RULE MAKING ACTIVITIES

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

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

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

Office of Alcoholism and Substance Abuse Services

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Integrated Outpatient Services

I.D. No. ASA-41-14-00018-P

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

Proposed Action: Addition of Part 825 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(c), 19.09(b), 19.40, 32.07(a) and 32.02

Subject: Integrated Outpatient Services.

Purpose: To promote access to physical and behavioral health services at a single site and to foster the delivery of integrated services.

Substance of proposed rule (Full text is posted at the following State website:www.oasas.ny.gov/regs/index.cfm): The Proposed Rule relates to standards applicable to programs licensed or certified by the Department of Health (DOH; Public Health Law Article 28), Office of Mental Health (OMH; Mental Hygiene Law Articles 31 and 33) or Office of Alcoholism and Substance Abuse Services (OASAS; Mental Hygiene Law Articles 19 and 32) which desire to add to existing programs services provided under the licensure or certification of one or both of the other agencies.

§ 825.1 Background and Intent. This section speaks to the background and intent of the Proposed Rule as applicable to all three agencies (DOH, OMH and OASAS). The purpose of the Rule is to promote increased access to physical and behavioral health services at a single site and to foster the delivery of integrated services based on recognition that behavioral and physical health are not distinct conditions.

§ 825.2 Legal Base. This section provides the Legal Base applicable to all three agencies for the promulgation of this Proposed Rule.

§ 825.3 Applicability. This section identifies providers of outpatient services or programs to which the standards outlined in the Proposed Rule would apply (e.g. providers certified or licensed or in the process of pursuing licensure or certification by at least two of the participating state agencies). Such providers would continue to maintain regulatory standards applicable to the host program's license or certification.

§ 825.4 Definitions. This section provides definitions as used in the Proposed Rule which would be applicable to any program licensed or certified by any of the three participating state agencies and identified as the host (program requesting the addition of services). Definitions specific to a host program's licensing agency are found in regulations of that agency. Among other things, the section defines an "integrated services provider" as a provider holding multiple operating certificates or licenses to provide outpatient services, who has also been authorized by a commissioner of a state licensing agency to deliver identified integrated care services at a specific site in accordance with the provisions of this Part.

§ 825.5 Integrated Care Models. This section describes three (3) models for host programs: (a) the Primary Care Host Model with compliance monitoring by DOH; (b) the Mental Health Behavioral Care Host Model with compliance monitoring by OMH; and (c) the Substance Use Disorder Behavioral Care Host Model with compliance monitoring by OASAS.

§ 825.6 Organization and Administration. This section requires any integrated services provider to be certified by the appropriate state agency and to revise any practices, policies and procedures as necessary to ensure regulatory compliance.

§ 825.7 Treatment Planning. This section requires treatment planning for any patient receiving behavioral health services (OMH and/or OASAS) from an integrated service provider and articulates the scope, standards and documentation requirements for such treatment plans including requirements of managed care plans where applicable.

§ 825.8 Policies and procedures. This section identifies minimum required policies and procedures for any integrated service provider.

§ 825.9 Integrated Care Services. This section identifies the minimum services required of any integrated services provider providing any of the three care models. The section also identifies services for each model which may be provided at an integrated services provider's option.

§ 825.10 Environment. This section outlines minimum physical plant requirements necessary for certifying existing facilities which want to provide integrated care services. The section requires programs seeking certification after the effective date of this Rule or who anticipate new construction or significant renovations to comply with requirements of 10 NYCRR Parts 711 (General Standards of Construction) and 715 (Standards of Construction for Freestanding Ambulatory Care Facilities).

§ 825.11 Quality Assurance, Utilization Review and Incident Reporting. This section outlines the requirements and obligations of an integrated service provider relative to QA/UR and Incident Reporting and are detailed by the type of model as the host program.

§ 825.12 Staffing. This section outlines staffing requirements by type of model as the host program and identifies specific requirements which may be unique to the model such as subspecialty credentials of a medical director.

§ 825.13 Recordkeeping. This section requires that a record be maintained for every individual admitted to and treated by an integrated services provider. Additional requirements include designated recordkeeping staff, record retention, and minimum content fields specific to each model. Confidentiality of records is assured via patient consents and disclosures compliant with state and federal law.

§ 825.14 Application and Approval. This section outlines the process whereby a provider seeking to become an integrated service provider may submit an application for review and approval. Applications are standardized for use by all three licensing agencies but shall be reviewed by both the agency that regulates the services to be added and the agency with authority for the host clinic. The section identifies minimum standards for approval.

§ 825.15 Inspection. This section requires the state licensing agency with authority to monitor the host clinic to have ongoing inspection responsibility pursuant to standards outlined in this Proposed Rule. The adjunct state licensing agency will not duplicate inspections for license renewal or compliance but shall be consulted about any deficiencies relative to the added services. The section identifies specific areas of review and requires one unannounced inspection prior to renewal of an Operating Certificate or License.

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

Text of proposed rule and any required statements and analyses may be obtained from: Trisha Schell-Guy, NYS Office of Alcoholism and Substance Abuse Services, 1450 Western Ave., Albany, NY 12203, (518) 485-2317, email: Trisha.Schell-Guy@oasas.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:

These proposed regulations concerning integrated outpatient services are being issued by the Office of Alcoholism and Substance Abuse Services (OASAS) and were developed with the Office of Mental Health (OMH), and the Department of Health (DOH). For OASAS, the regulations will appear in a new Part 825 of Title 14 of the New York Codes, Rules and Regulations. OMH and DOH each will issue an identical set of regulations which will appear in Part 825 of Title 14 of the New York Codes, Rules and Regulations (NYCRR) and Part 404 of Title 10 of the NYCRR, respectively.

These regulations are issued pursuant to the following:

Social Services Law (SSL) sections 365-a(2)(c) and 365-l(7) and Part L of Chapter 56 of the Laws of 2012, which authorize the commissioners of DOH, OMH and OASAS, with the approval of the Director of the Budget, to promulgate regulations to facilitate integrated service delivery by providers;

Section 19.07(c) of the Mental Hygiene Law (MHL) which charges the Office of Alcoholism and Substance Abuse Services with the responsibility to ensure that persons who abuse or are dependent on alcohol and/or substances and their families are provided with care and treatment that is effective and of high quality;

Section 19.07(e) of the MHL which authorizes the commissioner of the Office of Alcoholism and Substance Abuse Services to adopt standards including necessary rules and regulations pertaining to chemical dependence treatment services;

Section 19.09(b) of the MHL which authorizes the commissioner of the Office of Alcoholism and Substance Abuse Services to adopt regulations necessary and proper to implement any matter under his/her jurisdiction;

Section 19.21(b) of the MHL which requires the commissioner of the Office of Alcoholism and Substance Abuse Services to establish and enforce regulations concerning the licensing, certification, and inspection of chemical dependence treatment services;

Section 19.21(d) of the MHL which requires the Office of Alcoholism and Substance Abuse Services to establish reasonable performance standards for providers of services certified by the Office;

Section 19.40 of the MHL which authorizes the commissioner of the Office of Alcoholism and Substance Abuse Services to issue operating certificates for the provision of chemical dependence treatment services;

Section 32.01 of the MHL which authorizes the commissioner of the Office of Alcoholism and Substance Abuse Services to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by article 32 of the MHL;

Section 32.07(a) of the MHL which authorizes the commissioner of the Office of Alcoholism and Substance Abuse Services to adopt regulations to effectuate the provisions and purposes of article 32 of the MHL;

Section 32.05(b) of the MHL which provides that a controlled substance designated by the commissioner of the New York State Department of Health as appropriate for such use may be used by a physician to treat a chemically dependent individual pursuant to section 32.09(b) of the MHL; and

Section 32.09(b) of the MHL which provides that the commissioner of the Office of Alcoholism and Substance Abuse Services may, once a controlled substance is approved by the commissioner of the New York State Department of Health as appropriate for such use, authorize the use of such controlled substance in treating a chemically dependent individual.

Legislative Objectives:

Pursuant to SSL sections 365-a(2)(c) and 365-l(7) and Part L of Chapter 56 of the Laws of 2012, the commissioners of the Office of Mental Health (OMH), Office of Alcoholism and Substance Abuse Services (OASAS) and the Department of Health (DOH) are authorized, with the approval of the Director of the Budget, to promulgate regulations to facilitate integrated service delivery by providers.

Since 2012, OASAS, OMH and DOH have pursued an Integrated Licensure Pilot Project pursuant to this authority. The goals of that project have been to streamline the approval and oversight process for clinics interested in providing services under the licensure of more than one agency (OMH, DOH, OASAS) at one or more location(s), thereby:

- Providing an efficient approval process to add new services to a site that is not licensed for those services.
- Establishing a single set of administrative standards and survey process under which providers will operate and be monitored.
- Providing single state agency oversight of compliance with administrative standards for providers offering multiple services at a single site.

In addition, the project sought to improve the quality and coordination of care provided to people with multiple needs, by:

- Promoting integrated treatments records that comply with applicable Federal and State confidentiality requirements.
- Making optimal use of clinical resources jointly developed by OASAS and OMH that support evidence-based approaches to integrated dual disorders treatment.
- Ensuring that optimal clinical care and not revenue drive the program model.
- Providing an opportunity for optimal clinical care in a single setting creating cost efficiencies and increasing quality.

Highlights of the Project have included the formation of an interagency workgroup (OMH, DOH, OASAS) to develop a single set of administrative standards and a single application for licensure or certification. Though a provider may have multiple licenses, they are overseen by a single State agency utilizing a single review instrument.

It was from the Project that development of this regulatory proposal was conceived, to be used by all three State oversight agencies to promote consistency in the provision of integrated services. This regulatory proposal is therefore crafted utilizing the principles of the Integrated Licensure Project (the "Project") as its basis:

- to allow a single outpatient clinic provider to deliver the desired range of cross-agency (DOH, OMH, OASAS) clinic services under a single license
- the clinic provider would need to possess licenses from at least 2 of the 3 participating State agencies within their network
- the current license of the clinic site would serve as the "host", allowing that State agency to assume all surveillance activities relative to the site
- the desired "add-on" services would be requested via the State agency currently with primary oversight responsibility for such services

Needs and Benefits:

Physical and behavioral health conditions (i.e., mental illness and/or substance use disorders) often occur at the same time. Persons with behavioral disorders frequently experience chronic illnesses such as hypertension, diabetes, obesity, and cardiovascular disease. These illnesses can be prevented and are treatable. However, the difficulty in navigating complex healthcare systems calls for the implementation of regulatory changes to facilitate the ability of individuals with behavioral health disorders to seek treatment for their physical conditions.

Primary care settings have, at the same time, become a gateway to the behavioral health system, as people seek care for mild to moderate behavioral health needs (e.g., anxiety, depression, or substance use) in primary health care settings. Health care providers have long recognized that many patients have both physical and behavioral health care needs, yet physical and behavioral health care services have traditionally been provided and paid for separately. Even behavioral health services have traditionally been treated in a bifurcated system (e.g., substance use disorder treatment is treated separately from mental health treatment).

The term "integrated care" describes the systematic coordination of primary and behavioral health care services. The growing awareness of the prevalence and cost of comorbid physical and behavioral health conditions, and the increased recognition that integrated care can improve outcomes and achieve savings, has led to increasing acceptance of delivery models that integrate physical and behavioral health care. Moreover, most patients prefer to have their physical and behavioral health care delivered in one place, by the same team of clinicians. Accordingly, these regulations will prescribe standards for the integration of physical and behavioral health care services in certain outpatient programs licensed by DOH, OMH, and/or OASAS.

Costs:

Costs to Private Regulated Parties:

There are no additional costs to participating providers for this initiative. Integrated service sites will likely benefit from administrative process improvements related to facility licensure and recertification, which will be coordinated by a single host agency pursuant to this rule. Absent the process set forth in the regulations, providers would have to obtain the approval of another agency to provide such services and would be subject to the oversight of the other agency. Accordingly, the proposed regulations

may reduce the administrative costs that would otherwise be incurred as a result of adding services. In addition, the ability of providers to integrate primary care and behavioral health services will improve the overall quality of care for individuals with multiple health conditions and will reduce overall health and behavioral health care costs.

Costs to Local Government:

The proposed regulations will not impose any additional costs on local governments. To the extent that a local government operates a provider that will be able to integrate services under the expedited process established by the regulations, it will benefit from the administrative efficiencies created by the regulations. In addition, as previously noted, the ability of providers to integrate primary care and behavioral health services will improve the overall quality of care for individuals with multiple health conditions and will reduce overall health and behavioral health care costs, which could have a beneficial impact on the local government.

Costs to OASAS:

Approving and overseeing the addition of integrated services as set forth in the proposed regulations would not add any administrative burdens or costs to OASAS, since it otherwise would have to approve and oversee the addition of substance use disorder services and OMH and DOH will approve and oversee the addition of mental health and primary care services, respectively.

Costs to Other State Agencies:

Approving and overseeing the addition of integrated services as set forth in the proposed regulations would not add any administrative burdens or costs to OMH or DOH, since they otherwise would have to approve and oversee the addition of mental health and primary care services and OASAS will approve and oversee the addition of substance use disorder services.

Local Government Mandates:

This regulatory proposal will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

Paperwork:

Providers will be required to submit an application to deliver integrated services. The application has been significantly streamlined from a standard certification or licensing application, and providers will not be required to maintain any more documentation than already required under the regulations of their oversight agency. Under the regulations, integrated services providers will be able to use a single integrated record for patients receiving services, instead of maintaining two or three separate records currently required for patients receiving services at multiple sites.

Duplication:

This is a new initiative intended to streamline the administrative licensure and recertification processes for providers that qualify under this rule and hold multiple licenses or certifications. Without the proposed regulations, providers with multiple licenses or certifications would be subject to all the rules and site survey requirements imposed by each agency through which they are licensed.

Alternatives:

"Integrated licensure" is one model for providers to integrate physical and behavioral health services in a single location. Alternative models continue to be pursued (e.g., ambulatory services thresholds in clinics, the Collaborative Care Demonstration, the Delivery System Reform Incentive Payment (DSRIP) Program, the Patient Centered Medical Home and the Geriatric Services Demonstration). Such alternative models have not been rejected by the State oversight agencies. Rather, the barriers to the expansion of each alternative model continue to be examined for possible adoption on broader scales.

Federal Standards:

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

Compliance Schedule:

The regulatory amendment would be effective immediately upon adoption.

Regulatory Flexibility Analysis

Effect of Rule:

The proposed new Part 836 will impact all approximately 590 providers of substance use disorder services certified by the Office of Alcoholism and Substance Abuse Services (OASAS or "Office").

Compliance Requirements and Professional Services:

Regardless of type of program, location (rural, urban or suburban), or operation by local governments or small businesses, it is anticipated that there will be minimal impact on reporting and recordkeeping and no need for engagement of professional services because providers are already required to maintain treatment records and application to operate as an integrated services provider is optional.

Costs:

Regardless of type of program, location or size of business (rural, urban or suburban), or operation by local governments or small businesses, there will be no additional costs to providers or local governmental units resulting from these regulations.

Economic / Technological Feasibility:

Regardless of type, size and location of business (rural, urban or suburban), or operation by local governments or small businesses, the proposed regulations require no new equipment or technological improvements.

Minimizing Adverse Economic Impacts:

The proposed amendments were presented to the OASAS Executive Team and Advisory Council and then distributed for comment to members of the provider/stakeholder community. Comments from all, including speculation about economic impact, have been addressed and incorporated into the final regulation wherever necessary.

Participation of Affected Parties:

The proposed regulation amendments were presented to the Behavioral Health Services Advisory Council and distributed for comment to members of the provider/stakeholder community including provider associations. OASAS reviewed and addressed comments received and some changes were made in the proposed regulation.

Rural Area Flexibility Analysis

Types / Numbers:

The proposed amendments to Part 825 may impact approximately 590 providers of outpatient substance use disorder services certified by the Office of Alcoholism and Substance Abuse Services (OASAS or "Office"). The number impacted will depend on the number of providers that choose to apply to become an authorized integrated service provider. Some of these providers may be located in rural areas although the majority of treatment providers are located in urban areas.

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

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

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Reporting / Recordkeeping, Professional Services:

Regardless of location (rural, urban or suburban), or operation by local governments or small businesses, it is anticipated that there will be minimal impact on reporting and recordkeeping and no need for engagement of professional services because providers are already required to maintain treatment records and comply with existing treatment regulations and Medicaid billing regulations associated therewith.

Costs:

Regardless of location or size of business (rural, urban or suburban), or operation by local governments or small businesses, providers may incur some up-front administrative costs associated with incorporation of new services into existing records and billing systems; however this costs is expected to be minimal and should be offset by increased revenues generated by the ability to provide additional integrated services. Further, provision of integrated services is optional; providers do not need to apply and can maintain their existing certification or license authorizing them to provider only substance use disorder services, mental health services or primary care services.

Economic / Technological Feasibility:

Regardless of size and location of business (rural, urban or suburban), or operation by local governments or small businesses, the proposed amendments require no new equipment or technological improvements.

Minimizing Adverse Economic Impacts:

The proposed regulation was presented to the OASAS, OMH and DOH Executive Teams, the Public Health and Health Planning Council and Behavioral Health Services Advisory Council. It was also distributed for comment to members of the provider/stakeholder community, including providers that are participating in the pilot, providers certified by OASAS, providers licensed by the Office of Mental Health and providers licensed by the Department of Health. There were no comments received about economic impact. Further, the mufti-agency workgroup that developed these regulations anticipated no adverse economic impact because the purpose of these regulations is to reduce administrative burden on programs while improving efficiency and productivity; improve patient care through delivery of integrated services and fulfill the legislative mandate to allow for establish operating, reporting and construction requirements, as well as joint survey requirements and procedures for entities operating under the auspices of one or more agencies in order to integrate the delivery of health and behavioral health services in an efficient and effective manner.

Participation of Affected Parties:

The proposed regulation amendments were presented to the Behavioral Health Services Advisory Council and distributed for comment to members of the provider/stakeholder community including provider associations. OASAS reviewed and addressed comments received and some changes were made in the proposed regulation.

Job Impact Statement

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. The proposed Part 825 will have no substantial adverse impact on jobs or economic opportunities in New York State. No reduction in the number of jobs and employment opportunities is anticipated as a result of the proposed regulation.

Department of Corrections and Community Supervision

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Monterey Correctional Facility (CF), Chateaugay CF, Mt. McGregor CF, Butler CF

I.D. No. CCS-41-14-00007-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 repeal sections 100.66, 100.69, 100.70 and 100.131 of Title 7 NYCRR.

Statutory authority: Correction Law, section 70

Subject: Monterey Correctional Facility (CF), Chateaugay CF, Mt. McGregor CF, Butler CF.

Purpose: To remove references to Correctional Facilities that are no longer in operation.

Text of proposed rule: The Department of Corrections and Community Supervision repeals and reserves sections 100.66, 100.69, 100.70 and 100.131 of Title 7 NYCRR.

