lead to quality outcomes for individuals receiving services. The purpose of the methodology change is to move from budget to cost-based reimbursement, to provide a clear and transparent method of reimbursement, to move toward consistency in rates across the system, and to provide a more stable system of reimbursement.

OPWDD filed proposed regulations on this topic which are being finalized July 2, 2014. These regulations include a change in the unit of service from monthly to daily for residential habilitation delivered in supervised Individualized Residential Alternatives (IRAs) and Community Residences (CRs). The old methodology required that providers deliver services on 11 days to receive reimbursement for a half month and 22 days to receive reimbursement for a full month. There was no mechanism in the old methodology for a provider to receive reimbursement for supervised residential habilitation delivered less than 11 days a month. The emergency regulations are therefore necessary to provide reimbursement for services delivered on July 1, 2014. Without these emergency regulations, providers would be unable to receive reimbursement for these services and would suffer the loss of significant revenue with potential adverse consequences for individuals receiving services.

In addition, the reimbursement of residential habilitation in supportive IRAs and supportive CRs would be unnecessarily complicated by having the old methodology apply for some of the month of July and the new methodology apply for the rest of the month. Reimbursement for this service in the old and new methodology is on a monthly basis.

Furthermore, OPWDD's commitment with CMS was that the new methodology would become effective July 1, 2014. If OPWDD did not promulgate these regulations on an emergency basis, OPWDD would fail to meet its commitment to CMS and would risk loss of the substantial federal funding that is contingent on this commitment.

4. Costs:

a. Costs to the Agency and to the State and its local governments: The emergency regulation will result in the expenditure of $5.2 million of Medicaid funds for reimbursement of residential habilitation in supervised IRAs and supervised CRs for the reason noted above. The state share of these Medicaid costs is $2.6 million. The change in methodology for residential habilitation in supportive IRAs and supportive CRs and day habilitation will result in increased rates for some non-state providers and decreased rates for other non-state providers. However, there will be no change in the aggregate rates.

The new methodologies do not apply to the state as a provider of services.

There will be no savings or costs to local governments as a result of these regulations because pursuant to Social Services Law sections 365 and 368-a, either local governments incur no costs for these services or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. In addition, even if the amendments lead to an increase in Medicaid expenditures in a particular county, these amendments will not have any fiscal impact on local governments, as 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: The emergency regulation will implement a new reimbursement methodology for residential habilitation delivered in IRAs and CRs and day habilitation. Application of the new methodology is expected to result in increased rates for some non-state operated providers and decreased rates for others. However, overall reimbursement to providers will not be changed. In addition, the emergency regulation will enable providers of residential habilitation in supervised IRAs and supervised CRs to receive reimbursement for services delivered on July 1, 2014 which would otherwise not be reimbursed. This will result in additional revenues to providers of $5.2 million.

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 emergency amendments will require additional paperwork to be completed by providers of residential habilitation in supervised IRAs and supervised CRs. In order to receive reimbursement for July 1, 2014, providers will need to document the delivery of services on that date and bill for the reimbursement. In addition, the regulations require that providers determine and report retainer days, therapeutic leave days, and vacant bed days for residential habilitation delivered in supervised IRAs and supervised CRs.

7. Duplication: The emergency regulations do not duplicate any existing State or federal requirements that are applicable to services for persons with developmental disabilities.

8. Alternatives: There is no viable alternative to the promulgation of these emergency regulations as it is necessary to reimburse providers for

the delivery of residential habilitation in supervised IRAs and supervised CRs.

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 emergency regulations are effective July 1, 2014 only. OPWDD has finalized similar proposed regulations effective July 2, 2014 and has filed an emergency/proposed regulation to amend the finalized regulations on the same date (July 2). The text of the regulations, as amended by the emergency/proposed amendments, is the same as these emergency regulations, so that the implementation of the new methodology effective July 1 is designed to be seamless. All necessary information, training, and guidance regarding the new service documentation requirements and billing procedures have been provided to agencies in advance of the effective date of the emergency regulations. The provider training explained all components, and provisions of the new methodology implemented by these regulations.

Regulatory Flexibility Analysis

1. Effect on small business: OPWDD has determined, through a review of the certified cost reports, that most residential habilitation services delivered in Individualized Residential Alternatives (IRAs) and Community Residences (CRs) and most day habilitation services are provided by 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 348 providers of residential habilitation services delivered in IRAs and CRs and day habilitation services. Of these, 266 providers deliver residential habilitation in supervised IRAs and CRs (which are most affected by these emergency regulations). OPWDD is unable to estimate the portion of these providers that may be considered to be small businesses.

The emergency regulations concern changes in the methodology for reimbursement of residential habilitation services delivered in IRAs and CRs, and for day habilitation services. The methodology, which combines regional average cost components, provider specific cost experiences, and other factors, including the needs of individuals served, is expected to result in rates that are economic and efficient and that lead to quality outcomes for individuals receiving services. Application of the new methodology is expected to result in increased rates for some non-state operated providers and decreased rates for others. The overall reimbursement to providers will not change.

OPWDD filed proposed regulations on this topic which are being finalized July 2, 2014. These regulations include a change in the unit of service from monthly to daily for residential habilitation delivered in supervised Individualized Residential Alternatives (IRAs) and Community Residences (CRs). The old methodology required that providers deliver services on 11 days to receive reimbursement for a half month and 22 days to receive reimbursement for a full month. There was no mechanism in the old methodology for a provider to receive reimbursement for supervised residential habilitation delivered less than 11 days a month. The emergency regulations are therefore necessary to provide reimbursement for services delivered on July 1, 2014. Without these emergency regulations, providers would be unable to receive reimbursement for these services and would suffer the loss of significant revenue with potential adverse consequences for individuals receiving services.

For supportive IRAs and CRs and day habilitation, some providers will experience a reduction in reimbursement as a result of the promulgation of the new rate methodology contained in this regulation. OPWDD expects that the adverse economic impact of receiving reimbursement at a decreased rate for services delivered on a single day will be minor. Other providers will experience an increase in reimbursement, with the overall effect being budget neutral.

Finally, these amendments do not impose any requirements on local governments, and (as noted in the Regulatory Impact Statement) have no fiscal impact on local governments.

2. Compliance requirements: The emergency regulations change the unit of service for residential habilitation in supervised IRAs and supervised CRs from a monthly to a daily unit of service, effective July 1, 2014. As noted, in order to receive reimbursement for services delivered on July 1, 2014, providers will need to document and bill for these services. In addition, providers must also determine and report retainer days, therapeutic leave days, and vacant bed days.

3. Professional services: No additional professional services will be required as a result of these regulations and the regulations will not add to the professional service needs of local governments.

4. Compliance costs: As noted, the emergency regulations facilitate the reimbursement of residential habilitation in supervised CRs and supervised IRAs for services delivered on July 1, 2014. Providers will need to submit bills to receive this reimbursement. The costs incurred are minimal for billing for this single day of service.

5. Economic and technological feasibility: The proposed amendments do not impose on regulated parties the use of any new technological processes.

6. Minimizing adverse economic impact: The emergency regulations are primarily concerned with providing a mechanism for reimbursement of residential habilitation delivered in supervised IRAs and supervised CRs on July 1, 2014. Without these emergency regulations, providers would not be able to receive reimbursement for these services. Therefore, these regulations have a positive economic impact on providers of these services. For providers of residential habilitation in supportive IRAs and CRs and day habilitation some providers will experience an increase in rates and others will experience a decrease in rates. The adverse economic impact of any reduction in rates for the one day period covered by these regulations will be minor.

OPWDD has also reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. OPWDD determined that the revision to reimbursement in this amendment is the most optimal approach to providing the necessary reimbursement for residential habilitation in supervised IRAs and CRs for this one day period and for instituting the necessary change in rate methodology while minimizing any adverse impact on providers.

OPWDD considers that the minimal compliance activities associated with billing for residential habilitation delivered in IRAs and CRs for July 1, 2014 are appropriate and cannot be further minimized.

As noted above, some providers will experience a decrease in reimbursement because of this regulation. However, the adverse economic impact of decreased rates for a single day of service will be minor.

As noted in the emergency justification, without the promulgation of these emergency regulations OPWDD risks the loss of significant federal funding, which would result in a significant adverse economic impact on providers of services.

7. Small business participation: OPWDD and DOH met with representatives of providers to discuss the new methodology (including provider concerns) at numerous meetings beginning in August 2013, including the New York State Association of Community and Residential Agencies (NYSACRA) (which represents some providers that have fewer than 100 employees). OPWDD and DOH posted material about the original proposed regulations on the respective agencies' websites, and OWPDD notified all providers affected by proposed regulation of the materials posted. In addition, OPWDD and DOH conducted six training sessions for providers by videoconference throughout NYS during April-May 2014. DOH sent each provider affected by the new methodology the rate sheet and documents that described the impact of the new methodology on the specific provider. OPWDD and DOH received public comments on the original regulations and answered numerous questions. OPWDD is also posting materials about the new methodology on its website and is notifying all affected providers about the availability of these materials.

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, certain townships in 10 other counties have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

The emergency regulations concern changes in the methodology for reimbursement of residential habilitation services delivered in IRAs and CRs, and for day habilitation services, including services delivered in rural areas. The methodology, which combines regional average cost components, provider specific cost experiences, and other factors, including the needs of individuals served, is expected to result in rates that are economic and efficient and that lead to quality outcomes for individuals receiving services. Application of the new methodology is expected to result in increased rates for some non-state operated providers and decreased rates for others. The overall reimbursement to providers will not change.

OPWDD filed proposed regulations on this topic which are being finalized July 2, 2014. These regulations include a change in the unit of service from monthly to daily for residential habilitation delivered in supervised Individualized Residential Alternatives (IRAs) and Community Residences (CRs). The old methodology required that providers deliver services on 11 days to receive reimbursement for a half month and 22 days to receive reimbursement for a full month. There was no mechanism in the old methodology for a provider to receive reimbursement for supervised

residential habilitation delivered less than 11 days a month. The emergency regulations are therefore necessary to provide reimbursement for services delivered on July 1, 2014. Without these emergency regulations, providers would be unable to receive reimbursement for these services and would suffer the loss of significant revenue with potential adverse consequences for individuals receiving services.

For supportive IRAs and CRs and day habilitation, some providers will experience a reduction in reimbursement as a result of the promulgation of the new rate methodology contained in this regulation. OPWDD expects that the adverse economic impact of receiving reimbursement at a decreased rate for services delivered on a single day will be minor. Other providers will experience an increase in reimbursement, with the overall effect being budget neutral.

Finally, these amendments do not impose any requirements on local governments, and (as noted in the Regulatory Impact Statement) have no fiscal impact on local governments, including local governments in rural areas.

2. Compliance requirements: The emergency regulations change the unit of service for residential habilitation in supervised IRAs and supervised CRs from a monthly to a daily unit of service, effective July 1, 2014. As noted, in order to receive reimbursement for services delivered on July 1, 2014, providers will need to document and bill for these services. In addition, providers must also determine and report retainer days, therapeutic leave days, and vacant bed days.

The amendments will have no effect on local governments.

3. Professional services: No additional professional services will be required as a result of these regulations and the regulations will not add to the professional service needs of local governments.

4. Compliance costs: As noted, the emergency regulations facilitate the reimbursement of residential habilitation in supervised CRs and supervised IRAs for services delivered on July 1, 2014. Providers will need to submit bills to receive this reimbursement. The costs incurred are minimal for billing for this single day of service.

5. Minimizing adverse impact: The emergency regulations are primarily concerned with providing a mechanism for reimbursement of residential habilitation delivered in supervised IRAs and supervised CRs on July 1, 2014, including services delivered in rural areas. Without these emergency regulations, providers would not be able to receive reimbursement for these services. Therefore, these regulations have a positive economic impact on providers of these services. For providers of residential habilitation in supportive IRAs and CRs and day habilitation some providers will experience an increase in rates and others will experience a decrease in rates. The adverse economic impact of any reduction in rates for the one day period covered by these regulations will be minor.

OPWDD has also reviewed and considered the approaches for minimizing adverse impact as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act. OPWDD determined that the revision to reimbursement in this amendment is the most optimal approach to providing the necessary reimbursement for residential habilitation in supervised IRAs and CRs for this one day period and for instituting the necessary change in rate methodology while minimizing any adverse impact on providers.

OPWDD considers that the minimal compliance activities associated with billing for residential habilitation delivered in IRAs and CRs for July 1, 2014 are appropriate and cannot be further minimized.

As noted above, some providers will experience a decrease in reimbursement because of this regulation. However, the adverse economic impact of decreased rates for a single day of service will be minor.

As noted in the emergency justification, without the promulgation of these emergency regulations OPWDD risks the loss of significant federal funding, which would result in a significant adverse economic impact on providers of services.

6. Participation of public and private interests in rural areas: OPWDD and DOH met with representatives of providers to discuss the new methodology (including provider concerns) at numerous meetings beginning in August 2013, including providers in rural areas, such as NYSARC, the NYS Association of Community and Residential Agencies, NYS Catholic Conference, and CP Association of NYS. OPWDD and DOH posted material about the original proposed regulations on the respective agencies' websites, and OWPDD notified all providers affected by the proposed regulation of the materials posted. In addition, OPWDD and DOH conducted six training sessions for providers by videoconference throughout NYS during April-May 2014. DOH sent each provider affected by the new methodology the rate sheet and documents that described the impact of the new methodology on the specific provider. OPWDD and DOH received public comments on the original regulations and answered numerous questions. OPWDD is also posting materials about the new methodology on its website and is notifying all affected providers about the availability of these materials.

Job Impact Statement

A job impact statement is not being submitted for these emergency amendments because OPWDD determined that they will not cause a loss of more than 100 full time annual jobs State wide. The emergency regulations will implement a new reimbursement methodology for residential habilitation delivered in CRs and IRAs and day habilitation. Application of the new methodology is expected to result in increased rates for some non-state operated providers and decreased rates for others. However, overall reimbursement to providers will not be changed. Further, the changes in the emergency regulations are only effective for a single day.

Because these regulations only affect the reimbursement of services delivered on July 1, 2014, the minor decrease in reimbursement experienced by some providers will not have an impact on jobs or employment opportunities.

In addition, as noted in the Regulatory Impact Statement, the emergency regulation will enable providers of residential habilitation in supervised IRAs and CRs to receive reimbursement for services delivered prior to the permanent regulations becoming effective. Without these emergency regulations, providers would not be able to receive reimbursement for services delivered on July 1, 2014. Without the additional reimbursement available because of these amendments, providers may have had to reduce staff to accommodate the loss of revenue.

Therefore, OPWDD expects that there will be a small positive effect or no overall effect on jobs and employment opportunities as a result of these amendments.

EMERGENCY RULE MAKING

Rate Setting for Non-State Providers—ICF/DD Facilities

I.D. No. PDD-28-14-00020-E
Filing No. 576
Filing Date: 2014-07-01
Effective Date: 2014-07-01

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

Action taken: Addition of Subpart 641-2 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b) 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 emergency adoption of these amendments is necessary to protect the health, safety and general welfare of individuals receiving services in the OPWDD system. Working with the Federal government to transform its service delivery system, OPWDD made a number of commitments to the Centers for Medicare and Medicaid Services (CMS) as outlined in a transformation agreement. Among these commitments was a change in methodology for specified OPWDD services. However, it was not possible to promulgate regulations that achieve the required July 1, 2014 effective date using the regular rulemaking process established by the State Administrative Procedure Act (SAPA). If OPWDD did not promulgate these regulations on an emergency basis, OPWDD would fail to meet its commitment to CMS and would risk loss of the substantial federal funding that is contingent on this commitment. The loss of this federal funding could jeopardize the health, safety, and welfare of individuals receiving services in the OPWDD system, as without it, individuals would be at risk of receiving services that are inadequate or insufficient in meeting their needs.

Subject: Rate Setting for Non-State Providers—ICF/DD facilities.

Purpose: To establish a new rate methodology effective July 1, 2014.

Substance of emergency rule: This regulation establishes a new reimbursement methodology for Intermediate Care Facilities for People with Developmental Disabilities (ICFs/DD) scheduled to be effective July 1, 2014.

The methodology for this program will include the following elements:

1) The use of a base period Consolidated Fiscal Report (CFR) for the period of January 1, 2011 – December 31, 2011 for calendar year filers or the period of July 1, 2010 through June 30, 2011 for fiscal year filers.

2) The assignment of geographic location, based on CFR information and consistent with Department of Health regions.

