RULE MAKING ACTIVITIES

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

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

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

Office of Children and Family Services

NOTICE OF ADOPTION

Child Day Care and School Age Child Care Regulations

I.D. No. CFS-04-14-00003-A
Filing No. 920
Filing Date: 2014-10-31
Effective Date: 2015-06-01

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

Action taken: Amendment of Part 413; repeal of Part 414, Subparts 418-1 and 418-2; and addition of new Part 414, Subparts 418-1 and 418-2 to Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 390

Subject: Child day care and school age child care regulations.

Purpose: To revise and update the day care center and school age child care regulations.

Substance of final rule: After a rigorous review of the current regulatory standards for day care centers, school age child care and small day care centers and research on such issues as emergency preparedness, injuries related to supervision, national health and safety performance standards and guidelines for early care and education programs, the Office proposed numerous changes to Title 18 of the New York State Code of Rules and Regulations (NYCRR) Parts 413 and 414 and Sub-parts 418-1 and 418-2.

The Office's main objectives in changing day care center, school age child care, and small day care center regulations was to strengthen health and safety standards, correct conflicting regulatory language discovered in existing citations relative to the administration of medication, update the regulations with recent changes made to Social Services Law and the NYS Building Code, and make the regulations easier to understand.

One major category chosen for modifications was the administration of medication in day care centers, school age child care programs and small day care centers. These changes included amendments made as a result of lessons learned since 2005 when the administrations of medication regulations were first adopted. The regulations adhere to the approach that administering medications to children is a serious responsibility, performed best by those who have oversight by a health care consultant and training on administering all types of medications. The regulatory changes focus on when permission to administer medications is required by a parent and a health care provider and when a child's dose of medication can be altered without requiring a new prescription and added cost. The regulations also answer issues not addressed in 2005 such as, what is permitted when a health care consultant ends his/her affiliation with the program? May a program refuse to administer a medication? May a program stock medication? When may a program administer an auto injector or allow a child to carry an asthma inhaler?

A second category of changes focused on obesity prevention. On this topic, the Office worked in collaboration with the Centers for Disease Control and Prevention, Division of Nutrition, Physical Activity, and Obesity; and the NYS Department of Health. The group discussed best practice and the practicality of adding obesity prevention measures to child day care regulations. As a result of combined efforts, the Office is adopting balanced regulatory requirements for programs that would also allow for parent choice. The regulations will require that low-fat milk, water or 100% juice be served, unless the parent supplies alternatives. Day care center and school age child care programs must also adhere to the Child and Adult Food Program (CACFP) meal pattern standards. In addition, children must have physical activity every day, and screen time activities must be limited during the child day care program.

Health, safety and emergency preparedness was a focus in the regulations. The regulations address emergency evacuation plans and drills for sheltering in place, installation of carbon monoxide alarms, changes in technology around phone service, and safe sleep practices for infants, and also address field trip and water activity safety measures. Firearms, shotguns and rifles will be prohibited at day care centers, school age child care program and small day care centers. However, there will be no prohibition on a police officer, peace officer or security guard from possessing a firearm, shotgun or rifle on the premises for the protection of the child care program. In addition, child care programs will be required to post signs providing notification of such prohibition.

Another key change concerns adoption of an orientation session for applicants. Applicants seeking day care center licenses or a school age child care registrations must complete an on-line orientation program prior to receiving an application. Supervision is the most important element of child care services. Some would argue it is the central safety component in keeping children safe from harm. The meaning and significance of competent supervision, as a way of protecting children from injury, was studied and the Office has reworded the definition to include the need to be close enough to redirect a child and to be aware of each child's ongoing activity. The Office is also permitting continuity of care classroom models to operate in day care centers. Continuity of care is defined in day care center regulations at 418-1.8(r). A final change is the addition of language requiring all employees hired on or after June 30, 2013 to submit information which would allow directors, and in some cases the Office, to conduct data base checks against the NYS Justice Center Staff exclusion list.

Small day centers are registered to care for more than three and less than seven children. The regulations for small centers are a hybrid between large day care center regulations and family day care regulations. The building safety and equipment sections of the small day care center regulations mirror day care center regulations and program rules and staffing are akin to family day care.

In addition to the categories above, the Office made changes to the

length of the regulations and made minor revisions to two definitions and a deletion in wording in citation 413.4(b). The changes in length are more about breaking the regulations up into separate citations than it is about requiring additional standards. This change is significant to programs for the following reason: When an inspector cites a program for a violation of regulation, that violation is listed on the Office website. If the regulatory citation includes multiple requirements, the web user is unable to distinguish what part of the regulatory citation was violated. This change alleviates this problem. In Part 413, Definitions, Enforcement and Hearings, the definition of "employee" will include the day care director. The definition of "volunteer" was changed to clarify that a volunteer may assist in the care of children but may not be counted in ratio as meeting the child to assistant or child to teacher ratio and may not be left unsupervised with children. In addition, the words "effective date of this section" were removed from citation 413.4(b), because the phrase refers to a standard already in place.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 414.2(a)(6), 414.15(b)(11)(i)-(v), (18), (21)(xiv-xvi), 418-1.6(l), 418-1.7(k), (z)-(aa), 418-1.10(b)(3)(ii)(*a*), 418-1.15(b)(11)(i)-(v), (21)(xiv)-(xvi), 418-2.6(l), 418-2.7(h), 418-2.15(b)(11)(i)-(v) and (21)(xiv)-(xvi).

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

Revised Regulatory Impact Statement

1. Statutory authority:

Section 20(3)(d) of the Social Services Law (SSL) authorizes the Commissioner of the Office of Children and Family Services (Office) to establish rules, regulations and policies to carry out the Office's powers and duties under the SSL.

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

Section 390(2)(d) of the SSL authorizes the Office to establish regulations for the licensure and registration of child day care providers.

Section 410(l) of the SSL authorizes a social services official of a county, city or town to provide day care for children at public expense and authorizes the Office to establish criteria for when such day care is to be provided.

Chapter 416 of the Laws of 2000, enacting the Quality Child Care and Protection Act of 2000 (the Act), authorizes the Office to strengthen the existing regulations governing child day care programs. Subdivision 2-A of section 390 of the SSL, added by the Act, requires the Office to establish minimum quality program requirements.

2. Legislative objectives:

The Office's objective in proposing changes to current day care center, school age child care and small day care center regulations is to strengthen health and safety standards, correct conflicting regulatory language, update the regulations with recent changes made to SSL and NYS Building Code, and to make the regulations easier to understand.

3. Needs and benefits:

The proposed changes to the day care center, school age child care and small day care center regulations are needed to correct current regulatory inconsistencies, to incorporate recent statutory amendments, and to clarify the specific deficiency when a program is cited for a regulatory violation. The proposed changes can be organized into six categories: the administration of medication and infection control, obesity prevention, safety and emergency preparedness, legislative changes, terminology and definitions, and training requirements.

The first category, the administration of medication and infection control, includes changes that adhere to the approach that administering medications to children is a serious responsibility, performed best by those who have oversight by a health care consultant and training on administering all types of medications. Changes are needed to correct current inconsistencies in the regulations regarding the authorization needed by the program before administering medication to a child. The proposed changes reorganize the layout of the health and infection control section of the regulation to make referring to the regulations easier. The proposed changes will benefit the programs, children in care, and parents, by relaxing the current restrictions on medication administration, allowing programs discretion in medication administration, allowing programs to stock medication, and permitting a 60 day grace period when a health care consultant ends his/her affiliation with the program.

The second category, obesity prevention, is a topic the Office worked on in collaboration with the Centers for Disease Control and Prevention, Division of Nutrition, Physical Activity, and Obesity; and the NYS Department of Health. The current regulations do not require programs to help children cultivate healthy eating and positive exercise habits to prevent childhood obesity. As a result of combined efforts, the proposed changes balance minimal requirements with parent choice. The regulations will require that the center and school age child care program serve nutritious beverages and meals that comply with the Child and Adult Food Program meal pattern unless the parent supplies alternatives. Small day care centers, day care centers and school age child care programs will be required to serve only low fat milk, 100% juice or water, unless otherwise directed by the parent. In addition, children in all programs must have physical activity every day, and screen time activities will be limited.

The changes to the third category, health, safety and emergency preparedness are needed to address safety and security at the child care program. The proposed regulations require that programs plan for and practice emergency evacuations and sheltering in place drills. The regulations require carbon monoxide alarms, expanded requirements for safe sleep practices, and address field trip and water activity safety measures. Firearms, shotguns and rifles will be prohibited at day care centers, school age child care program and small day care centers. However, there will be no prohibition on a police officer, peace officer or security guard from possessing a firearm, shotgun or rifle on the premises for the protection of the child care program. In addition, child care programs will be required to post signs providing notification of such prohibition. A final change is the addition of language requiring all employees hired on or after June 30, 2013 to submit information which would allow directors, and in some cases the Office, to conduct data base checks against the NYS Justice Center Staff exclusion list.

The fourth category includes statutory requirements not yet included in regulation. These changes are needed to clarify that the requests of the Office are being made because of statutory requirements. Specifically the need to complete a training topic, Education on Shaken Baby Syndrome (school age child care program are excluded); that at least one caregiver in Cardio Pulmonary Resuscitation and first aid must be present; the increase in the licensing or registration period from two-year to four-year intervals; and prohibitions against reissuing a license or registration to a child day care provider whose license or registration was revoked or terminated during the previous two years. The Federal Consumer Product Commission new standards for cribs, are now included in regulation.

The fifth category includes changes to definitions and terms, which are needed to keep pace with the field observations, reflect current acceptable practices, and use of more neutral terms. The proposed regulations change the term "discipline" to behavior management, clarifies the meaning and significance of competent supervision to be close enough to redirect a child and to be aware of each child's ongoing activity. In addition, the proposed regulations allow a continuity of care model to be offered in day care centers. Continuity of care is defined in 418-1.8.(r). Finally, a change was made to the definition of employee and volunteer. The term "employee" will include the day care director. The definition of "volunteer" was changed to clarify that a volunteer may assist in the care of children but may not be counted in ratio as meeting the child to assistant or child to teacher ratio and may not be left unsupervised with children. In addition, the words "effective date of this section" were removed from citation 413.4(b) as it referred to standard already in place.

The sixth category addresses the need to clarify the training requirements associated with operating a child care program. The regulation will require would be applicants to complete an on-line orientation program prior to receiving an application. The changes also include examples of the types of course that will be accepted toward each of the training topics.

In addition to the above, the Office is proposing changes to the length of the regulations; breaking the current provisions into separate citations. This change is significant because when an inspector cites a violation, that violation is listed on the Office website. If the regulatory citation includes multiple requirements, the web user is unable to distinguish what part of the regulatory citation was violated. This change will alleviate this problem.

Small day centers are registered to care for more than three and less than seven children. The regulations for small centers are a hybrid between large day care center regulations and family day care regulations. The building safety and equipment mirrors center regulations and program rules and staffing are identical to family day care.

4. Costs:

The implementation of these regulations and the underlying statutory provisions may have minimal costs associated for some programs to post street numbers on the building for emergency vehicles when not already posted, installing carbon monoxide detectors where necessary, storing nonperishable food for all children in case of emergencies, and purchasing nutritious beverages and foods. Average day care center has 80 children; compliance would cost approximately $800.00. School-age child care program serves on average 96 children, costing $960.00 to come into compliance. Small day care center's maximum capacity is six children, costing $ 60.00 to come into compliance. Programs that serve food daily and have food supplies on site or are co-located with a cafeteria, pantry, or eatery of some kind may plan to access those supplies in a declared

emergency. The majority of programs will be able to meet these exemption criteria. New day care centers offering care to infants will be required to install an addition sink in the infant room. One sink will be designated for diapering needs and the other for washing dishes and bottles. Day care centers already in existence are not required to install an additional sink.

The Office will provide, at no cost, an on-line orientation session for all applicants. The Office will use existing resources to implement these regulations. It is expected that programs and their employees will have financial relief by changing renewals from every two years to every four years. Programs and their employees will also experience savings by the elimination of required medical examinations, after the initial medical examination associated with employment.

5. Local government mandates:

No new mandates are imposed on local governments by these proposed regulations.

6. Paperwork:

Paperwork will be reduced because the renewal application is now due on a four year cycle instead of a two year cycle. Regulatory waiver requests will be reduced because of the changes made to the medication administration and authorization provisions. In addition, the proposed regulations eliminate routine medical exams for all staff and volunteers at renewal. An estimated 4,535 child care facilities will no longer be tracking and filing staff medical forms (after the initial medical evaluation). Programs would no longer have to track each employee to ensure he/she completes the medical exam every two years, nor would they have to file and keep such records.

Additional paperwork is required in cases where it documents health and safety issues, and the overall impact will be minimal on facilities. Programs will be required to submit a written emergency plan and evacuation diagram, and will need to document that they held two shelter in place drills annually, this notation can be recorded with the other evacuation drills. Programs will be required to post the transportation services they are providing to children and share this with parents using the service. The child day care program will be required to enter the actual attendance times of each child and staff person. The "in" time and "out" time for each child and staff person can be an added to the child's attendance form, already in use. A child day care program must document that a daily health care check has been completed on each child in attendance. The Office will accept the addition of a check box on the attendance sheet indicating that the health care check was performed.

A provision was added requiring all employees hired on or after June 30, 2013 to submit information which would allow programs, and in some cases the Office, to conduct data base checks against the NYS Justice Center Staff exclusion list.

Finally, an Office provided sign must be posted at entrances to programs to designate the facility as a firearm free area.

7. Duplication:

The new requirements do not duplicate State or federal requirements.

8. Alternatives:

The Office has met with stakeholders, including child care providers, directors, staff from NYS Department of Health, Center for Disease Control and Prevention, NYS Department of Education, Child Care Resource and Referral, to develop the proposed regulatory changes. The alternative to the proposed regulations is to continue operation under the current regulations and cite law when the regulations contain out-of-date information or is missing requirements.

9. Federal standards:

The regulations are consistent with applicable federal requirements.

10. Compliance schedule:

These regulations will become effective on June 1, 2015.

Revised Regulatory Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments. The revisions to the last published rule merely clarify the text and correct technical errors, which requires no change to the Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Revised Rural Area Flexibility Analysis

Changes made to the last published rule do not necessitate revision to the previously published Rural Area Flexibility Analysis. The revisions to the last published rule merely clarify the text and correct technical errors. As such, no change to the Rural Area Flexibility Analysis was required.

Revised Job Impact Statement

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

Initial Review of Rule

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

Assessment of Public Comment

This assessment responds to the comments received on the Proposed Regulations for Parts 413 and 414, and Sub-parts 418-1, and 418-2, of Title 18 of the New York State Code of Rules and Regulations. The Notice of Proposed Rule Making was contained in the State Register issued on January 29, 2014.