Text of proposed rule and any required statements and analyses may be obtained from: Maureen E. Boll, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue - Harriman State Campus - Building 2, Albany, NY 12226-2050, (518) 457-4951, email: Rules@Doccs.ny.gov

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

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

Consensus Rule Making Determination

The Department of Correctional and Community Supervision (DOCCS) has determined that no person is likely to object to the proposed action. The repeal of this section removes the reference to correctional facilities that were closed in 2014 as part of the DOCCs right-sizing plan. The plan for prison closures in New York State reflects the State's changing and declining inmate population, while recognizing the benefit of programs that provide alternatives to incarceration and supervised re-entry into society. Since these facilities are no longer in operation the references to them in the regulations are no longer applicable to any person. See SAPA Section 102(11)(a).

The Department's authority resides in section 70 of Correction Law, which mandates that each correctional facility must be designated in the rules and regulations of the Department and assigns the Commissioner the duty to classify each facility with respect to the type of security maintained and the function as specified. See Correction Law § 70(6).

Job Impact Statement

A job impact statement is not submitted because this proposed rulemaking is removing the reference to correctional facilities that have been closed in accordance with the law; since the correctional facility is no longer in operation the removal of the reference to it has no adverse impact on jobs or employment opportunities.

Department of Economic Development

EMERGENCY RULE MAKING

Empire Zones Reform

I.D. No. EDV-41-14-00005-E

Filing No. 847

Filing Date: 2014-09-30

Effective Date: 2014-09-30

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

Action taken: Amendment of Parts 10 and 11; renumbering and amendment of Parts 12-14 to Parts 13, 15 and 16; and addition of new Parts 12 and 14 to Title 5 NYCRR.

Statutory authority: General Municipal Law, art. 18-B, section 959; L. 2000, ch. 63; L. 2005. ch. 63; L. 2009, ch. 57

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate. It bears noting that General Municipal Law section 959(a), as amended by Chapter 57 of the Laws of 2009, expressly authorizes the Commissioner of Economic Development to adopt emergency regulations to govern the program.

Subject: Empire Zones reform.

Purpose: Allow Department to continue implementing Zones reforms and adopt changes that would enhance program's strategic focus.

Substance of emergency rule: The emergency rule is the result of changes to Article 18-B of the General Municipal Law pursuant to Chapter 63 of the Laws of 2000, Chapter 63 of the Laws of 2005, and Chapter 57 of the Laws of 2009. These laws, which authorize the empire zones program, were changed to make the program more effective and less costly through higher standards for entry into the program and for continued eligibility to remain in the program. Existing regulations fail to address these requirements and the existing regulations contain several outdated references. The emergency rule will correct these items.

The rule contained in 5 NYCRR Parts 10 through 14 (now Parts 10-16 as amended), which governs the empire zones program, is amended as follows:

1. The emergency rule, tracking the requirements of Chapter 63 of the Laws of 2005, requires placement of zone acreage into "distinct and separate contiguous areas."

2. The emergency rule updates several outdated references, including: the name change of the program from Economic Development Zones to Empire Zones, the replacement of Standard Industrial Codes with the North American Industrial Codes, the renaming of census-tract zones as investment zones, the renaming of county-created zones as development zones, and the replacement of the Job Training Partnership Act (and

private industry councils) with the Workforce Investment Act (and local workforce investment boards).

3. The emergency rule adds the statutory definition of "cost-benefit analysis" and provides for its use and applicability.

4. The emergency rule also adds several other definitions (such as applicant municipality, chief executive, concurring municipality, empire zone capital tax credits or zone capital tax credits, clean energy research and development enterprise, change of ownership, benefit-cost ratio, capital investments, single business enterprise and regionally significant project) and conforms several existing regulatory definitions to statutory definitions, including zone equivalent areas, women-owned business enterprise, minority-owned business enterprise, qualified investment project, zone development plans, and significant capital investment projects. The emergency rule also clarifies regionally significant project eligibility. Additionally, the emergency rule makes reference to the following tax credits and exemptions: the Qualified Empire Zone Enterprise ("QEZE") Real Property Tax Credit, QEZE Tax Reduction Credit, and the QEZE Sales and Use Tax Exemption. The emergency rule also reflects the eligibility of agricultural cooperatives for Empire Zone tax credits and the QEZE Real Property Tax Credit.

5. The emergency rule requires additional statements to be included in an application for empire zone designation, including (i) a statement from the applicant and local economic development entities pertaining to the integration and cooperation of resources and services for the purpose of providing support for the zone administrator, and (ii) a statement from the applicant that there is no viable alternative area available that has existing public sewer or water infrastructure other than the proposed zone.

6. The emergency rule amends the existing rule in a manner that allows for the designation of nearby lands in investment zones to exceed 320 acres, upon the determination by the Department of Economic Development that certain conditions have been satisfied.

7. The emergency rule provides a description of the elements to be included in a zone development plan and requires that the plan be resubmitted by the local zone administrative board as economic conditions change within the zone. Changes to the zone development plan must be approved by the Commissioner of Economic Development ("the Commissioner"). Also, the rule adds additional situations under which a business enterprise may be granted a shift resolution.

8. The emergency rule grants discretion to the Commissioner to determine the contents of an empire zone application form.

9. The emergency rule tracks the amended statute's deletion of the category of contributions to a qualified Empire Zone Capital Corporation from those businesses eligible for the Zone Capital Credit.

10. The emergency rule reflects statutory changes to the process to revise a zone's boundaries. The primary effect of this is to limit the number of boundary revisions to one per year.

11. The emergency rule describes the amended certification and decertification processes. The authority to certify and decertify now rests solely with the Commissioner with reduced roles for the Department of Labor and the local zone. Local zone boards must recommend projects to the State for approval. The labor commissioner must determine whether an applicant firm has been engaged in substantial violations, or pattern of violations of laws regulating unemployment insurance, workers' compensation, public work, child labor, employment of minorities and women, safety and health, or other laws for the protection of workers as determined by final judgment of a judicial or administrative proceeding. If such applicant firm has been found in a criminal proceeding to have committed any such violations, the Commissioner may not certify that firm.

12. The emergency rule describes new eligibility standards for certification. The new factors which may be considered by the Commissioner when deciding whether to certify a firm is (i) whether a non-manufacturing applicant firm projects a benefit-cost ratio of at least 20:1 for the first three years of certification, (ii) whether a manufacturing applicant firm projects a benefit-cost ratio of at least 10:1 for the first three years of certification, and (iii) whether the business enterprise conforms with the zone development plan.

13. The emergency rule adds the following new justifications for decertification of firms: (a) the business enterprise, that has submitted at least three years of business annual reports, has failed to provide economic returns to the State in the form of total remuneration to its employees (i.e. wages and benefits) and investments in its facility greater in value to the tax benefits the business enterprise used and had refunded to it; (b) the business enterprise, if first certified prior to August 1, 2002, caused individuals to transfer from existing employment with another business enterprise with similar ownership and located in New York state to similar employment with the certified business enterprise or if the enterprise acquired, purchased, leased, or had transferred to it real property previously owned by an entity with similar ownership, regardless of form of incorporation or organization; (c) change of ownership or moving out of the Zone, (d) failure to pay wages and benefits or make capital investments as represented on the firm's application, (e) the business enterprise makes a material misrepresentation of fact in any of its business annual reports, and (f) the business enterprise fails to invest in its facility substantially in accordance with the representations contained in its application. In addition, the regulations track the statute in permitting the decertification of a business enterprise if it failed to create new employment or prevent a loss of employment in the zone or zone equivalent area, and deletes the condition that such failure was not due to economic circumstances or conditions which such business could not anticipate or which were beyond its control. The emergency rule provides that the Commissioner shall revoke the certification of a firm if the firm fails the standard set forth in (a) above, or if the Commissioner makes the finding in (b) above, unless the Commissioner determines in his or her discretion, after consultation with the Director of the Budget, that other economic, social and environmental factors warrant continued certification of the firm. The emergency rule further provides for a process to appeal revocations of certifications based on (a) or (b) above to the Empire Zones Designation Board. The emergency rule also provides that the Commissioner may revoke the certification of a firm upon a finding of any one of the other criteria for revocation of certification set forth in the rule.

14. The emergency rule adds a new Part 12 implementing recordkeeping requirements. Any firm choosing to participate in the empire zones program must maintain and have available, for a period of six years, all information related to the application and business annual reports.

15. The emergency rule clarifies the statutory requirement from Chapter 63 of the Laws of 2005 that development zones (formerly county zones) create up to three areas within their reconfigured zones as investment (formerly census tract) zones. The rule would require that 75% of the acreage used to define these investment zones be included within an eligible or contiguous census tract. Furthermore, the rule would not require a development zone to place investment zone acreage within a municipality in that county if that particular municipality already contained an investment zone, and the only eligible census tracts were contained within that municipality.

16. The emergency rule tracks the statutory requirements that zones reconfigure their existing acreage in up to three (for investment zones) or six (for development zones) distinct and separate contiguous areas, and that zones can allocate up to their total allotted acreage at the time of designation. These reconfigured zones must be presented to the Empire Zones Designation Board for unanimous approval. The emergency rule makes clear that zones may not necessarily designate all of their acreage into three or six areas or use all of their allotted acreage; the rule removes the requirement that any subsequent additions after their official redesignation by the Designation Board will still require unanimous approval by that Board.

17. The emergency rule clarifies the statutory requirement that certain defined "regionally significant" projects can be located outside of the distinct and separate contiguous areas. There are four categories of projects: (i) a manufacturer projecting the creation of fifty or more net new jobs in the State of New York; (ii) an agri-business or high tech or biotech business making a capital investment of ten million dollars and creating twenty or more net new jobs in the State of New York, (iii) a financial or insurance services or distribution center creating three hundred or more net new jobs in the State of New York, and (iv) a clean energy research and development enterprise. Other projects may be considered by the empire zone designation board. Only one category of projects, manufacturers projecting the creation of 50 or more net new jobs, are allowed to progress before the identification of the distinct and separate contiguous areas and/or the approval of certain regulations by the Empire Zones Designation Board. Regionally significant projects that fall within the four categories listed above must be projects that are exporting 60% of their goods or services outside the region and export a substantial amount of goods or services beyond the State.

18. The emergency rule clarifies the status of community development projects as a result of the statutory reconfiguration of the zones.

19. The emergency rule clarifies the provisions under Chapter 63 of the Laws of 2005 that allow for zone-certified businesses which will be located outside of the distinct and separate contiguous areas to receive zone benefits until decertified. The area which will be "grandfathered" shall be limited to the expansion of the certified business within the parcel or portion thereof that was originally located in the zone before redesignation. Each zone must identify any such business by December 30, 2005.

20. The emergency rule elaborates on the "demonstration of need" requirement mentioned in Chapter 63 of the Laws of 2005 for the addition (for both investment and development zones) of an additional distinct and separate contiguous area. A zone can demonstrate the need for a fourth or, as the case may be, a seventh distinct and separate contiguous area if (1) there is insufficient existing or planned infrastructure within the three (or six) distinct and separate contiguous areas to (a) accommodate business development and there are other areas of the applicant municipality that

can be characterized as economically distressed and/or (b) accommodate development of strategic businesses as defined in the local development plan, or (2) placing all acreage in the other three or six distinct and separate contiguous areas would be inconsistent with open space and wetland protection, or (3) there are insufficient lands available for further business development within the other distinct and separate contiguous areas.

The full text of the emergency rule is available at www.empire.state.ny.us

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

Text of rule and any required statements and analyses may be obtained from: Thomas P Regan, NYS Department of Economic Development, 625 Broadway, Albany NY 12245, (518) 292-5123, email: tregan@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Section 959(a) of the General Municipal Law authorizes the Commissioner of Economic Development to adopt on an emergency basis rules and regulations governing the criteria of eligibility for empire zone designation, the application process, the certification of a business enterprises as to eligibility of benefits under the program and the decertification of a business enterprise so as to revoke the certification of business enterprises for benefits under the program.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance because the majority of such revisions are in direct response to statutory amendments and the remaining revisions either conform the regulations to existing statute or clarify administrative procedures of the program. These amendments further the Legislative goals and objectives of the Empire Zones program, particularly as they relate to regionally significant projects, the cost-benefit analysis, and the process for certification and decertification of business enterprises. The proposed amendments to the rule will facilitate the administration of this program in a more efficient, effective, and accountable manner.

NEEDS AND BENEFITS:

The emergency rule is required in order to implement the statutory changes contained in Chapter 57 of the Laws of 2009. The emergency rule also clarifies the administrative procedures of the program, improves efficiency and helps make it more cost-effective and accountable to the State's taxpayers, particularly in light of New York's current fiscal climate.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Empire Zones program, only voluntary participants.

B. Costs to the agency, the state, and local governments: There will be additional costs to the Department of Economic Development associated with the emergency rule making. These costs pertain to the addition of personnel that may need to be hired to implement the Empire Zones program reforms. There may be savings for the Department of Labor associated with the streamlining of the State's administration and concentration of authority within the Department of Economic Development. There is no additional cost to local governments.

C. Costs to the State government: None. There will be no additional costs to New York State as a result of the emergency rule making.

LOCAL GOVERNMENT MANDATES:

None. Local governments are not mandated to participate in the Empire Zones program. If a local government chooses to participate, there is a cost associated with local administration that local government officials agreed to bear at the time of application for designation as an Empire Zone. One of the requirements for designation was a commitment to local administration and an identification of local resources that would be dedicated to local administration.

This emergency rule does not impose any additional costs to the local governments for administration of the Empire Zones program.

PAPERWORK:

The emergency rule imposes new recordkeeping requirements on businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years.

DUPLICATION:

The emergency rule conforms to provisions of Article 18-B of the General Municipal Law and does not otherwise duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to amending the regulations in response to statutory revisions.

FEDERAL STANDARDS:

There are no federal standards in regard to the Empire Zones program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible, and the Department of Economic Development expects to be compliant immediately.

Regulatory Flexibility Analysis

1. Effect of rule

The emergency rule imposes new recordkeeping requirements on small businesses and large businesses choosing to participate in the Empire Zones program. The emergency rule requires all businesses that participate in the program to establish and maintain complete and accurate books relating to their participation in the Empire Zones program for a period of six years. Local governments are unaffected by this rule.

2. Compliance requirements

Each small business and large business choosing to participate in the Empire Zones program must establish and maintain complete and accurate books, records, documents, accounts, and other evidence relating to such business's application for entry into the Empire Zone program and relating to existing annual reporting requirements. Local governments are unaffected by this rule.

3. Professional services

No professional services are likely to be needed by small and large businesses in order to establish and maintain the required records. Local governments are unaffected by this rule.

4. Compliance costs

No initial capital costs are likely to be incurred by small and large businesses choosing to participate in the Empire Zones program. Annual compliance costs are estimated to be negligible for both small and larges businesses. Local governments are unaffected by this rule.

5. Economic and technological feasibility

The Department of Economic Development ("DED") estimates that complying with this recordkeeping is both economically and technologically feasible. Local governments are unaffected by this rule.

6. Minimizing adverse impact

DED finds no adverse economic impact on small or large businesses with respect to this rule. Local governments are unaffected by this rule.

7. Small business and local government participation

DED is in full compliance with SAPA Section 202-b(6), which ensures that small businesses and local governments have an opportunity to participate in the rule-making process. DED has conducted outreach within the small and large business communities and maintains continuous contact with small businesses and large businesses with regard to their participation in this program. Local governments are unaffected by this rule.

Rural Area Flexibility Analysis

The Empire Zones program is a statewide program. Although there are municipalities and businesses in rural areas of New York State that are eligible to participate in the program, participation by the municipalities and businesses is entirely at their discretion. The emergency rule imposes no additional reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The emergency rule relates to the Empire Zones program. The Empire Zones program itself is a job creation incentive, and will not have a substantial adverse impact on jobs and employment opportunities. In fact, the emergency rule, which is being promulgated as a result of statutory reforms, will enable the program to continue to fulfill its mission of job creation and investment for economically distressed areas. Because it is evident from its nature that this emergency rule 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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Sportfish Activities and Associated Activities

I.D. No. ENV-41-14-00003-P

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

Proposed Action: Amendment of sections 10.1 through 10.9, 18.1, 19.2 and 35.2 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 3-0301, 11-0303, 11-0305, 11-0317, 11-1301, 11-1303, 11-1316 and 11-1319

Subject: Sportfish activities and associated activities.

Purpose: To revise sportfishing regulations and associated activities including the commercial collection, sale and use of baitfish.

Substance of proposed rule (Full text is posted at the following State website:www.dec.ny.gov): The purpose of this rule making is to amend the Department of Environmental Conservation's (department) general regulations governing sportfishing (6 NYCRR Part 10). Following biennial review of the department's fishing regulations, department staff have determined that the proposed amendments are necessary to maintain or improve the quality of the State's fisheries resources. Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation. The following is a summary of the amendments that the department is proposing.

Proposed changes include:

Establish a closed statewide season for sauger.

Modify the statewide regulation for muskellunge by increasing the minimum size limit to 40 inches and adjusting the season opener from the third Saturday in June to the last Saturday in May.

Provide consistency between the proposed statewide muskellunge regulation changes with the existing muskellunge regulations for specific waters including Lake Champlain and St. Lawrence County rivers and streams, as well as for both muskellunge and tiger muskellunge at Chautauqua Lake.

Increase the minimum size limit for muskellunge to 54 inches in the Niagara River, Lake Ontario and St. Lawrence River.

Increase the minimum size limit for walleye at Honeoye Lake from 15 to 18 inches.

Establish year round trout seasons, with catch and release fishing only from October 16th through March 31st, at the following streams in Western New York: Chenunda Creek, Oatka Creek, Clear Creek, Fenton Brook, Prendergast Creek, and waters in Allegany State Park.

Initiate a catch and release season for trout for sections of the Salmon River (Franklin County) and Ninemile Creek (Onondaga County), and extend the catch and release season at Fall Creek (Cayuga Lake).

Establish a special trout regulation of a daily creel limit of five fish with no more than two fish longer than 12 inches, in Herkimer, Jefferson, Lewis, Oneida, and St. Lawrence Counties, Little River and Oswegatchie River in St. Lawrence County, Millsite Lake in Jefferson County, and Oriskany Creek in Oneida County.

Establish an all year trout season, with a 12 inch minimum size limit and daily limit of 3 fish, at Hinkley and Prospect Reservoirs in Herkimer and Oneida Counties, North Lake in Herkimer County, for an additional section of the North Branch Saranac River in Franklin and Clinton Counties, and for the entire set of waters that are a part of the Massawepie Easement.

Apply the current trout and salmon special regulations for the Fulton Chain of Lakes to the connected water body Old Forge Pond.

Establish a 15 inch minimum size limit for lake trout and clarify that the statewide regulations apply for other species for Owasco Outlet (Cayuga County).

Modify trout and/or salmon regulations for Star Lake and Trout Lake (St. Lawrence County) by increasing the minimum size limit for trout to 12 inches and reducing the daily creel limit to 3. Include Landlocked salmon as part of the open year round trout season at Star Lake.

Establish an open year round trout season for Sylvia Lake (St. Lawrence County) with a 12 inch minimum size limit and 3 fish daily creel limit, with ice fishing permitted.