3) Operating, facility, day services and capital components. The operating component recognizes a blend of actual provider costs and average regional costs. The facility component recognizes actual provider costs. The day services component is based on the existing units of service from the provider rate sheet in effect on June 30, 2014 and the July 1, 2014 rate for the service. The methodology for the capital component has not been significantly changed from that of the previous reimbursement methodology. One adjustment to the methodology for the capital component is that initial reimbursement will only remain in the rate for two years

from the date of site certification unless actual costs are verified with the Office for People With Developmental Disabilities. The other adjustment to the methodology is that the thresholds identified are the maximum allowable amounts and will not be exceeded for property approved by OPWDD on/or after July 1, 2014.

4) Wage Equalization factors.

5) A Budget Neutrality factor.

6) A three year phase-in period for transition to the methodology.

7) A new section is added governing funding for those individuals identified as qualifying for template or auspice funding. The funding for ICF/DD services provided to these individuals will be determined in accordance with that section instead of the methodology that is generally applicable.

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires September 28, 2014.

Text of rule and any required statements and analyses may be obtained from: Janet Felker, 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. 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).

b. OPWDD has the statutory responsibility for setting Medicaid rates and fees for other services in facilities licensed or operated by OPWDD as stated in section 43.02 of the Mental Hygiene Law.

2. Legislative objective: These emergency regulations further the legislative objectives embodied in sections 13.09(b) and 43.02 of the Mental Hygiene Law. The emergency regulations concern changes in the methodology for reimbursement of Intermediate Care Facilities for Persons with Developmental Disabilities (ICFs/DD).

3. Needs and benefits: OPWDD and the Department of Health (DOH) are implementing a new reimbursement methodology, which complements existing OPWDD requirements concerning ICFs/DD, and satisfies commitments included in OPWDD's transformation agreement with the federal Centers for Medicare and Medicaid Services (CMS).

The methodology, which combines regional average cost components, provider specific cost experiences, and other factors, including the needs of individuals served, is expected to result in rates that are consistent with efficiency and economy and that lead to quality outcomes for individuals receiving services. The purpose of the methodology change is to provide a clear and transparent method of reimbursement, to move toward consistency in rates across the system, and to provide a more stable system of reimbursement.

OPWDD filed proposed regulations on this topic which are being finalized July 2, 2014. The emergency regulations are being promulgated to apply to the reimbursement of services provided on July 1, 2014 only, in order for the new ratesetting methodology to be in effect seamlessly for the entire month of July. OPWDD's commitment with CMS was that the new methodology would become effective July 1, 2014.

If OPWDD did not promulgate these regulations on an emergency basis, OPWDD would fail to meet its commitment to CMS and would risk loss of the substantial federal funding that is contingent on this commitment.

4. Costs:

a. Costs to the Agency and to the State and its local governments: The emergency regulation will have no fiscal effect on OPWDD and the State. The change in methodology for ICFs/DD will result in increased rates for some non-state providers and decreased rates for other non-state providers. However, there will be no change in the aggregate rates.

The new methodologies do not apply to the state as a provider of services.

There will be no savings or costs to local governments as a result of these regulations because there is no change in Medicaid expenditures as a result. In addition, pursuant to Social Services Law sections 365 and 368-a, either local governments incur no costs for these services or the State reimburses local governments for their share of the cost of Medicaid funded programs and services.

b. Costs to private regulated parties: The emergency regulation will implement a new reimbursement methodology for ICFs/DD. Application of the new methodology is expected to result in increased rates for some non-state operated providers and decreased rates for others. However, overall reimbursement to providers will not be changed. In any case, any adverse economic impact resulting from a decrease in rates for services delivered on a single day will be minor.

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: There is no change in paperwork requirements.

7. Duplication: The emergency regulations do not duplicate any existing State or federal requirements that are applicable to services for persons with developmental disabilities.

8. Alternatives: There is no viable alternative to the promulgation of these emergency regulations as it is necessary for OPWDD to fulfill its commitment to CMS.

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 emergency regulations are effective July 1, 2014 only. OPWDD has finalized similar proposed regulations effective July 2, 2014 and has filed an emergency/proposed regulation to amend the finalized regulations on the same date (July 2). The text of the regulations, as amended by the emergency/proposed amendments, is the same as these emergency regulations, so that the implementation of the new methodology effective July 1 is designed to be seamless. All necessary information, training, and guidance regarding the new methodology have been provided to agencies in advance of the effective date of the emergency regulations. The provider training explained all components, and provisions of the new methodology implemented by these regulations.

Regulatory Flexibility Analysis

1. Effect on small business: OPWDD has determined, through a review of the certified cost reports, that ICFs/DD are operated by 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 108 providers of ICFs/DD. OPWDD is unable to estimate the portion of these providers that may be considered to be small businesses.

The emergency regulations concern changes in the methodology for reimbursement of ICFs/DD. The methodology, which combines regional average cost components, provider specific cost experiences, and other factors, including the needs of individuals served, is expected to result in rates that are consistent with efficiency and economy and that lead to quality outcomes for individuals receiving services. Application of the new methodology is expected to result in increased rates for some non-state operated providers and decreased rates for others. The overall reimbursement to providers will not change. In any case, the adverse economic impact of receiving reimbursement at a decreased rate for services delivered on a single day will be minor.

Finally, these amendments do not impose any requirements on local governments, and (as noted in the Regulatory Impact Statement) have no fiscal impact on local governments.

2. Compliance requirements: There are no new compliance activities imposed by these amendments.

3. Professional services: No additional professional services will be required as a result of these regulations and the regulations will not add to the professional service needs of local governments.

4. Compliance costs: There are no compliance costs since there are no new compliance activities imposed by these amendments.

5. Economic and technological feasibility: The emergency amendments do not impose on regulated parties the use of any new technological processes.

6. Minimizing adverse economic impact: As noted above, the fiscal effect of a change in reimbursement level for a single day of service will be minor. Further, overall funding to providers is not changed as a result of this regulation.

OPWDD has also reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. OPWDD determined that the revision to reimbursement in this amendment is the most optimal approach to instituting the necessary change in rate methodology while minimizing any adverse impact on providers. As noted in the emergency justification, without the promulgation of these emergency regulations OPWDD risks the loss of significant federal funding, which would cause significant adverse economic impact on providers of services. This potential significant adverse impact on all providers far outweighs the minor adverse economic impact that may be experienced by some providers.

7. Small business participation: OPWDD and DOH met with representatives of providers to discuss the new methodology (including provider concerns) at numerous meetings beginning in August 2013, including the New York State Association of Community and Residential Agencies (NYSACRA) (which represents some providers that have fewer than 100 employees). OPWDD and DOH posted material about the original proposed regulations on the respective agencies' websites, and OWPDD notified all providers affected by the proposed regulation of the materials posted. In addition, OPWDD and DOH conducted six training sessions for

providers by videoconference throughout NYS during April-May 2014. DOH sent each provider affected by the new methodology the rate sheet and documents that described the impact of the new methodology on the specific provider. OPWDD and DOH received public comments on the original regulations and answered numerous questions. OPWDD is also posting materials about the new methodology on its website and is notifying all affected providers about the availability of these materials.

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, certain townships in 10 other counties have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

The emergency/proposed amendments make changes to the newly-adopted regulations that revise the rate methodology for ICF/DD facilities. The changes in these amendments clarify the new methodology and contain corrections that are necessary for its proper implementation.

Many of the amendments correct technical errors in the original text or add clarifying material. In general, these provisions do not change the impact of the original regulations on providers, including providers in rural areas, or have positive impacts. However, several technical amendments make changes to the original text that may translate into a minor increase or decrease in the rates and may have a modest negative impact on some providers of ICFs/DD in rural areas. For example, the change from "billed units" to "rate sheet capacities" in the methodology may result in immaterial positive or negative differences in the final rates. These immaterial differences will not impose an adverse economic impact on providers in rural areas and in any case, the overall funding to providers will remain the same because of budget neutrality. The amendments do not change any requirements for record-keeping or other compliance requirements that are contained in the original regulations.

Finally, these amendments do not impose any requirements on local governments, and (as noted in the Regulatory Impact Statement) have no fiscal impact on local governments, including local governments in rural areas.

2. Compliance requirements: There are no new compliance activities imposed by these amendments.

The amendments will have no effect on local governments.

3. Professional services: No additional professional services will be required as a result of these regulations and the regulations will not add to the professional service needs of local governments.

4. Compliance costs: There are no compliance costs since there are no new compliance activities imposed by these amendments.

5. Minimizing adverse economic impact: As noted above, some of the technical changes may affect the rates either positively or negatively. OPWDD does not expect that these immaterial differences would impose an adverse economic impact on providers in rural areas. In any case, the overall funding to providers will remain the same because of budget neutrality.

OPWDD has reviewed and considered the approaches for minimizing adverse impact on providers in rural areas as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act. The emergency/proposed regulations minimize adverse economic impact in several ways. First, the anticipated fiscal impact of the amendments is expected to be slight because only minor changes in the rates result from the technical amendments. In addition, OPWDD notes that the rate sheets distributed to providers in June anticipated the promulgation of these amendments by incorporating the technical changes into the methodology underlying the rate calculation, and providers have therefore already been developing plans to implement the new rate methodology based on the incorporation of these amendments. Therefore, providers will not need to make any additional adjustments in fiscal plans as a result of the minor fiscal impact of the amendments.

The amendments also contain several changes that will be positive for providers. The amendments include changes which explicitly state that the new provisions related to the calculation of the capital component do not apply to capital approved prior to July 1, 2014. While this reflects the original intention and is not a change per se, the inclusion of this specific language helps providers to keep faith with financial institutions who can rest assured that anticipated capital reimbursement will continue to be received for projects. In addition, new language was added to explicitly address the correction of arithmetic or calculation errors. In the event that such errors occur, providers have a referenced mechanism to request corrections of these errors. Finally, related to the calculation of the capital component, new items were added to the chart of thresholds for "soft costs," such as security and clerk of the works, which will permit the reimbursement of these items up to the threshold amount. This corrects the inadvertent exclusion of these items in the original proposed regulations.

6. Participation of public and private interests in rural areas: OPWDD and DOH met with representatives of providers to discuss the new methodology (including provider concerns) at numerous meetings beginning in August 2013, including providers in rural areas, such as NYSARC, the NYS Association of Community and Residential Agencies, NYS Catholic Conference, and CP Association of NYS. OPWDD and DOH posted material about the original proposed regulations on the respective agencies' websites, and OWPDD notified all providers affected by the proposed regulation of the materials posted. In addition, OPWDD and DOH conducted six training sessions for providers by videoconference throughout NYS during April-May 2014. As noted above, DOH sent each provider affected by the new methodology the rate sheet and documents that described the impact of the new regulations (including the emergency/proposed amendments) on the specific provider. OPWDD and DOH received public comments on the original regulations and answered numerous questions. Many of the changes contained in these emergency/proposed amendments were made as a result of the concerns raised by the regulated parties through one or more of these vehicles. OPWDD is also posting materials about these emergency/proposed amendments on its website and is notifying all affected providers about the availability of these materials.

Job Impact Statement

A job impact statement is not being submitted for these emergency amendments because OPWDD determined that they will not cause a loss of more than 100 full time annual jobs State wide. The emergency regulations will implement a new reimbursement methodology for ICFs/DD. Application of the new methodology is expected to result in increased rates for some non-state operated providers and decreased rates for others. However, overall reimbursement to providers will not be changed. Further, the changes in the emergency regulations are only effective for one day and adverse economic impacts experienced by some providers as a result of decreased rates will be minor.

Therefore, OPWDD expects that there will be no overall effect on jobs and employment opportunities as a result of these amendments.

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

Amendments to Rate Setting for Non-State Providers: IRA/CR Residential Habilitation and Day Habilitation

I.D. No. PDD-28-14-00017-EP
Filing No. 573
Filing Date: 2014-07-01
Effective Date: 2014-07-02

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

Proposed Action: Amendment of Subpart 641-1 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b) 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 emergency adoption of these amendments is necessary to protect the health, safety, and welfare of individuals receiving services in the OPWDD system.

The amendments are necessary to properly implement a new rate methodology for residential habilitation provided in Individualized Residential Alternatives (IRAs) and Community Residences (CRs) and day habilitation services. OPWDD made commitments to the Centers for Medicare and Medicaid Services (CMS) in order to qualify for substantial federal funding, including its commitment to implement the new rate methodology in July, 2014. To fulfill its commitment, OPWDD adopted proposed regulations to implement the new methodology effective July 2, 2014 through the regular rulemaking process. However, OPWDD became aware that substantive changes were necessary to properly implement the methodology subsequent to the proposal of the regulations, which was too late to incorporate the amendments through the regular rulemaking process. The State Administrative Procedure Act (SAPA) sets forth

timeframes for the promulgation of regulations (including a mandatory public comment period) and prohibits the adoption of rules containing substantive changes in the terms of proposed regulations. SAPA requires additional rulemaking activities to make substantive changes through the regular rulemaking process which delays the effective date. The only way that the substantive amendments necessary to properly implement the new methodology could be promulgated at the same time that the original regulation is adopted is through the emergency rulemaking process.

If OPWDD did not promulgate these regulations on an emergency basis, OPWDD would fail to meet its commitment to CMS and would risk loss of the substantial federal funding that is contingent on this commitment. The loss of this federal funding could jeopardize the health, safety, and welfare of individuals receiving services in the OPWDD system, as without it, individuals would be at risk of receiving services that are inadequate or insufficient in meeting their needs.

Subject: Amendments to Rate Setting for Non-State Providers: IRA/CR residential habilitation and day habilitation.

Purpose: To amend the new rate methodology effective July 2014.

Public hearing(s) will be held at: 10:30 a.m., Sept. 2, 2014 at Office of People with Developmental Disabilities, Counsel's Conference Rm., 3rd Fl., 44 Holland Ave., Albany, NY and 10:30 a.m., Sept. 3, 2014 at Office of People with Developmental Disabilities, Counsel's Conference Rm., 3rd Fl., 44 Holland Ave., Albany, 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 emergency/proposed rule (Full text is posted at the following State website:www.opwdd.ny.gov): The emergency/proposed regulations amend the newly-adopted 14 NYCRR Subpart 641-1, concerning the rate methodology for Residential Habilitation delivered in IRAs and Community Residences and Day Habilitation. (Note that the text of the newly adopted regulation is the same as the text of the proposed regulation published in the spring of 2014.) The changes include the following:

A) A clarification that the "initial period" of the methodology is July 1, 2014 through June 30, 2015.

B) A definition was added for "total reimbursement". The definition of total reimbursement is the provider's final reimbursement as calculated on its rate sheets inclusive of SSI/SNAP adjustments and any State supplement add-on.

C) A clarification in the definitions of the "regional average general and administrative component" and the "provider average general and administrative component" to specify that the administrative allocation for the base year is agency administration, that depreciation is equipment depreciation and that program administration property is not part of the formula.

D) A clarification in the definition of "provider direct care hours", "provider salary clinical hours" and the "provider contracted clinical hours" to indicate that the formulas are based on rate sheet capacities rather than billed units and that the formula quotient is multiplied by rate sheet capacities rather than units.

E) A change in the "provider facility reimbursement" definition to indicate that depreciation is equipment depreciation and that the formula utilizes provider rate sheet capacities rather than billed units or units.

F) A clarification to the "alternative cost component" and to the "alternative facility cost component" (specific to IRAs and Community Residences) to indicate that this section applies to providers that did not submit a cost report or submitted a cost report that was incomplete. The previous language applied these components in a more narrow set of circumstances, i.e., only when providers did not provide services during the base year.

G) The "budget neutrality" formula was changed for Supervised and Supportive IRAs and Community Residences. Budget neutrality was eliminated on the "facility cost component" and a "statewide budget neutrality for State supplement factor" was added to the methodology.

H) A note was added to the "capital component" section to indicate that the capital component language was not applicable to capital approved by OPWDD prior to July 1, 2014.

I) The "capital component" section for both Supervised and Supportive IRAs and Community Residences was changed to clarify that start-up costs may be amortized over a one-year period beginning with certification.

J) Numerous changes were made to the capital threshold schedules to add clarity including the elimination of references to incorrect programs; the elimination of the non-relevant "architect/engineer design fee schedule for ground-up construction" and to standardize definitions, including that of soft costs.

K) The "adjustments" section (specific to Supervised and Supportive IRAs and Community Residences) was revised to clarify that the supplemental security income offset is an annualized figure.

L) A "rate correction" section was added to specify the policies and procedures for the correction of arithmetic or calculation errors.