The Office of Children and Family Services (OCFS) received one thousand nine-hundred and sixty-five (1,965) comments during the public comment period. Responses were received from Child Care Resource & Referral Agencies, child care program directors, registration staff, program employees, public citizens, program owners, site supervisors, administrators, focus group leaders, a school-age network, a city health agency, a youth and community organization, credential advisors, policy chair for a health network, parents, scientific research organization, trainers, a capacity builder, a child care council, community based organizations, city school district, children's institute, child advocacy group, licensing staff, and others who chose not to identify themselves. Most responders included comments on more than one provision of the proposed regulations. Every comment was processed and considered by OCFS in this assessment.

This summary of the assessment will provide an overview of the issues receiving the most public feedback. In this assessment, OCFS combined similar comments from numerous commenters for the purpose of the assessment and response thereto. The consolidated comments and OCFS responses are grouped in categories into the following topic areas: building and equipment, health and safety, behavior management, program planning, health and infection control and training.

In undertaking this effort, OCFS recognized the need to make minor clarifications to afford clarity to its intent and corrected punctuation where needed.

The majority of comments received concerning building and equipment focused on requirements set in school age child care (SACC) regulations that differ from standards set by the State Education Department (SED). Responders asked that the regulations exempt programs operating in schools from OCFS physical plant requirements and other standards in regulation that may not be consistent with a school's standards. OCFS does exempt SACCs operating in school buildings from certain requirements concerning structural and environmental systems. In addition, the regulations address past inconsistencies between the two agencies, by: allowing hand dryers to substitute for paper towels, reducing square footage requirements for sedentary activities, and allowing barriers to substitute for radiator covers. OCFS has also set more flexible standards for children to independently use bathroom facilities. OCFS, however, will continue to require a set square footage amount per child and an adequate number of toilets per numbers of children. The use of space in SACCs is quite different than the use of space during classroom lessons. SACCs must program for physical activities that allow children to exercise through play after a long day of seated activities. OCFS supports the continued need for 35 square feet for active play but has reduced the square footage to 20 square feet for sedentary activities. School buildings should have ample toilet facilities for school age child care programs as schools generally serve larger groups of children during the school day. OCFS recognizes this may be a matter of renegotiating needed space with the school district. OCFS reviewed these comments and will make no changes based on its review.

Responders to both SACC and day care center (DCC) regulations disagreed with the requirement that programs receive OCFS permission to re-designate a classroom to a different age group of children. OCFS requires floor plans be approved prior to licensing/registering a program; OCFS asserts that any changes made after licensing/registration must also be approved. Knowing which rooms are used and by which age group is useful to OCFS and responding agencies in times of emergencies. OCFS reviewed these comments and will make no changes based on its review.

OCFS received positive, negative, and neutral comments concerning the ban on firearms, reptiles, and mixing of classroom groups, inclusion of shelter in place, background check requirements, outside play, restriction on cell phone use when supervising, additional safety measures for swimming and field trip purposes, napping, and behavior management techniques.

Of the responders commenting on the ban on firearms, shotguns and rifles, a small number agreed with the ban and just as many opposed the ban. Most responders were against having to post a sign stating that firearms are not permitted on the premises, claiming that the sign would be ineffective in stopping someone who wanted to harm others; and might scare parents and children. Additionally, there were many who questioned whether police or peace officers could be on the premises with a firearm. OCFS has as its core objective the protection, safety and well-being of children. The ban on firearms is consistent with this objective. In addition, OCFS maintains that posting the required sign provides notice to the public of the prohibition. Police and other law enforcement groups are permitted to possess a firearm; this regulation would not ban firearms from those groups. OCFS reviewed these comments and will make no changes based on its review.

Of the responders commenting on the prohibition of reptiles and amphibians in centers, most disagreed with the ban. OCFS reviewed the comments and based on the risk of salmonella and its potential harm to young children, the ban is necessary to protect the children's health. OCFS reviewed these comments and will make no changes based on its review.

OCFS received many questions and some opposition to the regulation which prohibits programs from mixing classroom groups together in common areas of the building and grounds unless the space is large enough to accommodate the groups separately. OCFS' proposed regulation allows multiple groups to use the same common area as long as the space provided is large enough to accommodate multiple groups and those groups are kept separate and not comingled. OCFS reviewed these comments and will make no changes based on its review.

The concept of shelter-in-place received much attention. Comments included such topics as: suggesting that drills would scare children, suggesting that a parent may be a threat, questioning how to document drills, questioning the number of drills, and questioning how staff can be trained on this issue. OCFS maintains that preparedness is essential to safety. Any number of environmental or manmade threats can occur during day care hours. Programs must be prepared to evacuate and shelter-in-place. OCFS will have forms available. OCFS has developed an on-line training available to employees who work in child day care programs. OCFS reviewed these comments and will make no changes.

Comments regarding background checks focused on providing documents to OCFS when employing new staff. Most commenters opposed this requirement, while others posed many questions about how such a system would work. OCFS will revise the regulatory provision in Part 414 and Sub-parts 418-1 and 418-2 to clarify that this requirement only applies when there is a change in director.

There were nearly equal pro and con comments on the prohibition of using electronic devices, such as cell phones, while supervising children. OCFS maintains that supervision is an interactive exercise that relies on active attention to children and quick response time when a need arises. Use of electronic devices while supervising hinders active supervision and response time. OCFS reviewed these comments and will make no changes based on its review.

OCFS added to its regulations stricter standards as it concerns water activities and field trips. There were some commenters asking that OCFS adhere to the Department of Health (DOH) Sanitary code in these matters. OCFS has made it mandatory in regulation that programs may only use facilities for swimming that have permits issued by DOH and operate according to sanitary code. OCFS asserts that its regulations sufficiently address safety on field trips and at water activities. OCFS reviewed this comment and will make no changes based on its review.

Nap time procedures and policies, specifically concerning those children who no longer require a nap, received much attention from those commenting on day care center regulations. More responders disagreed with this addition to regulation than agreed. In addition, many disagreed with the requirement to develop, in writing nap agreements between the program and the parent. Some responders had questions about the age at which children generally stop napping. Negative comment received concerning nap agreements suggested that agreements would be too varied to maintain, others asked that OCFS define what an agreement contains, and how often agreements have to be updated. It was OCFS' goal to end the practice of requiring a non-napping child to stay on a sleep surface for hours while other children nap. The content of a nap agreement need only address where, on what and how supervision is provided during nap time. If any of these arrangements change, the program would need to inform the parent and update the agreement. OCFS reviewed these comments and will make no changes based on its review.

The bulk of comments received relative to behavior management concerned the prohibition of physical restraint. Responders focused on how the prohibition would affect children with individual educational plans (IEPs). OCFS asserts that IEPs do not and should not include physical restraint and prohibition of physical restraint will not interfere with IEPs. OCFS reviewed these comments and will make no changes based on its review.

Comment received on program requirements focused on the need for physical activity every day and the use of electronic devices. Those opposing SACC regulations requiring daily physical activity requirement noted limited time and space constraints and suggested that physical activity remain an option, not a requirement. Those in favor of the daily physical activity requirement at SACCs suggested that OCFS add a prescribed duration and intensity level for physical activities. It is OCFS's position that SACCs should not focus entirely on academics. Children need variety in their activities and for health reasons they need daily physical activity. Physical activity does not have to take place in large spaces. OCFS has and will continue to provide guidance in this area but no changes will be made to this regulatory language. DCC responders focused on clarifying the regulatory language concerning required outdoor play and parent's ability to request that their child remain inside. The regulatory language concerning parents request to keep their child inside will remain in regulation, as it does not require that a program comply with the parent's request. In response to the comment from day care center responders, OCFS will clarify that outdoor play is a daily requirement.

OCFS received many favorable comments supporting the discontinuation of regular medical exams and tuberculin tests for staff. In addition, OCFS received many comments suggesting that the need for a health care consultant in programs serving infants, toddlers and mildly ill children be returned to regulation. Most DCCs are certified to administer medication and therefore have a health care consultant. OCFS will continue to research this matter while advising programs to contact a health care consultant when needed. OCFS reviewed these comments and will make no changes based on its review.

Comment received in regard to the training section of regulation concentrated on the provision that all mandatory training be approved by OCFS as per OCFS training policy. Of particular concern was how OCFS's approval process would work, what credentials would be needed to provide training and how this change might affect the expense of training. Currently, a director can train staff and those staff can receive credit toward the regulatory requirement. OCFS has been working with an on-line registry to compile a listing of persons who have certain qualifications to train day care providers, staff and caregivers. Once the registry verifies that the qualifications have been met, the person is considered to be a credentialed trainer. If a director has taken the opportunity to apply to be a "credentialed" trainer with the NYS training registry and their qualifications met the standard, they are considered to be a credentialed trainer. Training by a credentialed trainer is required only for those applying for educational incentive program funds. OCFS reviewed this comment and will make no changes based on its review.

Department of Economic Development

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Empire State Musical and Theatrical Production Tax Credit Program

I.D. No. EDV-46-14-00001-EP
Filing Date: 2014-10-31
Effective Date: 2014-10-31

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

Proposed Action: Addition of Part 240 to Title 5 NYCRR.

Statutory authority: L. 2014, ch. 59

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

Specific reasons underlying the finding of necessity: Chapter 59 of the Laws of 2014 created the Empire State Musical and Theatrical Production Tax Credit Program. The Program provides for the allocation of tax credits to qualified musical and theatrical production companies that complete qualifying touring productions. These benefits are designed to encourage musical and theatrical production companies preparing to undertake touring productions to make expenditures associated with producing these tours in Upstate New York theatrical facilities, and to secure the economic benefits associated with these production expenditures for Upstate New York communities.

Chapter 59 of the Laws of 2014 authorized the New York State Department of Economic Development to adopt regulations establishing procedures for the allocation of credits under the Program on an emergency basis. Without regulatory action by the Department of Economic Development, procedures will not be in place to accept applications from musical and theatrical production companies desiring to participate in the Program.

Adoption of this rule will allow the Department of Economic Development to begin accepting applications from musical and theatrical production companies, and will assist in stimulating spending on musical and theatrical productions in areas of the State that would otherwise not benefit from such expenditures.

Subject: Empire State Musical and Theatrical Production Tax Credit Program.

Purpose: Establish application procedures for the Empire State Musical and Theatrical Production Tax Credit Program.

Substance of emergency/proposed rule (Full text is posted at the following State website:esd.ny.gov): The Empire State Musical and Theatrical Production Tax Credit Program (the "Program") provides Empire State Musical and Theatrical Production Tax Credits ("Credits") to qualified musical and theatrical production companies that complete qualifying touring productions of eight or more shows in three or more localities.

1) The rule defines numerous important terms, including, but not limited to, "authorized applicant," "qualified production expenditure," "qualified touring production," and "technical period."

2) The rule indicates that only authorized applicants, qualified musical and theatrical production companies scheduled to begin production of qualified musical and theatrical productions after submitting an initial application to the New York State Department of Economic Development (the "Department"), may apply to participate in the Program.

3) The rule describes the application process for a musical and theatrical production company pursuing a Credit, including that an authorized applicant must submit an initial application prior to commencing a qualified touring production and submit a final application subsequent to completion of a qualified touring production.

4) The rule states that Credits shall be issued in the amount of twenty-five (25) percent and the sum of the qualified production expenditures and the transportation expenditures incurred by an applicant.

5) The rule provides that an application shall not be approved unless the Department determines that the application is complete, the applicant completed a qualified touring production, and the applicant did not knowingly submit false or misleading information to the Department.

6) The rule requires an applicant to retain records of any qualified musical and theatrical production costs used to calculate their potential or actual benefit(s) under the Program for a minimum of three years from the date the applicant claims a Credit.

7) The rule provides for an appeal process by which an applicant may appeal the disapproval of its final application by the Department, or the amount of a Credit granted by the Department, before an independent hearing officer.

8) The rule describes information sharing to take place between the Department and the New York State Department of Taxation and Finance relating to Credits applied for, allowed, or claimed under the Program, as well as information regarding taxpayers seeking Credits.

9) The rule describes the annual Program report to be submitted by the Department to the governor, the temporary president of the senate, and the speaker of the assembly. The annual report is to include information on the Credit-eligible man hours and total wages for such Credit-eligible man hours for each project, the identity of applicants for Credits, and the amount of each Credit allocated to each taxpayer.

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 January 28, 2015.

Text of rule and any required statements and analyses may be obtained from: Thomas Regan, New York State Department of Economic Development, 625 Broadway, 8th Floor, Albany, NY 12207, (518) 292-5123, email: tregan@esd.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:

Chapter 59 of the Laws of 2014 requires the Commissioner of the Department of Economic Development (the "Department") to promulgate regulations establishing the application process for the Empire State Musical and Theatrical Production Tax Credit Program (the "Program"). These procedures include the process for applying for tax credits under the Program, standards for the assessment of applications, and other provisions deemed necessary and appropriate. This regulatory impact statement is submitted in conjunction with the submission of a permanent regulation.

LEGISLATIVE OBJECTIVES:

The proposed rule gives effect to the intention of the legislature in adopting the Empire State Musical and Theatrical Production Tax Credit Program to encourage the production of musical and theatrical shows in venues outside of New York City. The proposed rule furthers this objective by establishing the application process for Empire State Musical and Theatrical Production Tax Credits ("Credits"), and clarifying certain requirements as to which touring productions are qualified to receive Credits under the Program.

NEEDS AND BENEFITS:

The rulemaking is necessary in order to implement the statute contained in Section 24-A of Article 1 of the Tax Law, creating the Empire State Musical and Theatrical Production Tax Credit Program. The statute authorizing the Program directs the Commissioner of the Department of Economic Development to establish procedures for the implementation and execution of the program.

Upstate New York, in particular, is home to some of the premier regional venues in which to produce musical and theatrical productions. In order to induce musical and theatrical production companies to undertake production activities in these non-New York City venues, referred to in the statute as qualified production facilities, the Program will allow musical and theatrical production companies to apply for a Credit against their qualifying production expenditures. To become eligible for a Credit, musical and theatrical production companies must undertake the pre-tour production activities comprising the technical period for the qualified touring production in a qualified production facility. Provided that musical and theatrical production companies meet this qualification requirement, they will be eligible for a Credit equal to twenty-five (25) percent of their qualified production expenditures associated with the show. In addition to pre-tour production costs, qualified production expenditures also include expenditures associated with performing a show before a paying audience in a qualified production facility if the show in question has not been previously performed in any venue other than a qualified production facility.

This incentive will allow musical and theatrical venues located outside of New York City to more fully actualize their potential for attracting musical and theatrical productions, as well as provide these venues with competitive balance against competing venues located in northeastern states that offer tax incentives to musical and theatrical productions which conduct technical rehearsals and other pre-tour production activities in their venues.