Extend Great Lakes tributary Regulations upstream to the section of the Genesee River (Monroe County) from State Route 104 Bridge upstream to the Lower Falls.

Exempt Old Seneca Lake Inlet from the Finger Lakes tributary regulations.

Adjust the allowable fishing hours for Spring Creek on the Caledonia Fish Hatchery property.

Clarify, in regulation, a definition for "catch and release fishing" as well as define the limitations of handling incidental catch of untargeted species.

Several changes are for the purposes of eliminating special regulations that are no longer warranted, and where the statewide regulations can be applied:

Delete the special minimum size and daily creel limit walleye regulation for Fern Lake (Clinton County), Lake Algonquin (Hamilton County), and Franklin Falls Flow, Lower Saranac Lake and Rainbow Lake in Franklin County, and Tully Lake (Onondaga County).

Eliminate the special regulations (examples being minimum size limit, daily creel limit, season length and/or method of take) for trout, landlocked salmon and/or lake trout, at several waters including Schoharie Reservoir, Susquehanna River (between Otsego and Goodyear Lakes), Launt Pond (Delaware County), Basswood Pond (Otsego County), Lake Algonquin (Hamilton County), Jennings Park Pond (Hamilton County), Hoosic River and Little Hoosic River (Rensselaer County), Hudson River (Saratoga County), Clear and Wheeler Ponds (Herkimer County), Cold Brook (St. Lawrence County), and West Branch of the St. Regis River (St. Lawrence County).

Eliminate the special brown trout and landlocked salmon regulations (minimum size limit, daily creel limit and season length) at Otsego Lake.

Eliminate the 10 inch minimum size limit for black bass at Lily Pond and Pack Forest Lake in Warren County.

Eliminate the "all year – any size" special regulation for black bass at Cayuta Creek in Tioga County, and adopt a consistent minimum size limit for black bass for sections of the Schoharie Creek at 10 inches.

Eliminate the daily creel limit special regulation for sunfish and yellow perch in Cumberland Bay (Lake Champlain).

Eliminate the minimum size limit special regulation for lake trout in the Essex Chain of Lakes.

Eliminate the separate special regulation for trout for Ischua Creek, and apply the Cattaraugus County regulation.

Delete the special regulation for Follensby Clear Pond (Franklin County) that permits ice fishing but prohibits the use of tip-ups.

Baitfish and non-game fish related proposed changes:

Prohibit the use of fish as bait in newly acquired trout waters: Fish Hole Pond and Balsam Pond in Franklin County, and Clear Pond in Washington County.

Remove the baitfish prohibition on Harlow Lake, Genesee County.

Remove all the currently listed eligible waters for the commercial collection of baitfish: in Clinton County, except Lake Champlain; in Essex County, except Lake Champlain and Lake Flower; in Franklin County, except Lake Flower, Lower Saranac Lake, Racquette River, Tupper Lake and Upper Saranac Lake; in Fulton County; in Hamilton County, except Indian Lake, Lake Pleasant and Long Lake; in Saratoga County, except the Hudson River, Lake Lonely and outlet Lake Lonely to Kayaderosseras Creek, Mohawk River and Saratoga Lake; in Warren County, except the Hudson River; and in Washington County, except the Hudson River and Lake Champlain.

Add madtoms and stonecats to the approved list of fish that may be used, collected and sold as baitfish.

Eliminate "snatching" of burbot in Scomotion Creek (Clinton County).

Eliminate smelt "dipping" in Raquette Lake.

Adjust smelt regulations for Cayuga and Owasco Lakes for consistency with five Western Finger Lakes.

Eliminate the prohibition on taking smelt and suckers with a scap or dip net in Willow Creek (Tompkins County).

Remove the allowance for snatching lake whitefish at Otsego Lake.

Gear and use of gear related proposals:

Streamline what devices may be used for ice fishing by modifying the statewide regulation to allow for a total of seven ice fishing devices/lines; modify the language pertaining to devices for ice fishing to allow for a total of 15 ice fishing devices/lines for Lake Champlain.

Eliminate the gear restrictions at Follensby Clear Pond (Franklin County) that permits ice fishing but prohibits the use of tip-ups.

With the exception of the Salmon River, permit the use of floating lures with multiple hooks with multiple hook points, on all Lake Ontario tributaries.

Clarify the definition of floating lures on Lake Ontario tributaries to: "A floating lure is a lure that floats while at rest in water with or without any weight attached to the line, leader, or lure".

Clarify that the current regulation for the Great Lake tributaries restricting the use of hooks with added weight was not intended to ban the use of small jigs.

Expand the prohibition of weight added to the line, leader, swivels, artificial fly or lures to all Lake Ontario tributaries (i.e. beyond a limited group of tributaries) from September 1 through March 31 of the following year.

Clarify the use of multiple hooks with multiple hook points on Lake Erie tributaries is legal, as well as clarify that the use of flies with up to two hook points is legal on all Great Lake tributaries.

Replace Lake Ontario tributary regulations for St. Lawrence River tributaries in Jefferson and St. Lawrence Counties with statewide terminal tackle restrictions.

Redefine the upstream limit for spearfishing on the Salmon River (Franklin County).

Clarify the description of gear (gill nets) that is allowed for, in the Finger Lakes, for the collection of alewives for personal use as bait.

Reinstate the prohibition on large landing nets (nets larger than 50 inches around the frame or with a handle longer than 20 inches) for Finger Lakes tributaries except for those sections that are specifically identified.

Several additional amendments are included, not as substantive regulation modifications, but to properly establish or clarify an earlier regulation change, better define an existing regulation (by rewording etc.), and/or address regulations that have not changed but are now redundant and covered elsewhere in the regulations including as a result of consolidation.

Better clarify the fishing hours for Great Lake Tributaries by replacing the word "night" with "one-half hour after sunset to one-half hour before sunrise".

Clarify that the purpose of the 15 inch size limit exemption on Irondequoit Creek (entire), Lindsey Creek, Skinner Creek (Oswego County and Jefferson County) and the Black River (Jefferson County) is intended to only allow for the harvest of stocked brown trout greater than 9 inches, while retaining the 15 inch minimum size limit for other species.

Eliminate the listing of pink salmon in the Great Lakes section of the regulations.

Correct a wording discrepancy in NYCRR documents to clarify that both artificial lures with multiple hooks/hook points and artificial flies may be used in the special catch-and-release sections of Chautauqua and Eighteen Mile Creek.

Eliminate redundancy in the Finger Lakes tributary regulations pertaining to seasonal angling restrictions and restrictions on night fishing.

Clarify the wording for the Whey Pond (Franklin County) special trout regulation that dates back to and references a previous regulation that has since been eliminated.

Clarify language in regulation referencing the Barge Canal in an existing Finger Lake tributary regulation.

Clarify the ending location of the special black bass regulation on the Chemung River, by correcting the wrong Route (road) number that is currently listed.

Correct a reference, for the definition of artificial flies (for Great Lakes tributaries) that directs the reader to the wrong section of the regulations.

Adjust the Finger Lakes regulations (as contained in an existing table) to clarify: which regulations apply for Honeoye Lake; that the tiger muskellunge special regulation only applies to Otisco Lake; and that the alewife prohibition only applies to Honeoye and Skaneateles Lakes.

Delete a conflicting regulation for trout for a section of Oneida Creek (Oneida County) to clarify which of two conflicting trout season regulations should apply to this section of Oneida Creek.

Delete special trout regulations that have not changed but are now redundant and covered elsewhere in the regulations including as a result of consolidation in the regulations; Crane Pond, and Upper Saranac Lake in Franklin County, Lansing Kill in Oneida County, and Stillwater Reservoir in Herkimer County.

Provide consistency with the lists of approved and identified baitfish (i.e "Green List") by adding the previously omitted Eastern Silvery Minnow to the list of baitfish that can be commercially collected and sold (in addition to the existing listing of the Eastern Silvery Minnow on the list of baitfish that can be used as bait by anglers).

Text of proposed rule and any required statements and analyses may be obtained from: Shaun Keeler, New York State Department of Environmental Conservation, 625 Broadway, Albany, NY 12233, (518) 402-8928, email: shaun.keeler@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.

Additional matter required by statute: A Programmatic Impact Statement pertaining to these actions is on file with the Department of Environmental Conservation.

Reasoned Justification for Modification of the Rule

General revisions to the State's regulations governing sportfishing (Part 10) and related activities (i.e. including Parts 18, 19 and 35 in this instance) are continuously needed to meet the management needs for specific waters as well as part of an effort to accommodate angler and other stakeholder desires. To meet this need the Division of Fish, Wildlife and Marine Resources conducts a biennial revision of regulations governing sportfishing and associated activities. Conducting a review of and proposing amendments to 6NYCRR Part 10, every two years, is responsive and adequate towards meeting the 5 Year Existing Rules review requirement.

Regulatory Impact Statement

1. Statutory Authority

Section 3-0301 of the Environmental Conservation Law (ECL) establishes the general functions, powers and duties of the Department of Environmental Conservation (department) and the Commissioner, including general authority to adopt regulations. Sections 11-0303 and 11-0305 of the ECL authorize the department to provide for the management and protection of the State's fisheries resources, taking into consideration ecological factors, public safety, and the safety and protection of private property. Section 11-0317 of the ECL empowers the department to adopt regulations, after consultation with the appropriate agencies of the neighboring states and the Province of Ontario, establishing open seasons, minimum size limits, manner of taking, and creel and seasonal limits for the taking of fish in the waters of Lake Erie, Lake Ontario, the Niagara River and the St. Lawrence River. Sections 11-1301 and 11-1303 of the ECL empower the department to fix by regulation open seasons, size and catch limits, and the manner of taking of all species of fish, except certain species of marine fish (listed in section 13-0339 of the ECL), in all waters of the State. Section 11-1316 of the ECL empowers the department to designate by regulation waters in which the use of baitfish is prohibited. Section 11-1319 of the ECL governs possession of fish taken in waters of the State.

2. Legislative Objectives

Open seasons, size restrictions, daily creel limits, and restrictions regarding the manner of taking fish are tools used by the department in achieving the intent of the legislation referenced above. The purpose of setting seasons is to prevent over-exploitation of fish populations during vulnerable periods, such as spawning, thereby ensuring a healthy population. Size limits are necessary to maintain quality fisheries and to ensure that adequate numbers survive to spawning age. Creel limits are used to distribute the harvest of fish among many anglers and optimize resource benefits. Catch and release fishing regulations are used in waters capable of sustaining outstanding growth and providing a large population of desirable-sized fish, creating an outstanding opportunity for anglers willing to forego harvesting fish.

Regulations governing the manner of taking fish upgrade the quality of the recreational experience, provide for a variety of harvest techniques and angler preferences, limit exploitation, and guard against unethical practices such as "snagging". Restrictions pertaining to the collection and use of baitfish are necessary for protecting against the spread of fish disease and the introduction of undesirable fish species and adversely impacting remote native trout populations.

3. Needs and Benefits

Most significant fishery resources in New York State are monitored through annual or periodic surveys and inventories, conducted by Bureau of Fisheries staff and DEC partners such as Cornell University and SUNY ESF. These fisheries surveys identify particular situations where changes in fishing regulations may be required to maintain the quality of a particular fishery or where significant opportunity for improvement or enhancement of the fishery exists. Additional regulation changes are prompted by the recommendation of user groups or the need to correct or clarify existing regulations. Concepts for regulation amendments that address identified needs are developed by Bureau of Fisheries staff and reviewed with sportsmen's groups at the local, regional, or state-wide level, depending upon the significance of the proposal.

In order to facilitate compliance by the angling public, significant revisions of the department's fishing regulations are currently conducted on a biennial schedule. The proposed amendments are necessary to maintain or improve the quality of the State's fisheries resources, including as described above (#2 Legislative Objectives Section). Changes to sportfishing regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

4. Costs

Enactment of the rules and regulations described herein governing fishing will not result in increased expenditures by the State, local governments, or the general public.

5. Local Government Mandates

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

6. Paperwork

No additional paperwork will be required as a result of these proposed changes in regulations.

7. Duplication

There are no other State or federal regulations which govern the taking of freshwater sportfish.

8. Alternatives

A no-action alternative would not likely result in improvements in fish communities, increases in sportfishing opportunity, or wise allocation of New York's fisher resources. In order to maintain or improve the quality of the State's fishery resources, and the recreational opportunity the resource provides to New York's anglers, significant revisions of the department's fishing regulations are conducted on a biennial schedule. Making modifications every two years is timely as far as keeping regulations current with management findings as well as provides the opportunity to eliminate special regulations that were evaluated and found to be ineffective in meeting their intended objective.

9. Federal Standards

There are no minimum federal standards that apply to the regulation of sportfishing.

10. Compliance Schedule

These regulations, if adopted, will be in effect starting April 1, 2015. It is anticipated that regulated persons will be able to immediately comply with these regulations once they take effect.

Regulatory Flexibility Analysis

The purpose of this rule making is to amend and update the Department of Environmental Conservation's (department) general regulations governing sportfishing. These amendments were developed as a result of the department's biennial review of existing sportfishing regulations. Changes to these regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The department has determined that the proposed regulations will not impose an adverse impact or any new or additional reporting, recordkeeping or other compliance requirements on small businesses or local governments. All reporting or recordkeeping requirements associated with sportfishing are administered by the department. Since small businesses and local governments have no management or compliance role in the regulation of sport fisheries, there is no impact upon these entities. Small businesses may, and town or village clerks do issue fishing and sportsman licenses. However, the department's rule making proposal does not change this process.

Fishing guides, and tackle/baitfish shops (to some extent), are the only business entities directly affected and impacted by changes to regulations pertaining to sport fishing. However, the actions proposed in this rule making (e.g. adjustments to season dates, bag limits, minimum size limits, gear restrictions etc.) are not measures that result in an overall loss of angling opportunities or diminish opportunities for taking fish. Therefore, while guide businesses would need to adjust techniques and schedules to comply with the proposed regulations, these businesses should not lose clientele as a result or otherwise be adversely impacted by the changes. In fact, positive impacts are anticipated for these businesses because the proposed regulations would enhance the likelihood that angling opportunities will remain high and sustainable for future anglers and fishing-related businesses. Reducing the list of previously established eligible waters for the commercial collection of baitfish collected is not expected to adversely affect commercial baitfish operators as very little, if any, commercial collection is occurring on such waters, and secondly, the waters that are viable for such have remained eligible.

Based on the above, the department has determined that a regulatory flexibility analysis is not required.

Finally, Chapter 524 of the New York Laws of 2011 is not applicable as this proposed rule making does not establish or modify a violation or a penalty associated with a violation.

Rural Area Flexibility Analysis

The purpose of this rule making is to amend and update the Department of Environmental Conservation's (department) general regulations governing sportfishing. These amendments were developed as a result of the department's biennial review of existing sportfishing regulations. Changes to these regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

The department has determined that the proposed rules will not impose an adverse impact or any new or additional reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. All reporting or recordkeeping requirements associated with sportfishing are administered by the department. The proposed regulations are not anticipated to negatively change the number of participants or the frequency of participation in regulated activities.

Fishing guides, and baitfish/tackle shop (to some extent), are the only entities directly affected and impacted by changes to regulations pertaining to sport fishing. However, the actions proposed in this rule making (e.g. adjustments to season dates, bag limits, minimum size limits, gear restrictions, etc.) are not measures that result in an overall loss of angling opportunities or diminish opportunities for taking fish. Therefore, while guide businesses would need to adjust techniques and schedules to comply with the proposed regulations, these businesses should not lose clientele as a result or otherwise be adversely impacted by the changes. Reducing the list of previously established eligible waters for the commercial collection of baitfish collected is not expected to adversely affect commercial baitfish operators as very little, if any commercial collection is occurring on such waters, and secondly, the waters that are viable for such have remained eligible. In fact, positive impacts are anticipated for these businesses because the proposed regulations would enhance the likelihood that angling opportunities will remain high and sustainable for future anglers and fishing-related businesses.

Small businesses may, and town or village clerks do issue fishing and sportsman licenses. However, the department's rule making proposal does not change this process.

Since the department's proposed rule making will not impose an adverse impact on public or private entities in rural areas and will have no effect on current reporting, recordkeeping, or other compliance requirements, the department has concluded that a rural area flexibility analysis is not required for this regulatory proposal.

Job Impact Statement

The purpose of this rule making is to amend and update the Department of Environmental Conservation's (department) general regulations governing sportfishing. These amendments were developed as a result of the department's biennial review of existing sportfishing regulations. Changes to these regulations are intended to promote optimum opportunity for public use consistent with resource conservation.

Fishing guides, and baitfish/tackle shops (to some extent), are the only business entities directly affected and impacted by changes to regulations pertaining to sport fishing. However, the actions proposed in this rule making (e.g. adjustments to season dates, bag limits, minimum size limits, gear restrictions, etc.) are not measures that result in an overall loss of angling opportunities or diminish opportunities for taking fish. Therefore, while guide businesses would need to adjust techniques and schedules to comply with the proposed regulations, these businesses should not lose clientele as a result or otherwise be adversely impacted by the changes, and no fishing guide jobs should be lost. Reducing the list of previously established eligible waters for the commercial collection of baitfish collected is not expected to adversely affect commercial baitfish operators as very little, if any commercial collection is occurring on such waters, and secondly, the waters that are viable for such have remained eligible. In fact, positive impacts are anticipated for these businesses because the proposed regulations would enhance the likelihood that angling opportunities will remain high and sustainable for future anglers and fishing-related businesses.

Based on the above, the department has concluded that the proposed regulatory changes will not have an adverse impact on jobs or employment opportunities in New York, and that a job impact statement is not required.

Department of Financial Services

EMERGENCY RULE MAKING

Title Insurance Agents, Affiliated Relationships, and Title Insurance Business

I.D. No. DFS-29-14-00014-E

Filing No. 839

Filing Date: 2014-09-25

Effective Date: 2014-09-27

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

Action taken: Amendment of Parts 20 (Regulations 9, 18 and 29), 29 (Regulation 87), 30 (Regulation 194) and 34 (Regulation 125); and addition of Part 35 (Regulation 206) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 107(a)(54), 301, 2101(k), 2109, 2112, 2113, 2119, 2120, 2122, 2128, 2129, 2132, 2139, 2314 and 6409

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

Specific reasons underlying the finding of necessity: Long-sought and

critically needed legislation to license title insurance agents was enacted as part of Chapter 57 of the New York Laws of 2014, which was signed into law by the governor on March 31, 2014. Chapter 57 takes effect on September 27, 2014.

A number of existing regulations that apply to insurance producers generally are amended to make them applicable to title insurance agents. Specifically, Part 20 addresses temporary licenses (Insurance Regulation 9), addresses appointment of insurance agents (Insurance Regulation 18), and regulates premium accounts and fiduciary responsibilities of insurance agents and insurance brokers (Insurance Regulation 29), and are amended to include references to title insurance agents. Part 29 (Insurance Regulation 87) addresses special prohibitions regarding sharing compensation with other licensees with respect to certain governmental entities and is amended to address a limited exception for title insurance business insuring State of New York Mortgage Agency and certain other circumstances. Part 30 (Insurance Regulation 194) addresses insurance producer compensation transparency and is amended to reflect specific requirements in new Insurance Law section 2113 for title insurance agents. Part 34 (Insurance Regulation 125) governs insurance agents and brokers that maintain multiple offices and is amended to clarify the applicability of the regulation to title insurance agents. In addition, a new Part 35 (Insurance Regulation 206) is added that address unique circumstances regarding title insurance agents.