M) Within the "transition periods and reimbursement" section, it was clarified that retainer days, specific to Supervised IRAs and Community Residences, will be reconciled at the mid-point and the end-point of the rate period ending June 30, 2015. It was further clarified that Supervised IRA and Community Residence providers shall not be paid for more than 14 retainer days per annual period for any one individual.

N) Also, within the "transition periods and reimbursement" section, specific to Supervised IRAs and Community Residences, it was clarified that therapeutic leave days include vacation absences and that therapeutic leave days will be reimbursed at the provider's Supervised IRA or Community Residence rate.

O) Additionally, within the "transition periods and reimbursement" section, specific to Supervised IRAs and Community Residences, it was further clarified that the payment for vacant bed days, through the period ending June 30, 2015, would be 75 percent of the provider's Supervised IRA or Community Residence rate up to a maximum of 90 such vacant bed days.

P) A new section is added governing funding for those individuals identified as qualifying for template or auspice funding. The funding for IRA/CR residential habilitation and day habilitation provided to these individuals will be determined in accordance with that section instead of the methodology that is generally applicable.

Q) Various non-substantive technical corrections were added to correct inconsistencies, grammatical errors, etc.

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 September 28, 2014.

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

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

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

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

Regulatory Impact Statement

1. Statutory authority:

a. 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).

b. OPWDD has the statutory responsibility for setting Medicaid rates and fees for other services in facilities licensed or operated by OPWDD, as stated in section 43.02 of the Mental Hygiene Law.

2. Legislative objective: These emergency/proposed regulations further the legislative objectives embodied in sections 13.09(b) and 43.02 of the Mental Hygiene Law. The emergency/proposed regulations amend the newly adopted methodology for reimbursement of residential habilitation delivered in Individualized Residential Alternatives (IRAs) and Community Residences (CRs) and day habilitation services.

3. Needs and benefits: OPWDD and the Department of Health (DOH) recently finalized a new reimbursement methodology for residential habilitation in IRAs/CRs and day habilitation, which complements existing OPWDD requirements concerning these programs, to satisfy commitments included in OPWDD's transformation agreement with the federal Centers for Medicare and Medicaid Services (CMS).

Prior to final adoption of the rule, OPWDD and DOH became aware of amendments that were needed to properly implement the new methodology. Many of the corrections and clarifications contained in these amendments are in response to concerns noted in public comments about the proposed regulations and questions submitted to OPWDD and DOH about the new methodology. The changes in these amendments clarify the new methodology and contain corrections that are necessary for its proper implementation.

4. Costs:

a. Costs to the Agency and to the State and its local governments: The emergency/proposed regulations are necessary to enable the State to properly implement the new methodology. In general, there are no material fiscal changes that result from the amendments compared to the intent of the original methodology. The amendments, building on the original methodology, will be cost neutral to the state as the overall monies expended overall for such services will remain constant.

The new methodology and these accompanying amendments do not apply to the state as a provider of services.

There will be no savings or costs to local governments as a result of these regulations because pursuant to Social Services Law sections 365 and 368-a, either local governments incur no costs for these services or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. In addition, even if the amendments lead to an increase in Medicaid expenditures in a particular county, these amendments will not have any fiscal impact on local governments, as 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: The emergency/proposed regulations will amend the new reimbursement methodology for residential habilitation in IRAs/CRs and day habilitation and facilitate its proper implementation. Application of the new methodology (as amended) is expected to result in increased rates for some non-state operated providers and decreased rates for others. However, overall reimbursement to providers will not be changed. The amendments themselves may result in a minor increase or decrease in rates for some providers, but will have no overall impact on provider rates because budget neutrality is built into the new methodology.

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 emergency/proposed amendments are not expected to increase paperwork to be completed by providers.

7. Duplication: The emergency/proposed regulations do not duplicate any existing State or Federal requirements that are applicable to services for persons with developmental disabilities.

8. Alternatives: The amendments include a statement to clarify that the provisions of the capital component do not apply to capital approved by OPWDD prior to July 1, 2014. This statement reflects the intent of the original regulations although this was not explicit in the original language. The statement is included in the amendments in response to concerns raised that the regulations could be construed to permit the prior approval of capital to be subject to inappropriate review. OPWDD considered the inclusion of the statement to be unnecessary but after consideration decided to include it to make its intent explicit and the regulations clear.

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

10. Compliance schedule: OPWDD is adopting the amendments on an emergency basis effective July 2, 2014 to coincide with the final adoption of the proposed regulations which it is amending. (Note: OPWDD is also filing emergency regulations on July 1, 2014 so that the new methodology is in effect on that date.) During the spring of 2014, DOH and OPWDD trained providers on the new methodology as amended and issued rate sheets, guidance documents and training materials which reflected the anticipated amendments. OPWDD expects to finalize the amendments as soon as possible within the timeframes established by the State Administrative Procedure Act.

Regulatory Flexibility Analysis

1. Effect on small business: OPWDD has determined, through a review of the certified cost reports, that most residential habilitation services delivered in Individualized Residential Alternatives (IRAs) and Community Residences (CRs) and most day habilitation services are provided by 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 348 providers of residential habilitation services delivered in IRAs and CRs and day habilitation services. OPWDD is unable to estimate the portion of these providers that may be considered to be small businesses.

The changes in these amendments clarify the new methodology and contain corrections that are necessary for its proper implementation.

Many of the amendments correct technical errors in the original text or add clarifying material. In general, these provisions do not change the impact of the original regulations on providers, including providers that are small businesses, or have positive impacts. However, several technical amendments make changes to the original text that may translate into a minor increase or decrease in the rates and may have a modest negative impact on some small business providers of residential habilitation in IRA/CRs and/or day habilitation. For example, the change from "billed units" to "rate sheet capacities" in the methodology may result in immaterial positive or negative differences in the final rates. These immaterial differences will not impose an adverse economic impact on small business providers and in any case, the overall funding to providers will remain the same because of budget neutrality. Changes made to the budget neutrality component of the methodology may have a slight impact on all providers of residential habilitation in IRA/CRs. The amendments do not change any requirements for record-keeping or other compliance requirements that are contained in the original regulations.

Finally, these amendments do not impose any requirements on local governments, and (as noted in the Regulatory Impact Statement) have no fiscal impact on local governments.

2. Compliance requirements: There are no new compliance activities imposed by these amendments.

3. Professional services: No additional professional services will be required as a result of these regulations and the regulations will not add to the professional service needs of local governments.

4. Compliance costs: There are no compliance costs since there are no new compliance activities imposed by these amendments.

5. Economic and technological feasibility: The emergency/proposed amendments do not impose on regulated parties the use of any new technological processes.

6. Minimizing adverse economic impact: As noted above, some of the technical changes may affect the rates either positively or negatively. OPWDD does not expect that these immaterial differences would impose an adverse economic impact on small business providers. In any case, the overall funding to providers as a result of these technical amendments will remain the same because of budget neutrality.

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. The emergency/proposed regulations minimize adverse economic impact in several ways. First, the anticipated fiscal impact of the amendments is expected to be slight because only minor changes in the rates result from the technical amendments. In addition, OPWDD notes that the rate sheets distributed to providers in June anticipated the promulgation of these amendments by incorporating the technical changes into the methodology underlying the rate calculation (except for the change in budget neutrality), and providers have therefore already been developing plans to implement the new rate methodology based on the incorporation of these amendments. Therefore, providers will only need to make minimal adjustments in fiscal plans as a result of the minor change in budget neutrality. OPWDD considered the impact of the change in budget neutrality on providers but determined that the changes incorporated in these amendments were necessary to properly implement the methodology. The potential loss of federal funds to OPWDD that could result from non-compliance would have had far more serious consequences to providers than the minor decrease in rates that result from these changes.

The amendments also contain several changes that will be positive for providers. The amendments include changes which explicitly state that the new provisions related to the calculation of the capital component do not apply to capital approved prior to July 1, 2014. While this reflects the original intention and is not a change per se, the inclusion of this specific language helps providers to keep faith with financial institutions who can rest assured that anticipated capital reimbursement will continue to be received for projects. In addition, new language was added to explicitly address the correction of arithmetic or calculation errors. In the event that such errors occur, providers now have a referenced mechanism to request corrections of these errors. Related to the calculation of the capital component, new items were added to the chart of thresholds for "soft costs," such as security and clerk of the works, which will permit the reimbursement of these items up to the threshold amount. This corrects the inadvertent exclusion of these items in the original proposed regulations.

There are several additional positive changes for providers which are specific to the provision of residential habilitation services in supervised IRAs/CRs. Changes were made in the definition of "therapeutic leave days" to include days when the individual receiving services is on vacation. This corrected an inadvertent omission in the original regulations (which only permitted therapeutic leave days for the purpose of visiting with family and friends). Because of this change, providers may receive reimbursement for days when the individual is on vacation but the vacation is not for the purpose of visiting with family and friends. Finally, changes were made related to the reconciliation of therapeutic leave days and retainer days, which positively affect the cash flow to providers. The amendments eliminate the reconciliation requirement for therapeutic leave days and state that the determination of reimbursement for retainer days will happen at the mid-point of the stated period as well as the conclusion of the period.

7. Small business participation: OPWDD and DOH met with representatives of providers to discuss the new methodology (including provider concerns) at numerous meetings beginning in August 2013, including the New York State Association of Community and Residential Agencies (NYSACRA) (which represents some providers that have fewer than 100 employees). OPWDD and DOH posted material about the original proposed regulations on the respective agencies' websites, and OWPDD notified all providers affected by the proposed regulation of the materials

posted. In addition, OPWDD and DOH conducted six training sessions for providers by videoconference throughout NYS during April-May 2014. As noted above, DOH sent each provider affected by the new methodology the rate sheet and documents that described the impact of the new regulations (including the emergency/proposed amendments) on the specific provider. OPWDD and DOH received public comments on the original regulations and answered numerous questions. Many of the changes contained in these emergency/proposed amendments were made as a result of the concerns raised by the regulated parties through one or more of these vehicles. OPWDD is also posting materials about these emergency/proposed amendments on its website and is notifying all affected providers about the availability of these materials.

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, certain townships in 10 other counties have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

The changes in these amendments clarify the new methodology and contain corrections that are necessary for its proper implementation.

Many of the amendments correct technical errors in the original text or add clarifying material. In general, these provisions do not change the impact of the original regulations on providers, including providers in rural areas, or have positive impacts. However, several technical amendments make changes to the original text that may translate into a minor increase or decrease in the rates and may have a modest negative impact on some providers of residential habilitation in IRA/CRs and/or day habilitation in rural areas. For example, the change from "billed units" to "rate sheet capacities" in the methodology may result in immaterial positive or negative differences in the final rates. These immaterial differences will not impose an adverse economic impact on providers in rural areas and in any case, the overall funding to providers will remain the same because of budget neutrality. Changes made to the budget neutrality component of the methodology may have a slight impact on all providers of residential habilitation in IRA/CRs. The amendments do not change any requirements for record-keeping or other compliance requirements that are contained in the original regulations.

Finally, these amendments do not impose any requirements on local governments, and (as noted in the Regulatory Impact Statement) have no fiscal impact on local governments, including local governments in rural areas.

2. Compliance requirements: There are no new compliance activities imposed by these amendments.

The amendments will have no effect on local governments.

3. Professional services: No additional professional services will be required as a result of these regulations and the regulations will not add to the professional service needs of local governments.

4. Compliance costs: There are no compliance costs since there are no new compliance activities imposed by these amendments.

5. Minimizing adverse economic impact: As noted above, some of the technical changes may affect the rates either positively or negatively. OPWDD does not expect that these immaterial differences would impose an adverse economic impact on providers in rural areas. In any case, the overall funding to providers as a result of these technical amendments will remain the same because of budget neutrality.

OPWDD has reviewed and considered the approaches for minimizing adverse impact on providers in rural areas as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act. The emergency/proposed regulations minimize adverse impact in several ways. First, the anticipated fiscal impact of the amendments is expected to be slight because only minor changes in the rates result from the technical amendments. In addition, OPWDD notes that the rate sheets distributed to providers in June anticipated the promulgation of these amendments by incorporating the technical changes into the methodology underlying the rate calculation (except for the change in budget neutrality), and providers have therefore already been developing plans to implement the new rate methodology based on the incorporation of these amendments. Therefore, providers will only need to make minimal adjustments in fiscal plans as a result of the minor change in budget neutrality. OPWDD considered the impact of the change in budget neutrality on providers but determined that the changes incorporated in these amendments were necessary to properly implement the methodology. The potential loss of federal funds to OPWDD that could result from non-compliance would have had far more serious consequences to providers than the minor decrease in rates that result from these changes.

The amendments also contain several changes that will be positive for providers. The amendments include changes which explicitly state that the new provisions related to the calculation of the capital component do not apply to capital approved prior to July 1, 2014. While this reflects the original intention and is not a change per se, the inclusion of this specific language helps providers to keep faith with financial institutions who can rest assured that anticipated capital reimbursement will continue to be received for projects. In addition, new language was added to explicitly address the correction of arithmetic or calculation errors. In the event that such errors occur, providers now have a referenced mechanism to request corrections of these errors. Related to the calculation of the capital component, new items were added to the chart of thresholds for "soft costs," such as security and clerk of the works, which will permit the reimbursement of these items up to the threshold amount. This corrects the inadvertent exclusion of these items in the original proposed regulations.

There are several additional positive changes for providers which are specific to the provision of residential habilitation services in supervised IRAs/CRs. Changes were made in the definition of "therapeutic leave days" to include days when the individual receiving services is on vacation. This corrected an inadvertent omission in the original regulations (which only permitted therapeutic leave days for the purpose of visiting with family and friends). Because of this change, providers may receive reimbursement for days when the individual is on vacation but the vacation is not for the purpose of visiting with family and friends. Finally, changes were made related to the reconciliation of therapeutic leave days and retainer days, which positively affect the cash flow to providers. The amendments eliminate the reconciliation requirement for therapeutic leave days and state that the determination of reimbursement for retainer days will happen at the mid-point of the stated period as well as the conclusion of the period.

6. Participation of public and private interests in rural areas: OPWDD and DOH met with representatives of providers to discuss the new methodology (including provider concerns) at numerous meetings beginning in August 2013, including providers in rural areas, such as NYSARC, the NYS Association of Community and Residential Agencies, NYS Catholic Conference, and CP Association of NYS. OPWDD and DOH posted material about the original proposed regulations on the respective agencies' websites, and OWPDD notified all providers affected by the proposed regulation of the materials posted. In addition, OPWDD and DOH conducted six training sessions for providers by videoconference throughout NYS during April-May 2014. As noted above, DOH sent each provider affected by the new methodology the rate sheet and documents that described the impact of the new regulations (including the emergency/proposed amendments) on the specific provider. OPWDD and DOH received public comments on the original regulations and answered numerous questions. Many of the changes contained in these emergency/proposed amendments were made as a result of the concerns raised by the regulated parties through one or more of these vehicles. OPWDD is also posting materials about these emergency/proposed amendments on its website and is notifying all affected providers about the availability of these materials.

Job Impact Statement

OPWDD is not submitting a Job Impact Statement for this emergency/proposed rulemaking because this rulemaking will not have a substantial adverse impact on jobs or employment opportunities.

The emergency/proposed amendments make changes to the newly-adopted regulations that revise the rate methodology for residential habilitation in IRA/CRs and day habilitation. The changes in these amendments clarify the new methodology and contain corrections that are necessary for its proper implementation.

As noted in the Regulatory Flexibility Analysis, the emergency/proposed amendments have a minor potential adverse economic impact on some providers, but otherwise have no overall impact or a positive impact. The amendments do not impose any changes to recordkeeping or other compliance activities. While some providers may experience a minor adverse economic impact as a result of these amendments due to some of these amendments (while experiencing positive effects from other amendments), the effect on jobs as a result is expected to be negligible. Other providers are expected to experience a commensurate slight increase in funding. The amendments are therefore expected to have no significant adverse impact on jobs and employment opportunities with providers.

As noted in the emergency justification, if OPWDD did not promulgate these amendments, OPWDD risks the loss of substantial federal funds. This loss of substantial funds could adversely impact jobs and employment opportunities in New York State. This potential adverse effect on jobs and employment opportunities is avoided by the promulgation of these amendments.

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

Supervised IRA/CR Residential Habilitation Unit of Service Change

I.D. No. PDD-28-14-00021-EP
Filing No. 577
Filing Date: 2014-07-01
Effective Date: 2014-07-01

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

Proposed Action: Amendment of sections 635-10.5(b) and 671.7 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, section 13.09(b)

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

Specific reasons underlying the finding of necessity: The emergency adoption of these amendments is necessary to protect the health, safety, and welfare of individuals receiving services in the OPWDD system.