The Program is premised upon using touring musical and theatrical productions, and the expenditures associated with these productions, as tools for economic development. Program incentives will be used to increase the number of musical and theatrical productions that launch tours from venues outside of New York City. This goal will not be achieved without first establishing procedures for the acceptance and evaluation of applications for Program Credits.

The proposed rule establishes the necessary application procedures for the Department to receive applications by musical and theatrical production companies for Program Credits. These rules allow for the prompt and efficient commencement of the Empire State Musical and Theatrical Production Tax Credit Program, clarify which touring productions will be eligible for Program Credits, and promote the general welfare of New Yorkers.

COSTS:

I. Costs to private regulated parties (the business applicants): None. The proposed rule will not impose any additional costs to eligible business applicants.

II. Costs to the regulating agency for the implementation and continued administration of the rule: None.

III. Costs to the State government: None.

IV. Costs to local governments: None. The proposed rule will not impose any costs on local governments.

LOCAL GOVERNMENT MANDATES:

None. There are no local government mandates associated with the Program.

PAPERWORK:

The rule establishes qualification rules and application procedures for the Program. The rule entails certain paperwork burdens including materials to be submitted as part of applications for Program Credits, additional documents the Commissioner may request from applicants as part of his evaluation of applications, and certain records that must be maintained by program participants for auditing purposes.

DUPLICATION:

The proposed rule will create a new section of the existing regulations of the Commissioner of the Department of Economic Development, Part 240 of 5 NYCRR. Accordingly, there is no risk of duplication in the adoption of the proposed rule.

ALTERNATIVES:

No alternatives were considered with regard to creating a new rule in response to the statutory requirement. The rule interprets the Empire State Musical and Theatrical Production Tax Credit Program requirements as to the application process for tax credits under the Program. This action is necessary in order to clarify how qualifying musical and theatrical production companies may obtain tax benefits under the Program, and is required by the legislation establishing the Program.

FEDERAL STANDARDS:

There are no federal standards applicable to the Program; it is purely a state program that offers tax benefits to musical and theatrical production companies with qualifying expenses. Therefore, the proposed rule does not exceed any federal standard.

COMPLIANCE SCHEDULE:

The affected agency (Department of Economic Development) and any musical and theatrical production company applicants will be able to achieve compliance with the regulation as soon as it is implemented.

Regulatory Flexibility Analysis

Participation in the Empire State Musical and Theatrical Production Tax Credit Program is entirely at the discretion of qualifying musical and theatrical production companies. Neither statute nor the proposed rule impose any obligation on any local government or business entity to participate in the program. The proposed rule does not impose any adverse economic impact or compliance requirements on small businesses or local governments. In fact, the proposed rule may have a positive economic impact on small businesses. Small businesses may enjoy increased business if the Empire State Musical and Theatrical Production Tax Credit Program induces applicant musical and theatrical production companies to procure products or services from small businesses in Upstate New York regions that the musical and theatrical production companies would not have used to produce a qualified touring production without the tax credit benefits.

Because it is evident from the nature of the proposed rule that it will have either no impact or a positive impact on small businesses and local government, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

The Empire State Musical and Theatrical Production Tax Credit Program provides tax benefits to participating musical and theatrical production companies, and does not distinguish between venues located in rural and urban areas of Upstate New York. Furthermore, the rule does not impose reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, except for any rural musical and theatrical production companies which voluntarily choose to participate in the Program. Therefore, the rule will not have a substantial adverse economic impact on rural areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed rule establishes application procedures for musical and theatrical production companies to apply for benefits under the Empire State Musical and Theatrical Production Tax Credit Program, as well as standards for the assessment of applications by the Commissioner of the Department of Economic Development. The Empire State Musical and Theatrical Production Tax Credit Program provides tax incentives to musical and theatrical production companies that incur qualifying production expenditures in association with qualified touring productions. The program aims to attract musical and theatrical productions to Upstate New York musical and theatrical venues so as to stimulate economic activity and create jobs. The rule will not have a substantial adverse impact on jobs and employment opportunities; rather, the program is intended to create jobs. Because it is evident from the nature of the rulemaking that it will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

Department of Environmental Conservation

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Amend Part 189 Related to the Discovery of Chronic Wasting Disease in Deer in Ohio

I.D. No. ENV-46-14-00002-EP

Filing No. 921

Filing Date: 2014-10-31

Effective Date: 2014-10-31

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

Proposed Action: Amendment of Part 189 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 11-0325, 11-1905 and 27-0703

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

Specific reasons underlying the finding of necessity: On October 23, 2014 DEC was notified that Ohio confirmed its first case of chronic wasting disease (CWD). New York must ensure that no CWD-infected material is transported into the State and therefore needs to remove Ohio from the list of states that are allowed to export the carcasses of wild, CWD-susceptible cervids obtained or harvested from Ohio into New York unless those carcasses have certain parts removed before importation into New York.

Subject: To amend Part 189 related to the discovery of chronic wasting disease in deer in Ohio.

Purpose: To prevent importation of chronic wasting disease infectious material from the State of Ohio into New York.

Text of emergency/proposed rule: Title 6 of the Codes, Rules and Regulations of the State of New York, Part 189, Chronic Wasting Disease, is amended as follows:

Subparagraph 189.3(e)(1)(i) is amended to read as follows:

(i) United States: Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Maine, Massachusetts, Mississippi, New Hampshire, New Jersey, North Carolina, [Ohio,] Rhode Island, South Carolina, Tennessee, and Vermont.

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 January 28, 2015.

Text of rule and any required statements and analyses may be obtained from: Patrick Martin, New York State Department of Environmental Conservation, 625 Broadway, Albany, New York 12233, (518) 402-9001, email: Patrick.Martin@dec.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory authority:

The Commissioner of the Department of Environmental Conservation (department), pursuant to Environmental Conservation Law (ECL) section 3-0301, has authority to protect the wildlife resources of New York State.

ECL section 11-0325 provides the authority to take action necessary to protect fish and wildlife from dangerous diseases. Where a disease is a threat to livestock, as well as to the fish and wildlife populations of the State, ECL section 11-0325 requires the department to consult with the Department of Agriculture and Markets. If the department and the Department of Agriculture and Markets jointly determine that a disease, which endangers the health and welfare of fish or wildlife populations, or of domestic livestock, exists in any area of the state or is in imminent danger of being introduced into the state, the department is authorized to adopt measures or regulations necessary to prevent the introduction or spread of such disease. An interagency determination certified the presence of CWD effective April 1, 2005.

ECL section 11-1905 provides the department with authority to regulate the possession, propagation, transportation and sale of captive-bred white-tailed deer.

2. Legislative objectives:

The legislative objective of ECL section 3-0301 is to grant the Commissioner the powers necessary for the department to protect New York's natural resources, including wildlife, in accordance with the environmental policy of the State.

In addition, this section provides for collaboration between the Department and the Department of Agriculture and Markets when such disease also poses a threat to livestock.

The legislative objective of ECL section 11-1905 is to provide the department with authority to regulate the captive-bred white-tailed deer population in New York.

The legislative objective of ECL section 27-0703 is to provide the department with authority to regulate the disposal of solid waste.

3. Needs and benefits:

This rule making is in response to the recent discovery of chronic wasting disease (CWD) in white-tailed deer in Ohio. CWD is an infectious neurological disease of cervids, the family which includes deer, elk and moose. CWD is a transmissible spongiform encephalopathy, and is a progressively fatal disease with no known immunity, vaccine or treatment. Management of CWD is further complicated by the fact that it is a poorly

understood disease with clinical signs not apparent for at least 18 months following exposure. In addition, CWD can be transmitted from animal to animal contact in the saliva, urine and feces and indirectly when the environment becomes contaminated with CWD infectious material and exposes wild deer, elk and moose.

This rule making is necessary to protect New York's white-tailed deer herd and moose population from CWD by preventing the importation of CWD infectious materials into New York from newly identified sources. In 2013, the Department of Agriculture and Markets adopted regulations to prohibit the importation of captive CWD-susceptible cervids to prevent the importation of CWD. At this time, the importation of a CWD infected carcass from a hunter-killed animal is the most significant risk of CWD entering New York. With the discovery of CWD in white-tailed deer in Ohio, amendment of 6 NYCRR Part 189 is necessary to prevent importation of CWD infectious materials from this new source.

The rulemaking will place restrictions on the importation of wild deer carcasses and parts from Ohio.

The white-tailed deer herd in New York is estimated to be approximately 900,000 animals. In 2013, over 560,000 licenses were sold to hunt white-tailed deer in New York, resulting in expenditures by hunters and for hunting related retail sales, food and lodging, salaries and taxes of in excess of $1.50 Billion annually.

4. Costs:

This rule making could result in additional costs to hunters who must process a deer taken in Ohio to remove the most infectious parts prior to importing the meat into New York.

5. Local government mandates:

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

6. Paperwork:

The proposed rule does not impose any additional recordkeeping.

7. Duplication:

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

8. Alternatives:

The department could take no action, but has rejected this option. Failing to act to prevent the importation of CWD infectious material would allow the disease to become established in New York State. CWD has not been found in New York for over nine years. The spread of CWD would severely compromise the health of New York's white-tailed deer herd and would have significant economic impacts on commercial and recreational activities associated with white-tailed deer for generations.

9. Federal standards:

The United States Department of Agriculture-Animal and Plant Health Inspection Service (USDA-APHIS) finalized an interim rule in 2012 that established a voluntary herd certification program to control the spread of CWD in farmed (captive) cervids. There are no federal rules or regulations to control the spread of CWD in deer, moose or elk existing in a wild state. It is the responsibility of the states to prevent the spread of CWD in wild deer, elk and moose populations.

10. Compliance schedule:

Compliance will be required upon adoption of the final rule.

Regulatory Flexibility Analysis

1. Effect of Rule:

The proposed regulation is necessary to protect the wild white-tailed deer and moose populations in New York State from Chronic Wasting Disease (CWD). The white-tailed deer is a very important natural resource to small businesses and local governments in New York. The purpose of the new regulation is to protect this resource so that New Yorkers may continue to enjoy viewing deer, and benefit from deer hunting, and the positive economic and social effects of deer and deer hunting.

Under the proposed regulations, Ohio will be dropped from the list of states that are exempt from the importation requirement to remove certain parts of the carcass known to harbor the CWD infectious material. All CWD positive states are subject to the same importation requirements. Although this will impact New York residents who may hunt in Ohio and plan to return to New York with field dressed carcasses of the deer, elk or moose they harvested in Ohio, it is anticipated that this will affect relatively few hunters and, with advanced planning, hunters can easily comply with these regulations without losing the opportunity to hunt in Ohio or without the ability to bring back the meat of the animal they harvested.

No local governments will be affected by this rule.

2. Compliance Requirements:

Resident hunters who harvest a deer in Ohio will be required to remove specific parts from the animal taken in Ohio before bringing it back into New York.

3. Professional Services:

The rule will not require local governments or small businesses to engage professional services to comply with this rule.

4. Compliance Costs:

Successful hunters in Ohio will be required to either pay for the processing of their harvested deer before returning to the State or process the harvested deer themselves. Most hunters who hunt in the CWD restricted states have their harvested game processed before they return as a matter of course.

5. Economic and Technological Feasibility:

There is no economic or technological effect on local governments or small businesses. The rule will not require any technological changes or capital expenditures to comply with the new regulation.

6. Minimizing Adverse Impact:

CWD has been confirmed in a number of states and measures to prevent the movement of the disease are in place in all states that have wild CWD susceptible cervids. The affected public (deer, elk and moose hunters) are aware of the CWD restrictions and have accepted them as reasonable and balanced. The Department of Environmental Conservation (department) strongly supports continued research on CWD to understand the modes of transmission, and associated risk variables. As new information becomes available, the department will amend regulations in response to new data or findings to ensure that the best prevention measures are in place to protect the wild deer herd.

7. Small Business and Local Government Participation:

When CWD was first confirmed in New York in 2005, the department held public meetings to explain the nature of the disease, the threat that CWD posed to the wild deer herd and the department's initial response. Since early April 2005, the department has issued press releases and posted CWD information to the department's website to continue to inform the public of developments and findings relative to the department's CWD surveillance program. Similarly, as the department establishes appropriate and necessary regulations to prevent the disease from entering New York, outreach to affected stakeholders (businesses and local governments) will be done so that the importance of the new regulations is understood.

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 that CWD would have on the health of New York's wild deer herd and moose population. Immediate compliance with this rule is necessary to prevent the introduction of this disease into New York State from Ohio. Compliance is also required to ensure that the general welfare of the public is protected.

Rural Area Flexibility Analysis

This rulemaking is directed at the importation of certain animal parts into New York from the State of Ohio. It does not have any direct impacts on rural areas or entities therein. Therefore, the department has determined that this rule making will not have any adverse impacts on rural areas. In fact, the rule making will have a positive impact on rural areas by preventing the importation of CWD infectious materials and the introduction of CWD to new areas of the state. The department has further determined that this rule will not impose any reporting, record-keeping, or other compliance requirements on public or private entities in rural areas. Therefore, a rural area flexibility analysis is not required for this rulemaking.

Job Impact Statement

This rule making is necessary to protect New York State's wild white-tailed deer herd and moose population from Chronic Wasting Disease (CWD) by preventing the importation of CWD infectious materials into New York from the State of Ohio. In 2014, CWD was found in white-tailed deer in the State of Ohio.

The Department of Environmental Conservation (department) has determined that this rule making will not have a substantial adverse impact on jobs and employment opportunities, and that by its nature and purpose (protecting the New York State white-tailed deer and moose resources), the proposed rule will protect jobs and employment opportunities. Therefore, the department has determined that a job impact statement is not required.

Department of Financial Services

NOTICE OF ADOPTION

Financial Statement Filings and Accounting Practices and Procedures

I.D. No. DFS-23-14-00002-A
Filing No. 919
Filing Date: 2014-10-30
Effective Date: 2014-11-19

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

Action taken: Amendment of Part 83 (Regulation 172) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 107(a)(2), 301, 307, 308, 1109, 1301, 1302, 1308, 1404, 1405, 1407, 1411, 1414, 1501, 1505, 3233, 4117, 4233, 4239, 4301, 4310, 4321-a, 4322-a, 4327 and 6404; Public Health Law, sections 4403, 4403-a, 4403-(c)(12) and 4408-a; L. 2002, ch. 599, L. 2008, ch. 311

Subject: Financial Statement Filings and Accounting Practices and Procedures.

Purpose: To update citations in Part 83 to the Accounting Practices and Procedures Manual as of March 2014.