It is critical for the protection of the public that appropriate rules and regulations be in place as of the effective date of Chapter 57 to apply to newly-licensed title insurance agents and the title insurance business generated. Although the Department has diligently developed regulations to implement Chapter 57, due to the short time frame, it is necessary to promulgate the rules on an emergency basis for the furtherance of the general welfare.

Subject: Title insurance agents, affiliated relationships, and title insurance business.

Purpose: To implement requirements of chapter 57 of Laws of 2014 re: title insurance agents and placement of title insurance business.

Substance of emergency rule: The following sections are amended:

Section 20.1, which specifies forms for temporary licenses, is amended to make technical changes and to add references to title insurance agents.

Section 20.2, which specifies forms of notice for termination of agents, is amended to make technical changes and to add references to title insurance agents.

Section 20.3, which governs fiduciary responsibility of insurance agents and brokers, including maintenance of premium accounts, is amended to make technical changes and to add references to title insurance agents.

Section 20.4, which governs insurance agent and broker recordkeeping requirements for fiduciary accounts, is amended to make technical changes and to add references to title insurance agents.

Section 29.5, which implements Insurance Law section 2128, governing placement of insurance business by licensees with governmental entities, is amended to make technical changes and to conform to amendments to section 2128, with respect to title insurance agents.

Section 29.6 is amended to remove language regarding return of disclosure statements.

Section 30.3, which governs notices by insurance producers regarding the amount and extent of their compensation, is amended by adding a new subdivision that modifies the requirements of the section with respect to title insurance agents, in order to conform to new Insurance Law section 2113(b).

Section 34.2, which governs satellite offices for insurance producers, is amended by adding a new subdivision that exempts from certain provisions of that section a title insurance agent that is a licensed attorney transacting title insurance business from the agent's law office.

A new Part 35 is added governing the activities of title insurance agents and the placement of title insurance business. The new sections are:

Section 35.1 contains definitions for new Part 35.

Section 35.2 specifies forms for title insurance agent licensing applications.

Section 35.3 specifies change of contact information required to be filed with the Department.

Section 35.4 addresses affiliated business relationships.

Section 35.5 addresses referrals by affiliated persons and the required disclosures in such circumstances.

Section 35.6 addresses minimum disclosure requirements for title insurance corporations and title insurance agents with respect to fees charged by such corporation or agent, including discretionary or ancillary fees.

Section 35.7 provides certain other minimum disclosure requirements.

Section 35.8 governs the use of title closers by title insurance agents and title insurance corporations.

Section 35.9 establishes record retention requirements for title insurance agents.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-29-14-00014-P, Issue of July 23, 2014. The emergency rule will expire December 23, 2014.

Text of rule and any required statements and analyses may be obtained from: Paul Zuckerman, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-5286, email: paul.zuckerman@dfs.ny.gov

Consolidated Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority to promulgate these amendments and the new Part derives from sections 202 and 302 of the Financial Services Law ("FSL") and sections 107(a)(54), 301, 2101(k), 2109, 2112, 2113, 2119, 2120, 2122, 2128, 2129, 2132, 2139, 2314, and 6409 of the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent as the head of the Department of Financial Services ("Department").

FSL section 302 and Insurance Law section 301 authorize the Superintendent to effectuate any power accorded to the Superintendent by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting the Insurance Law, among other things.

Insurance Law section 107(a)(54) defines title insurance agent.

Insurance Law section 2101(k) defines insurance producer to include title insurance agent.

Insurance Law section 2109 addresses temporary licenses for title insurance agents and other insurance producers.

Insurance Law section 2112 addresses appointments by insurers of insurance agents and title insurance agents.

Insurance Law section 2113 requires that title insurance agents and persons affiliated with such title insurance agents provide certain disclosures to applicants for insurance when referring such applicants to persons with which they are affiliated. Section 2113 also requires the Superintendent to promulgate regulations to enforce the affiliated person disclosure requirements and to consider any relevant disclosures required by the federal real estate settlement procedures act of 1974 ("RESPA"), as amended.

Insurance Law section 2119 permits title insurance agents to charge fees for certain ancillary services not encompassed within the rate of premium provided its pursuant to a written memorandum.

Insurance Law section 2120 addresses the fiduciary responsibility of title insurance agents and other producers.

Insurance Law section 2122 addresses advertising by title insurance agents and other insurance producers.

Insurance Law section 2128 prohibits fee sharing with respect to business placed with governmental entities.

Insurance Law section 2132 governs continuing education for title insurance agents and other insurance producers.

Insurance Law section 2139 is the licensing section for title insurance agents.

Insurance Law section 2314 prohibits title insurance corporations and title insurance agents from deviating from filed rates.

Insurance Law section 2324 prohibits rebating, improper inducements and other discriminatory behavior with respect to most kinds of insurance, including title insurance.

Insurance Law section 6409 contains specific prohibitions against rebating, improper inducements and other discriminatory behavior with respect to title insurance.

2. Legislative objectives: Long-sought and critically needed legislation to license title insurance agents was enacted as part of Chapter 57 of the New York Laws of 2014, which was signed into law by the governor on March 31, 2014. By way of background, title insurance agents in New York: (a) handle millions of dollars of borrowers' and sellers' funds, (b) record documents, and (c) pay off mortgages. Yet for years, title insurance agents have conducted business in New York without licensing or other regulatory oversight, standards or guidelines. Because, as a matter of practice in New York, the title insurance agents control the bulk of the title insurance business, including bringing in customers, conducting the searches and other title work, the title insurance corporations often have little choice but to deal with title insurance agents who they may otherwise consider questionable or unscrupulous. Without licensing or regulatory oversight, an unscrupulous title insurance agent who was fired by one title insurer could simply take the business to another title insurer, who is usually more than willing to appoint that title insurance agent.

This lack of State regulation over title insurance agents made for an alarming weakness in New York law, and specifically New York law addressing title insurance rebating and inducement. For example, lack of regulatory oversight and licensing created a gaping loophole, which led to

serious breaches of fiduciary duties and exploitation by unscrupulous actors to commit fraud in the mortgage origination and financing process. Over the years, this gap in New York law and lack of regulatory oversight allowed these actors to freely engage in theft, abuse, charging of excessive fees, and illegal rebates and inducements to the detriment of consumers, with little fear of prosecution. These abuses cost consumers of the State millions of dollars and at least one New York title insurer became insolvent because of the activities of its title insurance agents.

3. Needs and benefits: Now that New York law requires title insurance agents to be licensed, a number of existing regulations governing insurance producers need to be amended in order include title insurance agents or to address unique circumstances involving them, including affiliated persons' arrangements and required consumer disclosures. Specifically, Insurance Regulation 9 addresses temporary licenses; Insurance Regulation 18 addresses appointment of insurance agents; and Insurance Regulation 29 regulates premium accounts and fiduciary responsibilities of insurance agents and insurance brokers; and each is amended to include references to title insurance agents. Insurance Regulation 87 addresses special prohibitions regarding sharing compensation with other licensees with respect to certain governmental entities and is amended to address a limited exception for title insurance business insuring State of New York Mortgage Agency and certain other circumstances. Insurance Regulation 194 addresses insurance producer compensation transparency and is amended to reflect specific requirements in new Insurance Law section 2113 for title insurance agents. Insurance Regulation 125 governs insurance agents and brokers that maintain multiple offices and is amended to clarify the applicability of the regulation to title insurance agents. Regulation 125 also is amended to address unique circumstances involving title insurance agents who are also licensed attorneys.

New Insurance Regulation 206 addresses a number of miscellaneous issues involving title insurance agents. Some of these changes simply add provisions that are similar to those that apply to other insurance producers; for example, it prescribes the form of applications and requires licensees to notify the Department of any change of business or residence address. Other provisions of Regulation 206 set forth the new disclosure requirements; require title insurance agents to comply with a rate service organization's annual statistical data call; and address the obligation of title insurance agents and title insurance corporations with respect to title closers. Of particular significance are provisions of the regulations that codify Department opinions regarding affiliated business relations with respect to the applicability of Insurance Law section 6409, which prohibits rebates, inducements and certain other discriminatory behaviors.

4. Costs: Regulated parties impacted by these rules are title insurance agents, which heretofore were not licensed by the Department, and title insurance corporations. They may need to provide new disclosures in accordance with the regulation if they are not already making such disclosures but they already have an obligation to make changes to notices pursuant to the legislation. There are also new reporting requirements to the Department but these are the same that apply with respect to other licensees. In any event, the costs of these new disclosures and reporting requirements should not be significant. The proposed rules also subject title insurance agents to requirements regarding the maintenance of fiduciary accounts that already apply to other insurance producers. The cost impact on title insurance agents will likely vary from agent to agent but should not be significant.

Although the Department already was handling complaints and investigating matters regarding title insurance, because licensing title insurance agents is a new responsibility for the Department, anticipated costs to the Department are at this time uncertain. Existing personnel and line titles will handle any new licensing applications or enforcements issues initially.

These rules impose no compliance costs on any state or local governments.

5. Local government mandates: The new rules and amendments impose no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: The amendments and new rules now apply certain requirements that are applicable to other insurance producers to title insurance agents as well. For example, title insurance agents are made subject to the same reporting requirements as other insurance producers when changing addresses, maintaining records, and submitting applications, and title insurers are required to file certificates of appointment of their title insurance agents with the Department. In addition, to reflect the specific notice requirements of Insurance Law section 2113, the disclosure requirements to insureds under Insurance Regulation 194 are modified for title insurance agents to reflect the statutory requirements. The new law also contains certain new disclosure requirements and the new rules implement those changes, and require certain other disclosures to applicants for insurance, such as a notice advising insureds or applicants for insurance about the different kinds of title policies available to them.

7. Duplication: The amendments do not duplicate any existing laws or regulations.

8. Alternatives: Prior to proposing rules in the July 23, 2014 issue of the State Register the Department circulated drafts of the proposed rules to a number of interested parties and, as a result, the Department made a number of changes to proposed new Regulation 206, particularly with respect to affiliated business relationships, and title insurance corporation or title insurance agent responsibility for title insurance closers. In response to comments received during the public comment period, the Department has made a number of changes that are incorporated in the emergency rules that clarify the proposal or eliminates unnecessary requirements.

The Department received a number of comments regarding the significant and multiple sources of business provisions of the regulation with respect to affiliated business relationships. Because of the critical need to have regulations in effect on the September 27, 2014 effective date of Chapter 57, the Department is promulgating the emergency regulations utilizing the provisions contained in the proposed rulemaking, while the Department continues to evaluate and review those comments and consider whether any changes should be made to those provisions.

9. Federal standards: RESPA, and regulations thereunder, contain certain requirements and disclosures that apply to residential real estate settlement transactions. These requirements are minimum requirements and do not preempt state laws that provide greater consumer protection. The amendments and new rules are not inconsistent with RESPA and, consistent with New York law, provide greater consumer protection to the public.

10. Compliance schedule: Chapter 57 of the New York Laws of 2014 takes effect on September 27, 2014. In order to facilitate the orderly implementation of the new law, the Superintendent was authorized to promulgate regulations in advance of the effective date, but to be make such regulations effective on that date.

Consolidated Regulatory Flexibility Analysis

1. Effect of the rule: These rules affect title insurance corporations authorized to do business in New York State, title insurance agents and persons affiliated with such corporations and agents.

No title insurance corporation subject to the amendment falls within the definition of "small business" as defined in State Administrative Procedure Act section 102(8), because no such insurance corporation is both independently owned and has less than one hundred employees.

It is estimated that there are about 1,800 title insurance agents doing business in New York currently. Since they are not currently licensed by the Department of Financial Services ("Department"), it is not known how many of them are small businesses, but it is believed that a significant number of them may be small businesses.

Persons affiliated with title insurance agents or title insurance corporations would not, by definition, be independently owned and would thus not be small businesses.

The rule does not impose any impacts, including any adverse impacts, or reporting, recordkeeping, or other compliance requirements on any local governments.

2. Compliance requirements: The proposed rules conform and implement requirements regarding title insurance agents and placement of title insurance business with Chapter 57 of the Laws of 2014, which made title insurance agents subject to licensing in New York for the first time. A number of the rules will make title insurance agents subject to the same requirements that apply to other insurance producers. There are also disclosure requirements unique to title insurance.

3. Professional services: This amendment does not require any person to use any professional services.

4. Compliance costs: Title insurance agents will need to provide new disclosures in accordance with the regulation if they are not already making such disclosures but they already have an obligation to make changes to notices pursuant to the legislation. There are also new reporting requirements to the Department but these are the same that apply with respect to other licensees. In any event, the costs of these new disclosures and reporting requirements should not be significant. The proposed rules now subject title insurance agents to requirements regarding the maintenance of fiduciary accounts that already apply to other insurance producers. The cost impact on title insurance agents will likely vary from agent to agent but should not be significant.

5. Economic and Technological feasibility: Small businesses that may be affected by this amendment should not incur any economic or technological impact as a result of this amendment.

6. Minimizing adverse impact: This rule should have no adverse impact on small businesses.

7. Small business participation: Interested parties, including an organization representing title insurance agents, were given an opportunity to comment on draft proposed rules.

Consolidated Rural Area Flexibility Analysis

The Department of Financial Services ("Department") finds that this rule does not impose any additional burden on persons located in rural ar-

eas, and will not have an adverse impact on rural areas. This rule applies uniformly to regulated parties that do business in both rural and non-rural areas of New York State.

Rural area participation: Interested parties, including those located in rural areas, were given an opportunity to review and comment on draft versions of these rules.

Consolidated Job Impact Statement

The Department of Financial Services finds that these rules should have no negative impact on jobs and employment opportunities. The rules conform to and implement the requirements of, with respect to title insurance agents and the placement of title insurance business, Chapter 57 of the Laws of 2014, which make title insurance agents subject to licensing in New York for the first time and, by establishing a regulated marketplace, may lead to increased employment opportunity.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Force-Placed Insurance

I.D. No. DFS-39-13-00022-RP

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

Proposed Action: Addition of Part 227 (Regulation 202) to Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 301 and 302; Insurance Law, sections 301, 308, 2110, 2303, 2304, 2324, 2403 and arts. 21, 23, 24 and 34

Subject: Force-placed insurance.

Purpose: To set forth rules regarding, among other things, the rating and placement of, and practices related to, force-placed insurance.

Substance of revised rule: This rule sets forth rules for the rates for and placement of force-placed insurance and prohibits certain practices related to force-placed insurance in order to protect homeowners and investors from harm caused by excessive force-placed insurance rates, questionable business practices and relationships in the force-placed insurance industry, and inadequate notice of force-placed insurance.

Section 227.0 sets forth the purpose of the rule.

Section 227.1 provides definitions applicable to the rule.

Section 227.2 sets minimum adequate notification requirements to ensure homeowners understand their responsibility to maintain homeowners insurance, and that they may purchase voluntary homeowners insurance coverage at any time.

Section 227.3 sets the maximum amount of force-placed insurance coverage that an insurer may issue on a New York property.

Section 227.4 requires an insurer, insurance producer, or affiliate that receives correspondence related to force-placed insurance from a borrower on behalf a servicer to accept any reasonable form of written confirmation of a borrower's existing insurance coverage.

Section 227.5 requires an insurer, insurance producer, or affiliate to refund all force-placed insurance premiums for any period of overlapping insurance coverage within fifteen days of receiving evidence demonstrating that the borrower has had in place hazard insurance coverage that complies with the mortgage's requirements to maintain hazard insurance.

Section 227.6 prohibits certain practices with respect to force-placed insurance, including: the payment of commissions to servicer-affiliated insurance producers; the sharing of force-placed insurance premiums or risk with a servicer affiliate; and issuing force-placed insurance on property serviced by a servicer affiliated with the insurer.

Section 227.7 requires insurers to regularly inform the Department of loss ratios actually experienced and re-file rates when actual loss ratios are below 40 percent, and sets a permissible loss ratio for rate filings to ensure that premiums are set at a rate reasonably related to paid claims.

Revised rule compared with proposed rule: Substantial revisions were made in sections 227.1(f), 227.4, 227.6 and 227.7.

Text of revised proposed rule and any required statements and analyses may be obtained from Brian Montgomery, Department of Financial Services, One State Street, New York, NY 10004, (212) 480-2296, email: Brian.Montgomery@dfs.ny.gov

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

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

Revised Regulatory Impact Statement

1. Statutory authority: The Superintendent's authority for the promulgation of this rule derives from Sections 202, 301 and 302 of the Financial Services Law ("FSL") and Sections 301, 308, 2110, 2303, and 2304 and Articles 21, 23, 24 and 34 of the Insurance Law.

Section 202 of the FSL establishes the office of the Superintendent and designates the Superintendent of Financial Services as the head of the Department of Financial Services ("Department").

FSL Section 301 authorizes the Superintendent to take such action as the Superintendent deems necessary to protect and educate users of financial products and services.

FSL Section 302 and Insurance Law Section 301, in relevant part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting the Insurance Law.

Insurance Law Section 308 authorizes the Superintendent to address to any authorized insurer or its officers any inquiry relating to its transactions or condition or any matter connected therewith.

Article 21 of the Insurance Law sets forth the duties and obligations of insurance producers. Insurance Law Section 2110 provides grounds for the Superintendent to refuse to renew, revoke or suspend the license of an insurance producer.

Article 23 of the Insurance Law authorizes the Superintendent to regulate property/casualty insurance rates. Insurance Law Section 2303 provides that rates shall not be excessive, inadequate, unfairly discriminatory, destructive of competition or detrimental to the solvency of insurers. Insurance Law Section 2304 provides standards for the making of rates and the information that may be furnished in support of a rate filing. Insurance Law Section 2324 prohibits insurers, insurance agents and insurance brokers from providing rebates on, or inducements to purchase, insurance.

Article 24 of the Insurance Law regulates trade practices in the insurance industry by prohibiting practices that constitute unfair methods of competition or unfair or deceptive acts or practices. Insurance Law Section 2403 prohibits persons from engaging in defined or determined violations as defined in Article 24 of the Insurance Law.

Article 34 of the Insurance Law regulates property and casualty insurance contracts.

2. Legislative objectives: This rule sets forth rules for the rates for and placement of force-placed insurance and prohibits certain practices related to force-placed insurance in order to protect homeowners and investors from harm caused by excessive force-placed insurance rates, questionable business practices and relationships in the force-placed insurance industry, and inadequate notice of force-placed insurance.