The amendments are necessary to fully implement a new rate methodology for residential habilitation provided in non-state operated Individualized Residential Alternatives (IRAs) and Community Residences (CRs). OPWDD made commitments to the Centers for Medicare and Medicaid Services (CMS) in order to qualify for substantial federal funding, including its commitment to implement a new rate methodology in July 2014. The rate methodology includes a change in the unit of service for residential habilitation services delivered in supervised IRAs and CRs. To fulfill its commitment, OPWDD adopted proposed regulations to implement the rate setting methodology effective July, 2014 through the regular rulemaking process. However, there was not sufficient time to propose regulations concerning the implementation of the unit of service change through the regular rulemaking process.

The emergency/proposed regulations change the unit of service from a monthly to a daily unit of service and change the service documentation requirements. The regulations are necessary to enable provider agencies to receive reimbursement for residential habilitation services provided in supervised IRAs and CRs on or after July 1, 2014.

Further, if OPWDD did not promulgate these regulations on an emergency basis, OPWDD would fail to meet its commitment to CMS and would risk loss of the substantial federal funding that is contingent on this commitment. The loss of this federal funding could jeopardize the health, safety, and welfare of individuals receiving services in the OPWDD system, as without it, individuals would be at risk of receiving services that are inadequate or insufficient in meeting their needs.

Subject: Supervised IRA/CR residential habilitation unit of service change.

Purpose: To conform existing OPWDD regulations to the change in the unit of service from monthly to daily.

Public hearing(s) will be held at: 10:30 a.m., Sept. 2, 2014 at Office for People with Developmental Disabilities, Counsel's Office Conference Rm., 3rd Fl., 44 Holland Ave., Albany, NY; and 10:30 a.m., Sept. 3, 2014 at Office for People with Developmental Disabilities, Counsel's Office Conference Rm., 3rd Fl., 44 Holland Ave., Albany, NY.

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

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

Text of emergency/proposed rule: • Subdivision 635-10.5(b) is amended by the addition of a new paragraph (3) as follows and existing paragraphs (3)-(9) are renumbered to be (4)-(10):

(3) Reimbursement for residential habilitation services provided in non-state operated IRAs and CRs on or after July 1, 2014 shall be in accordance with the provisions of Subpart 641-1 of this Title. Subpart 641-1 supersedes the provisions of this subdivision for reimbursement of residential habilitation services provided in non-state operated supervised and supportive IRAs and CRs on or after July 1, 2014, except those provisions pertaining to enrollment and service days in paragraphs (9) - (13) of this subdivision.

Note: Subpart 641-1 includes a provision that changes the unit of service for residential habilitation services provided in non-state operated supervised IRAs and CRs from a monthly to a daily unit of service (See paragraphs (9) and (13) of this subdivision).

• Renumbered paragraph 635-105(b)(9) is amended as follows and existing subparagraphs (i)-(v) are renumbered to be (iii) -(vii):

(9) [Monthly] [s]*S*upervised IRA [price] *residential habilitation (Supervised IRA RH)*.

(i) Reimbursement for residential habilitation services provided in non-state operated IRAs and CRs on or after July 1, 2014 shall be in accordance with the provisions of Subpart 641-1 of this Title. Subpart 641-1 supersedes the provisions of subparagraphs (iii) - (vii) of this paragraph for reimbursement of residential habilitation services provided in non-state operated supervised IRAs and CRs on and after July 1, 2014.

(ii) The unit of service for residential habilitation services provided in non-state operated supervised IRAs and CRs on or after July 1, 2014 shall be a daily unit of service. The requirements of this subparagraph supersede the provisions of subparagraph (v) of this paragraph for residential habilitation services provided in non-state operated supervised IRAs and CRs on or after July 1, 2014.

• Renumbered subparagraph 635-10.5(b)(9)(v) is amended as follows:

[(iii)]*(v)* Countable service days.

(a) The full month supervised IRA price shall be paid for services provided to an individual who meets the enrollment requirement in subparagraph (11)[(i)]*(ii)* of this subdivision and who receives face-to-face residential habilitation services in accordance with the individual's individualized service plan (ISP) and residential habilitation plan on each of the 22 days of the enrollment requirement. These are known as countable service days.

(b) One-half of the full month supervised IRA price shall be paid for services provided to an individual who meets the enrollment requirement in subparagraph (11)[(ii)]*(iii)* of this subdivision and who receives face-to-face residential habilitation services in accordance with the individual's ISP and residential habilitation plan on each of the 11 days of the enrollment requirement. These are known as countable service days.

• Renumbered subparagraph 635-10.5(b)(9)(vi) is amended as follows:

[(iv)]*(vi)* Newly certified sites. A newly certified site is an IRA whose reimbursable costs are not already included in the monthly price and at which a provider is initially approved to deliver services pursuant to an operating certificate issued by OPWDD. A newly certified site's annual total reimbursable residential habilitation costs and certified capacity shall be included in the monthly price as calculated in accordance with subparagraph [(ii)]*iv* of this paragraph except for capital moveable equipment and property insurance components after December 31, 2010. If two countable service days are possible in the month of certification, the new site shall be included in the monthly price in the month of certification. If two countable service days are not possible in the month of certification, the new site shall be included in the monthly price effective the month after the month of certification.

• Renumbered clause 635-10.5(b)(9)(vii)(e) is deleted as follows:

[(e) OPWDD may opt to re-examine the capital moveable equipment and property insurance components of the supervised IRA price for purposes of recalculation after December 31, 2015, for Region II and Region III reporting providers, or after June 30, 2016, for Region I reporting providers.]

• Note: Existing paragraph 635-10.5(b)(10) was previously ''reserved''

• Renumbered paragraph 635-10.5(b)(10) is amended by the addition of a new subparagraph (i) as follows and existing subparagraphs (i)-(v) are renumbered to be (ii)-(vi):

(i) Reimbursement for residential habilitation services provided in non-state operated IRAs and CRs on or after July 1, 2014 shall be in accordance with the provisions of Subpart 641-1 of this Title. Subpart 641-1 supersedes the provisions of subparagraphs (ii) - (v) of this paragraph for reimbursement of residential habilitation services provided in non-state operated supportive IRAs and CRs on and after July 1, 2014.

• Renumbered subparagraph 635-10.5(b)(10)(iv) is amended as follows:

[(iii)]*(iv)* Countable service days.

(a) The full month [supported] *supportive* IRA price shall be paid for services provided to an individual who meets the enrollment requirement in subparagraph (11)[(i)]*(ii)* of this subdivision and who receives face-to-face residential habilitation services in accordance with the individual's ISP and residential habilitation plan on four of the 22 days of the enrollment requirement. Services provided on these four days must be delivered, initiated or concluded at the site. No more than two days of service within a week may be counted toward the four-day requirement. These four days are countable service days.

(b) One-half of the full month [supported] *supportive* IRA price shall be paid for services provided to an individual who meets the enrollment requirement in subparagraph (11)[(ii)]*(iii)* of this subdivision and

who receives face-to-face residential habilitation services in accordance with the individual's ISP and residential habilitation plan on two of the 11 days of the enrollment requirement. Services provided on these two days must be delivered, initiated or concluded at the site. No more than one day of service within a week may be counted toward the two-day requirement. These two days are countable service days.

• Renumbered subparagraph 635-10.5(b)(10)(v) is amended as follows:

[(iv)]*(v)* Newly certified sites. A newly certified site is an IRA whose reimbursable costs are not already included in the monthly price and at which a provider is initially approved to deliver services pursuant to an operating certificate issued by OPWDD. The approved total annual budgeted costs established for newly certified supportive IRA sites after June 30, 2011 shall reflect a two percent reduction in operating costs as was implemented for providers on July 1, 2011 pursuant to subparagraph (18)(iii) of this subdivision. A newly certified site's annual total reimbursable residential habilitation costs and certified capacity shall be included in the monthly price as calculated in accordance with subparagraph [(ii)]*(iii)* of this paragraph except for capital moveable equipment and property insurance components after December 31, 2010. If two countable service days are possible in the month of certification, the new site shall be included in the monthly price in the month of certification. If two countable service days are not possible in the month of certification, the new site shall be included in the monthly price effective the month after the month of certification.

• Renumbered clause 635-10.5(b)(10)(vi)(e) is deleted as follows:

[(e) OPWDD may opt to re-examine the capital moveable equipment and property insurance components of the supportive IRA price for purposes of recalculation after December 31, 2015, for Region II and Region III reporting providers, and after June 30, 2016, for Region I reporting providers.]

• Paragraph 635.10.5(b)(11) is amended as follows:

(11) Enrollment requirements for [consumers] *individuals* enrolled in a supervised or supportive IRA.

(i) Effective July 1, 2014, for the provider to be paid for a daily unit of Supervised IRA RH the individual must be enrolled at the supervised IRA and either services are provided or the person is eligible for a therapeutic leave or retainer day in accordance with the provisions of paragraph (12) of this subdivision.

[(i)]*(ii) Prior to July 1, 2014,* [F]*f*or the provider to be paid a full month supervised IRA price, the [consumer] *individual* must be enrolled in the provider's supervised IRA program for a minimum of 22 days in the calendar month.[; to be paid a full month supportive price, the consumer must be enrolled in the provider's supportive IRA program for a minimum of 22 days in the calendar month.]

[(ii)]*(iii) Prior to July 1, 2014,* [F]*f*or the provider to be paid a one-half month supervised IRA price, the [consumer] *individual* must be enrolled in the provider's supervised IRA program for a minimum of 11 days in the calendar month. [; to be paid a one-half month supportive price, the consumer must be enrolled in the provider's supportive IRA program for a minimum of 11 days in the calendar month.]

(iv) For the provider to be paid a full month supportive price or rate, the individual must be enrolled in the provider's supportive IRA program for a minimum of 22 days in the calendar month.

(v) For the provider to be paid a one-half month supportive price or rate, the individual must be enrolled in the provider's supportive IRA program for a minimum of 11 days in the calendar month.

• Paragraph 635-10.5(b)(12) is amended as follows:

(12) Standards for [countable] service days.

(i) Supervised IRA RH service days, effective July 1, 2014, require:

(a) the individual's presence at the supervised IRA, or one of the following allowable exceptions:

(1) the day is a day of discharge from a hospital, nursing home, intermediate care facility (ICF), or other certified, licensed, or government funded residential facility when the individual returns to the supervised IRA;

(2) the day is a day when the individual's residence is converted from an ICF to a supervised IRA, or when the designation of an IRA is changed (supportive to supervised or supervised to supportive) and the individual is present at the facility;

(3) days when IRA staff deliver and document residential habilitation services to an individual who is away from the residence for the purpose of a vacation or a visit with family or friends, and the location of service delivery is documented; or

(4) days when residents of the IRA are relocated due to emergency conditions or other circumstances reported to and approved by the OPWDD regional office for the region where the IRA is located and the entity within OPWDD that is responsible for survey and certification activity. (Individuals must be present at the approved site and the location of the site documented); and

(b) provision and documentation of at least one face to face service in accordance with the individual's residential habilitation plan on each service day.

(ii) Theraputic leave and retainer days. Effective July 1, 2014, a supervised IRA provider will be paid for therapeutic leave days and retainer days in accordance with 14 NYCRR Subpart 641-1.

(iii) Countable service days prior to July 1, 2014:

[(i)]*(a)* In computing the countable service days, the provider cannot include days [that] *when* the [consumer] *individual* is in a hospital, nursing home. ICF/DD or other certified, licensed or government funded residential setting.

[(ii)]*(b)* The day the [consumer] *individual* is admitted or discharged from one of the other residential settings listed in [subparagraph (i)] *clause (a)* of this *sub*paragraph may be a countable service day if, on that day, IRA staff deliver residential habilitation services to the [consumer] *individual* at the IRA.

[(iii)]*(c)* For supervised IRAs only: in determining countable service days the provider may include days when an *individual* [consumer] is away from the IRA, for purposes such as vacations and visits with family or friends, only when staff from the [consumer's] *individual's* IRA deliver and document services to that [consumer] *individual* that are similar in scope, frequency and duration to the residential habilitation services typically delivered to the [consumer] *individual* at the IRA.

[(a)]*(1)* No more than 14 days in a calendar month that meet the conditions of this subparagraph may be countable service days for a full month supervised IRA price.

[(b)]*(2)* No more than seven days in a calendar month that meet the conditions of this subparagraph may be countable service days for one-half of a full month supervised IRA price.

[(iv)]*(d)* The provisions of this paragraph notwithstanding, days when all [consumers] *residents* of the IRA are relocated due to an emergency or other conditions [which] *that* necessitate relocation for the health and safety of the [consumers] *residents* may be considered as countable if:

[(a)]*(1)* the relocation is reported to and approved by OPWDD; and

[(b)]*(2)* staff regularly assigned to the IRA continue to deliver and document residential habilitation services that are similar in scope, frequency and duration to those typically delivered to the [consumers] *residents* at the certified site.

[(v)]*(e)* [s]*S*ervices provided on countable service days must be documented. On any countable service day there must be documentation of at least one residential habilitation service delivered to the [person] *individual* by IRA staff on that day.

• Section 671.7 is amended by the addition of a new subdivision (a) as follows and existing subdivision (a) is re-lettered to be (b) which was previously reserved:

(a) Effective July 1, 2014:

(1) reimbursement for residential habilitation services provided in non-state operated IRAs and CRs shall be in accordance with the provisions of Subpart 641-1 of this Title. Subpart 641-1 supersedes the provisions of subdivision (b) of this section for reimbursement of residential habilitation services provided in non-state operated supervised and supportive IRAs and CRs on or after July 1, 2014;

(2) the unit of service for residential habilitation services provided in non-state operated supervised IRAs and CRs shall be a daily unit of service. The requirements of this paragraph supersede the provisions of paragraph (b)(3)(ii) of this section for residential habilitation services provided in non-state operated supervised IRAs and CRs on or after July 1, 2014;

(3) residential habilitation services in non-state operated supervised CRs shall be provided and documented in accordance with subparagraphs 635-10.5(b)(11)(i) and (12)(i)-(ii) of this Title; and

(4) residential habilitation services in non-state operated supportive CRs shall be provided and documented in accordance with paragraph 635-10.5(b)(10) and subparagraphs (11)(iv)-(v) of this Title.

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 September 28, 2014.

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

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

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

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

Regulatory Impact Statement

1. Statutory authority:

a. 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).

b. OPWDD has the statutory responsibility for setting Medicaid rates and fees for other services in facilities licensed or operated by OPWDD as stated in section 43.02 of the Mental Hygiene Law.

2. Legislative objective: These proposed regulations further the legislative objectives embodied in sections 13.09(b) and 43.02 of the Mental Hygiene Law. The proposed emergency/proposed regulations concern a change in the unit of service for residential habilitation services delivered in supervised IRAs and CRs.

3. Needs and benefits: OPWDD is implementing emergency/proposed regulations that change unit of service requirements for residential habilitation services provided in non-state operated supervised IRAs and CRs on or after July 1, 2014. The emergency/proposed regulations change the unit of service from a monthly to a daily unit of service and change the service documentation requirements. These regulations conform OPWDD regulations to Department of Health (DOH) and other OPWDD regulations, both effective July 1, 2014 and satisfy commitments included in OPWDD's transformation agreement with the federal Centers for Medicare and Medicaid Services (CMS).

4. Costs:

a. Costs to the Agency and to the State and its local governments: The emergency/proposed regulations will be cost neutral to the State as the monies expended overall for residential habilitation provided in supervised CRs and IRAs will remain constant.

The emergency/proposed regulations do not apply to the State as a provider of services.

There will be no savings or costs to local governments as a result of these regulations because pursuant to Social Services Law sections 365 and 368-a, either local governments incur no costs for these services or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. In addition, even if the amendments lead to an increase in Medicaid expenditures in a particular county, these amendments will not have any fiscal impact on local governments, as 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: The emergency/proposed regulations will implement new unit of service requirements for residential habilitation delivered in supervised IRAs and CRs. These regulations require changes in billing and service documentation. OPWDD expects that changes will be addressed with existing staff and technology.

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 emergency/proposed amendments will require additional paperwork to be completed by providers. The emergency/proposed regulations change the unit of service for residential habilitation in supervised IRAs and CRs from a monthly to a daily unit of service. The monthly unit of service required documentation of service delivery on at least twenty-two days each month; the new methodology will require daily documentation. In addition, providers will need to bill for each day that services are delivered, rather than billing on a monthly basis. The regulations also require providers to report retainer days, therapeutic leave days, and vacant bed days.