Text or summary was published in the June 11, 2014 issue of the Register, I.D. No. DFS-23-14-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Sally Geisel, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5287, email: sally.geisel@dfs.ny.gov

Revised Job Impact Statement

The Department does not believe that this rule will have any impact on jobs and employment opportunities, including self-employment opportunities. The amendment merely adopts the most recent edition published by the National Association of Insurance Commissioners ("NAIC") of the Accounting Practices and Procedures Manual As of March 2014 ("2014 Accounting Manual"), replacing the rule's current reference to the Accounting Practices and Procedures Manual As of March 2013. All states require insurers to comply with the 2014 Accounting Manual, which establishes uniform practices and procedures for U.S.-licensed insurers. Adoption of the rule is necessary for the Department to maintain its accreditation status with the NAIC. The NAIC accreditation standards require that state insurance regulators have adequate statutory and administrative authority to regulate insurers' corporate and financial affairs, and that they have the necessary resources to carry out that authority.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Reports to Central Organization

I.D. No. DFS-46-14-00013-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 Subpart 62-2 of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 201, 301, 318, 319, 403, 2601, 3403, 3413 and 3432

Subject: Reports to Central Organization.

Purpose: To remove an outdated references to "PILR" in the title of section 62-2.2.

Text of proposed rule: The title of Section 62-2.4 is amended to read as follows:

Section 62-2.4 Requests for insurance loss information [collected by PILR].

Text of proposed rule and any required statements and analyses may be obtained from: Jessica Heegan, NYS Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5683, email: jessica.heegan@dfs.ny.gov

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

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

Consensus Rule Making Determination

This amendment merely updates the rule by removing an obsolete reference to PILR from the title of section 62-2.2 of title 11 of the New York Compilation of Codes Rules and Regulations (Insurance Regulation 96). Because this amendment merely updates the rule by removing an obsolete reference, no person or entity is likely to object.

Accordingly, this rulemaking is determined to be a consensus rulemaking, as defined in State Administrative Procedure Act ("SAPA") § 102(11), and is proposed pursuant to SAPA § 202(1)(b)(i). Therefore, this rulemaking is exempt from the requirement to file a Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Businesses and Local Governments, or a Rural Area Flexibility Analysis.

Job Impact Statement

This amendment merely updates the rule by removing an obsolete reference to PILR from the title of section 62-2.2 of title 11 of the New York Compilation of Codes Rules and Regulations (Insurance Regulation 96). This amendment will not adversely impact job or employment opportunities in New York, or have any adverse impact on self-employment opportunities, because the revision imposes no new or additional requirements on any insurer subject to the rule.

Department of Health

NOTICE OF EMERGENCY
ADOPTION
AND REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Rate Rationalization—Intermediate Care Facilities for Persons with Developmental Disabilities

I.D. No. HLT-28-14-00015-ERP
Filing No. 922
Filing Date: 2014-10-31
Effective Date: 2014-11-01

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

Action Taken: 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 Intermediate Care Facilities for Persons with Developmental Disabilities (ICFs/DD).

On July 1, 2014, OPWDD and the Department of Health (DOH) implemented a new reimbursement methodology for ICFs/DD, which complements existing OPWDD requirements concerning this program, to satisfy commitments included in OPWDD's transformation agreement with the federal Centers for Medicare and Medicaid Services (CMS).

After July 1, CMS informed OPWDD and DOH that CMS would require changes in reimbursement for capital assets used in ICFs/DD. These changes are that capital costs for day habilitation property acquisitions must be depreciated over 25 years and that providers must submit information for each capital asset that is verified by an independent auditor and identifies the differences, by asset, between the amounts reported on the cost report and amounts that were approved by OPWDD. The emergency/proposed regulations are in response to these CMS requirements. The amendments change the depreciation period and reporting for capital costs.

DOH was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes. The State Administrative Procedure Act (SAPA) sets forth timeframes for the promulgation of regulations (including 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 to adopt the substantive amendments necessary to implement the rate-setting methodology in accordance with CMS mandates is through the emergency rulemaking process.

If DOH did not promulgate these regulations on an emergency basis, the Department would fail to meet its commitment to CMS and would risk loss of the substantial federal funding that is contingent upon 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 November 1, 2014.

Substance of emergency/revised rule: These emergency/proposed regulations amend the newly-adopted 10 NYCRR subpart 86-11 concerning the rate methodology for Intermediate Care Facilities for Persons with Developmental Disabilities (ICFs/DD). The amendments contain the methodology as described in the regulations adopted July 1, 2014 with changes required by the federal Centers for Medicare and Medicaid Services (CMS) subsequent to the adoption of those regulations. The amendments change reimbursement for capital assets used in ICFs/DD. The changes are:

1) The "capital component" sections were revised to require that capital costs must be depreciated over 25 years. The amendments require ICF/DD providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

2) The "capital component" section was revised to eliminate capital threshold schedules.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on July 16, 2014, I.D. No. HLT-28-14-00015-P. The emergency rule will expire December 29, 2014.

Emergency rule compared with proposed rule: Substantial revisions were made in sections 86-11.1, 86-11.2, 86-11.3, 86-11.4 and 86-11.7.

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.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

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 amendments 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 amendments change the newly adopted methodology for reimbursement of Intermediate Care Facilities for Persons with Developmental Disabilities (ICFs/DD).

Needs and Benefits:

On July 1, 2014, the Office for People With Developmental Disabilities (OPWDD) and the Department of Health (DOH) implemented a new reimbursement methodology for ICFs/DD to satisfy commitments included in OPWDD's transformation agreement with the federal Centers for Medicare and Medicaid Services (CMS).

After July 1, CMS informed OPWDD and DOH that CMS would require changes in reimbursement for ICF/DD capital assets. These changes are that capital costs for property acquisitions must be depreciated over 25 years; that the provider must submit a schedule that identifies the differences, by capital asset, between the amounts reported on the cost report and the amounts that were prior approved by OPWDD; and that an independent auditor apply procedures to verify the accuracy and completeness of the schedule. The amendments are in response to these CMS requirements.

These changes will bring the methodology into compliance with current CMS policies regarding depreciation of capital assets and provide information on capital costs required by CMS.

Costs:

Costs to the Agency and to the State and its local governments:

The amendments require OPWDD or DOH to give each provider a schedule identifying (for each capital asset for which OPWDD approved the costs prior to July 1, 2014) total actual costs, reimbursable costs, total financing cost, allowable depreciation and interest for the remaining useful life, and allowable reimbursement for each year of the remaining useful life.

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.

Costs to private regulated parties:

The emergency/proposed regulations will change the new reimbursement methodology for ICFs/DD. Application of the changes in the methodology may result in lower capital cost reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period. In addition, providers will incur costs preparing capital assets schedules and having independent auditors apply procedures to verify the accuracy and completeness of the capital assets schedules.

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 amendments increase paperwork to be completed by providers. The amendments require providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

Duplication:

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

Alternatives:

Since the methodology changes in these amendments are required by CMS, OPWDD and DOH did not consider any alternatives, because any alternatives would not be in compliance with recently articulated CMS policy and requirements.

Federal Standards:

The 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 November 1, 2014. DOH expects to finalize the amendments as soon as possible within the timeframes established by the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis

Effect of Rule:

OPWDD and DOH have determined, through a review of the certified cost reports, that most services delivered in Intermediate Care Facilities for Persons with Developmental Disabilities (ICFs/DD) 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 108 ICF/DD providers. OPWDD and DOH are unable to estimate the portion of these providers that may be considered to be small businesses.

The emergency/proposed regulations, effective November 1, 2014, amend the rate setting methodology that was adopted in July 2014 in conformance with changes mandated by CMS after July 1, 2014.

After July 1, 2014, CMS informed OPWDD and DOH that it would require changes in reimbursement for ICF/DD capital assets. These changes are that capital costs for property acquisitions must be depreciated over 25 years; that the provider must submit a schedule that identifies the differences, by capital asset, between the amounts reported on the cost report and the amounts that were prior approved by OPWDD; and that an independent auditor apply procedures to verify the accuracy and completeness of the schedule. The amendments change the depreciation period and reporting requirements for capital costs. Application of the changes in the methodology for capital costs may result in lower reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period.

Compliance Requirements:

The amendments require ICF/DD providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

Professional Services:

Additional professional services will be required as a result of these regulations. The amendments require independent auditors to apply procedures to verify the accuracy and completeness of the capital assets schedule. However, the regulations will not add to the professional service needs of local governments.

Compliance Costs:

The amendments require ICF/DD providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

Since the methodology changes in these amendments are required by CMS, OPWDD and DOH did not consider any alternatives, because any alternatives would not be in compliance with recently articulated CMS policy and requirements.

The potential loss of federal funds that could result from noncompliance would have had far more serious consequences to providers than the minor decrease in annual reimbursement for capital costs that may result from this change.

Small Business and Local Government Participation:

OPWDD and DOH met with representatives of providers to discuss this change in methodology at a meeting held on October 6, 2014. The New York State Association of Community and Residential Agencies (NYSACRA), which represents some providers that have fewer than 100 employees, was included in this meeting.

Revised 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 regulations, effective November 1, 2014, amends the rate setting methodology that was adopted in July 2014, in conformance with a change mandated by CMS after July 1, 2014.

After July 1, 2014, CMS informed OPWDD and DOH that CMS would require changes in reimbursement ICF/DD capital assets. These changes are that capital costs for property acquisitions must be depreciated over 25 years; that the provider must submit a schedule that identifies the differences, by capital asset, between the amounts reported on the cost report and the amounts that were approved by OPWDD; and that an independent auditor apply procedures to verify the accuracy and completeness of the schedule. The amendments change the depreciation period and reporting for capital costs. Application of the changes in the methodology may result in lower reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

There will be additional reporting, recordkeeping, and professional services imposed by these amendments. The amendments require ICF/DD providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule. However, the amendments will not add to the professional service needs of local governments.

Costs:

The amendments require ICF/DD providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

Minimizing Adverse Impact:

Since the methodology change in this amendment is required by CMS, OPWDD and DOH did not consider any alternatives, because any alternatives would not be in compliance with recently articulated CMS policy and requirements.

The potential loss of federal funds that could result from noncompliance would have had far more serious consequences to providers than the minor decrease in annual reimbursement that results for capital costs that result from these changes.

Rural Area Participation:

Participation of public and private interests in rural areas: OPWDD and DOH met with representatives of providers to discuss the capital changes in new methodology October 6, 2014. The New York State Association of Community and Residential Agencies (NYSACRA), which represents some providers in rural areas, was included in this meeting.

Revised 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 regulations, effective November 1, 2014, amend the rate setting methodology that was adopted in July 2014, in conformance with changes mandated by CMS after July 1, 2014.

Application of the changes in the methodology may result in lower capital cost reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period. The impact of additional recordkeeping associated with verification of those capital costs will be negligible.

The amendments are therefore expected to have no significant adverse impact on jobs and employment opportunities with providers.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF EMERGENCY ADOPTION AND REVISED 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-ERP

Filing No. 923

Filing Date: 2014-10-31

Effective Date: 2014-11-01

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

Action Taken: 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 the rate methodology for residential habilitation provided in Individualized Residential Alternatives (IRAs) and Community Residences (CRs) and day habilitation services.

On July 1, 2014, OPWDD and the Department of Health (DOH) implemented 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).

After July 1, CMS informed OPWDD and DOH that the State could not use SSI benefits in excess of the room and board costs to offset the Medicaid rate for residential habilitation, and that CMS would require changes in reimbursement for capital assets used in day habilitation programs. These changes are that capital costs for day habilitation property acquisitions must be depreciated over 25 years and that providers must submit information for each capital asset that is verified by an independent auditor and identifies the differences, by asset, between the amounts reported on the cost report and amounts that were approved by OPWDD.

The emergency/proposed regulations are in response to these CMS requirements. The regulations contain the methodology as described in the regulations adopted effective July 1, with changes to the SSI offset, day habilitation depreciation period and reporting for day habilitation capital costs, and with additional changes to the budget neutrality factor necessitated by the change in the SSI offset. In addition, the amendments contain provisions to reimburse IRA and CR providers for July 1 through November 1, 2014 for the difference between the November 1 rate and the July 1 rate, if the November 1 rate is higher.

The Department was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the nec-

essary timeframes. The State Administrative Procedure Act (SAPA) sets forth timeframes for the promulgation of regulations (including 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 to adopt the substantive amendments necessary to implement the rate-setting methodology in accordance with CMS mandates is through the emergency rulemaking process.

If the Department did not promulgate these regulations on an emergency basis, the Department would fail to meet its commitment to CMS and would risk loss of the substantial federal funding that is contingent upon 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 November 1, 2014.

Substance of emergency/revised rule: 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. The amendments contain the methodology as described in the regulations adopted July 1, 2014 with changes required by the federal Centers for Medicare and Medicaid Services (CMS) subsequent to the adoption of those regulations. The amendments change the SSI offset with additional changes to the budget neutrality factor necessitated by the change in the SSI offset. The changes are:

1) A definition was added for "state supplement." The definition state supplement is the amount paid to a provider to cover room and board costs in excess of SSI/SNAP payments.

2) The "budget neutrality" formula was changed for Supervised and Supportive Individualized Residential Alternatives (IRAs) and Community Residences (CRs). The method for calculating the budget neutrality factor for the "state supplement" was adjusted.

3) The "capital component" sections were revised to eliminate capital threshold schedules and require that capital costs must be depreciated over 25 years. The amendments require day habilitation providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

4) The amendments also contain provisions to reimburse IRA and CR providers for July 1 through November 1, 2014 for the difference between the November 1, 2014 rate and the July 1, 2014 rate, if the November 1 rate is higher.

5) Several non-substantive technical corrections were added to correct reference errors and grammatical errors.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on July 16, 2014, I.D. No. HLT-28-14-00016-P. The emergency rule will expire December 29, 2014.

Emergency rule compared with proposed rule: Substantive revisions were made in sections 86-10.1, 86-10.2, 86-10.3, 86-10.6 and 86-10.8.

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.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

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 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:

On July 1, 2014, OPWDD and the Department of Health (DOH) implemented 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).

After July 1, CMS informed OPWDD and DOH that the State could not use SSI benefits in excess of the room and board costs to offset the Medicaid rate for residential habilitation, and that CMS would require changes in reimbursement for capital assets used in day habilitation programs. These changes are that capital costs for day habilitation property acquisitions must be depreciated over 25 years and that providers must submit information for each capital asset that is verified by an independent auditor and identifies the differences, by asset, between the amounts reported on the cost report and the amounts that were prior approved by OPWDD. The emergency/proposed amendments are in response to these CMS requirements. The amendments contain the methodology as described in the regulations adopted effective July 1, with changes to the SSI offset, day habilitation depreciation period and reporting for day habilitation capital costs, and with additional changes to the budget neutrality factor necessitated by the change in the SSI offset. In addition, the amendments contain provisions to reimburse IRA and CR providers for July 1 through November 1, 2014 for the difference between the November 1 rate and the July 1 rate, if the November 1 rate is higher. Finally, these amendments make technical and clarifying changes to the regulations effective July 1, 2014.