An investigation by the Department found that the rates for force-placed hazard insurance bear little relation to insurers' actual loss experience, resulting in high profits, a portion of which insurers commonly pass on to mortgage servicers and their affiliates through commissions, other payments, and reinsurance arrangements, to the detriment of homeowners and investors. The Department also found that homeowners often failed to receive adequate notice that insurers and servicers were force-placing insurance policies on their homes. The rule sets minimum adequate notification requirements to ensure homeowners understand their responsibility to maintain homeowners' insurance, and that they may purchase voluntary homeowners insurance coverage at any time. These provisions of the rule require insurers, insurance producers and their affiliates to comply with recently amended provisions of the federal Real Estate Settlement Procedures Act ("RESPA") that became effective on January 10, 2014. In addition, these provisions require insurers, insurance producers and their affiliates to make clear and conspicuous disclosures on the outside of envelopes to better inform homeowners that the envelopes contain important information, and require insurers, insurance producers and their affiliates to disclose that they or another third party is staffing a mortgage servicer's telephone lines, if that is the case.

The Department's investigation also found that insurers offered financial incentives to mortgage servicers and their affiliates, including commissions to servicer-affiliated insurance producers who performed little or no work. The investigation also found that insurers entered into arrangements that transferred a significant percentage of force-placed insurance profits to affiliates of servicers. In addition, one insurer provided force-placed insurance on mortgages serviced by an affiliate of the insurer. These practices not only artificially inflated premiums charged to homeowners, but created a conflict of interest in that servicers had an incentive to purchase more costly force-placed insurance where they earned a portion of the premiums or profits from the placement of force-placed insurance. This rule prohibits these practices.

Further, actual loss ratios for force-placed hazard insurance have been significantly lower than both the expected loss ratios insurers filed with the Department and the actual loss ratios for voluntary homeowners insurance. Insurers have failed to regularly update and adjust their rates despite these significant discrepancies. This rule requires insurers to regularly inform the Department of loss ratios actually experienced, re-file rates when actual loss ratios are below 40 percent, and sets a permissible

loss ratio for rate filings to ensure that premiums are set at a rate reasonably related to paid claims.

3. Needs and benefits: The Department's investigation revealed multiple, industry-wide practices that violate New York law. This rule is necessary to ensure that force-placed insurance market participants comply with New York law. This rule is also necessary to protect homeowners and investors from the harm caused by the multiple law violations.

The Department's investigation of force-placed insurance has resulted in agreements with all admitted insurers writing force-placed insurance in New York. The agreements include many of the key provisions in this rule. This rule will ensure that new entrants to the market operate on a level playing field with current market participants.

4. Costs: Every New York authorized insurer that issues force-placed insurance on New York property has already agreed to the key provisions of this rule regarding prohibited conduct and financial arrangements. As a result, these insurers and their affiliates should incur only minimal additional costs to comply with the requirements of this rule. These minimal costs may vary from insurer to insurer. Insurance producers may also incur minimal additional costs to comply with the notice requirements of this rule. Any additional costs insurance producers incur as a result of these requirements should be minimal because federal law imposes similar notice requirements. The public benefit of ensuring that rates are not excessive, that improper financial incentives are not paid, and that homeowners receive adequate notice to ensure that they understand their responsibility to maintain homeowners' insurance outweighs the incidental costs of complying with this rule.

The cost to the Department will be minimal because existing personnel are available to verify and ensure compliance with this rule. There are no costs to any other state government agency or local government.

5. Local government mandates: The rule imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: Section 227.2 of this rule sets minimum adequate notification requirements to ensure homeowners understand their responsibility to maintain homeowners insurance, and that they may purchase voluntary homeowners insurance coverage at any time. These provisions of the rule require insurers, insurance producers and their affiliates to comply with recently amended provisions of the federal Real Estate Settlement Procedures Act ("RESPA") that become effective on January 10, 2014. In addition, these provisions require insurers, insurance producers and their affiliates to make clear and conspicuous disclosures on the outside of envelopes to better inform homeowners that the envelopes contain important information, and require insurers, insurance producers and their affiliates to disclose that they or another third party is staffing a mortgage servicer's telephone lines, if that is the case.

Section 227.7 of this rule requires every insurer that issues force-placed insurance to file force-placed insurance premium rates with a permissible loss ratio of at least 62 percent within 30 days of the effective date of the rule. This rule also requires every insurer that issues force-placed insurance to re-file their rates every three years and, commencing on January 1, 2015 and continuing annually thereafter, to re-file their force-placed insurance premium rates for any force-placed insurance policy form that has had an actual loss ratio of less than 40 percent for the immediately preceding calendar year. This rule also requires every insurer that issues force-placed insurance to report to the Superintendent no later than April 1 of each year, with respect to force-placed insurance policy forms issued during the preceding calendar year, the: (1) actual loss ratio; (2) earned premium; (3) itemized expenses; (4) paid losses; (5) loss reserves; (6) case reserves; and (7) incurred but not reported losses.

7. Duplication: This rule will not duplicate any existing state rule. Portions of this rule track certain provisions of RESPA relating to notices concerning force-placed insurance that become effective on January 10, 2014.

8. Alternatives: This rule addresses excessive rates and improper financial arrangements in the force-placed insurance industry, and ensures that homeowners receive adequate notice of their responsibility to maintain homeowners insurance. The Department has determined that there are no other viable alternatives to this rule. Every insurer subject to this rule has agreed to the key provisions of this rule regarding prohibited conduct and financial arrangements.

9. Federal standards: This rule requires insurers and insurance producers to provide certain additional notices to homeowners in addition to notice requirements concerning force-placed insurance that are required by the recent amendments to RESPA that became effective January 10, 2014.

10. Compliance schedule: This rule will take effect 30 days after publication in the State Register.

Revised Regulatory Flexibility Analysis

1. Effect of rule: This rule sets forth rules for the rates for and placement of force-placed insurance and prohibits certain practices related to force-placed insurance in order to protect homeowners and investors from harm caused by excessive force-placed insurance rates, questionable business practices and relationships in the force-placed insurance industry, and inadequate notice of force-placed insurance.

This rule is directed to insurers, insurance producers, and their affiliates. Insurers, most insurance producers, and most affiliates of insurers and insurance producers affected by this rule do not come within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act, because they are not independently owned and operated and/or do not employ 100 or fewer individuals.

This rule will not impose significant burdens on those insurance producers and affiliates of insurers and insurance producers that are small businesses because federal law imposes requirements similar to the provisions of this rule that apply to insurance producers and affiliates of insurers and insurance producers.

2. Compliance requirements: Section 227.2 of this rule sets minimum adequate notification requirements to ensure homeowners understand their responsibility to maintain homeowners' insurance, and that they may purchase voluntary homeowners' insurance coverage at any time. These provisions of the rule require insurance producers and affiliates of insurers and insurance producers to comply with recently amended provisions of the federal Real Estate Settlement Procedures Act ("RESPA") that became effective on January 10, 2014. In addition, these provisions require insurance producers and affiliates of insurers and insurance producers to make clear and conspicuous disclosures on the outside of envelopes to better inform homeowners that the envelopes contain important information, and require insurance producers and affiliates of insurers and insurance producers to disclose that they or another third party is staffing a mortgage servicer's telephone lines, if that is the case.

3. Professional services: Small businesses to which this regulation may apply will not need professional services to comply with this rule. This rule does not require producers and affiliates to provide notices to homeowners on behalf of mortgage servicers; it merely sets standards for the form of notices that must be provided should producers and affiliates choose to provide notices. Most such producers already provide notices on behalf of servicers, and will not need professional services to revise those notices to comply with this rule. This rule does not apply to or affect local governments.

4. Compliance costs: This rule imposes no compliance costs on local governments. The Department does not anticipate that this rule will impose significant additional costs on small businesses to which this rule may apply. This rule does not require producers and affiliates to provide notices to homeowners on behalf of mortgage servicers; it merely sets standards for the form of notices that must be provided should producers and affiliates choose to provide notices. Most such producers and affiliates already provide notices on behalf of servicers, and will not incur significant costs to revise their existing notices to comply with this rule. Moreover, the recent amendments to RESPA impose requirements similar to this rule, and producers and affiliates should not incur significant additional costs to implement the few additional requirements of this rule.

5. Economic and technological feasibility: Small businesses to which this regulation may apply will not incur an economic or technological impact as a result of this rule. This rule does not require producers and affiliates to provide notices to homeowners on behalf of mortgage servicers; it merely sets standards for the form of notices that must be provided should producers and affiliates choose to provide notices. Most such producers and affiliates already provide notices on behalf of servicers, and will not incur significant costs to revise their existing notices to comply with this rule. Moreover, the recent amendments to RESPA impose requirements similar to this rule. To the extent that small businesses need to update their computer systems to comply with this rule, such an update can be performed in conjunction with the update that will be required to comply with the recent amendments to RESPA, and therefore any costs imposed by this rule should be minimal.

This rule does not apply to or affect local governments.

6. Minimizing adverse impact: This rule applies equally to all insurers and insurance producers, regardless of their size. The rule does not impose any adverse or disparate impact on small businesses. This rule does not apply to or affect local governments.

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

Revised Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurers, insurance producers, and their affiliates to which this regulation applies do business in every county of New York State, including rural areas as defined in section 102(10) of the State Administrative Procedure Act. The proposed regulation will apply to all insurers, insurance producers, and their affiliates, including those located in rural areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Section 227.2 of this rule sets minimum adequate

notification requirements to ensure homeowners understand their responsibility to maintain homeowners insurance, and that they may purchase voluntary homeowners insurance coverage at any time. These provisions of the rule require insurers, insurance producers and their affiliates to comply with recently amended provisions of the federal Real Estate Settlement Procedures Act ("RESPA") that became effective on January 10, 2014. In addition, these provisions require insurers, insurance producers and their affiliates to make clear and conspicuous disclosures on the outside of envelopes to better inform homeowners that the envelopes contain important information, and require insurers, insurance producers and their affiliates to disclose that they or another third party is staffing a mortgage servicer's telephone lines, if that is the case.

Section 227.7 of this rule requires every insurer that issues force-placed insurance to file force-placed insurance premium rates with a permissible loss ratio of at least 62 percent within 30 days of the effective date of the rule. This rule also requires every insurer that issues force-placed insurance to re-file their rates every three years and, commencing on January 1, 2015 and continuing annually thereafter, to re-file their force-placed insurance premium rates for any force-placed insurance policy form that has had an actual loss ratio of less than 40 percent for the immediately preceding calendar year. This rule also requires every insurer that issues force-placed insurance to report to the Superintendent no later than April 1st of each year, with respect to force-placed insurance policy forms issued during the preceding calendar year, the: (1) actual loss ratio; (2) earned premium; (3) itemized expenses; (4) paid losses; (5) loss reserves; (6) case reserves; and (7) incurred but not reported losses.

3. Costs: Every New York authorized insurer that issues force-placed insurance on New York property has agreed to the key prohibitions of this rule. As a result, insurers and their affiliates should incur minimal additional costs to comply with the requirements of this rule, including those located in rural areas. These minimal costs may vary from insurer to insurer. Insurance producers and their affiliates may also incur minimal additional costs to comply with the notice requirements of this rule. Any additional costs insurance producers incur as a result of these requirements should be minimal because federal law imposes similar notice requirements. The public benefit of ensuring that rates are not excessive, that improper financial incentives are not paid, and that homeowners receive adequate notice to ensure that they understand their responsibility to maintain homeowners insurance outweighs the incidental costs of complying with this rule.

4. Minimizing adverse impact: The requirements of this rule will apply equally to all insurers, insurance producers, and their affiliates, whether they are located in rural or non-rural areas.

5. Rural area participation: This notice is intended to provide entities in rural and non-rural areas with the opportunity to participate in the rule making process. Interested parties will have an opportunity to participate in the rule making process when the rule is published in the State Register.

Revised Job Impact Statement

The Department believes that changes made to the last published rule do not necessitate revision to the previously published JIS.

Assessment of Public Comment

The New York State Department of Financial Services ("Department") received comments from a managing general agent ("MGA"), an organization that represents more than 1,000 property/casualty insurers nationally ('property/casualty trade organization A"), an organization that represents banks that are engaged in the business of insurance ("bank organization"), an organization that represents more than 300 property/casualty insurers nationally ("property/casualty trade organization B"), a state-wide coalition of over 160 members that promotes access to fair and affordable financial services ("New York consumer coalition"), an insurance producer that provides force-placed insurance programs to mortgage servicers ("insurance producer"), a consumer advocacy and education organization and an association of non-profit consumer organizations ("consumer organizations"), and an international association of commercial insurance and employee benefits intermediaries ("commercial insurance organization") in response to its publication of the proposed rule in the New York State Register.

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

11 NYCRR § 227.1 ("Definitions")

Comment

Property/casualty trade organization A and the commercial insurance organization commented that the term "force-placed insurance" should be changed to "lender-placed insurance."

Department's response

The term "force-placed insurance" is used in federal law and regulations and the Department's consent orders concerning force-placed insurance. The Department did not change the rule to address these comments.

11 NYCRR § 227.2 ("Requirements Before Issuing Force-Placed Insurance")

Comment

Property/casualty trade organization A commented that lenders or servicers, not insurers, should be required to provide notices to borrowers.

Department's response

Section 227.2 does not require insurers to provide notices to borrowers; rather, it sets forth requirements an insurer must follow if the insurer chooses to provide notices to borrowers on behalf of a servicer. Consequently, the Department did not change the rule to address this comment.

Comment

Property/casualty trade organization B commented that it did not object to providing a notice to borrowers if an insurer, producer, or affiliate is staffing a servicer's telephone lines. It did, however, object to the requirement that this notice must be provided on a separate piece of paper than the notice required by federal regulations.

Department's response

Federal regulations provide that any additional information concerning force-placed insurance that is not specifically required by federal regulations must be provided on a separate piece of paper than the notice required by federal regulations. Consequently, the Department did not change the rule to address this comment.

Comment

Property/casualty trade organization B commented that the proposed regulation that required a notice on the outside of envelopes in at least 24 point font was too large.

Department's response

The Department changed the rule to require the notice be provided in at least 12 point font.

11 NYCRR § 227.3 ("Amount of Coverage")

Comment

Property/casualty trade organization A characterized the proposed rule as a "flat ban" on coverage in excess of the last known amount of coverage and commented that the requirement should be changed because the last known amount of coverage might be insufficient coverage for current circumstances or might conflict with investor requirements to keep the property insured at replacement cost. The New York consumer coalition commented that the proposed rule is appropriate to ensure homeowners receive adequate coverage but are not charged for unnecessary coverage.

Department's response

The proposed rule is not a flat ban on coverage in excess of the last known amount of coverage. If the last known amount of coverage does not comply with the borrower's mortgage, an insurer would be permitted to issue coverage in an amount that does not exceed the replacement cost of the improvements on the property. Therefore, if a lender or investor required additional coverage that was permitted by the mortgage and did not exceed the replacement cost, the insurer could issue such coverage. Consequently the Department did not change the rule to address property/casualty trade organization A's comment.

11 NYCRR § 227.4 ("Sufficiency of Demonstration")

Comment

Property/casualty trade organization B commented that the proposed rule should be modified to incorporate language from the Consumer Financial Protection Bureau's Official Interpretations to provide a more objective standard and reduce confusion concerning what constitutes acceptable evidence of insurance.

Department's response

The Department has revised the rule to incorporate language from the Consumer Financial Protection Bureau's Official Interpretations.

11 NYCRR § 227.5 ("Refunds of Force-Placed Insurance Premium")

Comment

Property/casualty trade organization A commented that the proposed rule should expressly state that the time period during which an insurer must refund force-placed insurance premium does not begin until the insurer is notified that other hazard insurance was in place.

Department's response

The proposed rule states that an insurer must refund premium "within 15 days of receiving… evidence" that other hazard insurance was in place. Consequently, the Department did not change the rule to address this comment.

11 NYCRR § 227.6 ("Prohibited Practices")

Comment

The bank organization commented that the Department should not prohibit insurers, insurance producers, or affiliates from paying commissions or sharing risk with servicers or affiliates of servicers. The New York consumer coalition commented that it strongly supported those provisions of the proposed rule.

Department's response

The Department's investigation of force-placed insurance found that rates were excessive and that payments by insurers, producers, and affiliates to servicers and servicer's affiliates contributed, directly and indirectly, to the excessive rates. Consequently, the Department did not change the rule to address this comment.

Comment

The commercial insurance and employee benefits organization commented that proposed subsection 227.6(d) should be modified. First, because the commercial insurance organization assumed that the rule was solely targeted at servicers, the commercial insurance organization suggested adding language to explicitly limit the rule to servicers. Alternatively, the commercial insurance organization suggested deleting subsection 227.6(d) because it would be redundant in that proposed subsection 227.6(c) already prohibited such payments. Finally, the commercial insurance organization proposed that the Department explicitly exclude from the proposed rule payments to insurance producers that handle underwriting on behalf of an insurer. Property/casualty trade organization A commented that subsection 227.6(d) should be deleted.

Department's response

The Department has revised subsection 227.6(d) to limit its applicability to certain persons and entities. Proposed subsection 227.6(d) was not targeted solely at servicers and their affiliates; however, because proposed subsection 227.6(c) would prohibit the payment of any compensation to servicers and their affiliates, including compensation based on underwriting profitability or loss ratios, revised subsection 227.6(d) does not list servicers and their affiliates among the persons and entities prohibited from receiving such compensation. Revised subsection 227.6(d) prohibits an insurance agent or an independent adjuster that acts in the adjustment of a loss from being compensated based on underwriting profitability or loss ratio.

Comment

Property/casualty trade organization A commented that proposed Section 227.6(e) could be read to prohibit all sharing of risk between an insurer and a servicer or affiliate, even sharing of risk that is wholly unrelated to force-placed insurance.

Department's response

The Department has revised Section 227.6(e) to make clear that the rule only prohibits sharing force-placed insurance risk.

Comment

The insurance producer commented that Section 227.6(f) should be revised to permit an insurer, insurance producer or affiliate to reimburse servicers or their affiliates for expenses incurred in connection with a conversion to a new force-placed insurance provider. The insurance producer maintained that such payments fit within an exception to Insurance Law § 2324 that was described in a March 3, 2009 Insurance Department Circular Letter.

Department's response

The Department disagrees with the insurance producer's interpretation of Insurance Law § 2324 and the March 3, 2009 Circular Letter. Consequently, the Department did not change the rule to address this comment.

Insurance Tracking

Comment

The MGA, the commercial insurance and employee benefits organization, and property/casualty trade organization A commented that the rule gives an unfair competitive advantage to direct writers as compared to insurers that use insurance producers because Section 227.6(g) permits insurers to perform certain administrative and insurance tracking services for free or below cost but does not permit insurance producers to provide such services for free or below cost. The MGA suggested that the rule should be revised to define "managing general agent" and that subsection 227.6(g)(2) should be revised to include managing general agents. The commercial insurance and employee benefits organization and property/casualty trade organization A suggested that subsection 227.6(g)(2) should be revised to include insurance producers.

Department's response

The Department has revised Section 227.6(g) to apply to equally to both insurers and insurance producers.