7. Duplication: The emergency/proposed regulations do not duplicate any existing State or federal requirements that are applicable to services for persons with developmental disabilities.

8. Alternatives: The change in the supervised IRA and CR residential habilitation unit of service is part of OPWDD's transformation agreement with CMS. An hourly unit of service was considered, but it was determined that a daily unit is more appropriate in a residential setting.

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

10. Compliance schedule: The emergency/proposed regulations are effective on July 1, 2014.

OPWDD provided statewide provider training during April and May of 2014 and posted guidance on the new service documentation requirements and billing procedures in June 2014.

OPWDD expects to finalize the amendments as soon as possible within the timeframes established by the State Administrative Procedure Act.

Regulatory Flexibility Analysis

1. Effect on small business: OPWDD has determined, through a review of the certified cost reports, that most residential habilitation services delivered in Individualized Residential Alternatives (IRAs) and Community Residences (CRs) are provided by 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 250 providers of residential habilitation services delivered in IRAs and CRs. OPWDD is unable to estimate the portion of these providers that may be considered to be small businesses.

OPWDD is implementing emergency/proposed regulations that change unit of service requirements for residential habilitation services provided in non-state operated supervised IRAs and CRs on or after July 1, 2014. The emergency/proposed regulations change the unit of service from a monthly to a daily unit of service and change the service documentation requirements.

The emergency/proposed amendments will require some additional paperwork to be completed by providers. The monthly unit of service required documentation of service delivery on at least twenty-two days each month; the new unit of service will require daily documentation. In addition, providers will need to bill for each day that services are delivered, rather than billing on a monthly basis. The regulations also require providers to report retainer days, therapeutic leave days, and vacant bed days.

Although these regulations require changes in billing and service documentation, OPWDD expects that changes will be addressed with existing staff and technology.

2. Compliance requirements: The emergency/proposed regulations change the unit of service for residential habilitation in supervised IRAs and CRs from a monthly to a daily unit of service. The monthly unit of service required documentation of service delivery on at least twenty-two days each month; the new methodology will require daily documentation. In addition, providers will need to bill for each day that services are delivered, rather than billing on a monthly basis. The regulations also require providers to report retainer days, therapeutic leave days, and vacant bed days.

3. Professional services: No additional professional services will be required as a result of these regulations and the regulations will not add to the professional service needs of local governments.

4. Compliance costs: The emergency/proposed amendments will require additional paperwork to be completed by providers. The emergency/proposed regulations change the unit of service for residential habilitation in supervised IRAs and CRs from a monthly to a daily unit of service. The monthly unit of service required documentation of service delivery on at least twenty-two days each month; the new methodology will require daily documentation. In addition, providers will need to bill for each day that services are delivered, rather than billing on a monthly basis. The regulations also require providers to report retainer days, therapeutic leave days, and vacant bed days. OPWDD expects that the changes will be addressed with existing staff and technology and therefore compliance costs incurred by providers will be minimal.

5. Economic and technological feasibility: The proposed amendments do not impose on regulated parties the use of any new technological processes.

6. Minimizing adverse economic impact: OPWDD has also reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. OPWDD determined that the requirements in the emergency/proposed regulations represent the most optimal approach to instituting the necessary change associated with OPWDD's and DOH's recently adopted rate setting regulations, and satisfying commitments included in OPWDD's transformation agreement with the federal Centers for Medicare and Medicaid Services (CMS), while minimizing any adverse impact on providers.

These amendments impose modest compliance response on regulated parties. Since the monthly unit of service required documentation of service delivery on at least twenty-two days each month; the emergency/proposed amendments will require additional documentation for at most nine days per month. OPWDD considers that these compliance activities are needed to implement the change in the unit of service and cannot be further minimized.

7. Small business participation: The change in the unit of service associated with OPWDD's and DOH's July 1, 2014 rate setting methodology was discussed with representatives of providers at meetings held between August 2013 and January 2014, including the New York State Association of Community and Residential Agencies (NYSACRA) (which represents some providers who have fewer than 100 employees).

OPWDD also provided statewide provider training during April and May of 2014 and posted guidance on the new service documentation requirements and billing procedures in June 2014.

Finally, these amendments do not impose any requirements on local governments, and (as noted in the Regulatory Impact Statement) have no fiscal impact on local governments.

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, certain townships in 10 other counties have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

OPWDD is implementing emergency/proposed regulations that change unit of service requirements for residential habilitation services provided in non-state operated supervised IRAs and CRs on or after July 1, 2014. The emergency/proposed regulations change the unit of service from a monthly to a daily unit of service and change the service documentation requirements.

The emergency/proposed amendments will require some additional paperwork to be completed by providers, including providers in rural areas. The monthly unit of service required documentation of service delivery on at least twenty-two days each month; the new unit of service will require daily documentation. In addition, providers will need to bill for each day that services are delivered, rather than billing on a monthly basis. The regulations also require providers to report retainer days, therapeutic leave days, and vacant bed days.

Although these regulations require changes in billing and service documentation, OPWDD expects that changes will be addressed with existing staff and technology.

These amendments do not impose any requirements on local governments, and (as noted in the Regulatory Impact Statement) have no fiscal impact on local governments, including local governments in rural areas.

2. Compliance requirements: The emergency/proposed regulations change the unit of service for residential habilitation in supervised IRAs and CRs from a monthly to a daily unit of service. The monthly unit of service required documentation of service delivery on at least twenty-two days each month; the new methodology will require daily documentation. In addition, providers will need to bill for each day that services are delivered, rather than billing on a monthly basis. The regulations also require providers to report retainer days, therapeutic leave days, and vacant bed days.

3. Professional services: No additional professional services will be required as a result of these regulations and the regulations will not add to the professional service needs of local governments.

4. Compliance costs: The emergency/proposed amendments will require additional paperwork to be completed by providers. The emergency/proposed regulations change the unit of service for residential habilitation in supervised IRAs and CRs from a monthly to a daily unit of service. The monthly unit of service required documentation of service delivery on at least twenty-two days each month; the new methodology will require daily documentation. In addition, providers will need to bill for each day that services are delivered, rather than billing on a monthly basis. The regulations also require providers to report retainer days, therapeutic leave days, and vacant bed days. OPWDD expects that the changes will be addressed with existing staff and technology and therefore compliance costs incurred by providers will be minimal.

5. Minimizing adverse economic impact: OPWDD has also 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 determined that the requirements in the emergency/proposed regulations represent the most optimal approach to instituting the necessary change associated with OPWDD's DOH's recently adopted rate setting regulations, and satisfying commitments included in OPWDD's transformation agreement with the federal Centers for Medicare and Medicaid Services (CMS), while minimizing any adverse impact on providers.

These amendments impose modest compliance response on regulated parties. Since the monthly unit of service required documentation of service delivery on at least twenty-two days each month; the emergency/proposed amendments will require additional documentation for at most nine days per month. OPWDD considers that these compliance activities are needed to implement the change in the unit of service and cannot be further minimized.

6. Participation of public and private interests in rural areas: The change in the unit of service associated with OPWDD's and DOH's July 1, 2014 rate setting methodology was discussed with representatives of providers at meetings held between August 2013 and January 2014, including the New York State Association of Community and Residential Agencies (NYSACRA), NYSARC, and CP of NYS (which represent some providers from rural areas of the state).

OPWDD also provided statewide provider training during April and May of 2014 and posted guidance on the new service documentation requirements and billing procedures in June 2014.

Job Impact Statement

OPWDD is not submitting a Job Impact Statement for this emergency/proposed rulemaking because this rulemaking will not have a substantial adverse impact on jobs or employment opportunities.

OPWDD is implementing emergency/proposed regulations that change unit of service requirements for residential habilitation services provided in non-state operated supervised IRAs and CRs on or after July 1, 2014. The emergency/proposed regulations change the unit of service from a monthly to a daily unit of service and change the service documentation requirements.

Although these regulations require changes in billing and service documentation, OPWDD expects that changes will be addressed with existing staff and technology.

The amendments are therefore expected to have no impact on jobs and employment opportunities with providers.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Pathway to Employment Fee Adjustment

I.D. No. PDD-28-14-00009-EP

Filing No. 569

Filing Date: 2014-07-01

Effective Date: 2014-07-01

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

Proposed Action: Amendment of Subparts 635-10, 635-99 and section 686.99 of Title 14 NYCRR.

Statutory authority: 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 emergency adoption of these amendments, which make changes to requirements concerning the newly created Pathway to Employment service, is necessary to protect the health, safety, and welfare of individuals receiving services in the OPWDD system.

Working with the Federal government to transform its service delivery system, OPWDD made a commitment to the Centers for Medicare and Medicaid Services (CMS) in a transformation agreement, to increase the number of individuals in competitive employment. An essential step toward fulfilling this commitment was the creation of OPWDD's new Pathway to Employment service, which was designed to serve as a bridge between pre-employment services and competitive employment/self employment. However, without the emergency/proposed amendments that increased reimbursement for Region 3 to an equitable and adequate level, it was unlikely that providers in Region 3 would have been willing to deliver this new service.

If OPWDD had not promulgated these regulations on an emergency basis, OPWDD would have risked loss of federal funding that is contingent on its commitment to CMS. The loss of this federal funding could have jeopardized the health, safety, and welfare of individuals receiving services in the OPWDD system, as without it, individuals are at risk of receiving services that are inadequate or insufficient in meeting their needs.

Subject: Pathway to Employment Fee Adjustment.

Purpose: To increase fees for Region 3 and make other changes to requirements for the pathway to employment service.

Text of emergency/proposed rule: • Clause 635-10.4(h)(1)(i)(l) is amended as follows:

(l) community experiences through volunteer opportunities, paid or unpaid internships, mentorships, apprenticeships, job clubs, work site visits, job placement, or other job exploration modalities (Note: individuals participating in paid internships must be paid at least the minimum wage *for the type of employment or self-employment sought through the internship opportunity*);

• A new clause 635-10.4(h)(1)(i)(m) is added as follows and the remaining clauses are renumbered accordingly:

(m) transportation to and from such community experiences;

• Paragraph 635-10.5(ad)(4) is amended as follows:

(4) Fee schedule. The hourly fees for the pathway to employment service are as follows:

Pathway to Employment-- Fee is hourly per person

Region	Individual Fee	Group Fee

Region 1	$43.04	$37.68
Region 2	$41.92	$35.64
Region 3	[$33.40] *$39.70*	[$28.40] *$33.74*

• Subdivision 635-99.1(bk) (the definition of individualized service plan (ISP)) is amended as follows:

(bk) … It is the responsibility of the person's chosen service coordinator to ensure that the ISP is reviewed at least semi-annually and includes consideration of the information obtained from other-than-OPWDD providers (if any), who are providing services ([i.e.]*e.g.*, as appropriate, the individualized *plan for employment (IPE)*[written rehabilitation plan (IWRP)] or the individualized education plan (IEP)). The service coordinator should also ensure that a review of the ISP occurs when the person and/or his or her advocate request it; or when the capabilities, capacities or preferences of the person have changed and warrant a review; or when it is determined by the service coordinator that the prevailing plan (or portions thereof) is/are ineffective. If habilitation services are provided (i.e., residential habilitation, day habilitation, community habilitation, supported employment, pre-vocational services, pathway to employment), the relevant habilitation plan(s) must be developed, and on a semiannual basis thereafter, reviewed and revised as necessary by the habilitation service provider. The ISP shall include or contain as attachments the following: …

• Subdivision 686.99(ab) (the definition of individualized service plan (ISP)) is amended as follows:

(ab) … It is the responsibility of the person's chosen service coordinator to ensure that the individualized service plan is reviewed at least semi-annually and includes consideration of the information obtained from other-than-OPWDD providers (if any), who are providing services ([i.e.]*e.g.*, as appropriate, the individualized *plan for employment (IPE-)*[written rehabilitation plan (IWRP)] or the individualized education plan (IEP)). The service coordinator should also ensure that a review of the ISP occurs when the person and/or his or her advocate request it; or when the capabilities, capacities or preferences of the person have changed and warrant a review; or when it is determined by the service coordinator that the prevailing plan (or portions thereof) is/are ineffective. If habilitation services are provided (i.e., residential habilitation, day habilitation, community habilitation, supported employment, prevocational services, pathway to employment), the relevant habilitation plan(s) must be developed, and on a semiannual basis thereafter, reviewed and revised as necessary by the habilitation service provider. The ISP shall include or contain as attachments the following: …

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 September 28, 2014.

Text of rule and any required statements and analyses may be obtained from: Karisa Capone, Regulatory Affairs Unit, Office for People with Developmental Disabilities (OPWDD), 44 Holland Avenue, 3rd Floor, Albany, NY 12229, (518) 474-1830, email: RAU.Unit@opwdd.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.

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

Regulatory Impact Statement

1. Statutory Authority:

a. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs, supports and services in the areas of care, treatment, habilitation, rehabilitation, and other education and training of persons with developmental disabilities, as stated in the New York State (NYS) Mental Hygiene Law Section 13.07.

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

c. OPWDD has the statutory authority to adopt regulations concerning the operation of programs and the provision of services, as stated in the NYS Mental Hygiene Law Section 16.00.

2. Legislative Objectives: The proposed amendments further the legislative objectives embodied in sections 13.07, 13.09, and 16.00 of the Mental Hygiene Law. The emergency/proposed amendments make changes to requirements concerning the newly created Pathway to Employment service.

3. Needs and Benefits: OPWDD recently promulgated regulations that established standards for the provision and funding of the newly created Pathway to Employment service. During the public comment period, OPWDD received many public comments and participated in discussions with providers about the proposed requirements. Upon consideration of the concerns raised, OPWDD decided that it was necessary to make some substantive and minor technical changes to the regulations. Consequently, OPWDD promulgated the emergency/proposed amendments on the effective date of the new service in order to prevent disruptions or inconsistency in service delivery.

The emergency/proposed amendments increase the hourly fees for Region 3, which encompasses approximately 52 counties in upstate New York. The original fees for Region 3 were significantly lower than fees for the other regions, and OPWDD determined that original fees provided inadequate reimbursement for this important service and would have deterred agencies from providing the new service. Consequently, the emergency/proposed regulations increase the hourly fees for Region 3 to adequate and equitable levels.

The emergency/proposed amendments also add transportation to and from community experiences as an allowable activity involving direct service provision. This addition will permit reimbursement for the time when Pathway to Employment staff accompany individuals to and from these community experiences. The omission of transportation in the original regulations was inadvertent. OPWDD recognizes that many individuals need the assistance of staff to be transported to and from community experiences and that this is an essential component of the Pathway to Employment service for these individuals.

The amendments also modify language requiring that individuals with internships be paid at least the minimum wage. The new language clarifies that the requirement applies to the minimum wage for the type of employment or self-employment sought through the internship opportunity.

Finally, the amendments delete an outdated reference to the "individualized written rehabilitation plan (IWRP)" and substitute the current term, "individualized plan for employment (IPE)."

4. Costs:

a. Costs to the Agency and to the State and its local governments:

Because the emergency/proposed amendments increase the fees for the Pathway to Employment service in Region 3, the amendments, viewed in isolation, would increase costs to OPWDD and the State. OPWDD cannot estimate the amount of this increase because OPWDD does not know how many hours of pathway to employment services will be delivered in Region 3. Pathway to Employment is a new service that is optional for providers. Since the service is new, OPWDD does not have any existing data available to use in estimating the amount of service that might be provided. Further, because the service is optional, OPWDD cannot predict the number of providers that would provide this service.

However, the amendments are actually cost neutral for the State in the short term. Without the amendments, it was unlikely that providers in Region 3 would have been willing to provide the Pathway to Employment service because the original reimbursement was inadequate. Individuals residing in this Region would have continued to receive other services such as prevocational services and day habilitation services in lieu of the Pathway to Employment service. OPWDD expects that as a result of the emergency/proposed amendments, providers in Region 3 will offer the Pathway to Employment service and, consequently, providers will experience a commensurate reduction in the provision of the other services mentioned above. OPWDD expects that the savings associated with the reduction in these other services will be approximately equal to the cost of providing the new Pathway to Employment service. In the long-term, OPWDD expects to see a reduction in Medicaid expenditures in Region 3, since the Pathway to Employment service was designed to serve as a bridge between prevocational services/day habilitation services and competitive employment/self employment. When individuals in Region 3 transition to competitive employment (or self employment) after completing the Pathway to Employment service, they will likely receive supported employment services, which are less costly than day habilitation and prevocational services.