These changes will increase reimbursement to providers, bring the methodology into compliance with current CMS policies regarding depreciation of capital assets and the treatment of individual benefits in HCBS waiver programs and provide information on capital costs required by CMS.

Costs:

Costs to the Agency and to the State and its local governments:

The emergency/proposed regulations will result in additional State share Medicaid costs of approximately $17 million per year. The regulations also require OPWDD or DOH to give each provider a schedule identifying (for each capital asset for which OPWDD approved the costs prior to July 1, 2014) total actual costs, reimbursable costs, total financing cost, allowable depreciation and interest for the remaining useful life, and allowable reimbursement for each year of the remaining useful life.

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. Application of the changes in the methodology for SSI and budget neutrality is expected to result in increased rates for all non-state operated providers. Overall reimbursement to providers will be increased by approximately $29 million from July 2014 through June 2015. Application of the changes in the methodology for capital cost to day habilitation may result in lower reimbursement per year, but full approved capital costs will be reimbursed over the 25 year amortization period.

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 increase paperwork to be completed by providers. The amendments require providers of day habilitation services to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

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:

Since the methodology changes in these amendments are required by

CMS, OPWDD and DOH did not consider any alternatives, because any alternatives would not be in compliance with recently articulated CMS policy and requirements.

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 November 1, 2014. DOH expects to finalize the amendments as soon as possible within the timeframes established by the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis

Effect of Rule:

OPWDD and DOH have 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 and DOH are unable to estimate the portion of these providers that may be considered to be small businesses.

The changes in the emergency/proposed regulations, effective November 1, 2014, amend the rate-setting methodology that was adopted in July 2014 in conformance with changes mandated by CMS after July 1, 2014.

After July 1, 2014, CMS informed OPWDD and DOH that the State could not use SSI benefits in excess of the room and board costs to offset the Medicaid rate for residential habilitation, and that CMS would require changes in reimbursement for capital assets used in day habilitation programs. These changes are that capital costs for day habilitation property acquisitions must be depreciated over 25 years; that providers must submit a schedule that identifies the differences, by capital asset, between the amounts reported on the cost report and the amounts that were approved by OPWDD; and that an independent auditor apply procedures to verify the accuracy and completeness of the schedule. The amendments contain the methodology as described in the regulations adopted in July 2014, with changes to the SSI offset, day habilitation depreciation period and reporting for day habilitation capital costs, and with additional changes to the budget neutrality factor necessitated by the change in the SSI offset. Application of the changes in the methodology regarding SSI offsets and budget neutrality is expected to result in increased rates for all providers, including providers that are small businesses. Overall reimbursement to providers will be increased by approximately $29 million for July 2014 through June 2015. Application of the changes in the methodology for capital costs to day habilitation may result in lower reimbursement per year, but full approved capital costs will be reimbursed over the 25 year amortization period.

The changes also include an amendment to reimburse IRA and CR providers, including providers that are small businesses, for the difference between the November 1 rate and the July 1 rate, if the November 1 rate is higher. Finally, these regulations make technical and clarifying changes to the regulations effective July 1, 2014.

Compliance Requirements:

The amendments require providers of day habilitation services to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

Professional Services:

Additional professional services will be required as a result of these regulations. The amendments require providers of day habilitation services to verify the accuracy and completeness of the capital assets schedule. However, the regulations will not add to the professional service needs of local governments.

Compliance Costs:

The amendments require providers of day habilitation services to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

Since the methodology changes in these amendments are required by CMS, OPWDD and DOH did not consider any alternatives, because any alternatives would not be in compliance with recently articulated CMS policy and requirements.

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 yearly reimbursement for day habilitation costs that may result from these changes.

Small Business and Local Government Participation:

OPWDD and DOH met with representatives of providers to discuss the SSI offset changes in the new methodology (including provider concerns) on July 21, August 18 and September 15. OPWDD and DOH also met with representatives of providers to discuss the capital changes on October 6, 2014. The New York State Association of Community and Residential Agencies (NYSACRA), which represents some providers that have fewer than 100 employees, was included in these meetings.

Revised 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 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 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 regulations, effective November 1, 2014, amend the rate-setting methodology that was adopted in July 2014 in conformance with changes mandated by CMS after July 1, 2014.

After July 1, 2014, CMS informed OPWDD and DOH that the State could not use SSI benefits in excess of the room and board costs to offset the Medicaid rate for residential habilitation, and that CMS would require changes in reimbursement for capital assets used in day habilitation programs. These changes are that capital costs for day habilitation property acquisitions must be depreciated over 25 years; that providers must submit a schedule that identifies the differences, by capital asset, between the amounts reported on the cost report and amounts that were approved by OPWDD; and that an independent auditor apply procedures to verify the accuracy and completeness of the schedule. The amendments contain the methodology as described in the regulations adopted in July 2014, with changes to the SSI offset, day habilitation depreciation period and reporting for day habilitation capital costs, and with additional changes to the budget neutrality factor necessitated by the change in the SSI offset. Application of the changes in the methodology regarding SSI offsets and budget neutrality is expected to result in increased rates for all providers, including providers in rural areas. Overall reimbursement to providers will be increased by approximately $29 million for July 2014 through June 2015. Application of the changes in the methodology for capital costs to day habilitation may result in lower reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period.

The changes also include an amendment to reimburse IRA and CR providers, including providers in rural areas, for the difference between the November 1 rate and the July 1 rate, if the November 1 rate is higher. Finally, these regulations make technical and clarifying changes to the regulations effective July 1, 2014.

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

There will be additional reporting, recordkeeping, and professional services imposed by these amendments. The amendments require providers of day habilitation services to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule. However, the amendments will not add to the professional service needs of local governments.

Costs:

The amendments require providers of day habilitation services to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

Minimizing Adverse Impact:

Since the methodology changes in these amendments are required by CMS, OPWDD and DOH did not consider any alternatives, because any alternatives would not be in compliance with recently articulated CMS policy and requirements.

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 annual reimbursement for day habilitation capital costs that may result from these changes.

Rural Area Participation:

Participation of public and private interests in rural areas: OPWDD and DOH met with representatives of providers to discuss the SSI offset changes in the new methodology (including provider concerns) on July 21, August 18 and September 15. OPWDD and DOH met with representatives of providers to discuss the capital changes on October 6, 2014. The NYS Association of Community and Residential Agencies (NYSACRA), which represents some providers in rural areas, was included in these meetings.

Revised 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 regulations, effective November 1, 2014, amend the rate-setting methodology that was adopted in July 2014 in conformance with changes mandated by CMS after July 1, 2014.

All providers will experience an increase in funding as a result of the changes to the SSI offset and budget neutrality factor in these amendments. Application of the changes in the methodology for capital costs to day habilitation may result in lower reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period.

The amendments are therefore expected to have no significant adverse impact on jobs and employment opportunities with providers.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Prevention of Influenza Transmission by Healthcare and Residential Facility and Agency Personnel

I.D. No. HLT-30-14-00016-A

Filing No. 929

Filing Date: 2014-11-04

Effective Date: 2014-11-19

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

Action taken: Amendment of section 2.59 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 225, 2800, 2803, 3612 and 4010

Subject: Prevention of Influenza Transmission by Healthcare and Residential Facility and Agency Personnel.

Purpose: To clarify regulatory amendments and implement more flexible reporting provisions.

Text or summary was published in the July 30, 2014 issue of the Register, I.D. No. HLT-30-14-00016-P.

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

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

Assessment of Public Comment

The Department received 8 public comments. Four were from home care agencies and associated organizations: VIP Health Care Services, PHI New York, Home Care Association of New York State, and New York State Association of Health Care Providers. One was from District Council 37, American Federation of State, County & Municipal Employees, AFL-CIO, and one was from the New York State Association of County Health Officials. One was from a local health department employee, and one was from an administrative assistant at an academic medical center. In general, all commenters support the amendments, although some expressed concerns about provisions in the original regulation that remain unchanged or suggested additional changes. Given the small number of comments received, each is summarized below with a response.

One commenter stated that although "the rule is just one more regulation to adhere to", it has merits and positive impact. The commenter supports the change in documentation that no longer requires the name and address of the person ordering or administering the vaccine. The commenter questions why the vaccine formulation is included among the new documentation requirements and questions whether an attestation stating that the individual received the vaccine and the date of vaccine would suffice. Additionally, the commenter requests clarification on the mechanism for employers to attest to the immunization status of their employees, and questions whether the employer should be required to pay for masks for employees who refuse vaccine.

Response: Vaccine formulation is a standard part of immunization documentation. Inclusion of the formulation (e.g., brand name, generic name, or other generally accepted designation such as "LAIV" or "IIV") will bring the documentation requirements for this regulation in line with documentation requirements for other vaccines. Asking healthcare providers only to give an attestation for this regulation would not relieve them of the need to appropriately document receipt of the vaccine, including formulation.

Regarding the attestation of the immunization status of their employees, this amendment relieves the burden placed on regulated entities, especially those that involve contract staff.

Finally, the requirement that covered entities pay for masks for personnel who refuse vaccine is not new. 10 NYCRR 2.59 currently requires healthcare and residential facilities and agencies to supply such masks to personnel, free of charge. It is standard procedure for healthcare facilities to provide appropriate personal protective equipment.

One commenter writes "in support of the proposed amendments to the regulations pertaining to the prevention of influenza transmission by healthcare and residential facility and agency personnel." The commenter further states that "the proposed changes will ease the regulatory burden on the agencies while still serving the intended purpose of the regulation".

Response: The Department agrees that these amendments will lessen the burden on covered entities while maintaining the important functions of the regulation.

One commenter "supports the July 30th proposed changes" while noting concerns over provisions in the original regulation that have not been revised and suggesting additional changes. Regarding documentation of vaccination, the commenter states that the new language eases documentation burden but urges "continued effort" in this regard. Specifically, the commenter suggested changes to reduce "duplicative and excessive reporting". This commenter described challenges ensuring compliance with the regulation in the home care setting and "urge[d] the Department to be cognizant of the realistic challenges faced by home care agencies when judging agency efforts to ensure compliance with this mandate." The commenter questioned the suitability of mask wear in the home care setting, but focused on provisions in the original regulation rather than the proposed amendments. The commenter noted the provision that covered facilities and agencies must supply masks to unvaccinated personnel free of charge to the personnel and suggested that agencies be compensated for the costs of doing so.

Response: The Department agrees that these proposed amendments will ease administrative burden and continues to monitor implementation.

Regarding the commenter's suggestion about eliminating duplicative reporting (where one healthcare worker is reported more than once if working for more than one covered agency or facility), reporting is intended to focus on the vaccination statistics for the facility or agency, rather than individual healthcare workers. Because the focus of reporting is on vaccination coverage at facilities or agencies, it is appropriate to include healthcare workers who work at more than one facility or agency in each report.

The Department recognizes the challenges of ensuring compliance with mask wear in the home care setting and suggests that methods similar to those used to monitor compliance with other infection control practices (e.g., hand hygiene) should be used.

As noted above, the requirement that covered entities pay for masks for personnel who refuse vaccine is not new, and it is standard procedure for healthcare facilities to provide all appropriate personal protective equipment.

One commenter expressed opposition to the regulation, while supporting the proposed amendments as improvements. Specifically, the commenter stated that the proposals allowing for removal of masks when outside the home in the community, during speech therapy, or when communicating with persons who lip read are "critical clarifications". The commenter also described the previous reporting requirements in the original regulation as "daunting" and "burdensome" and supports the change to allow for attestations from contract employers regarding vaccination status. The commenter also supports the change to remove the documentation requirement of name and address of the person who ordered or administered the vaccine, noting that it "posed particular challenges" to providers. Despite overall support for the proposed amendments, the commenter expressed continued concern about the appropriateness of the regulation in the home care setting and stated that home care consumers should decide whether masks are worn. Finally, the commenter opposed including healthcare workers as part of the report from each facility or agency where they work.

Response: While understanding the commenter's concerns about the home care setting, the Department continues to believe that home care

consumers deserve the same protection from influenza as patients in other healthcare settings. A provision to relax the mask wear requirement in homes could easily be misused, especially with vulnerable patients and/or providers who prefer not to wear masks.

The Department has put considerable thought and effort into the reporting procedures. The Department believes that the current system appropriately focuses on the proportion of vaccinated personnel providing services to a facility or agency. Specifically, attempting to identify personnel who work for multiple facilities or agencies would be burdensome to facilities, agencies, and the Department. Some healthcare workers are employed by one agency but contracted to other agencies or facilities and, furthermore, some healthcare workers are directly employed by multiple agencies or facilities.

One commenter expresses opposition to the regulation itself and suggests "a more comprehensive approach to infection control." The commenter suggests additional amendments requiring employers to provide different types of masks for personnel who have difficulty wearing one style. The commenter objects to the language allowing employers to adopt more stringent policies than are contained within the regulation. The commenter states that the amendments that provide additional guidance on where masks must be worn and provide exemptions for care outside of homes or facilities, speech therapists, and personnel communicating with individuals who lip read are "generally beneficial", while noting that the proposed language might be open to interpretation. The commenter notes use of different terminology ("influenza vaccine" vs. "vaccine") and suggests that this could create misinterpretation. The commenter notes that the process for requesting consent for vaccination records and de-identifying employee health information before it is sent is not described, and notes that some facilities use stickers on badges to denote vaccination status. The commenter states that there is continued confusion about which personnel are covered, and the question of who might expose patients is left open to interpretation. Finally, the commenter states that the start and end of the "flu season" is confusing and suggests amendments to directly notify workers.

Response: Regarding the concern about employers providing different types of masks, employers are expected to provide appropriate personal protective equipment (PPE).

Although not explicitly stated in the original regulation, facilities and agencies have always been allowed to implement more stringent policies than those embodied in this regulation. Therefore, this is not a substantive change. The regulation was merely clarified in this regard.

The Department does not expect use of the terms "influenza vaccine" and "vaccine" to cause confusion in the context of this regulation.

Regarding the commenter's concerns about consent for transmission of vaccination records, nothing in this regulation or the amendments changes current consent procedures. It would not be appropriate to attempt to duplicate consent requirements by including them within this regulation. Regarding de-identification of employee health information, in cases where facilities or agencies are providing an attestation of which employees are vaccinated, de-identification would not be appropriate because the receiving facility or agency needs to know who is vaccinated and who is not. Again, the usual procedures for obtaining consent for release of records would apply. Similarly, procedures for identifying vaccinated and unvaccinated employees must conform to applicable privacy laws and regulations.

Regarding the commenter's concerns about parts of the regulation and amendments being open to interpretation, in the context of different settings and facility layouts, the Department believes that the language in the regulation and amendments—referring to areas where patients or residents are "typically" present—provides the appropriate level of guidance.