Comment

The consumer organizations and the New York consumer coalition commented that subsection 227.6(g)(2)(i), which permits insurers to monitor a servicer's portfolio for a reduced fee, solely to the extent that such monitoring is performed for the purpose of managing the insurer's exposure to lost premium and losses on properties on which no other insurance is in effect, should be deleted. The consumer organizations and the New York consumer coalition commented that monitoring whether a homeowner has required insurance in place is the responsibility of mortgage servicers. The consumer organizations commented that the expense of monitoring the presence of required insurance should not be included in force-placed insurance rates, but insurers will attempt to use subsection 227.6(g)(2)(i) to improperly include such expenses in rate filings. The consumer organizations further stated that a mortgage servicer interpreted a similar provision in the Department's consent orders with insurers as permitting tracking expenses to be included in force-placed insurance rates in New York. The consumer organizations suggested that "insurance tracking" should be defined and that insurers, insurance producers and their affiliates should be prohibited from providing free or below-cost insurance tracking to servicers. The consumer organizations and the New York consumer coalition also commented that subsection 227.6(g)(2)(ii), which permits insurers to perform administrative services associated with providing and subsequently cancelling force-placed insurance, should be deleted.

Property/casualty trade organization B commented that the Department should delete "for a reduced fee" from subsection 227.6(g)(2)(i) because the language could be read to require insurers to charge a fee for tracking services when, in the organization's view, an insurer should not be required to charge any fee for such services.

Department's response

The proposed rule did not address whether insurance tracking expenses are permitted in force-placed insurance rates. However, there has been confusion about this issue and some entities have incorrectly interpreted the Department's consent orders to allow the inclusion of insurance tracking expenses in force-placed insurance rates. The Department is revising subsections 227.6(g) and 227.7(c)(3) and adding subsections 227.1(f) and 227.7(f) to clarify the meaning of the insurance tracking provisions of the rule. The Department has revised the rule to define "insurance tracking" and to prohibit insurers, insurance producers, or affiliates from providing "insurance tracking" to a servicer or its affiliate for a reduced fee or no separately identifiable charge. The Department has further revised the rule to require insurers to annually report to the Superintendent certain specified expenses, including expenses for insurance tracking, and to prohibit insurers from including the expense of insurance tracking in rates. New subsection 227.7(f), which prohibits insurers from including the expense of insurance tracking in rates does not take effect until January 1, 2015 in order to give insurers time to implement the new requirement.

11 NYCRR § 227.6 ("Minimum Loss Ratio and Rate Filings")

Comment

The New York consumer coalition commented that they would require an 80% minimum loss ratio. The consumer organizations commented that "permissible loss ratio" should be defined in terms of specific loss and expense categories and that the loss numerator should only include expected loss and loss adjustment expenses and should exclude net reinsurance costs. The consumer organizations also commented that expenses other than loss, loss adjustment expense, and net reinsurance costs should be capped at 15%.

Department's Response

The Department believes that a 62% permissible loss ratio is appropriate at this time and did not change the rule to address this comment.

New York State Gaming Commission

NOTICE OF ADOPTION

Addition of a New Multi-Jurisdictional Lottery Game

I.D. No. SGC-32-14-00005-A

Filing No. 851

Filing Date: 2014-09-30

Effective Date: 2014-10-15

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

Action taken: Addition of section 5007.16 to Title 9 NYCRR.

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

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

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

Substance of final rule: This amendment of Part 5007, Multi-Jurisdictional Games, of Subtitle T of Title 9 NYCRR will add a new Section 5007.16, to allow the New York State Gaming Commission ("Commission") to offer the MONOPOLY™ Millionaires' Club™ game.

The purpose of this rule making is to generate additional revenue for education in New York through operation of the new MONOPOLY Millionaires' Club multi-state lottery game that will award prizes to ticket holders matching specified combinations of numbers randomly selected in regularly scheduled drawings.

The new section of the Gaming Commission regulations describes the MONOPOLY Millionaires' Club as a multi-jurisdictional lottery game similar to the Powerball and the Mega Millions games that have been offered in New York and other states since 2002 and the Cash 4 Life game introduced in 2014. Subdivision (a) sets forth some definitions. Subdivision (b) governs ticket pricing and the terms and conditions of ticket sales. Subdivision (c) describes the game, including the primary and secondary drawings and additional game feature(s). The number of winners to be selected in a secondary drawing shall be not less than 10 and may increase based upon sales.

Subdivision (d) sets forth play characteristics and restrictions. Subdivision (e) describes the time and place of drawings. Subdivision (f) details the prize structure and probabilities of winning. Subdivision (g) describes the payment options that may be chosen by a winner. Subdivision (h) provides that Parts 5003 and 5004 govern this new game. Subdivision (i) states that this new section applies only to the new MONOPOLY Millionaires' Club game.

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

Final rule as compared with last published rule: Nonsubstantive changes were made in section 5007.16.

Text of rule and any required statements and analyses may be obtained from: Kristen Buckley, New York State Gaming Commission, 1 Broadway Center, P.O. Box 7500, Schenectady, New York 12301, (518) 388-3407, email: gamingrules@gaming.ny.gov

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

A revised Regulatory Impact Statement, Regulatory Flexibility Analysis (RFA) for small business and local governments, Rural Area Flexibility Analysis (RAFA), and Job Impact Statement (JIS) are not required because the only change to the text of the proposed rule is a technical correction to the heading of the new regulation. In accordance with guidance regarding proper trademark attribution provided by the owner of applicable trademark rights, the heading of the proposed Section 5007.16 must be changed from "MONOPOLY® Millionaires' Club" to "MONOPOLY™ Millionaires' Club™." The revised heading does not materially alter the purpose, meaning or effect of the proposed rule and is therefore not a substantive revision.

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

Department of Health

EMERGENCY RULE MAKING

Rate Rationalization — Intermediate Care Facilities for Persons with Developmental Disabilities

I.D. No. HLT-28-14-00015-E

Filing No. 846

Filing Date: 2014-09-29

Effective Date: 2014-09-29

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a

permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-28-14-00015-P, Issue of July 16, 2014. The emergency rule will expire November 27, 2014.

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objective:

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

Needs and Benefits:

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

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

Costs:

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

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

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

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

Costs to Private Regulated Parties:

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

Local Government Mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect of Rule:

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

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

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

Compliance Requirements:

There are no new compliance activities imposed by these amendments.

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

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

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

the inadvertent exclusion of these items in the original proposed regulations.

Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

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

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

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

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

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

Costs:

The proposed rule imposes no new costs on regulated entities.

Minimizing Adverse Impact:

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

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

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

Rural Area Participation:

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

Job Impact Statement

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

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

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

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

EMERGENCY RULE MAKING

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

I.D. No. HLT-28-14-00016-E
Filing No. 845
Filing Date: 2014-09-29
Effective Date: 2014-09-29

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

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

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

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

Substance of emergency 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. (Note that the text of the newly adopted regulation is the same as the text of the proposed regulation published in the spring of 2014.) The changes include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-28-14-00016-P, Issue of July 16, 2014. The emergency rule will expire November 27, 2014.

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

Regulatory Impact Statement

Statutory Authority:

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

Legislative Objective:

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

Needs and Benefits:

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

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

Costs:

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

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

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

There will be no savings or costs to local governments as a result of these regulations because pursuant to Social Services Law sections 365 and 368-a, either local governments incur no costs for these services or the State reimburses local governments for their share of the cost of Medicaid funded programs and services. In addition, even if the amendments lead to an increase in Medicaid expenditures in a particular county, these amendments will not have any fiscal impact on local governments, as the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

Costs to Private Regulated Parties:

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

Local Government Mandates:

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

Paperwork:

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

Duplication:

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

Alternatives:

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

Federal Standards:

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

Compliance Schedule:

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

Regulatory Flexibility Analysis

Effect of Rule:

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

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

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

Compliance Requirements:

There are no new compliance activities imposed by these amendments.

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

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

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

There are several additional positive changes for providers which are specific to the provision of residential habilitation services in supervised IRAs/CRs. Changes were made in the definition of "therapeutic leave days" to include days when the individual receiving services is on vacation. This corrected an inadvertent omission in the original regulations (which only permitted therapeutic leave days for the purpose of visiting with family and friends). Because of this change, providers may

receive reimbursement for days when the individual is on vacation but the vacation is not for the purpose of visiting with family and friends. Finally, changes were made related to the reconciliation of therapeutic leave days and retainer days, which positively affect the cash flow to providers. The amendments eliminate the reconciliation requirement for therapeutic leave days and state that the determination of reimbursement for retainer days will happen at the mid-point of the stated period as well as the conclusion of the period.

Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Effect on Rural Areas:

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

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

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

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

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

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

The amendments will have no effect on local governments.

Costs:

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

Minimizing Adverse Impact:

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

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

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

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

Rural Area Participation:

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

Job Impact Statement

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

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

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

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Certificate of Need (CON) Requirements

I.D. No. HLT-41-14-00002-P

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

Proposed Action: Amendment of section 710.1 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2802

Subject: Certificate of Need (CON) Requirements.

Purpose: Simplify CON review requirements for projects involving nonclinical infrastructure, equipment replacement and repair and maintenance.

Text of proposed rule: Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by section 2802 of the Public Health Law, subparagraph (j) of paragraph (3) of subdivision (c) of section 710.1 is amended to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

(j) [any proposal that does not relate to a change in clinical service, space or equipment or an increase in certified bed capacity, including but not limited to: information systems, exterior building envelope (e. g., windows, roof, wall repairs), parking garages, dietary and solid waste and/or sewage disposal, provided that proposals with a total project cost of up to $15 million may be reviewed under paragraph (5) of this subdivision] *reserved*;

Paragraph (4) of subdivision (c) of Section 710.1 is amended to read as follows:

(4) Proposals not requiring an application.

(i) The following types of construction projects shall not require prior approval under this Part, regardless of cost, provided that a written notice has been submitted to the Department prior to commencement of construction, together with, where indicated in this paragraph, a written certification by a New York State licensed architect or engineer that the project meets all applicable statutes, codes and regulations; and provided that the hospital shall implement a plan to protect patient safety during construction projects that implicate patient safety, consistent with section 711.2 of this part and other applicable standards, and as otherwise required by the department:

(a) Any proposal for the correction of cited deficiencies, consistent with a plan of correction approved by the department; provided that the construction is limited to the correction of the deficiencies.

([i]*b*) Any proposal for the repair or maintenance of a medical facility [which is not covered by paragraph (1) of this subdivision], including routine purchases and the acquisition of minor equipment undertaken in the course of a medical facility's inventory control functions, [shall not require the submission of a certificate of need application under this Part if the total project cost does not exceed $6,000,000, and] provided that *for* proposals *under this clause with a total cost of up to six million dollars, including separate proposals* which are programmatically related, *no written notice shall be required* [together do not exceed $6,000,000, and further provided that such proposal will not result in increased costs or expenses other than for lease costs, amortization, depreciation, interest, or return of or on equity]. This subparagraph shall not apply to activities requiring a limited review under Article 28 of the Public Health Law pursuant to paragraph (5) of this subdivision.

([ii]*c*) Any proposal to discontinue a part-time clinic site of a medical facility already authorized to operate part-time clinics pursuant to this Part shall not require the submission of an application pursuant to this Part, but compliance is required with the applicable notice provisions of section 703.6 of this Title.

([iii]*d*) Any proposal for the replacement of existing equipment, [listed in paragraphs (2) or (3) of this subdivision,] regardless of cost, *with another piece of equipment used for similar purposes but employing substantially equivalent current technology which, if subject to approval by the U.S. Food and Drug Administration, has received such approval.* [when such replacement is essential for the continued operation of the facility in compliance with the requirements of this Title or the provision of necessary medical care and services and the equipment to be replaced no longer meets the generally accepted operational standards for such equipment or has exhausted at least 90 percent of the higher of its useful life reported pursuant to Part 86 of this Title or its estimated useful life according to the tables of estimated useful lives in the American Hospital Association's Estimated Useful Lives of Depreciable Hospital Assets, 2008 edition, as incorporated by reference in this clause. Copies of the foregoing publication are available from the American Hospital Association, One North Franklin, Chicago, Illinois 60606-3421, www.aha.org, and a copy is available for inspection and copying at the New York State Department of Health, Regulatory Affairs Unit, Empire State Plaza, Corning Tower, Albany, NY 12237.] The facility*'s written notice to the department* shall[,] [30 days prior to such replacement, notify the department in writing of such proposed replacement with] *include a written certification by a New York State licensed architect or engineer that the project meets the applicable statutes, codes and regulations; and a plan to protect patient safety during replacement projects that implicate patient safety, consistent with section 711.2 of this part and other applicable standards, and as otherwise required by the department* [a statement of fact indicating when the equipment was purchased or otherwise acquired and that 90 percent of its useful life has been exhausted. At the end of the 30-day notice period the cost of the replacement will be eligible for reimbursement pursuant to Part 86 of this Title. The notice of the proposed replacement should be sent to the department's Division of Health Facility Planning and Division of Health Care Financing]. *Upon completion of the project, the facility shall, where applicable, submit written certification by a New York State licensed architect, engineer and/or physicist that the replacement equipment as installed meets applicable statutes, codes and regulations; and such other close-out documents as may be required by the department.*

([iv]*e*) *Subject to clause (d) of subparagraph (ii) of paragraph 5 of this subdivision, any proposal for a nonclinical infrastructure project, regardless of cost, including but not limited to replacement of heating, ventilating and air conditioning, fire alarm and call bell systems or components thereof, roofs, elevators, parking lots and garages, dietary, and solid waste and/or sewage disposal and upgrades of the exterior building envelope. The facility's written notice to the department shall include a written certification by a New York State licensed architect or engineer that the project meets the applicable statutes, codes and regulations; and shall include a plan to protect patient safety during construction consistent with section 711.2 of this part and other applicable standards, and as otherwise required by the department. Upon completion of the project, the facility shall, where applicable, submit written certification by a New York State licensed architect, engineer and/or physicist that the project as constructed or installed meets applicable statutes, codes and regulations; and such other close-out documents as may be specified by the department.*

([iv]*f*) Notwithstanding anything in this section to the contrary, from time to time the commissioner may, at the commissioner's discretion, approve capital expenditures that may be required in response to new state, municipal, or federal code requirements. Such approval may only be considered when such code changes affect large numbers of hospitals (as such term is defined in Article 28 of the Public Health Law) and where the commissioner finds that the capital expenditure is unlikely to create any risk to patient safety. Upon such determination, the commissioner shall notify affected hospitals of the opportunity to proceed with such capital expenditures based on a letter of notice to the department. The commissioner may impose a cap on anticipated individual project capital expenditures for such a waiver.

* * *

Paragraph (5) of subdivision (c) of section 710.1 is amended to read as follows:

(5) Proposals requiring a limited review. Proposals where total project cost does not exceed $6,000,000 and for which a certificate of need is not otherwise required under this Part, shall be reviewed under this

paragraph, *except for proposals covered by paragraph (4) of this subdivision*.

(i)(a) Applicants shall submit all such requests for approval of proposals described in this paragraph [directly to the Director of the Bureau of Project Management in the Division of Health Facility Planning,] *through the electronic application submission process* at the address posted on the department's Web site, including such information and documentation as the department requires to determine whether the proposal is acceptable.

(b) If the proposal involves the addition or decertification of a service or the conversion or decertification of beds subject to review under subparagraph (iv) of this paragraph, a copy shall also be sent to the health systems agency (HSA) having jurisdiction, if any. The HSA will have 10 days to respond to the department.

(c) If the Department determines that the proposal complies with all pertinent statutory and regulatory requirements, the Department shall notify the applicant, in writing, that the proposal is acceptable and, if applicable, an amended operating certificate will be issued.

(d) If the Department determines that the proposal is not acceptable, the applicant shall be notified in writing of such determination and the bases thereof. If the applicant disagrees with the commissioner's determination, the applicant may submit a certificate of need application to be processed for full review in accordance with this Part.

(e) Applicants that submit proposals subject to review under clause (e) of subparagraph (ii) of this paragraph, or under subparagraph (iv) of this paragraph that do not require an architecture and engineering [review] *certification*, shall be notified of the Department's determination within 30 days of submission of all necessary information.

(ii) A review shall be conducted of the proposal's compliance with applicable statutes, codes, rules and regulations relating to the structural, architectural, engineering, environmental, safety and sanitary requirement of licensed medical facilities, where the proposal relates to the acquisition, relocation, installation or modification of:

(a) medical equipment involving ionizing radiation or magnetic resonance, including magnetic resonance imagers (MRIs) and CT scanners by a general hospital as defined in Article 28 of the Public Health Law;

(b) facility areas relating to clinical services or surgical or other invasive procedures, not otherwise requiring approval under this section;

(c) inpatient units*, including resident rooms in a residential health care facility and other spaces used by residents of residential health care facilities on a daily basis,* relating to other than routine maintenance and repairs or routine purchase of equipment;

(d) [systems that impact clinical space, services or equipment, including] heating, ventilating, air conditioning, plumbing, electrical, water supply and fire protection systems[,] [other than routine maintenance and repairs or routine purchases affecting such systems;] *that involve modification or alteration of clinical space, services or equipment such as operating rooms, treatment and procedure rooms, and intensive care, cardiac care and other special care units (such as airborne infection isolation rooms and protective environment rooms), laboratories and special procedure rooms, and patient or resident rooms or other spaces used by residents of residential health care facilities on a daily basis. Projects involving routine maintenance or repairs or routine purchases affecting such systems shall not be subject to this subparagraph.*

[(e) equipment or facility space, where the proposal does not relate to a change in clinical service, space or equipment, or an increase in certified bed capacity, and is not subject to paragraph (3) of this subdivision and, notwithstanding any inconsistent provision of this paragraph, whose cost does not exceed $15,000,000 including but not limited to: information systems, exterior building envelope (e.g., windows, roof, wall repairs), parking garages, dietary, and solid waste and/or sewage disposal;]

([f]*e*)the relocation of an extension clinic within the same service area, defined as (1) one or more postal zip code areas in each of which twenty-five (25) percent or more of the extension clinic's patients reside, or (2) the area within one mile of the current location of such extension clinic, which does not entail an increase in services or clinical capacity; and

([g]*f*) Notwithstanding anything in this Title to the contrary, the reallocation, relocation or redistribution of linear accelerators as replacements for cobalt units and related services from one hospital to another hospital within the same established Article 28 network.

* * *

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

Paragraph (1) of section 2802 of the Public Health Law details procedures for the submission of applications for approval of construction projects for general hospitals, nursing homes, diagnostic and treatment centers and other health care facilities defined as hospitals in section 2801. Subparagraphs (1-a) and (1-b) of section 2802, as amended by Chapter 174 of the Laws of 2011, set forth the types of construction projects that do not require prior approval and for which written notice suffices for submission of the required construction application.

Legislative Objectives:

Article 28 of the Public Health Law seeks to protect and promote the health of the inhabitants of the State by assuring the efficient, accessible, and affordable provision of health services of the highest quality and that such services are properly utilized. Section 2802 seeks to ensure that the application process furnishes the Department with sufficient information to determine whether construction projects proposed by facilities subject to Article 28 are consistent with this standard.

Construction projects subject to Article 28 approval undergo one of three levels of review:

Limited Review: This level of review requires only the submission of a narrative describing the construction activity to be undertaken, the cost of the construction and where applicable, architecture/engineering drawings or certification. Limited review construction projects are generally not subject to review for financial feasibility or public need.