Because these emergency/proposed amendments are not expected to increase costs to the State, they also are not expected to increase costs to local governments. Even if the emergency/proposed amendments led to a change in Medicaid expenditures in a particular county, these amendments will not have any fiscal impact on local governments, as 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: There are no capital costs for the emergency/proposed amendments. The emergency/proposed amendments will not result in any additional costs for regulated parties. Providers will be reimbursed for Pathway to Employment at the increased fees for Region 3 stated in the emergency/proposed amendments. Provider spending on delivering the Pathway to Employment service is expected to be at the level of the increased fees. OPWDD therefore expects these amendments to be cost neutral for providers.

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: No new paperwork is imposed by these amendments.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to these services.

8. Alternatives: OPWDD considered not making any changes to the recently promulgated regulations on the Pathway to Employment service, and therefore, not filing the emergency/proposed amendments. However, upon consideration of feedback from stakeholders in its system, OPWDD determined that the changes to the new regulations in the emergency/proposed amendments were necessary in order to adequately and equitably fund the new service in Region 3.

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

10. Compliance Schedule: The emergency rule is effective July 1, 2014. OPWDD has concurrently filed the rule as a Notice of Proposed Rule Making, and it intends to finalize the rule as soon as possible within the time frames mandated by the State Administrative Procedure Act. OPWDD provided training on the new requirements for the Pathway to Employment service, including the changes to requirements in the emergency/proposed amendments, to providers throughout the month of June 2014. Also, in discussions with providers during the public comment period for the proposed requirements on this new service (March 20, 2014 through May 5, 2014), OPWDD informed providers of its intention to increase the fees for Region 3. Finally, OPWDD notified providers of the emergency/proposed amendments in a mailing sent out around the time of their effective date.

Regulatory Flexibility Analysis

A regulatory flexibility analysis for small businesses and local governments is not being submitted because these amendments do not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses. There are no professional services, capital, or other compliance costs imposed on small businesses as a result of these amendments.

The emergency/proposed amendments make changes to requirements concerning the newly created Pathway to Employment service. Specifically, the amendments increase the fees for Region 3, add transportation as an allowable activity involving direct service provision, and make other minor technical changes. Providers will not incur costs as a result of these amendments. Conversely, the amendments increase reimbursement for Region 3, which allows for adequate reimbursement to providers for service delivery in this Region. Therefore, OPWDD expects that the adoption of these amendments will not have any adverse economic impact on small business providers of services. Further, these amendments do not impose any requirements on local governments, and (as noted in the Regulatory Impact Statement) have no fiscal impact on local governments.

Rural Area Flexibility Analysis

A Rural Area Flexibility Analysis for these amendments is not being submitted because the amendments do not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the amendments.

The emergency/proposed amendments make changes to requirements concerning the newly created Pathway to Employment service. Specifically, the amendments increase the fees for Region 3, add transportation as an allowable activity involving direct service provision, and make other minor technical changes. Providers will not incur costs as a result of these amendments. Conversely, the amendments increase reimbursement for Region 3, which allows for adequate reimbursement to providers for service delivery in this Region. Therefore, OPWDD expects that their adoption will not have any adverse impact on providers in rural areas. As noted previously, the amendments have no impact on local governments, including those in rural areas.

Job Impact Statement

OPWDD is not submitting a Job Impact Statement for this emergency/proposed rulemaking because this rulemaking will not have a substantial adverse impact on jobs or employment opportunities.

The emergency/proposed amendments make changes to requirements concerning the newly created Pathway to Employment service. Specifically, the amendments increase the fees for Region 3, add transportation as an allowable activity involving direct service provision, and make other minor technical changes. OPWDD expects that the amendments will result in a shift in services in Region 3 from day habilitation and prevocational services to the new Pathway to Employment service, but that overall reimbursement to providers in that Region will be unchanged. Any job loss due to the changes will therefore be offset by gains in jobs for staff providing Pathway to Employment services. Consequently, OPWDD expects that their adoption will not have any substantial adverse impact on jobs or employment opportunities.

These amendments should increase employment for persons with developmental disabilities, and should have a positive effect on jobs and employment opportunities for these individuals.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Amendments to Rate Setting for Non-State Providers: ICF/DD

I.D. No. PDD-28-14-00018-EP
Filing No. 574
Filing Date: 2014-07-01
Effective Date: 2014-07-02

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

Proposed Action: Amendment of Subpart 641-2 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.09(b) 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 emergency adoption of these amendments is necessary to protect the health, safety, and welfare of individuals receiving services in the OPWDD system.

The amendments are necessary to properly implement a new rate methodology for ICFs/DD. OPWDD made commitments to the Centers for Medicare and Medicaid Services (CMS) in order to qualify for substantial federal funding, including its commitment to implement the new ICF/DD rate methodology in July, 2014. To fulfill its commitment, OPWDD adopted proposed regulations to implement the new methodology effective July 2, 2014 through the regular rulemaking process. However, OPWDD became aware that substantive changes were necessary to properly implement the methodology subsequent to the proposal of the regulations, which was too late to incorporate the amendments through the regular rulemaking process. The State Administrative Procedure Act (SAPA) sets forth timeframes for the promulgation of regulations (including a mandatory public comment period) and prohibits the adoption of rules containing substantive changes in the terms of proposed regulations. SAPA requires additional rulemaking activities to make substantive changes through the regular rulemaking process which delays the effective date. The only way that the substantive amendments necessary to properly implement the new methodology could be promulgated at the same time that the original regulation is adopted is through the emergency rulemaking process.

If OPWDD did not promulgate these regulations on an emergency basis, OPWDD would fail to meet its commitment to CMS and would risk loss of the substantial federal funding that is contingent on this commitment. The loss of this federal funding could jeopardize the health, safety, and welfare of individuals receiving services in the OPWDD system, as without it, individuals would be at risk of receiving services that are inadequate or insufficient in meeting their needs.

Subject: Amendments to Rate Setting for Non-State Providers: ICF/DD.

Purpose: To amend the new rate methodology effective July 2014.

Substance of emergency/proposed rule (Full text is posted at the following State website:www.opwdd.ny.gov): The emergency/proposed regulations amend the newly-adopted 14 NYCRR Subpart 641-2, concerning the rate methodology for ICF/DD facilities. (Note that the text of the newly adopted regulation is the same as the text of the proposed regulation published in the spring of 2014.) The changes include the following:

A) A clarification that the "initial period" of the methodology is July 1, 2014 through June 30, 2015.

B) A clarification in the definitions of the "regional average general and administrative component" and the "provider average general and administrative component" to specify that the administrative allocation for the base year is agency administration, that depreciation is equipment depreciation and that program administration property is not part of the formula.

C) A clarification in the definition of "provider direct care hours", "provider salary clinical hours" and the "provider contracted clinical hours" to indicate that the formulas are based on rate sheet capacities rather than billed units and that the formula quotient is multiplied by rate sheet capacities rather than units.

D) A change in the "provider facility reimbursement" definition to

indicate that depreciation is equipment depreciation and that the formula utilizes provider rate sheet capacities rather than billed units or units.

E) A clarification to the "alternative operating component" to indicate that this section applies to providers that did not submit a cost report or submitted a cost report that was incomplete. The previous language applied the section in a more narrow set of circumstances, i.e., only when providers did not provide services during the base year.

F) The "day program services component" was revised by changing the word "and" to "plus" to add clarity to the intent of the section.

G) A note was added to the "capital component" section to indicate that the capital component language was not applicable to capital approved by OPWDD prior to July 1, 2014.

H) The "capital component" section was changed to clarify that start-up costs for ICFs/DD may be amortized over a one-year period beginning with certification.

I) Numerous changes were made to the capital threshold schedules to add clarity including the elimination of references to non-ICF/DD programs; the elimination of the non-relevant "architect/engineer design fee schedule for ground-up construction", and to standardize definitions, including that of soft costs.

J) A clarification was made to the "transition to new methodology" section to indicate that the described base rate is specifically the base operating rate.

K) A "rate correction" section was added to specify the policies and procedures for the correction of arithmetic or calculation errors.

L) A new section is added governing funding for those individuals identified as qualifying for template or auspice funding. The funding for ICF/DD services provided to these individuals will be determined in accordance with that section instead of the methodology that is generally applicable.

M) Various non-substantive technical corrections were added to correct inconsistencies, grammatical errors, etc.

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 September 28, 2014.

Text of rule and any required statements and analyses may be obtained from: Janet Felker, Regulatory Affairs Unit, Office for People With Developmental Disabilities (OPWDD), 44 Holland Avenue, 3rd Floor, Albany, NY 12229, (518) 474-1830, email: RAU.Unit@opwdd.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.

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

Regulatory Impact Statement

1. Statutory authority:

a. 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).

b. OPWDD has the statutory responsibility for setting Medicaid rates and fees for other services in facilities licensed or operated by OPWDD, as stated in section 43.02 of the Mental Hygiene Law.

2. Legislative objective: These emergency/proposed regulations further the legislative objectives embodied in sections 13.09(b) and 43.02 of the Mental Hygiene Law. The emergency/proposed regulations amend the newly adopted methodology for reimbursement of Intermediate Care Facilities for Persons with Developmental Disabilities (ICFs/DD).

3. Needs and benefits: OPWDD and the Department of Health (DOH) recently finalized a new reimbursement methodology, which complements existing OPWDD requirements concerning ICFs/DD, to satisfy commitments included in OPWDD's transformation agreement with the federal Centers for Medicare and Medicaid Services (CMS).

Prior to final adoption of the rule, OPWDD and DOH became aware of amendments that were needed to properly implement the new methodology. Many of the corrections and clarifications contained in these amendments are in response to concerns noted in public comments about the proposed regulations and questions submitted to OPWDD and DOH about the new methodology. The changes in these amendments clarify the new methodology and contain corrections that are necessary for its proper implementation.

4. Costs:

a. Costs to the Agency and to the State and its local governments: The emergency/proposed regulations are necessary to enable the State to properly implement the new methodology. There are no material fiscal changes that result from the amendments compared to the intent of the original methodology. The amendments, building on the original methodology, will be cost neutral to the state as the overall monies expended for such services will remain constant.

The new methodology and these accompanying amendments do not apply to the state as a provider of services.

There will be no savings or costs to local governments as a result of these regulations because pursuant to Social Services Law sections 365 and 368-a, either local governments incur no costs for these services or the State reimburses local governments for their share of the cost of Medicaid funded programs and services.

b. Costs to private regulated parties: The emergency/proposed regulations will amend the new reimbursement methodology for ICFs/DD and facilitate its proper implementation. Application of the new methodology (as amended) is expected to result in increased rates for some non-state operated providers and decreased rates for others. However, overall reimbursement to providers will not be changed. The amendments themselves may result in a minor increase or decrease in rates for some providers, but will have no overall impact on provider rates because budget neutrality is built into the new methodology.

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 emergency/proposed amendments are not expected to increase paperwork to be completed by providers.

7. Duplication: The emergency/proposed regulations do not duplicate any existing State or Federal requirements that are applicable to services for persons with developmental disabilities.

8. Alternatives: The amendments include a statement to clarify that the provisions of the capital component do not apply to capital approved by OPWDD prior to July 1, 2014. This statement reflects the intent of the original regulations although this was not explicit in the original language. The statement is included in the amendments in response to concerns raised that the regulations could be construed to permit the prior approval of capital to be subject to inappropriate review. OPWDD considered the inclusion of the statement to be unnecessary but after consideration decided to include it to make its intent explicit and the regulations clear.

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

10. Compliance schedule: OPWDD is adopting the amendments on an emergency basis effective July 2, 2014 to coincide with the final adoption of the proposed regulations which it is amending. (Note: OPWDD is also filing emergency regulations on July 1, 2014 so that the new ICF/DD methodology is in effect on that date.) During the spring of 2014, DOH and OPWDD trained providers on the new methodology as amended and issued rate sheets, guidance documents and training materials which reflected the anticipated amendments. OPWDD expects to finalize the amendments as soon as possible within the timeframes established by the State Administrative Procedure Act.

Regulatory Flexibility Analysis

1. Effect on small business: OPWDD has determined, through a review of the certified cost reports, that ICFs/DD are operated by 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 108 providers of ICFs/DD. OPWDD is unable to estimate the portion of these providers that may be considered to be small businesses.

The emergency/proposed amendments make changes to the newly-adopted regulations that revise the rate methodology for ICF/DD facilities. The changes in these amendments clarify the new methodology and contain corrections that are necessary for its proper implementation.

Many of the amendments correct technical errors in the original text or add clarifying material. In general, these provisions do not change the impact of the original regulations on providers, including providers that are small businesses, or have positive impacts. However, several technical amendments make changes to the original text that may translate into a minor increase or decrease in the rates and may have a modest negative impact on some small business providers of ICFs/DD. For example, the change from "billed units" to "rate sheet capacities" in the methodology may result in immaterial positive or negative differences in the final rates. These immaterial differences will not impose an adverse economic impact on small business providers and in any case, the overall funding to providers will remain the same because of budget neutrality. The amendments do not change any requirements for record-keeping or other compliance requirements that are contained in the original regulations.

Finally, these amendments do not impose any requirements on local governments, and (as noted in the Regulatory Impact Statement) have no fiscal impact on local governments.

2. Compliance requirements: There are no new compliance activities imposed by these amendments.

3. Professional services: No additional professional services will be required as a result of these regulations and the regulations will not add to the professional service needs of local governments.

4. Compliance costs: There are no compliance costs since there are no new compliance activities imposed by these amendments.

5. Economic and technological feasibility: The emergency/proposed amendments do not impose on regulated parties the use of any new technological processes.

6. Minimizing adverse economic impact: As noted above, some of the technical changes may affect the rates either positively or negatively. OPWDD does not expect that these immaterial differences would impose an adverse economic impact on small business providers. In any case, the overall funding to providers will remain the same because of budget neutrality.

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. The emergency/proposed regulations minimize adverse economic impact in several ways. First, the anticipated fiscal impact of the amendments is expected to be slight because only minor changes in the rates result from the technical amendments. In addition, OPWDD notes that the rate sheets distributed to providers in June anticipated the promulgation of these amendments by incorporating the technical changes into the methodology underlying the rate calculation, and providers have therefore already been developing plans to implement the new rate methodology based on the incorporation of these amendments. Therefore, providers will not need to make any additional adjustments in fiscal plans as a result of the minor fiscal impact of the amendments.

The amendments also contain several changes that will be positive for providers. The amendments include changes which explicitly state that the new provisions related to the calculation of the capital component do not apply to capital approved prior to July 1, 2014. While this reflects the original intention and is not a change per se, the inclusion of this specific language helps providers to keep faith with financial institutions who can rest assured that anticipated capital reimbursement will continue to be received for projects. In addition, new language was added to explicitly address the correction of arithmetic or calculation errors. In the event that such errors occur, providers have a referenced mechanism to request corrections of these errors. Finally, related to the calculation of the capital component, new items were added to the chart of thresholds for "soft costs," such as security and clerk of the works, which will permit the reimbursement of these items up to the threshold amount. This corrects the inadvertent exclusion of these items in the original proposed regulations.

7. Small business participation: OPWDD and DOH met with representatives of providers to discuss the new methodology (including provider concerns) at numerous meetings beginning in August 2013, including the New York State Association of Community and Residential Agencies (NYSACRA) (which represents some providers that have fewer than 100 employees). OPWDD and DOH posted material about the original proposed regulations on the respective agencies' websites, and OWPDD notified all providers affected by the proposed regulation of the materials posted. In addition, OPWDD and DOH conducted six training sessions for providers by videoconference throughout NYS during April-May 2014. As noted above, DOH sent each provider affected by the new methodology the rate sheet and documents that described the impact of the new regulations (including the emergency/proposed amendments) on the specific provider. OPWDD and DOH received public comments on the original regulations and answered numerous questions. Many of the changes contained in these emergency/proposed amendments were made as a result of the concerns raised by the regulated parties through one or more of these vehicles. OPWDD is also posting materials about these emergency/proposed amendments on its website and is notifying all affected providers about the availability of these materials.

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, certain townships in 10 other counties have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange, and Saratoga.

The emergency/proposed amendments make changes to the newly-adopted regulations that revise the rate methodology for ICF/DD facilities. The changes in these amendments clarify the new methodology and contain corrections that are necessary for its proper implementation.

Many of the amendments correct technical errors in the original text or add clarifying material. In general, these provisions do not change the impact of the original regulations on providers, including providers in rural areas, or have positive impacts. However, several technical amendments make changes to the original text that may translate into a minor increase or decrease in the rates and may have a modest negative impact on some providers of ICFs/DD in rural areas. For example, the change from "billed units" to "rate sheet capacities" in the methodology may result in immaterial positive or negative differences in the final rates. These immaterial differences will not impose an adverse economic impact on providers in rural areas and in any case, the overall funding to providers will remain the same because of budget neutrality. The amendments do not change any requirements for record-keeping or other compliance requirements that are contained in the original regulations.