The Department believes that notification to healthcare facilities and agencies, which can then notify their employees, is the best way to communicate the mask requirement. Additionally, the beginning and end of mask wear are reported on the Department's web site.

One commenter recommends that the Department amend regulations affecting the Early Intervention (EI) program such that EI providers are subject to mask wear requirements if unvaccinated for influenza. The commenter states a belief that regulations obligate the Department to implement mask wear requirements for EI providers.

Response: EI providers are not "personnel" within the meaning of the regulation. The Department believes that the regulation is appropriately limited to healthcare personnel.

One commenter stated that the addition of vaccine formulation among the documentation requirements "makes things much more complicated".

Response: As noted in the response to a previous comment, the formulation of vaccine is a standard part of immunization documentation, similar to what is required for measles and rubella vaccine documentation requirements.

One commenter suggested that a distinction be made between mental health facilities and other medical facilities. The commenter states that some patients leave the patient areas on a pass and might travel through various administrative or non-patient areas of the hospital. The commenter also asks if there are boundaries within which facilities must stay if they adopt more stringent policies than required by the regulation and notes several examples of additional institutional requirements.

Response: Mental health facilities that do not otherwise meet the definition of "healthcare or residential facility or agency" are not covered by this regulation. The Department believes that the regulation appropriately protects patients and residents from transmission of influenza from healthcare workers. The facility is expected to use reasonable judgment in determining whether a given area is one in which patients or resident are typically present, such that unvaccinated personnel must wear masks during the influenza season.

Regarding the statement that facilities may adopt more stringent policies, as noted in a previous response, this is not a change from the original regulation but rather a clarification. Questions regarding the boundaries of a facility's or agency's authority to issue employee policies, which may be more stringent that this regulation, are beyond the scope of this document and should be directed to legal counsel for the facility or agency.

Office of Mental Health

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Vital Access Program and Providers

I.D. No. OMH-46-14-00005-EP
Filing No. 927
Filing Date: 2014-11-04
Effective Date: 2014-11-04

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

Proposed Action: Addition of Part 530 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.02, 43.02; L. 2014, ch. 53

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

Specific reasons underlying the finding of necessity: Chapter 53 of the Laws of 2014 provides for the Commissioners of Health and Mental Hygiene to make available funds to certain designated providers of health and behavioral health services which might be endangered due to shifting demographics and changes in health care financing (Medicaid managed care and Affordable Care Act). The Vital Access Program allows for supplemental funding and/or a temporary rate or fee adjustment that is available to providers of mental health services that are determined by the Commissioner to be essential to the availability of mental health services in a geographic or economic region of the State, but in financial jeopardy due to their payer mix or geographic isolation. This rule making establishes the process by which providers of mental health clinic services may be designated as Vital Access Providers to receive the above-mentioned funding. This proposal has significant impact upon public health, safety and general welfare, since without the Vital Access Program funding, providers of clinic services could be at financial risk, and individuals in need of mental health clinic services would be at risk of not receiving the services they need. Therefore, the rule is being adopted on an emergency basis until such time as it is promulgated through the normal Notice of Proposed Rule Making process, consistent with the State Administrative Procedure Act.

Subject: Vital Access Program and Providers.

Purpose: To establish a process by which providers may be designated as Vital Access Providers to receive supplemental funding.

Text of emergency/proposed rule: *PART 530*
VITAL ACCESS PROGRAM and PROVIDERS
530.1 Background and Intent.
The purpose of this Part is to provide a means to support the stability and geographic distribution of mental health clinic services throughout all geographic and economic regions of the State. A designation of Vital Access Provider denotes the Commissioner's determination to ensure patient access to a provider's essential services otherwise jeopardized by the provider's payer mix or geographic isolation.

530.2 Legal Base.

(a) Section 7.09 of the Mental Hygiene Law authorizes the Commissioner to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

(b) Section 31.02 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for the provision of inpatient and outpatient mental health services.

(c) Section 43.02 of the Mental Hygiene Law authorizes the Office to establish rates or methods of payment for services at facilities subject to licensure or certification by the Office.

(d) Chapter 53 of the Laws of 2014 authorizes the Commissioner to provide special funding to certain designated providers.

530.3 Definitions.

(a) Vital Access Program ("VAP") means a program of supplemental funding and/or temporary rate or fee adjustments available to providers of mental health services that are determined by the Commissioner to be essential to the availability of mental health services in a geographic or economic region of the State but in financial jeopardy due to their payer mix or geographic isolation.

(b) Vital Access Provider means a provider of mental health clinic services that is licensed under Article 31 of the Mental Hygiene Law and that is designated by the Commissioner as eligible for participation in the Vital Access Program. It does not include a provider that is licensed under Article 28 of the Public Health Law.

530.4 Vital Access Program.

(a) The Commissioner may accept applications from licensed providers of mental health clinic services requesting designation as a Vital Access Provider eligible to receive supplemental funding or a temporary rate adjustment. The Commissioner may give priority to providers serving regions or populations in the State that he or she shall determine are in special need of services. Such applications must sufficiently demonstrate that:

(1) The provider is essential to maintaining access to the mental health services it is authorized to provide to individuals with mental illness who reside in the geographic or economic region of the State served by the provider;

(2) The provider is in financial jeopardy due to payer mix or geographic isolation;

(3) The additional resources provided by supplemental funding or a rate or fee adjustment will achieve one or more of the following:

(i) protect or enhance access to care;

(ii) protect or enhance quality of care;

(iii) improve the cost effectiveness of the delivery of health care services; or

(iv) otherwise protect or enhance the health care delivery system, as determined by the Commissioner.

(b) Application.

(1) The written application required pursuant to subdivision (a) of this Section shall be submitted to the Commissioner at least sixty (60) days prior to the requested effective date of the designation as a Vital Access Provider and shall include a proposed budget to achieve the goals identified in the application.

(2) The Commissioner may require that applications submitted pursuant to this Section be submitted in response to, and in accordance with, a Request For Applications or a Request For Proposals issued by the Office.

(c) Reimbursement.

A provider that is designated as a Vital Access Provider shall be eligible to receive supplemental funding or a temporary rate or fee adjustment.

(d) Conditions on Approval.

(1) Any temporary rate adjustment issued pursuant to this section shall be in effect for a specified period of time of no more than three years, as determined by the Commissioner, based upon review and approval of a specific plan of action to achieve one or more of the goals set forth in paragraph (3) of this section. At the end of the specified timeframe, the provider shall be reimbursed in accordance with the otherwise applicable rate-setting methodology or fee schedule pertaining to such provider.

(2) The Commissioner may establish, as a condition of designation as a Vital Access Provider benchmarks, goals and standards to be achieved, and may require such periodic reports as he or she shall determine to be necessary to ensure their achievement. A determination by the Commissioner of a failure to demonstrate satisfactory progress in achieving such benchmarks, goals and standard shall be a basis for revoking the provider's designation as a Vital Access Provider, and terminating the supplemental funding or temporary rate or fee adjustment prior to the end of the specified timeframe.

(3) No portion of the funds received pursuant to this Part shall be used for the payment of any prior debt or obligation incurred by the designated provider, or for any purpose not related to the purposes set forth in this Part.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire February 1, 2015.

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

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

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

Regulatory Impact Statement

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

Section 31.02 of the Mental Hygiene Law authorizes the Commissioner to issue operating certificates for the provision of inpatient and outpatient mental health services.

Section 43.02 of the Mental Hygiene Law authorizes the Office to establish rates or methods of payment for services at facilities subject to licensure or certification by the Office.

Chapter 53 of the Laws of 2014 authorizes the Commissioner to provide special funding to certain designated providers.

2. Legislative Objectives: Articles 7, 31 and 43 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs and establish rates of payments for services under the Medical Assistance program. The rule making furthers the Legislative intent under Article 7 by ensuring that the Office fulfills its responsibility to assure the development of comprehensive plans, programs and services in the care, treatment, rehabilitation and training of persons with mental illness.

3. Needs and Benefits: The Vital Access Program ("VAP") allows for supplemental funding and/or a temporary rate or fee adjustment that is available to providers of mental health services that are determined by the Commissioner to be essential to the availability of mental health services in a geographic or economic region of the State, but in financial jeopardy due to their payer mix or geographic isolation. This rule making establishes the process by which providers may be designated as Vital Access Providers to receive the above-mentioned funding.

4. Costs:

(a) Cost to State government: These regulatory amendments are expected to result in a cost of $30 million Gross Medicaid in the 2014-2015 State fiscal year and $15 million Gross Medicaid in the 2015-2016 State fiscal year.

(b) Cost to local government: These regulatory amendments are not expected to result in any additional costs to local government.

(c) Cost to regulated parties: These regulatory amendments are not expected to result in any additional costs to regulated parties.

5. Local Government Mandates: The regulation will not mandate any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

6. Paperwork: This rule making will result in paperwork requirements associated with the written application for VAP approval, which may include preparing responses to a Request for Applications or Request for Proposals issued by the Office.

7. Duplication: The regulatory amendment does not duplicate existing State or Federal requirements.

8. Alternatives: The only alternative would have been inaction. As that would have resulted in those entities otherwise considered to be Vital Access Providers to be unable to receive the funding available through the Vital Access Program, that alternative was necessarily rejected.

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

10. Compliance Schedule: The regulatory amendment will become effective upon adoption.

Regulatory Flexibility Analysis

The Vital Access Program ("VAP") allows for supplemental funding and/or a temporary rate or fee adjustment that is available to providers of mental health services that are determined by the Commissioner to be essential to the availability of mental health services in a geographic or economic region of the State, but in financial jeopardy due to their payer mix or geographic isolation. This rule making establishes the process by which providers of mental health clinic services may be designated as Vital Access Providers to receive the above-mentioned funding. As there will be no adverse economic impact on small businesses or local governments as a result of these amendments, a regulatory flexibility analysis is not submitted with this notice.

Rural Area Flexibility Analysis

The Vital Access Program ("VAP") allows for supplemental funding and/or a temporary rate or fee adjustment that is available to providers of

mental health services that are determined by the Commissioner to be essential to the availability of mental health services in a geographic or economic region of the State, but in financial jeopardy due to their payer mix or geographic isolation. This rule making establishes the process by which providers of mental health clinic services may be designated as Vital Access Providers to receive the above-mentioned funding. As there will be no adverse economic impact on rural areas, a rural area flexibility analysis is not submitted with this notice.

Job Impact Statement

A Job Impact Statement is not submitted with this notice because it is evident from the subject matter that there will be no adverse impact on jobs and employment opportunities as a result of these amendments. The new 14 NYCRR Part 530 establishes the process by which providers of mental health clinic services may be designated as Vital Access Providers to receive supplemental funding and/or a temporary rate or fee adjustment consistent with the Vital Access Program (VAP).

Department of Motor Vehicles

NOTICE OF ADOPTION

Signage of School Buses Equipped with Wheelchairs

I.D. No. MTV-37-14-00010-A

Filing No. 930

Filing Date: 2014-11-04

Effective Date: 2014-11-19

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

Action taken: Amendment of section 46.11 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 375(20)(b)(2)

Subject: Signage of school buses equipped with wheelchairs.

Purpose: To conform signage on school buses related to persons with disabilities with the signage mandated by the Secretary of State.

Text or summary was published in the September 17, 2014 issue of the Register, I.D. No. MTV-37-14-00010-P.

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

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

Assessment of Public Comment

The agency received no public comment.

Office for People with Developmental Disabilities

EMERGENCY/PROPOSED RULE MAKING HEARING(S) SCHEDULED

Amendments to Rate Setting Methodology: Rates for Residential Habilitation Delivered in IRAs and CRs and for Day Habilitation

I.D. No. PDD-46-14-00003-EP

Filing No. 925

Filing Date: 2014-10-31

Effective Date: 2014-11-01

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 the rate methodology for residential habilitation provided in Individualized Residential Alternatives (IRAs) and Community Residences (CRs) and for day habilitation services.

On July 1, 2014, OPWDD and the Department of Health (DOH) implemented 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).

After July 1, CMS informed OPWDD and DOH that the State could not use SSI benefits in excess of the room and board costs to offset the Medicaid rate for residential habilitation, and that CMS would require changes in reimbursement for capital assets used in day habilitation programs. These changes are that capital costs for day habilitation property acquisitions must be depreciated over 25 years and that providers must submit information for each capital asset that is verified by an independent auditor and identifies the differences, by asset, between the amounts reported on the cost report and amounts that were approved by OPWDD.

The emergency/proposed regulations are in response to these CMS requirements. The regulations contain the methodology as described in the regulations adopted effective July 1, with changes to the SSI offset, day habilitation depreciation period and reporting for day habilitation capital costs, and with additional changes to the budget neutrality factor necessitated by the change in the SSI offset. In addition, the amendments contain provisions to reimburse IRA and CR providers for July 1 through November 1, 2014 for the difference between the November 1 rate and the July 1 rate, if the November 1 rate is higher.

OPWDD was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes. 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 to adopt the substantive amendments necessary to implement the rate-setting methodology in accordance with CMS mandates 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 Methodology: Rates for Residential Habilitation Delivered in IRAs and CRs and for Day Habilitation.

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

Public hearing(s) will be held at: 11:00 a.m., January 5, 2015 at Office for Persons with Developmental Disabilities, Counsel's Conference Rm., 3rd Fl., 44 Holland Ave., Albany, NY; 11:00 a.m., January 6, 2015 at Office for Persons 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. The amendments contain the methodology as described in the regulations adopted effective July 1, 2014 with changes required by the federal Centers for Medicare and Medicaid Services (CMS) subsequent to the adoption of those regulations. The amendments change the SSI offset with additional changes to the budget neutrality factor necessitated by the change in the SSI offset. The changes are:

1) A definition was added for "state supplement." The definition of state supplement is the amount paid to a provider to cover room and board costs in excess of SSI/SNAP payments.

2) The "budget neutrality" formula was changed for supervised and supportive individualized residential alternatives (IRAs) and community residences (CRs). The method for calculating the budget neutrality factor for the "state supplement" was adjusted.

3) The "capital component" sections were revised to eliminate capital threshold schedules and require that capital costs must be depreciated over 25 years. The amendments require day habilitation providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

4) The amendments also contain provisions to reimburse IRA and CR providers for July 1 through November 1, 2014 for the difference between the November 1, 2014 rate and the July 1, 2014 rate if the November 1 rate is higher.

5) Several non-substantive technical corrections were added to correct reference errors and grammatical errors.

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 January 28, 2015.

Text of rule and any required statements and analyses may be obtained from: Regulatory Affairs Unit, Office for Persons 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: On July 1, 2014, OPWDD and the Department of Health (DOH) implemented 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).