Administrative Certificate of Need (CON) review: This process requires submission of a CON application, which has considerably more detailed forms and schedules than the documents required for limited review. The process also involves review for financial feasibility and public need.

Full CON review: Full review construction projects generally require the submission of the same forms and schedules as administrative review applications but, because of their generally greater complexity and higher costs, usually involve a more detailed review for financial feasibility and public need. They also require review by the Public Health and Health Planning Council for submission of a recommendation by the PHHPC to the Commissioner.

The amended section 2802 provides that a notice process, as opposed to a CON application, is sufficient in the case of construction projects, regardless of cost, that involve only non-clinical infrastructure, facility repair and maintenance, and the one-for-one replacement of equipment. The proposed rule changes would amend paragraphs (4) and (5) of subdivision (c) of section 710.1 to remove CON review requirements for repair and maintenance projects and equipment replacement projects costing more than $6 million. The proposed revisions would also remove the requirement in paragraph (3) of subdivision (c) of section 710.1 that non-clinical infrastructure projects exceeding $15 million be subject to administrative review. In lieu of the submission of administrative or full review CON applications, the amended rules would require the submission of only a written notice and, where applicable, specified certifications and a plan for patient safety during project construction (additional close-out certifications would be required, where applicable, upon completion of the project). Once the notice and required accompanying documents were submitted, the applicant would also not have to await formal approval from the Department to commence the proposed project.

Current Requirements:

Under paragraph (4) of subdivision (c) of section 710.1, projects for facility repair and maintenance costing under $6 million do not require an application, while those over $6 million require a limited review application. Projects for one-for-one replacement of non-medical and most medical equipment for which the total project costs are under $6 million are currently subject to limited review. Those between $6 million and $15 million require administrative CON review. Projects for one-for-one equipment replacement of certain types of major medical equipment, e.g., MRI's, therapeutic radiology devices, CT scanners and cardiac catheterization equipment, regardless of cost, do not require an application, but only notification to the Department, and documentation that the equipment to be replaced is depreciated or no longer operable. Under section 710.1(c)(5), projects involving non-clinical infrastructure, including but not limited to windows, roof and wall repairs, parking garages, dietary, and solid waste and/or sewage disposal, whose costs are under $15 million are subject only to limited review. Under 710.1(c)(3), non-clinical infrastructure projects that exceed $15 million are subject to administrative CON review. Non-clinical infrastructure projects that exceed this amount are not subject to full review, regardless of cost.

Needs and Benefits:

Whether undertaken on an ongoing or occasional basis, the construc-

tion projects involving repair and maintenance, non-clinical infrastructure and equipment replacement addressed by the amended Section 2802 typically require relatively rapid implementation, lest services to patients be disrupted or operational inefficiencies occur. The proposed amendments seek to ensure that these essential activities can be undertaken more rapidly than often occurs under the current requirements for limited review and administrative or full CON review set forth in section 710.1.

The proposed changes would amend paragraphs (3), (4) and (5) of subdivision (c) of section 710.1 to expand the range of projects that do not require limited review or administrative or full CON review. The following would no longer require these types of prior approval, regardless of cost:

- correction of cited deficiencies, provided that the construction is limited to the correction;
- projects for repair or maintenance;
- replacement of any type of equipment, medical or non-medical. This is in contrast to current rules, which exempt only certain types of major medical devices from prior approval;
- non-clinical infrastructure projects.

All projects affected by the new rules would require the submission of a written notice and, where applicable, a plan for patient safety during project construction, and architect/engineer certification that the proposed project complies with the medical facilities construction code set forth in 10 NYCRR Parts 711 through 715. For those repair/maintenance, equipment replacement and non-clinical infrastructure projects currently subject to administrative CON review, and for the relatively few such projects requiring full CON review, the proposed changes would remove the need for applicants to submit the more elaborate and detailed CON application forms and schedules currently required. For all projects affected by the new rules, the proposed changes would also remove the requirement for the applicant to await Department approval of the proposed project before commencing construction. Applicants would therefore be able to proceed with their projects as soon as their written notices were submitted and receipt of the individual notice acknowledged by NYSE-CON, the electronic CON application processing mechanism. Upon completion of the project, the facility would be required to submit, as applicable, written certification by an architect, engineer and/or physicist, stating that the project had been completed in compliance with all applicable codes and regulations.

Although under the proposed rules the applicant would no longer need to await Department approval before commencement of the proposed project, it would remain the responsibility of the applicant to construct and operate the project in full compliance with the medical facilities construction code (Parts 711 through 715), the hospital code (Part 405) and any other applicable regulations. Any violations thereof would be fully cited in the course of routine surveys, complaint investigations or other surveillance and enforcement activities.

The submission of written notices rather than CON applications, together with the absence of a need to await formal Department approval of proposed projects, whether currently subject to CON review or limited review, would enable hospitals, nursing homes and diagnostic and treatment centers to take prompt advantage of changes in equipment and technology and allow them to update their facility equipment and infrastructure more readily. These new provisions would also help health facility operators avoid increases in construction costs that can occur while projects are pending Department approval, as well as prevent delays in the attainment of savings associated with proposed improvements to their facilities and services. For the Department, the simpler receipt of written notices would enable staff to focus more fully on larger-scale CON projects that warrant in-depth review and analysis.

COSTS:

Costs to State Government Other than the Department of Health:

There are no costs to State government.

Costs to Local Government:

There are no costs to local governments. For those local governments that operate Article 28 facilities, the proposed rules would reduce the costs associated with the preparation of administrative review CON and full review CON applications for affected projects. They would also eliminate the costs associated with delays in construction that can occur while projects await Department approval.

Costs to Private Regulated Parties:

Because the proposed amendments simplify the Article 28 review process for construction projects, these changes carry no costs for private regulated parties. The proposed rules actually would reduce the costs associated with the preparation of administrative review CON and full review CON applications for affected projects. They would also eliminate the costs associated with delays in construction that can occur while projects await Department approval.

Costs to the Department of Health:

There would be no additional costs to the Department of Health because CON review is an established function of the agency.

Local Government Mandates:

The proposed amendments do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

The proposed amendments impose no new reporting requirements, forms or other paperwork.

Duplication:

There are no relevant State or Federal rules that duplicate, overlap or conflict with the proposed amendments.

Alternatives:

The Department considered no alternatives because the proposed amendments reflect a statutory mandate.

Federal Standards:

Because there are no Federal rules affecting Certificate of Need, the proposed amendments do not exceed any minimum standards of the Federal government.

Compliance Schedule:

The proposed rules would take effect upon publication of a Notice of Adoption in the New York State Register. Because applications for construction under Article 28 may be submitted at any time, there is no schedule of compliance.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. The proposed rules simplify the application process for the approval of certain types of projects for construction, repair and maintenance and purchases of replacement equipment by hospitals, nursing homes, clinics and other health care providers.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not required for this proposal since it will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on rural areas. The proposed rules simplify the application process for the approval of certain types of projects for construction, repair and maintenance and purchases of replacement equipment by hospitals, nursing homes, clinics and other health care providers.

Job Impact Statement

A job impact statement is not submitted because this proposed rule will have no adverse impact on jobs or employment opportunities. The proposed rules simplify the application process for the approval of certain types of projects for construction, repair and maintenance and purchases of replacement equipment by hospitals, nursing homes, clinics and other health care providers. Because these rules represent only a change in application procedures, they will have no impact on jobs and employment opportunities, in the health care sector or elsewhere.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Integrated Outpatient Services

I.D. No. HLT-41-14-00022-P

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

Proposed Action: Addition of Part 404 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 2803

Subject: Integrated Outpatient Services.

Purpose: To establish standards applicable to programs licensed or certified by the DOH, OMH or OASAS to add existing program services.

Substance of proposed rule (Full text is posted at the following State website:www.health.ny.gov): The Proposed Rule relates to standards applicable to programs licensed or certified by the Department of Health (DOH; Public Health Law Article 28), Office of Mental Health (OMH; Mental Hygiene Law Articles 31 and 33) or Office of Alcoholism and Substance Abuse Services (OASAS; Mental Hygiene Law Articles 19 and 32) which desire to add to existing programs services provided under the licensure or certification of one or both of the other agencies.

§ 404.1 Background and Intent. This section speaks to the background and intent of the Proposed Rule as applicable to all three agencies (DOH, OMH, and OASAS). The purpose of the Rule is to promote increased access to physical and behavioral health services at a single site and to foster the delivery of integrated services based on recognition that behavioral and physical health are not distinct conditions.

§ 404.2 Legal Base. This section provides the Legal Base applicable to all three agencies for the promulgation of this Proposed Rule.

§ 404.3 Applicability. This section identifies providers of outpatient services or programs to which the standards outlined in the Proposed Rule would apply (e.g., providers certified or licensed, or in the process of pursuing licensure or certification, by at least two of the participating state agencies). Such providers would continue to maintain regulatory standards applicable to the host program's license or certification.

§ 404.4 Definitions. This section provides definitions as used in the Proposed Rule which would be applicable to any program licensed or certified by any of the three participating state agencies and identified as the host (program requesting the addition of services). Definitions specific to a host program's licensing agency are found in regulations of that agency. Among other things, the section defines an "integrated services provider" as a provider holding multiple operating certificates or licenses to provide outpatient services, who has also been authorized by a commissioner of a state licensing agency to deliver identified integrated care services at a specific site in accordance with the provisions of this Part.

§ 404.5 Integrated Care Models. This section describes three (3) models for host programs: (a) Primary Care Host Model with compliance monitoring by DOH; (b) the Mental Health Behavioral Care Host Model with compliance monitoring by OMH; and (c) the Substance Use Disorder Behavioral Care Host Model with compliance monitoring by OASAS.

§ 404.6 Organization and Administration. This section requires any integrated services provider to be certified by the appropriate state agency and to revise any practices, policies and procedures as necessary to ensure regulatory compliance.

§ 404.7 Treatment Planning. This section requires treatment planning for any patient receiving behavioral health services (OMH and/or OASAS) from an integrated service provider and articulates the scope, standards and documentation requirements for such treatment plans including requirements of managed care plans where applicable.

§ 404.8 Policies and procedures. This section identifies minimum required policies and procedures for any integrated service provider.

§ 404.9 Integrated Care Services. This section identifies the minimum services required of any integrated services provider providing any of the three care models. The section also identifies services for each model which may be provided at an integrated services provider's option.

§ 404.10 Environment. This section outlines minimum physical plant requirements necessary for certifying existing facilities which want to provide integrated care services. The section requires programs seeking certification after the effective date of this Rule or who anticipate new construction or significant renovations to comply with requirements of 10 NYCRR Parts 711 (General Standards of Construction) and 715 (Standards of Construction for Freestanding Ambulatory Care Facilities).

§ 404.11 Quality Assurance, Utilization Review and Incident Reporting. This section outlines the requirements and obligations of an integrated service provider relative to QA/UR and Incident Reporting and are detailed by the type of model as the host program.

§ 404.12 Staffing. This section outlines staffing requirements by type of model as the host program and identifies specific requirements which may be unique to the primary care host model such as subspecialty credentials of a medical director.

§ 404.13 Recordkeeping. This section requires that a record be maintained for every individual admitted to and treated by an integrated services provider. Additional requirements include designated recordkeeping staff, record retention, and minimum content fields specific to each model. Confidentiality of records is assured via patient consents and disclosures compliant with state and federal law.

§ 404.14 Application and Approval. This section outlines the process whereby a provider seeking to become an integrated service provider may submit an application for review and approval. Applications are standardized for use by all three licensing agencies but shall be reviewed by both the agency that regulates the services to be added and the agency with authority for the host clinic. The section identifies minimum standards for approval.

§ 404.15 Inspection. This section requires the state licensing agency with authority to monitor the host clinic to have ongoing inspection responsibility pursuant to standards outlined in this Proposed Rule. The adjunct state licensing agency will not duplicate inspections for license renewal or compliance but shall be consulted about any deficiencies relative to the added services. The section identifies specific areas of review and requires one unannounced inspection prior to renewal of an Operating Certificate or License.

A copy of the full text of the regulatory proposal is available on the DOH website at: http://www.health.ny.gov/regulations/proposed rulemaking.

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

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

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

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

Regulatory Impact Statement

Statutory Authority:

These proposed regulations concerning integrated outpatient services are being issued by the Department of Health (DOH) and were developed with the Office of Mental Health (OMH), and the Office of Alcoholism and Substance Abuse Services (OASAS). For DOH, the regulations will appear in a new Part 404 of Title 10 of the New York Codes, Rules and Regulations. OMH and OASAS each will issue an identical set of regulations which will appear in Part 14 of the New York Codes, Rules and Regulations (NYCRR).

These regulations are issued pursuant to: (1) Social Services Law (SSL) sections 365-a(2)(c) and 365-l(7) and Part L of Chapter 56 of the Laws of 2012, which authorize the Commissioners of DOH, OMH and OASAS, with the approval of the Director of the Budget, to promulgate regulations to facilitate integrated service delivery by providers; and (2) Public Health Law (PHL) § 2803, which authorizes the Public Health and Health Planning Council to adopt rules and regulations, subject to the approval of the Commissioner of Health, to effectuate the purposes of PHL Article 28. OMH and OASAS will reflect their statutory authorities in their regulatory impact statements.

Legislative Objectives:

Pursuant to SSL sections 365-a(2)(c) and 365-l(7) and Part L of Chapter 56 of the Laws of 2012, the Commissioners of the Office of Mental Health (OMH), Office of Alcoholism and Substance Abuse Services (OASAS) and the Department of Health (DOH) are authorized, with the approval of the Director of the Budget, to promulgate regulations to facilitate integrated service delivery by providers.

Since 2012, OASAS, OMH and DOH have pursued an Integrated Licensure Pilot Project pursuant to this authority. The goals of that project have been to streamline the approval and oversight process for clinics interested in providing services under the licensure of more than one agency (OMH, DOH, OASAS) at one or more location(s), thereby:

- Providing an efficient approval process to add new services to a site that is not licensed for those services.
- Establishing a single set of administrative standards and survey processes under which providers will operate and be monitored.
- Providing single state agency oversight of compliance with administrative standards for providers offering multiple services at a single site.

In addition, the project sought to improve the quality and coordination of care provided to people with multiple needs, by:

- Promoting integrated treatments records that comply with applicable Federal and State confidentiality requirements.
- Making optimal use of clinical resources jointly developed by OASAS and OMH that support evidence-based approaches to integrated dual disorders treatment.
- Ensuring that optimal clinical care, and not revenue, drive the program model.
- Providing an opportunity for optimal clinical care in a single setting creating cost efficiencies and increasing quality.

Highlights of the Project have included the formation of an interagency workgroup (OMH, DOH, OASAS) to develop a single set of administrative standards and a single application for licensure or certification. Though a provider may have multiple licenses, they are overseen by a single State agency utilizing a single review instrument.

It was from the Project that development of this regulatory proposal was conceived, to be used by all three State oversight agencies to promote consistency in the provision of integrated services. This regulatory proposal is therefore crafted utilizing the principles of the Integrated Licensure Project (the "Project") as its basis:

- to allow a single outpatient clinic provider to deliver the desired range of cross-agency (DOH, OMH, OASAS) clinic services under a single license.
- the clinic provider would need to possess licenses from at least 2 of the 3 participating State agencies within their network.
- the current license of the clinic site would serve as the "host", allowing that State agency to assume all surveillance activities relative to the site.
- the desired "add-on" services would be requested via the State agency currently with primary oversight responsibility for such services.

Needs and Benefits:

Physical and behavioral health conditions (i.e., mental illness and/or substance use disorders) often occur at the same time. Persons with behavioral disorders frequently experience chronic illnesses such as hypertension, diabetes, obesity, and cardiovascular disease. These ill-

nesses can be prevented and are treatable. However, the difficulty in navigating complex health care systems calls for the implementation of regulatory changes to facilitate the ability of individuals with behavioral health disorders to seek integrated treatment for their physical conditions.

Primary care settings have, at the same time, become a gateway to the behavioral health system, as people seek care for mild to moderate behavioral health needs (e.g., anxiety, depression, or substance use) in primary health care settings. Health care providers have long recognized that many patients have both physical and behavioral health care needs, yet physical and behavioral health care services have traditionally been provided and paid for separately. Even behavioral health services have traditionally been treated in a bifurcated system (e.g., substance use disorder treatment is treated separately from mental health treatment).

The term "integrated care" describes the systematic coordination of primary and behavioral health care services. The growing awareness of the prevalence and cost of comorbid physical and behavioral health conditions, and the increased recognition that integrated care can improve outcomes and achieve savings, has led to increasing acceptance of delivery models that integrate physical and behavioral health care. Moreover, most patients prefer to have their physical and behavioral health care delivered in one place, by the same team of clinicians. Accordingly, these regulations will prescribe standards for the integration of physical and behavioral health care services in certain outpatient programs licensed by DOH, OMH, and/or OASAS.

Costs:

Costs to Private Regulated Parties:

There are no additional costs to participating providers for this initiative. Integrated service sites will likely benefit from administrative process improvements related to facility licensure and recertification, which will be coordinated by a single host agency pursuant to this rule. Absent the process set forth in the regulations, providers would have to obtain the approval of another agency to provide such services and would be subject to the oversight of the other agency. Accordingly, the proposed regulations may reduce the administrative costs that would otherwise be incurred as a result of adding services. In addition, the ability of providers to integrate primary care and behavioral health services will improve the overall quality of care for individuals with multiple health conditions and will reduce overall health and behavioral health care costs.

Costs to Local Government:

The proposed regulations will not impose any additional costs on local governments. To the extent that a local government operates a provider that will be able to integrate services under the expedited process established by the regulations, it will benefit from the administrative efficiencies created by the regulations. In addition, as previously noted, the ability of providers to integrate primary care and behavioral health services will improve the overall quality of care for individuals with multiple health conditions and will reduce overall health and behavioral health care costs, which could have a beneficial impact on the local government.

Costs to the Department of Health:

Approving and overseeing the addition of integrated services as set forth in the proposed regulations would not add any administrative burdens or costs to DOH, since it otherwise would have to approve and oversee the addition of primary care services. OMH and OASAS will approve and oversee the addition of behavioral health services.

Costs to Other State Agencies:

Approving and overseeing the addition of integrated services as set forth in the proposed regulations would not add any administrative burdens or costs to OMH or OASAS, since they otherwise would have to approve and oversee the addition of behavioral health services. DOH will approve and oversee the addition of primary care services.

Local Government Mandates:

This regulatory proposal will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

Paperwork:

Providers will be required to submit an application to deliver integrated services. The application has been significantly streamlined from a standard certification or licensing application, and providers will not be required to maintain any more documentation than already required under the regulations of their oversight agency. Under the regulations, integrated services providers will be able to use a single integrated record for patients receiving services, instead of maintaining two or three separate records currently required for patients receiving services at multiple sites.

Duplication:

This is a new initiative intended to streamline the administrative licensure and recertification processes for providers that qualify under this rule and hold multiple licenses or certifications. Without the proposed regulations, providers with multiple licenses would be subject to all the rules and site survey requirements imposed by each agency through which they are licensed.