Finally, these amendments do not impose any requirements on local governments, and (as noted in the Regulatory Impact Statement) have no fiscal impact on local governments, including local governments in rural areas.

2. Compliance requirements: There are no new compliance activities imposed by these amendments.

The amendments will have no effect on local governments.

3. Professional services: No additional professional services will be required as a result of these regulations and the regulations will not add to the professional service needs of local governments.

4. Compliance costs: There are no compliance costs since there are no new compliance activities imposed by these amendments.

5. Minimizing adverse economic impact: As noted above, some of the technical changes may affect the rates either positively or negatively. OPWDD does not expect that these immaterial differences would impose an adverse economic impact on providers in rural areas. In any case, the overall funding to providers will remain the same because of budget neutrality.

OPWDD has reviewed and considered the approaches for minimizing adverse impact on providers in rural areas as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act. The emergency/proposed regulations minimize adverse economic impact in several ways. First, the anticipated fiscal impact of the amendments is expected to be slight because only minor changes in the rates result from the technical amendments. In addition, OPWDD notes that the rate sheets distributed to providers in June anticipated the promulgation of these amendments by incorporating the technical changes into the methodology underlying the rate calculation, and providers have therefore already been developing plans to implement the new rate methodology based on the incorporation of these amendments. Therefore, providers will not need to make any additional adjustments in fiscal plans as a result of the minor fiscal impact of the amendments.

The amendments also contain several changes that will be positive for providers. The amendments include changes which explicitly state that the new provisions related to the calculation of the capital component do not apply to capital approved prior to July 1, 2014. While this reflects the original intention and is not a change per se, the inclusion of this specific language helps providers to keep faith with financial institutions who can rest assured that anticipated capital reimbursement will continue to be received for projects. In addition, new language was added to explicitly address the correction of arithmetic or calculation errors. In the event that such errors occur, providers have a referenced mechanism to request corrections of these errors. Finally, related to the calculation of the capital component, new items were added to the chart of thresholds for "soft costs," such as security and clerk of the works, which will permit the reimbursement of these items up to the threshold amount. This corrects the inadvertent exclusion of these items in the original proposed regulations.

6. Participation of public and private interests in rural areas: OPWDD and DOH met with representatives of providers to discuss the new methodology (including provider concerns) at numerous meetings beginning in August 2013, including providers in rural areas, such as NYSARC, the NYS Association of Community and Residential Agencies, NYS Catholic Conference, and CP Association of NYS. OPWDD and DOH posted material about the original proposed regulations on the respective agencies' websites, and OWPDD notified all providers affected by the proposed regulation of the materials posted. In addition, OPWDD and DOH conducted six training sessions for providers by videoconference throughout NYS during April-May 2014. As noted above, DOH sent each provider affected by the new methodology the rate sheet and documents that described the impact of the new regulations (including the emergency/proposed amendments) on the specific provider. OPWDD and DOH received public comments on the original regulations and answered numerous questions. Many of the changes contained in these emergency/proposed amendments were made as a result of the concerns raised by the regulated parties through one or more of these vehicles. OPWDD is also posting materials about these emergency/proposed amendments on its website and is notifying all affected providers about the availability of these materials.

Job Impact Statement

OPWDD is not submitting a Job Impact Statement for this emergency/proposed rulemaking because this rulemaking will not have a substantial adverse impact on jobs or employment opportunities.

The emergency/proposed amendments make changes to the newly-adopted regulations that revise the rate methodology for ICF/DD facilities. The changes in these amendments clarify the new methodology and contain corrections that are necessary for its proper implementation.

As noted in the Regulatory Flexibility Analysis, the emergency/proposed amendments have no adverse economic impact on providers and do not impose any changes to record-keeping or other compliance activities. While some providers may experience an immaterial adverse economic impact as a result of these amendments, the effect on jobs as a result is expected to be negligible. In any case, other providers would experience a commensurate slight increase in funding and there will be no overall economic impact (and jobs impact) because the methodology is budget neutral. The amendments are therefore expected to have no impact on jobs and employment opportunities with providers.

As noted in the emergency justification, if OPWDD did not promulgate these amendments, OPWDD risks the loss of substantial federal funds. This loss of substantial funds could adversely impact jobs and employment opportunities in New York State. This potential adverse effect on jobs and employment opportunities is avoided by the promulgation of these amendments.

Public Service Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

A Proposed Water Supply Agreement Between New York American Water Inc. and the Glenwood Water District

I.D. No. PSC-28-14-00003-EP

Filing Date: 2014-06-26

Effective Date: 2014-06-26

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

Proposed Action: The Public Service Commission issued an order authorizing New York American Water, Inc. to enter into a water supply agreement with the Glenwood Water District.

Statutory authority: Public Service Law, section 89-c

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

Specific reasons underlying the finding of necessity: This action is taken on an emergency basis, under Public Service Law § 89-c and 110, to authorize New York American Water, Inc. (NYAW) to enter into a 12 month water supply agreement with the Glenwood Water District (Glenwood), commencing July 1, 2014.

Emergency action is required because Glenwood's current water source, the Roslyn Water District (Roslyn) is reducing the amount supplied to Glenwood on June 30, 2014 due to reduced capacity. Glenwood has no independent water supply and NYAW is the only viable source, therefore, if the water supply agreement is not authorized by July 1, 2014, Glenwood residents will be left with an insufficient supply of water.

Subject: A proposed water supply agreement between New York American Water Inc. and the Glenwood Water District.

Purpose: To grant, reject or modify the proposed water supply agreement.

Substance of emergency/proposed rule: The Public Service Commission adopted an Order authorizing New York American Water, Inc. to enter into a 12 month water supply agreement with the Glenwood Water District to commence July 1, 2014.

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 September 23, 2014.

Text of rule may be obtained from: 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, 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 amended rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-W-0215EP1)

NOTICE OF ADOPTION

Allowing Con Ed's Filing to Revise PSC No. 9—Gas

I.D. No. PSC-20-13-00011-A

Filing Date: 2014-06-26

Effective Date: 2014-06-26

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

Action taken: On 6/26/14, the PSC adopted an order allowing Consolidated Edison Company of New York, Inc.'s (Con Ed) tariff revisions to Interruptible Service Options contained in PSC No. 9—Gas.

Statutory authority: Public Service Law, sections 65 and 66(12)

Subject: Allowing Con Ed's filing to revise PSC No. 9—Gas.

Purpose: To allow Con Ed's filing to revise PSC No. 9—Gas.

Substance of final rule: The Commission, on June 26, 2014, adopted an order approving a filing by Consolidated Edison Company of New York, Inc. to make revisions to Interruptible Service Options to eliminate the temperature control option, contained in PSC No. 9—Gas.

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-0186SA1)

NOTICE OF ADOPTION

Allowing UWNY's Filing for a Rate Increase, with Modifications

I.D. No. PSC-39-13-00019-A

Filing Date: 2014-06-26

Effective Date: 2014-06-26

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

Action taken: On 6/26/14, the PSC adopted an order establishing rates for United Water New York Inc. (UWNY).

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

Subject: Allowing UWNY's filing for a rate increase, with modifications.

Purpose: To allow UWNY's filing for a rate increase, with modifications.

Substance of final rule: The Commission, on June 26, 2014, adopted an order establishing a rate plan for United Water New York, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-W-0295SA1)

NOTICE OF ADOPTION

Approving, with Modification, NFGDC's Management Audit Implementation Plan

I.D. No. PSC-07-14-00007-A
Filing Date: 2014-06-30
Effective Date: 2014-06-30

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

Action taken: On 6/26/14, the PSC adopted an order approving National Fuel Gas Distribution Corporation's (NFGDC) Management Audit Implementation Plan, with modification.

Statutory authority: Public Service Law, section 66(19)b

Subject: Approving, with modification, NFGDC's Management Audit Implementation Plan.

Purpose: To approve, with modification, NFGDC's Management Audit Implementation Plan.

Substance of final rule: The Commission, on June 26, 2014, adopted an order approving, with one modification, the Management Audit Implementation Plan submitted by National Fuel Gas Distribution Corporation in response to the Commission's August 21, 2013 Order, 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.

(11-G-0580SA1)

NOTICE OF ADOPTION

Allowing Niagara Mohawk's Filing to Establish Fees for Residential Customers Who Choose to Opt Out of the Use of AMR Meters

I.D. No. PSC-08-14-00016-A
Filing Date: 2014-06-30
Effective Date: 2014-06-30

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

Action taken: On 6/26/14, the PSC adopted an order allowing Niagara Mohawk Power Corporation d/b/a National Grid's (Niagara Mohawk) tariff filing contained in PSC No. 219—Gas, to go into effect.

Statutory authority: Public Service Law, section 66(12)

Subject: Allowing Niagara Mohawk's filing to establish fees for residential customers who choose to opt out of the use of AMR meters.

Purpose: To allow Niagara Mohawk's filing to establish fees for residential customers who choose to opt out of the use of AMR meters.

Substance of final rule: The Commission, on June 26, 2014, allowed a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid, contained in PSC No. 219—Gas, to establish fees to allow residential customers to opt out of using Automated Meter Reading meters.

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.

(14-M-0039SA2)

NOTICE OF ADOPTION

Allowing Niagara Mohawk's Filing to Establish Fees for Residential Customers Who Choose to Opt Out of the Use of AMR Meters

I.D. No. PSC-08-14-00017-A
Filing Date: 2014-06-30
Effective Date: 2014-06-30

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

Action taken: On 6/26/14, the PSC adopted an order allowing Niagara Mohawk Power Corporation d/b/a National Grid's (Niagara Mohawk) tariff filing contained in PSC No. 220 - Electricity, to go into effect.

Statutory authority: Public Service Law, sections 66(12)

Subject: Allowing Niagara Mohawk's filing to establish fees for residential customers who choose to opt out of the use of AMR meters.

Purpose: To allow Niagara Mohawk's filing to establish fees for residential customers who choose to opt out of the use of AMR meters.

Substance of final rule: The Commission, on June 26, 2014, allowed a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid, contained in PSC No. 220 – Electricity, to establish fees to allow residential customers to opt out of using Automated Meter Reading meters.

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.

(14-M-0039SA1)

NOTICE OF ADOPTION

Allowing KEDLI's Filing to Establish Fees for Residential Customers Who Choose to Opt Out of the Use of AMR Meters

I.D. No. PSC-08-14-00019-A
Filing Date: 2014-06-30
Effective Date: 2014-06-30

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

Action taken: On 6/26/14, the PSC adopted an order allowing KeySpan Gas East Corporation d/b/a Brooklyn Union of L.I. (KEDLI) tariff filing contained in PSC No 1—Gas, to go into effect.

Statutory authority: Public Service Law, section 66(12)

Subject: Allowing KEDLI's filing to establish fees for residential customers who choose to opt out of the use of AMR meters.

Purpose: To allow KEDLI's filing to establish fees for residential customers who choose to opt out of the use of AMR meters.

Substance of final rule: The Commission, on June 26, 2014, allowed a tariff filing by KeySpan Gas East Corporation d/b/a Brooklyn Union of L.I., contained in PSC No. 1—Gas, to establish fees to allow residential customers to opt out of using Automated Meter Reading meters.

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.

(14-M-0039SA3)

NOTICE OF ADOPTION

Adopting an Emergency Rule as a Permanent Rule

I.D. No. PSC-10-14-00002-A
Filing Date: 2014-06-27
Effective Date: 2014-06-27

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

Action taken: On 6/26/14, the PSC adopted an order approving an emergency rule making permanent an Order Requiring Risk Assessments and Remediation of New York Gas Facilities, issued on February 20, 2014.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Adopting an emergency rule as a permanent rule.

Purpose: To adopt an emergency rule as a permanent rule.

Substance of final rule: The Commission, on June 26, 2014, adopted an emergency rule as a permanent rule approving an Order Requiring Risk Assessments and Remediation of New York Gas Facilities, issued February 20, 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.
(11-G-0565EA1)

NOTICE OF ADOPTION

Granting, in Part and Denying, in Part, NYSEG's Petition for a Declaratory Ruling

I.D. No. PSC-10-14-00008-A
Filing Date: 2014-07-01
Effective Date: 2014-07-01

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

Action taken: On 6/26/14, the PSC adopted an order granting, in part and denying, in part, New York State Electric & Gas Corporation's (NYSEG) petition for a Declaratory Ruling.

Statutory authority: Public Service Law, sections 65 and 66

Subject: Granting, in part and denying, in part, NYSEG's petition for a Declaratory Ruling.

Purpose: To grant, in part and deny, in part, NYSEG's petition for a Declaratory Ruling.

Substance of final rule: The Commission, on June 26, 2014, adopted an order granting, in part and denying, in part, New York State Electric and Gas Corporation's (NYSEG) petition for a declaratory ruling concerning regulation of a proposed compressed natural gas supply station and related facilities and authorized NYSEG to charge ratepayers through its Gas Supply Charge for the supplier's costs to provide the compressed natural gas, which are the contractual costs incurred to meet peak demand. All remaining facility costs are subject to review and normal rate treatment, 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.
(14-G-0019SA1)

NOTICE OF ADOPTION

Denying Comverge, Inc., *et al.'s* Petition for Rehearing and Granting Reconsideration

I.D. No. PSC-15-14-00006-A
Filing Date: 2014-06-30
Effective Date: 2014-06-30

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

Action taken: On 6/26/14, the PSC adopted an order denying the petition for rehearing by Comverge, Inc., et al. seeking modification of the Demand response Programs established by the Commission in an Order dated March 13, 2014.

Statutory authority: Public Service Law, sections 22, 65(1), 66(1) and (12)(a)

Subject: Denying Comverge, Inc., et al.'s petition for rehearing and granting reconsideration.

Purpose: To deny Comverge, Inc., et al.'s petition for rehearing and granting reconsideration.

Substance of final rule: The Commission, on June 26, 2014, adopted an order denying a petition by Comverge, Inc., EnergyConnect, EnerNOC, Inc. and Innoventive Power, LLC seeking rehearing of the Commission's Order Adopting Tariff Revisions with Modifications dated March 13, 2014, but granted reconsideration, 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-0573SA2)

NOTICE OF ADOPTION

Allowing RG&E's Filing to Revise Service Classification No. 1

I.D. No. PSC-15-14-00009-A
Filing Date: 2014-06-26
Effective Date: 2014-06-26

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

Action taken: On 6/26/14, the PSC adopted an order allowing Rochester Gas and Electric Corporation's (RG&E) tariff revisions to Service Classification No. 1, Street Lighting Service, in PSC No. 18—Electricity to go into effect.

Statutory authority: Public Service Law, section 66(12)

Subject: Allowing RG&E's filing to revise Service Classification No. 1.

Purpose: To allow RG&E's filing to revise Service Classification No. 1

Substance of final rule: The Commission, on June 26, 2014, adopted an order approving a filing by Rochester Gas and Electric Corporation to make revisions to Service Classification No. 1, to add Metal Halide Arc Lighting to its Street Lighting Service in PSC No. 18—Electricity to become effective July 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.

(14-E-0106SA1)

NOTICE OF ADOPTION

Approving the Transfer of Ownership and Operational Interests in the Danskammer Generation Facility

I.D. No. PSC-16-14-00012-A
Filing Date: 2014-06-30
Effective Date: 2014-06-30

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

Action taken: On 6/26/14, the PSC adopted an order approving the petition by Helios Power Capital LLC (Helios) and others, the transfer of ownership interests in the Danskammer Generation Facility to Mercuria Energy America, Inc.

Statutory authority: Public Service Law, sections 5(1)(b) and 70

Subject: Approving the transfer of ownership and operational interests in the Danskammer Generation Facility.

Purpose: To approve the transfer of ownership and operational interests in the Danskammer Generation Facility.

Substance of final rule: The Commission, on June 26, 2014, adopted an order approving a petition by Helios Power Capital, LLC, Danskammer Energy, LLC and Mercuria Energy America, Inc. (Mercuria) to transfer ownership and operational interests in the Danskammer Generation Facility located in the Town of Newburgh and granted Mercuria as the controlling indirect owner of the facility, to operate it under lightened regulation, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Deborah Swatling, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2659, email: deborah.swatling@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-E-0117SA1)

NOTICE OF ADOPTION

Approving the Financing of the Alliance Affiliates

I.D. No. PSC-18-14-00009-A
Filing Date: 2014-06-30
Effective Date: 2014-06-30

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

Action taken: On 6/26/14, the PSC adopted an order approving the petition by affiliates of Alliance Energy New York, LLC. (Alliance Affiliates) to enter into credit facilities in an amount not to exceed $30 million.