After July 1, CMS informed OPWDD and DOH that the State could not use SSI benefits in excess of the room and board costs to offset the Medicaid rate for residential habilitation and that CMS would require changes in reimbursement for capital assets used in day habilitation programs. These changes are that capital costs for day habilitation property acquisitions must be depreciated over 25 years; that the provider must submit a schedule that identifies the differences, by capital asset, between the amounts reported on the cost report and the amounts that were approved by OPWDD, and that an independent auditor apply procedures to verify the accuracy and completeness of the schedule. The amendments are in response to these CMS requirements. The amended regulations contain the methodology as described in the regulations adopted effective July 1, with changes to the SSI offset, day habilitation depreciation period and reporting for day habilitation capital costs, and with additional changes to the budget neutrality factor necessitated by the change in the SSI offset. In addition, the amendments contain provisions to reimburse IRA and CR providers for July 1 through November 1, 2014 for the difference between the November 1 rate and the July 1 rate, if the November 1 rate is higher. Finally, these regulations make technical and clarifying changes to the regulations effective July 1, 2014.

These changes will increase reimbursement to providers, bring the methodology into compliance with current CMS policies regarding depreciation of capital assets and the treatment of individual benefits in HCBS waiver programs and provide information on capital costs required by CMS.

4. Costs:

a. Costs to the Agency and to the State and its local governments: The emergency/proposed regulations will result in an additional State share of Medicaid costs of approximately $29 million from July 2014 through June 2015. The regulations also require OPWDD or DOH to give each provider a schedule identifying (for each capital asset for which OPWDD approved the costs prior to July 1, 2014) total actual costs, reimbursable costs, total financing cost, allowable depreciation and interest for the remaining useful life, and allowable reimbursement for each year of the remaining useful life.

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 regulations will amend the new reimbursement methodology for residential habilitation in IRAs/CRs and day habilitation. Application of the changes in the methodology for SSI and budget neutrality is expected to result in increased rates for all non-state operated providers. Overall reimbursement to providers will be increased by approximately $29 million from July 2014 through June 2015. Application of the changes in the methodology for capital costs to day habilitation will result in lower reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period. Providers will incur costs preparing the capital assets schedule and having an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

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 amendments increase paperwork to be completed by providers. They require providers of day habilitation services to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

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

8. Alternatives: Since the methodology changes in these amendments are required by CMS, OPWDD and DOH did not consider any alternatives, because any alternatives would not be in compliance with recently articulated CMS policy and requirements.

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

10. Compliance Schedule: OPWDD is adopting the amendments on an emergency basis effective November 1, 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) 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 emergency/proposed regulations, effective November 1, 2014, amend the rate-setting methodology that was adopted in July 2014 in conformance with changes mandated by CMS after July 1, 2014.

After July 1, 2014, CMS informed OPWDD and DOH that the State could not use SSI benefits in excess of the room and board costs to offset the Medicaid rate for residential habilitation, and that CMS would require changes in reimbursement for capital assets used in day habilitation programs. These changes are that capital costs for day habilitation property acquisitions must be depreciated over 25 years; that the provider must submit a schedule that identifies the differences, by capital asset, between the amounts reported on the cost report and the amounts that were approved by OPWDD, and that an independent auditor apply procedures to

verify the accuracy and completeness of the schedule. The regulations contain the methodology as described in the regulations adopted in July 2014, with changes to the SSI offset, day habilitation depreciation period and reporting for day habilitation capital costs, and with additional changes to the budget neutrality factor necessitated by the change in the SSI offset. Application of the changes in the methodology regarding SSI offsets and budget neutrality is expected to result in increased rates for all providers, including providers that are small businesses. Overall reimbursement to providers will be increased by approximately $29 million for July 2014 through June 2015. Application of the changes in the methodology for capital costs to day habilitation will result in lower reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period.

The changes also include an amendment to reimburse IRA and CR providers, including providers that are small businesses, for the difference between the November 1 rate and the July 1 rate, if the November 1 rate is higher. Finally, these regulations make technical and clarifying changes to the regulations effective July 1, 2014.

2. Compliance requirements: The amendments require providers of day habilitation services to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

3. Professional services: Additional professional services will be required as a result of these regulations. The amendments require providers of day habilitation services to verify the accuracy and completeness of the capital assets schedule. However, the regulations will not add to the professional service needs of local governments.

4. Compliance costs: The amendments require providers of day habilitation services to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

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

6. Minimizing adverse impact: Since the methodology changes in these amendments are required by CMS, OPWDD and DOH did not consider any alternatives, because any alternatives would not be in compliance with recently articulated CMS policy and requirements.

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 yearly reimbursement for day habilitation capital costs that result from these changes.

7. Small business participation: OPWDD and DOH met with representatives of providers to discuss the SSI offset changes in the new methodology (including provider concerns) on July 21, August 18 and September 15, 2014. OPWDD and DOH also met with representatives of providers to discuss the capital changes on October 6, 2014. The New York State Association of Community and Residential Agencies (NYSACRA) (which represents some providers that have fewer than 100 employees) was included in these meetings.

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 regulations, effective November 1, 2014, amend the rate-setting methodology that was adopted in July 2014 in conformance with changes mandated by CMS after July 1, 2014.

After July 1, 2014, CMS informed OPWDD and DOH that the State could not use SSI benefits in excess of the room and board costs to offset the Medicaid rate for residential habilitation, and that CMS would require changes in reimbursement for capital assets used in day habilitation programs. These changes are that capital costs for day habilitation property acquisitions must be depreciated over 25 years; that the provider must submit a schedule that identifies the differences, by capital asset, between the amounts reported on the cost report and the amounts that were approved by OPWDD, and that an independent auditor apply procedures to verify the accuracy and completeness of the schedule. The regulations contain the methodology as described in the regulations adopted in July 2014, with changes to the SSI offset, day habilitation depreciation period and reporting for day habilitation capital costs, and with additional changes to the budget neutrality factor necessitated by the change in the SSI offset. Application of the changes in the methodology regarding SSI offsets and budget neutrality is expected to result in increased rates for all providers, including providers in rural areas. Overall reimbursement to providers will be increased by approximately $29 million for July 2014 through June 2015. Application of the changes in the methodology for capital costs to day habilitation will result in lower reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period.

The changes also include an amendment to reimburse IRA and CR providers, including providers in rural areas, for the difference between the November 1 rate and the July 1 rate, if the November 1 rate is higher. Finally, these regulations make technical and clarifying changes to the regulations effective July 1, 2014.

2. Compliance requirements: The amendments require providers of day habilitation services to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

3. Professional services: Additional professional services will be required as a result of these regulations. The amendments require independent auditors to apply procedures to verify the accuracy and completeness of the capital assets schedule. However, the regulations will not add to the professional service needs of local governments.

4. Compliance costs: The amendments require providers of day habilitation services to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

5. Minimizing adverse impact: Since the methodology changes in these amendments are required by CMS, OPWDD and DOH did not consider any alternatives, because any alternatives would not be in compliance with recently articulated CMS policy and requirements.

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 yearly reimbursement for day habilitation capital costs that result from these changes.

6. Participation of public and private interests in rural areas: OPWDD and DOH met with representatives of providers to discuss the SSI offset changes in the new methodology (including provider concerns) on July 21, August 18 and September 15, 2014. OPWDD and DOH met with representatives of providers to discuss the capital changes on October 6, 2014. The New York State Association of Community and Residential Agencies (NYSACRA) (which represents some providers in rural areas) was included in these meetings.

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 regulations, effective November 1, 2014, amend the rate-setting methodology that was adopted in July 2014 in conformance with changes mandated by CMS after July 1, 2014.

All providers will experience an increase in funding as a result of the changes to the SSI offset and budget neutrality factor in these amendments. Application of the changes in the methodology for capital costs to day habilitation will result in lower reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period.

The amendments are therefore expected to have no significant adverse impact on jobs and employment opportunities with providers.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Amendment to Rate Setting for Non-State Providers: Intermediate Care Facilities for Persons with Developmental Disabilites

I.D. No. PDD-46-14-00004-EP
Filing No. 926
Filing Date: 2014-10-31
Effective Date: 2014-11-01

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 the rate methodology for intermediate care facilities for persons with developmental disabilities (ICF/DDs).

On July 1, 2014, OPWDD and the Department of Health (DOH) implemented a new reimbursement methodology for ICF/DDs, 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).

After July 1, CMS informed OPWDD and DOH that CMS would require changes in reimbursement for ICF/DD capital assets. These changes are that capital costs for property acquisitions must be depreciated over 25 years and that providers must submit information for each capital asset that is verified by an independent auditor and identifies the differences, by asset, between the amounts reported on the cost report and amounts that were approved by OPWDD.

The emergency/proposed regulations are in response to these CMS requirements. The regulations change the depreciation period and reporting for capital costs.

OPWDD was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes. 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 to adopt the substantive amendments necessary to implement the rate-setting methodology in accordance with CMS mandates 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: Amendment to Rate Setting for Non-State Providers: Intermediate Care Facilities for Persons with Developmental Disabilites.

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

Text of emergency/proposed rule: • Section 641-2.3 is amended by the addition of new subdivisions (e) and (g) to read as follows:

(e) Capital costs. Costs that are related to the acquisition, lease, construction and/or long-term use of land, building and fixed equipment, leasehold improvements and vehicles.

(g) Depreciation. The allowable cost based on historical costs and useful life of buildings, fixed equipment, capital improvements and /or acquisition of real property. The useful life shall be based on "The Estimated Useful Life of Depreciable Hospital Assets (2008 edition). This document is available from the American Hospital Association, 840 Lake Shore Drive, Chicago, IL 60611; or is available during business hours and by appointment at the following locations:

(1) Department of State, Division of Administrative Rules, One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001

(2) OPWDD, Attention Public Access Officer, 44 Holland Avenue, Albany, NY 12229.

Note: existing subdivision (e) is re-lettered subdivision (f), and existing subdivisions (f) through (n) are re-lettered subdivisions (h) through (p).

• Section 641-2.3 is amended by the addition of new subdivision (q) to read as follows:

(q) Start-up Costs. Those costs associated with the opening of a new facility or program. Start-up costs include pre-operational rent, utilities, staffing, staff training, advertizing for staff, travel, security services, furniture, equipment and supplies.

Note: existing subdivision (o) is re-lettered subdivision (r).

• Current paragraph 641-2.3(c)(4) is deleted and a new paragraph 641-2.3(c)(4) is added to read as follows:

(4) Capital component.

(i) For Capital Assets Approved on or after July 1, 2014. OPWDD regulations at Subpart 635-6 of this Title establish standards and criteria for calculating provider reimbursement for the acquisition and lease of real property assets which require approval by OPWDD. The regulations also address associated depreciation and related financing expenses. The rate will include costs for actual straight line depreciation, interest expense, financing expenses, and lease cost.

In no case will the total capital reimbursement associated with the capital asset exceed the total acquisition, renovation and financing cost associated with a capital asset. The asset life for building acquisitions shall be 25 years.

(ii) For Capital Assets Approved Prior to July 1, 2014. The State will identify each asset by provider, and provide a schedule of these assets identifying: total actual cost, reimbursable cost determined by the prior approval, total financing cost, allowable depreciation and allowable interest for the remaining useful life as determined by the prior approval, and the allowable reimbursement for each year of the remaining useful lives.

In no case will the total reimbursable depreciation or principal amortization and total interest associated with the capital asset exceed the total acquisition, renovation and financing cost associated with a capital asset.

(iii) Notification to Providers. Subpart 635-6 of this Title contains the criteria and standards associated with capital costs and reimbursement. Each provider will receive a schedule of prior approved assets that is being used to establish the real property capital component of the provider's reimbursement rate.

(iv) Initial rate for capital assets approved on or after July 1, 2014. The rate shall include the approved appraised costs of an acquisition or fair market value of a lease, and estimated costs for renovations, interest, soft costs and start-up expenses. Such costs shall be included in the rate as of the date of certification of the site, continuing until such time as actual costs are submitted to the State. Estimated costs shall be submitted in lieu of actual costs for a period no greater than two years. If actual costs are not submitted to the State within two years from the date of site certification, the amount of capital costs included in the rate shall be zero for each period in which actual costs are not submitted. DOH may retroactively adjust the capital component.

(v) Cost verified rates for capital assets approved on or after July 1, 2014. The provider shall submit to the State supporting documentation of actual costs. Actual costs shall be verified by the State reviewing the supporting documentation of such costs. A provider submitting such actual costs shall certify that the reimbursement requested reflects allowable capital costs, and that such costs were actually expended by such provider. Under no circumstances shall the amount included in the rate under this subparagraph exceed the amount authorized in the approval process. Capital costs shall be depreciated over a 25 year period for acquisition of properties or amortized over the life of the lease for leased sites. Capital improvements shall be depreciated over the life of the asset. The amortization of interest shall not exceed the life of the loan taken. Amortization or depreciation shall begin upon certification by the provider of such costs. Start-up costs may be amortized over a one year period beginning with site certification. If actual costs are not submitted to the State within two years from the date of site certification, the amount of capital costs included in the rate shall be zero for each period in which actual costs are not submitted.

(vi) Capital reimbursement reconciliation schedule. Beginning with the cost reporting period ending December 31, 2014, each provider shall submit to OPWDD, as part of the annual cost report, a capital reimbursement reconciliation schedule.

This schedule will specifically identify the differences, by capital reimbursement item, between the amounts reported on the certified cost report, and the reimbursable items, including depreciation, interest and lease cost from the schedule of approved reimbursable capital costs.

The provider's independent auditor will apply procedures to verify the accuracy and completeness of the capital reimbursement reconciliation schedule.

DOH will retroactively adjust capital reimbursement based on the actual cost verification process as described in subparagraph (iv) of this paragraph.

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 January 28, 2015.

Text of rule and any required statements and analyses may be obtained from: Regulatory Affairs Unit, Office for Persons 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 amendments further the legislative objectives embodied in sections 13.09(b) and 43.02 of the Mental Hygiene Law. The amendments change the newly adopted methodology for reimbursement of intermediate care facilities for persons with developmental disabilities (ICF/DDs).

3. Needs and Benefits: On July 1, 2014, OPWDD and the Department of Health (DOH) implemented a new reimbursement methodology for ICF/DDs to satisfy commitments included in OPWDD's transformation agreement with the federal Centers for Medicare and Medicaid Services (CMS).

After July 1, CMS informed OPWDD and DOH that CMS would require changes in reimbursement for ICF/DD capital assets. These changes are that capital costs for property acquisitions must be depreciated over 25 years; that the provider must submit a schedule that that identifies the differences, by capital asset, between the amounts reported on the cost report and the amounts that were approved by OPWDD, and that an independent auditor apply procedures to verify the accuracy and completeness of the schedule. The amendments are in response to these CMS requirements.

These changes will bring the methodology into compliance with current CMS policies regarding amortization of capital assets and provide information on capital costs required by CMS.