Statutory authority: Public Service Law, section 69

Subject: Approving the financing of the Alliance Affiliates.

Purpose: To approve the financing of the Alliance Affiliates.

Substance of final rule: The Commission, on June 26, 2014, adopted an order approving a petition by Allegany Generating Station LLC, Alliance NYGT LLC, Carthage Energy LLC, Power City Partners LLC, Seneca Power Partners, L.P., Sterling Power Partners, L.P., Alliance Energy Transmissions LLC and Alliance Energy Transmissions-Syracuse LLC to enter into credit facilities up to a maximum amount of $30 million, 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.

(14-M-0143SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether to Permit the Use of the MiniCloset—5N Multi Tenant Smart Meter

I.D. No. PSC-28-14-00011-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by Quadlogic Controls Corporation for approval to use the MiniCloset—5N Multi Tenant Smart Meter in electric submeter applications.

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

Subject: Whether to permit the use of the MiniCloset—5N Multi Tenant Smart Meter.

Purpose: Pursuant to 16 NYCRR Parts 93 and 96, it is necessary to permit the use of the MiniCloset—5N Multi Tenant Smart Meter.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Quadlogic Controls Corporation to use the MiniCloset—5N Multi Tenant Smart Meter in residential submetering applications, and any 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.

(14-E-0223SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

KeySpan Gas East Corporation d/b/a National Grid (KEDLI) Petition for Deferral

I.D. No. PSC-28-14-00012-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 the petition of KeySpan Gas East Corp. requesting authorization to defer certain cost items in its capital spending programs and for other relief.

Statutory authority: Public Service Law, sections 4, 5, 64, 65 and 66

Subject: KeySpan Gas East Corporation d/b/a National Grid (KEDLI) Petition for Deferral.

Purpose: To authorize KEDLI to defer a cost item(s) for future recovery in rates.

Substance of proposed rule: The Public Service Commission is considering a Petition for Deferral submitted by KeySpan Gas East Corporation d/b/a National Grid (KEDLI). In its deferral petition, KEDLI requests the ability to defer certain costs associated with its capital spending programs and to eliminate other existing deferral mechanisms. The Commission may grant, deny or modify, in whole or in part, KEDLI's deferral petition.

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

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

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

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

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

(14-G-0214SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether to Permit the Use of the Sensus FlexNet 510M and 520M Radio Transceivers

I.D. No. PSC-28-14-00013-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by United Water New Rochelle, Inc. for approval to use the Sensus FlexNet 510M and 520M Radio Transceivers.

Statutory authority: Public Service Law, section 89-d(1)

Subject: Whether to permit the use of the Sensus FlexNet 510M and 520M Radio Transceivers.

Purpose: Pursuant to 16 NYCRR Part 500.3, it is necessary to permit the use of the Sensus FlexNet 510M and 520M Radio Transceivers.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by United Water New Rochelle, Inc. to use the Sensus FlexNet 510M and 520M Radio Transceivers in New York.

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

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

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

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

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

(14-W-0225SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition to Transfer Systems, Franchises and Assets

I.D. No. PSC-28-14-00014-P

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

Proposed Action: The Commission is considering whether to grant, deny, modify or condition, in whole or in part, the petition of Comcast and Charter for approval to transfer telephone and cable systems, franchises and assets.

Statutory authority: Public Service Law, sections 99(2), 100(1) and 222

Subject: Petition to transfer systems, franchises and assets.

Purpose: To consider the Comcast and Charter transfer of systems, franchise and assets.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny, or modify in whole or in part, the joint petition filed by Comcast Corporation (Comcast) and Charter Communications, Inc. (Charter) seeking approval under Public Service Law (PSL) §§ 99, 100 and 222 to transfer certain Charter cable and telephone systems, franchises and assets to Comcast. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may take such further action as deemed warranted.

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) 408-1978, email: secretary@dps.ny.gov

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

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

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

(14-M-0219SP1)

Department of Taxation and Finance

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

City of Yonkers Withholding Tables and Other Methods

I.D. No. TAF-28-14-00002-EP

Filing No. 561

Filing Date: 2014-06-26

Effective Date: 2014-06-26

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

Proposed Action: Repeal of Appendix 10-A; addition of new Appendix 10-A; and amendment of section 251.1 of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subdivision First, 671(a)(1), 697(a), 1321, 1329(a) and 1332(a); Code of the City of Yonkers, sections 15-105, 15-108(a) and 15-111; City of Yonkers Local Law No. 11-2014

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

Specific reasons underlying the finding of necessity: Amendments to the Code of the City of Yonkers enacted by Local Law No. 11-2014 on June 19, 2014, under the authority of Tax Law section 1321, increased the rate of the city income tax surcharge from 15 percent of net state income tax to 16 3/4 percent of that amount, effective January 1, 2014. The increase necessitates adjustments to the withholding tables and other methods in Appendix 10-A of 20 NYCRR, and amendments to section 251.1 of 20 NYCRR. Sections 1309, 671(a), and other comparable sections of the Tax Law require that employers withhold from employee wages amounts that are substantially equivalent to the tax reasonably estimated to be due for the taxable year. To that end, the withholding rates for the remainder of tax year 2014 reflect the full amount of tax liability for tax year 2014. This rule is being adopted on an emergency basis in order to assure that the new withholding tables and other methods can apply beginning on August 1, 2014, and that the information can be disseminated to employers as soon as possible to allow them sufficient time to make the requisite changes to their payroll systems. Expeditious implementation of the new withholding tables on August 1, 2014 will allow taxpayers to pay the increased income tax surcharge in as many increments as possible. The City of Yonkers has advised that it is necessary that the withholding tables be effective August 1 for its Budget to be in compliance and for the City's fiscal health.

Subject: City of Yonkers withholding tables and other methods.

Purpose: To provide current City of Yonkers withholding tables and other methods.

Substance of emergency/proposed rule (Full text is posted at the following State website:www.tax.ny.gov): Sections 671(a)(1) and 1329(a) of the Tax Law and section 15-105 of the Code of the City of Yonkers require

that employers withhold from employee wages amounts that are substantially equivalent to the amount of City of Yonkers income tax surcharge reasonably estimated to be due for the taxable year. The provisions authorize the Commissioner of Taxation and Finance to provide for withholding of these taxes through regulations promulgated by the Commissioner.

This rule repeals Appendix 10-A of Title 20 NYCRR and adds a new Appendix 10-A to provide new City of Yonkers withholding tables and other methods. The new tables and other methods reflect amendments to the Code of the City of Yonkers enacted by Local Law No. 11-2014 pursuant to Tax Law section 1321 that increased the rate of the city income tax surcharge from 15 percent of net state income tax to 16 3/4 percent of that amount, effective January 1, 2014. This rule also reflects the increase in the City of Yonkers supplemental withholding tax rate to be applied to supplemental wage payments. The rule applies to wages and other compensation subject to withholding paid on or after August 1, 2014. Accordingly, withholding rates reflect the full amount of liability for 2014 applied to a 5-month period.

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 September 23, 2014.

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Department of Taxation and FInance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 457-2254, email: tax.regulations@tax.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: Tax Law, section 171, subdivision First, generally authorizes the Commissioner of Taxation and Finance to promulgate regulations; section 671(a)(1) provides that the method of determining the amounts of New York State personal income tax to be withheld will be prescribed by regulations promulgated by the Commissioner; section 697(a) provides the authority for the Commissioner to make such rules and regulations as are necessary to enforce the personal income tax; section 1329(a) of the Tax Law and section 15-105 of the Code of the City of Yonkers provide that the City of Yonkers income tax surcharge shall be withheld in the same manner and form as that required for State income tax; section 1332(a) of the Tax Law and section 15-108(a) of the Code of the City of Yonkers provide that the income tax surcharge shall be administered and collected by the Commissioner in the same manner as the tax imposed by Article 22 of the Tax Law. Section 1321 of the Tax Law authorizes the City of Yonkers to adopt and amend local laws imposing a city income tax surcharge to be administered, collected and distributed by the Commissioner. Local Law No. 11-2014 amended section 15-111 of the Code of the City of Yonkers to increase the city income tax surcharge from 15 to 16 3/4 percent of net state income tax.

2. Legislative objectives: New Appendix 10-A of Title 20 NYCRR contains the revised City of Yonkers withholding tables and other methods applicable to wages and other compensation paid on or after August 1, 2014. The amendments reflect the increase in the City of Yonkers income tax surcharge from 15 to 16 3/4 percent of net state income tax, pursuant to amendments to section 15-111 of the code of the City of Yonkers made by Local Law No. 11-2014 of the City of Yonkers, which was enacted under the authority of Section 1321 of the Tax Law. The rule also reflects this increase in the City of Yonkers supplemental withholding rate to be applied to supplemental wage payments.

3. Needs and benefits: This rule sets forth City of Yonkers withholding tables and other methods, applicable to wages and other compensation paid on or after August 1, 2014, reflecting the increase in the City of Yonkers income tax surcharge from 15 percent of net state income tax to 16 3/4 percent of that amount. This rule benefits taxpayers by providing City of Yonkers withholding rates that reflect the current income tax rates. If this rule is not promulgated, the use of the existing withholding tables would cause some under-withholding for some taxpayers and impede the City of Yonkers' revenue.

4. Costs: (a) Costs to regulated parties for the implementation and continuing compliance with this rule: Since (i) the Tax Law and the Code of the City of Yonkers already mandate withholding in amounts that are substantially equivalent to the amount of City of Yonkers income tax surcharge on residents reasonably estimated to be due for the taxable year, and (ii) this rule merely conforms Appendix 10-A of Title 20 NYCRR to the rates of the City of Yonkers income tax surcharge on residents, any compliance costs to employers associated with implementing the revised withholding tables and other methods are due to such statutes, and not to this rule.

(b) Costs to this agency, the State and local governments for the implementation and continuation of this rule: Since the need to revise the City of Yonkers income tax surcharge on residents withholding tables and other methods arises due to the statutory change in the rate of the City of Yonkers income tax surcharge, there are no costs to this agency or the State and local governments that are due to the promulgation of this rule.

(c) Information and methodology: This analysis is based on a review of the statutory requirements and on discussions among personnel from the Department's Taxpayer Guidance Division, Office of Counsel, Office of Tax Policy Analysis Bureau of Tax and Fiscal Studies, Office of Budget and Management Analysis, and Management Analysis and Project Services Bureau.

5. Local government mandates: Local governments, as employers, would be required to implement the new withholding tables and other methods in the same manner and at the same time as any other employer.

6. Paperwork: This rule will not require any new forms or information. The reporting requirements for employers are not changed by this rule. Employers will be notified of the changed tables and other methods and directed to the Department's Web site for the new tables and other methods.

7. Duplication: This rule does not duplicate any other requirements.

8. Alternatives: Since sections 671(a) and 1329(a) of the Tax Law and section 15-105 of the Code of the City of Yonkers require that City of Yonkers withholding tables and other methods be promulgated, there are no viable alternatives to providing such tables and other methods.

9. Federal standards: This rule does not exceed any minimum standards of the federal government for the same or similar subject area.

10. Compliance schedule: Affected employers will be receiving the required information in sufficient time to implement the revised City of Yonkers withholding tables and other methods for wages and other compensation paid on or after August 1, 2014.

Regulatory Flexibility Analysis

1. Effect of rule: Small businesses, within the meaning of the State Administrative Procedure Act, that are currently subject to the City of Yonkers withholding requirements will continue to be subject to these requirements. This rule should, therefore, have little or no effect on small businesses other than the requirement of conforming to the new withholding tables and other methods. All small businesses that are employers or are otherwise subject to the City of Yonkers withholding requirements must comply with the provisions of this rule.

2. Compliance requirements: This rule requires small businesses and local governments that are already subject to the City of Yonkers withholding requirements to continue to deduct and withhold amounts from employees using the revised City of Yonkers withholding tables and other methods. The promulgation of this rule will not require small business or local governments to submit any new information, forms, or paperwork.

3. Professional services: Many small businesses currently utilize bookkeepers, accountants and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of such services.

4. Compliance costs: Small businesses and local governments are already subject to the City of Yonkers withholding requirements. Therefore, small businesses and local governments are accustomed to withholding revisions, including minor programming changes for federal, state, City of New York, and City of Yonkers purposes. As such, these changes should place no additional burdens on small businesses and local governments. See, also, section 4(a) of the Regulatory Impact Statement for this rule.

5. Economic and technological feasibility: This rule does not impose any economic or technological compliance burdens on small businesses or local governments.

6. Minimizing adverse impact: Section 671(a)(1) of the Tax Law requires that New York State withholding tables and other methods be promulgated. Section 1329(a) of the Tax Law requires that the City of Yonkers withholding of tax on wages shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law. There are no provisions in the Tax Law that exclude small businesses and local governments from the withholding requirements. The regulation provides some relief to small businesses and local government with respect to the methods allowed to comply with the withholding requirements by continuing to provide employers with more than one method of computing the amount to withhold from their employees. Look-up tables are provided for employers who prepare their payrolls manually, and an exact calculation method is provided for employers with computer-based systems.

7. Small business and local government participation: The following organizations were given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Office of Coastal, Local Government, and Community Sustainability of the New York State Department of State; the Division for Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Committee of the New York State Business Council; the Retail Council of New York State;

and the New York Association of Convenience Stores; the Tax Section of the New York State Bar Association; the Association of the Bar of the City of New York; the New York State Society of Enrolled Agents; the New York State Society of CPAs; and the Taxation Committee of the Business Council of New York State. In addition, the City of Yonkers was consulted.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Every employer that is currently subject to the City of Yonkers withholding requirements will continue to be subject to such requirements and will be required to comply with the provisions of this rule. The effect on employers in rural areas is limited because the changes relate to the City of Yonkers income tax surcharge on residents withholding requirements. There are 44 counties throughout this State that are rural areas (having a population of less than 200,000) and 9 more counties having towns that are rural areas (with population densities of 150 or fewer people per square mile).

2. Reporting, recordkeeping and other compliance requirements; and professional services: This rule requires employers that are already subject to the City of Yonkers withholding requirements to continue to deduct and withhold amounts from employees using the revised withholding tables and other methods. The promulgation of this rule will not require employers to submit any new information, forms, or other paperwork.

Further, many employers currently utilize bookkeepers, accountants, and professional payroll services in order to comply with existing withholding requirements. This rule will not encourage or discourage the use of any such services.

3. Costs: Employers are already subject to the New York State, New York City and City of Yonkers withholding requirements. Therefore, employers are accustomed to withholding revisions, including minor programming changes for federal, state, City of New York, and City of Yonkers purposes. As such, these City of Yonkers changes should place no additional burdens on employers located in rural areas. See also section 4(a) of the Regulatory Impact Statement for this rule.

4. Minimizing adverse impact: Section 671(a)(1) of the Tax Law requires that New York State withholding tables and other methods be promulgated. Section 1329(a) of the Tax Law requires that the City of Yonkers withholding of tax on wages shall be administered and collected by the Commissioner of Taxation and Finance in the same manner as the tax imposed by Article 22 of the Tax Law. The effect on employers in rural areas is limited because the changes relate to the City of Yonkers income tax surcharge on residents withholding requirements.

5. Rural area participation: The following organizations are being given an opportunity to participate in the rule's development: the Association of Towns of New York State; the Office of Coastal, Local Government, and Community Sustainability of New York State Department of State; the Division for Small Business of Empire State Development; the National Federation of Independent Businesses; the New York State Association of Counties; the New York Conference of Mayors and Municipal Officials; the Small Business Committee of the Business Council of New York State; the Retail Council of New York State; the New York Association of Convenience Stores; the Tax Section of the New York State Bar Association; the Association of the Bar of the City of New York; the New York State Society of Enrolled Agents; the New York State Society of CPAs; and the Taxation Committee of the Business Council of New York State. In addition, the City of Yonkers was consulted.

Job Impact Statement

A Job Impact Exemption is not being submitted with this rule because it is evident from the subject matter of the rule that it could have no impact on jobs and employment opportunities. The purpose of the rule is to provide City of Yonkers withholding tables and other methods, applicable for compensation paid on or after August 1, 2014, which reflect the revision of the tax tables in keeping with the increase in the income tax surcharge from 15 to 16 3/4 percent of net state income tax pursuant to City of Yonkers Local Law No. 11-2014, enacted under the authority of section 1321 of the Tax Law. The rule also reflects the increase in the City of Yonkers supplemental withholding rates applied to supplemental wage payments.