4. Costs:

a. Costs to the Agency and to the State and its local governments: The amendments require OPWDD or DOH to give each provider a schedule identifying (for each capital asset for which OPWDD approved the costs prior to July 1, 2014) total actual costs, reimbursable costs, total financing cost, allowable depreciation and interest for the remaining useful life, and allowable reimbursement for each year of the remaining useful life.

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 change the new reimbursement methodology for ICF/DDs. Application of the changes in the methodology will result in lower capital cost reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period. In addition, providers will incur costs preparing capital assets schedules and having independent auditors apply procedures to verify the accuracy and completeness of the capital assets schedules.

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 amendments increase paperwork to be completed by providers. The amendments require providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

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

8. Alternatives: Since the methodology changes in these amendments are required by CMS, OPWDD and DOH did not consider any alternatives, because any alternatives would not be in compliance with recently articulated CMS policy and requirements.

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

10. Compliance Schedule: OPWDD is adopting the amendments on an emergency basis effective November 1, 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 services delivered in intermediate care facilities for persons with developmental disabilities (ICF/DDs) 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 108 ICF/DD providers. OPWDD is unable to estimate the portion of these providers that may be considered to be small businesses.

The emergency/proposed regulations, effective November 1, 2014, amend the rate-setting methodology that was adopted in July 2014 in conformance with changes mandated by CMS after July 1, 2014.

After July 1, 2014, CMS informed OPWDD and DOH that CMS would require changes in reimbursement for ICF/DD capital assets. These changes are that capital costs for property acquisitions must be depreciated over 25 years; that the provider must submit a schedule that that identifies the differences, by capital asset, between the amounts reported on the cost report and the amounts that were approved by OPWDD, and that an independent auditor apply procedures to verify the accuracy and completeness of the schedule. The amendments change the depreciation period and reporting for capital costs. Application of the changes in the methodology for capital costs will result in lower reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period.

2. Compliance requirements: The amendments require ICF/DD providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

3. Professional services: Additional professional services will be required as a result of these regulations. The amendments require independent auditors to apply procedures to verify the accuracy and completeness of the capital assets schedule. However, the regulations will not add to the professional service needs of local governments.

4. Compliance costs: The amendments require ICF/DD providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

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

6. Minimizing adverse impact: Since the methodology changes in these amendments are required by CMS, OPWDD and DOH did not consider any alternatives, because any alternatives would not be in compliance with recently articulated CMS policy and requirements.

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 yearly reimbursement for capital costs that result from these changes.

7. Small business participation: OPWDD and DOH met with representatives of providers to discuss the changes in the new methodology on October 6, 2014. The New York State Association of Community and Residential Agencies (NYSACRA) (which represents some providers that have fewer than 100 employees) was included in these meetings.

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, effective November 1, 2014, amend the rate-setting methodology that was adopted in July 2014 in conformance with changes mandated by CMS after July 1, 2014.

After July 1, 2014, CMS informed OPWDD and DOH that CMS would require changes in reimbursement for ICF/DD capital assets. These changes are that capital costs for property acquisitions must be depreciated over 25 years; that the provider must submit a schedule that that identifies the differences, by capital asset, between the amounts reported on the cost report and the amounts that were approved by OPWDD, and that an independent auditor apply procedures to verify the accuracy and completeness of the schedule. The amendments change the depreciation period and reporting for capital costs. Application of the changes in the methodology will result in lower reimbursement per year, but full ap-

proved capital costs will be reimbursed over the 25 year depreciation period.

2. Compliance requirements: The amendments require ICF/DD providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

3. Professional services: Additional professional services will be required as a result of these regulations. The amendments require independent auditors to apply procedures to verify the accuracy and completeness of the capital assets schedule. However, the regulations will not add to the professional service needs of local governments.

4. Compliance costs: The amendments require ICF/DD providers to submit a capital assets schedule to OPWDD as part of the annual cost report, to identify the differences, by asset, between the amount on the cost report and the amount prior approved by OPWDD, and to have an independent auditor apply procedures to verify the accuracy and completeness of the capital assets schedule.

5. Minimizing adverse impact: Since the methodology changes in these amendments are required by CMS, OPWDD and DOH did not consider any alternatives, because any alternatives would not be in compliance with recently articulated CMS policy and requirements.

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 yearly reimbursement for capital costs that result from these changes.

6. Participation of public and private interests in rural areas: OPWDD and DOH met with representatives of providers to discuss the capital changes in the new methodology on October 6, 2014. The New York State Association of Community and Residential Agencies (NYSACRA) (which represents some providers in rural areas) was included in these meetings.

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 regulations, effective November 1, 2014, amend the rate-setting methodology that was adopted in July 2014 in conformance with changes mandated by CMS after July 1, 2014.

Application of the changes in the methodology will result in lower capital cost reimbursement per year, but full approved capital costs will be reimbursed over the 25 year depreciation period. The impact of additional recordkeeping associated with verification of those capital costs will be negligible.

The amendments are therefore expected to have no significant adverse impact on jobs and employment opportunities with providers.

Public Service Commission

NOTICE OF ADOPTION

Approval of Petition of Zbigniew W. Solarz to Submeter Electricity at 715 41st Street

I.D. No. PSC-23-14-00008-A

Filing Date: 2014-10-29

Effective Date: 2014-10-29

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

Action taken: On 10/23/14, the PSC adopted an order approving the petition of Zbigniew W. Solarz to submeter electricity at 715 41st Street, Brooklyn, NY, located in the territory of Consolidated Edison Company of New York, Inc.

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

Subject: Approval of petition of Zbigniew W. Solarz to submeter electricity at 715 41st Street.

Purpose: To approve the petition of Zbigniew W. Solarz to submeter electricity at 715 41st Street.

Substance of final rule: The Commission, on October 23, 2014, adopted an order approving the petition of Zbigniew W. Solarz to submeter electricity at 715 41st Street, Brooklyn, New York, located in the territory of Consolidated Edison Company of 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.

(14-E-0152SA1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Consider the Request for Waiver of the Individual Residential Unit Meter Requirements and 16 NYCRR 96.1(a)

I.D. No. PSC-46-14-00006-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Hegeman Avenue Housing L.P. for waiver of the individual residential unit meter requirements at 39 Hegeman Ave., Brooklyn, New York.

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

Subject: To consider the request for waiver of the individual residential unit meter requirements and 16 NYCRR 96.1(a).

Purpose: To consider the request for waiver of the individual residential unit meter requirements and 16 NYCRR 96.1(a).

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Hegeman Avenue Housing L.P. for a waiver of the individual residential unit meter requirements in Opinion 76-17 and waiver of the definition of "Assisted Living Facilities" in 16 NYCRR Section 96.(1)(a), for 39 Hegeman Avenue, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc.

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

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

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

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

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

(12-E-0543SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Modifications to General Rule 17.5 - Requests for Aggregated Company Records

I.D. No. PSC-46-14-00007-P

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

Proposed Action: The Commission is considering whether to approve, modify or reject in whole or in part the tariff amendments filed by Consolidated Edison Company of New York, Inc. to make modifications to General Rule 17.5, contained in P.S.C. No. 10.

Statutory authority: Public Service Law, section 66(12)(a) and (b)

Subject: Modifications to General Rule 17.5 - Requests for Aggregated Company Records.

Purpose: Modifications to General Rule 17.5 - Requests for Aggregated Company Records.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Consolidated Edison Company of New York, Inc. (Con Edison or the Company) to revise its tariff for electric service, P.S.C. No. 10. Con Edison proposes to modify General Rule 17.5 - Request for Aggregated Company Records, concerning buildings' electricity usage. The Company proposes that requests for information be made by providing the address served by the Company; the building identification number (BIN) assigned to the building by the New York City Department of Buildings, or the borough, tax block and tax lot (BBL) number assigned to the property by the New York City Department of Finance. Con Edison's current charge of $102.50 per request per building would be revised to a single charge of $102.50 per request for information, independent of the number of addresses or buildings associated with the BIN or BBL number. The proposed tariff amendments have an effective date of January 15, 2015.

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

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-4535, email: secretary@dps.ny.gov

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

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

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

(14-E-0481SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Funding and Eligibility Rules for the Green Bank Program as Described in the Green Bank Petition

I.D. No. PSC-46-14-00008-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 proposal for funding and eligibility rule changes for the Green Bank program described in the Petition to Complete Capitalization (Green Bank Petition) filed by NYSERDA on October 30, 2014.

Statutory authority: Public Service Law, sections 4(1), 5(2) and 66(1)

Subject: Funding and eligibility rules for the Green Bank program as described in the Green Bank Petition.

Purpose: Consideration of proposal by NYSERDA for the funding and eligibility rule changes for the Green Bank program.

Substance of proposed rule: The Public Service Commission is considering a petition filed by the New York State Energy Research and Development Authority (NYSERDA) titled Petition to Complete Capitalization regarding the New York Green Bank, filed on October 30, 2014. NYSERDA requests that the Commission issue an order authorizing further funding and expanded eligibility rules for the Green Bank. The Commission may adopt, reject or modify, in whole or in part, the relief requested and may resolve related matters.

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

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

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

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

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

(13-M-0412SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Continuation of Exemptions from Standby Rates for Beneficial Forms of Distributed Generation and Small Combined Heat and Power

I.D. No. PSC-46-14-00009-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 continuation of exemptions from standby rates for beneficial forms of distributed generation, as well as small, efficient combined heat and power projects.

Statutory authority: Public Service Law, sections 64, 65(1), (2), (3), (5), 66(1), (2), (5), (8), (9), (10) and (12)

Subject: Continuation of exemptions from standby rates for beneficial forms of distributed generation and small combined heat and power.

Purpose: To continue the exemptions from standby rates for beneficial forms of distributed generation and small combined heat and power.

Substance of proposed rule: The Public Service Commission is considering the continuation of exemptions from standby rates for beneficial forms of distributed generation, as well as small, efficient combined heat and power projects, as detailed in the Notice Soliciting Comments issued in Case 14-E-0488 on November 4, 2014. The exemptions are scheduled to expire on May 31, 2015, and include the options to select standard tariff rates. The Commission may adopt, reject or modify, in whole or in part, the proposed continuation and may resolve related matters.

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

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

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

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

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

(14-E-0488SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Modifications to General Information Section IV.3(c) — Requests for Aggregated Company Records

I.D. No. PSC-46-14-00010-P

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

Proposed Action: The Commission is considering whether to approve, modify or reject in whole or in part the Consolidated Edison Company of New York, Inc. to make to make modifications to General Information Section IV.3(c), contained in P.S.C. No. 9, for gas service.

Statutory authority: Public Service Law, section 66(12)(a) and (b)

Subject: Modifications to General Information Section IV.3(c) — Requests for Aggregated Company Records.

Purpose: Modifications to General Information Section IV.3(c) — Requests for Aggregated Company Records.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Consolidated Edison Company of New York, Inc. (Con Edison or the Company) to modify General Information Section IV.3(c) — Request for Aggregated Company Records, contained in P.S.C. No. 9, concerning buildings' gas usage. The Company proposes that requests for information may now be made by the address served by the Company; the building

identification number (BIN) assigned to the building by the New York City Department of Buildings, or the borough, tax block and tax lot (BBL) number assigned to the property by the New York City Department of Finance. Con Edison's current charge of $102.50 per request per building is being revised to a single charge of $102.50 per request for information, independent of the number of addresses or buildings associated with the BIN or BBL number. The proposed tariff amendments have an effective date of January 15, 2015.

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

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-4535, email: secretary@dps.ny.gov

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

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

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

(14-G-0482SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Disposition of Proceeds from Sale of Headquarters

I.D. No. PSC-46-14-00011-P

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

Proposed Action: The Commission is considering whether to approve, disapprove, or modify the use of the proceeds from the sale of New York American Water Company's Headquarters approved in case 14-W-0072 to offset its Revenue and Property Tax Reconciliation Mechanism.

Statutory authority: Public Service Law, section 89-f

Subject: Disposition of proceeds from sale of headquarters.

Purpose: To allow or disallow New York American Water Company to use sales proceeds to offset its Revenue and Property Tax Reconciliation.

Substance of proposed rule: The Commission is considering whether to approve, deny, or modify, in whole or in part, the use of the proceeds from the sale of New York American Water Company, Inc. (f/k/a Long Island Water Corporation) Headquarters approved in Case 14-W-0072 to offset its Revenue and Property Tax Reconciliation Mechanism. The Commission shall consider all other related matters.

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

Data, views or arguments may be submitted to: Kathleen H. Burgess, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-4535, email: secretary@dps.ny.gov

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

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

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

(14-W-0072SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

To Consider Proposals for Changes to the Electronic Data Interchange Standards

I.D. No. PSC-46-14-00012-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 adopting, rejecting or modifying, in whole or in part, proposals for changes to the Electronic Data Interchange Standards filed on 10/23/2014 in the ''Report on EDI Standards Development.''

Statutory authority: Public Service Law, sections 5(1)(b) and 66(1)

Subject: To consider proposals for changes to the Electronic Data Interchange standards.

Purpose: To consider proposals for changes to the Electronic Data Interchange standards.

Substance of proposed rule: On October 23, 2014, a "Report on EDI Standards Development" was filed with the Public Service Commission (Commission) in cases 12-M-0476, 98-M-1343, 06-M-0647 and 98-M-0667. That report proposes the implementation of certain changes to the Electronic Data Interchange standards used for the utility – energy service company exchange of information in New York State. The proposal was filed in response to the Commission's Order Taking Actions to Improve the Residential and Small Non-residential Retail Access Markets, issued on February 25, 2014 in cases 12-M-0476, 98-M-1343, 06-M-0647 and 98-M-0667. The Commission is considering whether to adopt, reject or modify, in whole or in part, the proposals contained in the above referenced filings. The Commission may also address 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.

(98-M-0667SP60)

Department of State

NOTICE OF ADOPTION

Proscribing Use of Word ''Handicapped'' on New Accessibility Signs, and Designating Updated Logo to be Used on Such Signs

I.D. No. DOS-37-14-00009-A

Filing No. 934

Filing Date: 2014-11-04

Effective Date: 2014-11-19

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

Action taken: Addition of Part 300 to Title 19 NYCRR.

Statutory authority: Executive Law, section 101; L. 2014, ch. 190

Subject: Proscribing use of word ''handicapped'' on new accessibility signs, and designating updated logo to be used on such signs.

Purpose: To implement Executive Law section 101; striking word handicapped from, and providing new symbol for, new ''accessibility'' signs.

Text or summary was published in the September 17, 2014 issue of the Register, I.D. No. DOS-37-14-00009-P.

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

Text of rule and any required statements and analyses may be obtained from: David Treacy, Esq., Department of State, One Commerce Plaza, Albany, NY 12231, (518) 474-6740, email: David.Treacy@dos.ny.gov

Assessment of Public Comment

The agency received no public comment.