Alternatives:

"Integrated licensure" is one model for providers to integrate physical and behavioral health services in a single location. Alternative models continue to be pursued (e.g., ambulatory services thresholds in clinics, the Collaborative Care Demonstration, the Delivery System Reform Incentive Payment (DSRIP) Program, the Patient Centered Medical Home and the Geriatric Services Demonstration). Such alternative models have not been rejected by the State oversight agencies. Rather, the barriers to the expansion of each alternative model continue to be examined for possible adoption on broader scales.

Federal Standards:

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

Compliance Schedule:

The regulatory amendment would be effective immediately upon adoption.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

Job Impact Statement

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. The proposed amendments will not have a substantial adverse impact on jobs and employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Accountable Care Organizations (ACOs)

I.D. No. HLT-41-14-00023-P

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

Proposed Action: Addition of Part 1003; and amendment of Subpart 98-1 of Title 10 NYCRR.

Statutory authority: Public Health Law, art. 29-E and section 4403(2)

Subject: Accountable Care Organizations (ACOs).

Purpose: To promote ACOs and establish a certification process to regulate the use of ACOs to deliver an array of health care services.

Substance of proposed rule (Full text is posted at the following State website:www.health.ny.gov): These proposed regulations would: (1) add a new Part 1003 to 10 NYCRR, entitled "Accountable Care Organizations," to establish standards for the issuance of certificates of authority by the Commissioner of Health (Commissioner) to Accountable Care Organizations (ACOs); and (2) amend Part 98 of 10 NYCRR, entitled "Managed Care Organizations," to make conforming changes to provisions related to Independent Practice Associations.

Part 1003 (Accountable Care Organizations)

Section 1003.1 (Applicability) provides that Part 1003 applies to persons or entities seeking certification as an ACO. The section further specifies that no application is required for a Medicare-only ACO whose contract with CMS does not permit shared losses to exceed 10 percent. This applies to the ACOs approved by CMS to participate in the Medicare Shared Savings Program. Such a Medicare-only ACO may receive certification through an expedited process and will be subject only to §§ 1003.6 (Legal Structure and Responsibilities), 1003.11 (Payment and Third Party Payers), 1003.12 (Termination), 1003.13 (Reporting) and 1003.14 (Legal Protections) of Part 1003. Similarly, a Medicare-only ACO whose contract with CMS allows shared losses to exceed 10 percent may receive certification through an expedited process and will be subject to the aforementioned provisions as well as § 1003.5 (Medicare-Only ACOs Sharing Losses).

Section 1003.2 (Definitions) sets forth definitions for certain terms. In particular, an "ACO" is defined as "an organization comprised of clinically integrated independent health care providers that work together to

provide, manage, and coordinate health care (including primary care) for a defined population; with a mechanism for shared governance; the ability to negotiate, receive, and distribute payments; and to be accountable for the quality, cost, and delivery of health care to the ACO's patients and has been issued a certificate of authority" by the Commissioner.

Section 1003.3 (Certificate of Authority) establishes the criteria that must be satisfied for the Commissioner to approve a certificate of authority. Among other things, the ACO must demonstrate the capability to provide, manage and coordinate health care for a defined population, and its operation must include the participation of clinically integrated health care providers and administrative support organizations that are accountable for the quality, cost and delivery of health care to the individuals it serves.

Section 1003.4 (Application Requirements) provides that a person or entity seeking to obtain a certificate of authority must submit an application on forms prescribed by the Commissioner.

Section 1003.5 (Medicare-Only ACOs Sharing Losses) applies only to a Medicare-only ACO which may have shared losses that exceed ten percent of the benchmark established under its contract with CMS (meaning ACOs that participate in the Pioneer Program). The section allows such Medicare-only ACOs the ability to share losses without having to obtain an insurance license, subject to meeting several stringent financial conditions.

Section 1003.6 (Legal Structure and Responsibilities) sets forth requirements pertaining to the legal structure of an ACO, and provides that an approved ACO must provide, manage and coordinate health care for a defined population; be accountable for quality, cost, and delivery of health care to ACO patients; negotiate, receive and distribute any shared savings or losses; and establish, report and ensure provider compliance with health care criteria including quality performance standards. The section also requires that providers that participate in an ACO provide notification of such to their patients.

Section 1003.7 (Governing Body) requires that the governing body of an ACO have a transparent governing process and be responsible for the oversight and strategic direction of the ACO, holding those responsible for management of the ACO accountable for the ACO's activities.

Section 1003.8 (Leadership and Management) provides that an ACO must have a leadership and management structure that supports the delivery of an array of health care services for the purpose of improving quality of care, health outcomes and coordination and accountability of services provided to patients.

Section 1003.9 (Quality Management and Improvement Program) requires ACOs to develop and implement a quality management and improvement program that identifies, evaluates and resolves quality related issues.

Section 1003.10 (Quality Performance Standards and Reporting) provides that the Department of Health ("Department") shall collect from ACOs data related to quality assurance reporting requirements, which will be developed by the Department in conjunction with the National Committee on Quality Assurance. The ACO will be afforded the opportunity to review the information and correct any errors, and then the information will be posted on the Department's public website. The section also provides that the ACO must demonstrate quality performance equal to or above statewide and/or national benchmarks.

Section 1003.11 (Payment and Third Party Health Care Payers) sets forth requirements for ACOs that enter into payment arrangements with a third party health care payer. In particular, the section clarifies that unless an ACO is licensed as an insurer under the Insurance Law or certified under Article 44 of the Public Health Law, the ACO is prohibited from engaging in any activity that would constitute the business of insurance under Insurance Law § 1101, except as provided in § 1003.11(b)(1) and (2).

Section 1003.12 (Termination) specifies that the Commissioner may limit, suspend or terminate the certificate of authority of an ACO after written notice and an opportunity for review and/or hearing. The section provides, among other things, that the failure to adhere to established quality measures or comply with corrective action plans related to poor performance on established quality of care standards constitute grounds for termination.

Section 1003.13 (Reporting) requires ACOs to submit data to the Commissioner annually and as otherwise requested. The data requested would include information about ACO participants and enrollees, utilization of services, complaints and grievances, quality metrics and shared savings or losses.

Section 1003.14 (Legal Protections; State Action Immunity) reflects the statutory intent to promote ACOs by excluding them from the application of certain provisions that might otherwise inhibit such arrangements:

- ACOs certified pursuant to Part 1003 shall not be considered to be in violation of Article 22 of the General Business Law relating to contracts or agreement in restraint of trade, if the ACO's actions qualify for the safety zone, subject to the antitrust analysis set forth in the Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program issued by the Federal Trade Commission and U.S. Department of Justice and published in the Federal Register on October 28, 2011. (§ 1003.14(a));
- As part of its application for a certificate of authority under this part, an ACO may request that the State provide state action immunity from federal and state antitrust laws;
- ACOs certified pursuant to Part 1003 shall not be considered to be in violation of Education Law Article 131-A relating to fee splitting when certain criteria are satisfied (§ 1003.14(b));
- Health care providers shall not be considered to be in violation of Title 2-D of Article 2 of the Public Health Law when making referrals to other health care practitioners that are part of their ACO activities (§ 1003.14(c));
- Medicaid providers that enter into arrangements with an ACO, one or more of its ACO participants or its ACO providers/suppliers, or a combination thereof shall not be in violation of Social Services Law ("SSL") § 366-d (§ 1003.14(d)); and
- The provision of health care services by an ACO shall not be considered the practice of a profession under Education Law Title 8 (§ 1003.14(f)).

Part 98 of NYCRR (Managed Care Organizations)

Section 98-1.2(w) is amended to expand the definition of an IPA to allow certification as an ACO pursuant to PHL Article 29-E and Part 1003 and provide that if so certified, the IPA may contract with third party health care payers.

Section 98-1.5(b)(vii)(f) is amended to provide that an IPA may seek certification as an ACO pursuant to PHL Article 29-E and Part 1003 and, if so certified, must comply with all the requirements of Part 1003, including but not limited to the requirements of § 1003.6(e) and (g). Upon receiving such certification, an IPA acting as an ACO may contract with third party health care payers. § 98-1.5(b)(vii)(f).

Section 98-1.5(b)(vii)(g) is added to provide that an IPA may include any and all necessary powers and purposes as authorized, allowed or required under an approved Delivery System Reform Incentive Payment ("DSRIP") Program.

A copy of the full text of the regulatory proposal is available on the Department of Health website (www.health.ny.gov).

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

Article 29-E of the Public Health Law ("PHL") requires the Commissioner to issue regulations pertaining to the certification of Accountable Care Organizations.

Legislative Objectives:

An Accountable Care Organization ("ACO") is a voluntary organization comprised of clinically integrated independent health care providers that work together to provide, manage, and coordinate health care for a defined population, has a mechanism for shared governance and the ability to negotiate, receive, and distribute payments, and is accountable for the quality, cost, and delivery of health care to the ACO's patients.

In New York, based upon a recommendation of the Medicaid Redesign Team ("MRT"), the 2011-12 budget (Chapter 59 of the Laws of 2011, Part H, § 66) added new PHL Article 29-E to require the Commissioner of Health ("Commissioner") to establish a program governing the approval of ACOs. Initially, the law was designed as a demonstration program to test the ability of ACOs to deliver an array of health care services for the purpose of improving the quality, coordination and accountability of services provided to patients. The Commissioner was authorized to issue certificates of authority to up to seven ACOs prior to December 31, 2015.

PHL Article 29-E was subsequently amended (Chapter 461 of the Laws of 2012) to make the program permanent and authorize an unlimited number of certificates prior to December 31, 2016. As amended, PHL Article 29-E reflects the legislative finding that the development of ACOs will "reduce health care costs, promote effective allocation of health care resources, and enhance the quality and accessibility of health care." PHL § 2999-n.

Current Requirements:

Currently, there are no state regulations specific to ACOs in New York.

Needs and Benefits:

The proposed regulations advance the objectives of PHL Article 29-E by establishing requirements for certificates of authority in conjunction

with the statutory requirements, including those pertaining to governance, quality standards and reporting requirements. Among other things, the statute authorizes the Commissioner to issue a certificate of authority to a "Medicare-only ACO" that documents its approval by the federal Centers for Medicare and Medicaid Services (CMS) to operate as an ACO under Medicare, without the need to meet all of the criteria applicable to ACOs receiving other sources of payment. The regulations are consistent with this objective. Specifically, no application is required for a Medicare-only ACO whose contract with CMS does not permit shared losses to exceed 10 percent (for ACOs participating in the federal Medicare Shared Savings Program) (§ 1003.1(b)) or a Medicare-only ACO whose contract with CMS allows shared losses to exceed 10 percent (for ACOs participating in the federal Pioneer Program) (§ 1003.1(c)). These ACOs may request a certificate of authority from the Department through an expedited process which requires submission of documentation establishing CMS approval.

Additionally, as required by PHL Article 29-E, the regulations establish the criteria that must be satisfied for ACOs to obtain and maintain certificates of authority and address matters such as: (1) the governance, leadership and management structure of the ACO; (2) the definition of the population proposed to be served by the ACO; (3) the character, competence and fiscal responsibility and soundness of an ACO and its principals, if deemed appropriate by the Department; (4) the adequacy of the ACO's network of participating health care providers; (5) mechanisms by which the ACO will provide, manage, and coordinate quality health care for its patients; (6) mechanisms by which the ACO will receive and distribute payments to its participating providers; (7) mechanisms for quality assurance and grievance procedures; (8) mechanisms that promote evidence-based health care, patient engagement, coordination of care and electronic health records; (9) performance standards and measures to assess the quality and utilization of care provided by the ACO; and (10) the protection of patient rights. As required by the statute, to the extent practical, the regulations are consistent with CMS regulations for ACOs under the Medicare program, which were issued in 2011. See 76 FR 67802 (http://www.gpo.gov/fdsys/pkg/FR-2011-11-02/pdf/2011-27461.pdf).

Further, the regulations include provisions consistent with the legislative objective of promoting the development of ACOs. Article 29-E states that the provision of health care services by an ACO shall not be considered the practice of a profession under Title 8 of the Education Law, and identifies several "safe harbors" that exempt ACOs from the application of existing statutes pertaining to the restraint of trade, fee splitting and referrals. In particular, PHL Article 29-E expressly sets forth the State's intent to supplant competition with active state supervision in order to provide state action immunity under state and federal antitrust laws, where necessary to accomplish the statutory purposes. The regulations establish a process for such active state supervision, and further permit an ACO to proceed under the analysis set forth in the Statement of Antitrust Enforcement Policy Regarding Accountable Care Organizations Participating in the Medicare Shared Savings Program, issued by the Federal Trade Commission (FTC) and the Department of Justice (DOJ). See 76 FR 67-26 (October 28, 2011) (http://www.gpo.gov/fdsys/pkg/FR-2011-10-28/pdf/2011-27944.pdf).

As contemplated by Article 29-E, the proposed regulations also include provisions pertaining to payment methodologies with third party payers. In general, if an entity bears insurance risk, it is "doing the business of insurance" and must either become licensed under the Insurance Law or, in the event of a managed care organization ("MCO"), certified under PHL Article 44, or it must meet the criteria for an exemption from licensure. Requiring licensure or certification ensures that the entity meets financial requirements such as maintaining adequate reserves to pay claims and complies with various consumer protections. DFS Regulation 164, found within Part 101 of Title 11 of the NYCRR, permits insurers and MCOs to transfer risk to a provider organization that is not licensed or certified so long as the provider organization meets certain financial requirements and consumer protections and the ultimate risk is borne by the insurer or MCO.

In keeping with these general principles, the proposed regulations provide that an ACO may not enter into any arrangement that involves risk sharing or otherwise constitutes the business of insurance, except in specific circumstances. The ACO may be or become certified as a MCO pursuant to PHL Article 44, authorized to write accident and health insurance as an insurer pursuant to the Insurance Law, or licensed as a corporation pursuant to Insurance Law Article 43. Alternatively, the ACO may contract with an entity that is certified, authorized or licensed under such statutory provisions.

The proposed regulations also permit an Independent Practice Association ("IPA") to apply for and receive a certificate of authority as an ACO. IPAs, which are permitted to enter into arrangements with payers under Regulation 164, contract with providers of medical or medically related services or other IPAs and then contract with one or more MCOs and/or workers' compensation preferred provider organizations to make the services of such providers available to the MCOs' enrollees and/or to injured workers participating in a workers' compensation preferred provider arrangement. In addition, the regulations are amended to permit IPAs to participate as Performing Provider Systems under New York's Delivery System Reform Incentive Payment (DSRIP) Program.

Finally, the proposed regulations also provide that a Medicare-only ACO permitted to share losses greater than 10 percent pursuant to its contract with CMS can do so without having to become a licensed insurer under the Insurance Law, provided that several stringent financial conditions are satisfied. DFS will amend Regulation 164 to include ACOs within the types of providers that may enter into such arrangements.

As required by Article 29-E, in developing these regulations, the Commissioner consulted with the Superintendent of Financial Services, the Attorney General and State Education Department, health care providers, third-party health care payers, patient advocates, and other appropriate parties.

COSTS:

Costs to Private Regulated Parties:

ACOs are not required to obtain certificates of authority. Therefore, the proposed regulations do not create any mandatory burdens or costs to regulated parties. Applicants may incur administrative costs associated with applying for or maintaining a certificate of authority, such as preparing the application or complying with periodic reporting requirements. However, both the ACA and Article 29-E anticipated that the utilization of ACOs will produce a substantial reduction in health care costs. For example, CMS reports that in 2012 the Medicare program realized $87 million in gross spending savings with direct Medicare savings of $33 million. CMS also reports that 70,000 potential hospital inpatient admissions were avoided and all ACOs reported they successfully met quality benchmarks.

Costs to Local Government:

The proposed regulations do not impose any costs on local government, except to the extent that a local government operates a provider that participates in an ACO that chooses to seek a certificate of authority. In such cases, the analysis set forth above regarding costs to private regulated parties applies.

Costs to the Department of Health:

Certifying and monitoring ACOs may result in minimal additional costs to the Department, which will be managed within existing resources.

Costs to Other State Agencies:

The proposed regulations will not result in any costs to other state agencies.

Local Government Mandates:

The proposed regulations do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

Under the proposed regulations, paperwork is required for the submission of ACO applications and for annual data submissions by the ACOs. The regulations attempt to minimize administrative burdens by providing that various items need be submitted only upon request. In addition, the electronic submission of applications and reports will minimize or eliminate costs for printing and mailing.

Duplication:

There are no relevant State regulations which duplicate, overlap or conflict with the proposed regulations.

Alternatives:

There are no alternatives to the proposed regulations. Article 29-E requires the Department to issue regulations to implement the statute for the purpose of establishing a program for the certification of ACOs.

Federal Standards:

The proposed regulations do not duplicate or conflict with any federal regulations. They comply with the Article 29-E requirement that the regulations be consistent, to the extent practical, with the federal Medicare regulations governing ACOs.

Compliance Schedule:

The regulations will be effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

Effect of Rule:

The proposed regulations are not expected to have an adverse impact on local governments or small businesses. Under the rule, health care providers and other entities that may participate in an ACO include entities licensed or certified under PHL Articles 28 or 36 or Articles 16, 31 or 32 of the Mental Hygiene Law, a health care practitioner licensed or certified under Title 8 of the Education Law or a combination of such practitioners, and other entities that provide technical assistance, information systems and services to health care providers and patients participating in the ACO. This may include providers operated by local governments or entities that qualify as small businesses.

However, pursuit of a certificate of authority is optional. Moreover,

both the federal ACA and PHL Article 29-E anticipate that ACOs have the potential to reduce unnecessary utilization of health care services among patients served by ACOs, leading to overall savings in the health care system. For example, CMS reported that in 2012 the Medicare program realized $87 million in gross spending savings with direct Medicare savings of $33 million. CMS also has reported that 70,000 potential hospital inpatient admissions were avoided and all ACOs reported they successfully met quality benchmarks.

Compliance Requirements:

To obtain a certificate of authority under the proposed regulations, a prospective ACO must submit an application that demonstrates its ability to satisfy certain standards pertaining to legal structure, governance, leadership, management, quality management and improvement, quality performance standards, payment and shared savings, third party payer contracts and reporting.

Cure Period:

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

Professional Services:

Pursuit of a certificate of authority is optional. Some ACOs that elect to pursue a certificate of authority may decide to retain professional services, such as accounting services, to help carry out the functions required under the proposed regulations, while others may find it sufficient to utilize existing staff for such purposes.

Compliance Costs:

Pursuit of a certificate of authority is optional but, as anticipated by Article 29-E, ACOs are expected to result in savings which should ultimately exceed any costs required to comply with the standards outlined in the proposed regulations.

Economic and Technological Feasibility:

This proposal is economically and technically feasible. In particular, pursuit of a certificate of authority is optional. Some ACOs that elect to pursue a certificate of authority may find it necessary to retain additional personnel or professional services to help carry out the functions required under the rule, while others may find it sufficient to utilize existing staff for such purposes.

Minimizing Adverse Impact:

The proposed regulations are consistent with PHL Article 29-E and its directive to closely follow the federal CMS ACO regulations. Where possible, efforts were made to streamline the administrative processes created by the rule. For example, the regulations require that reports, organizational charts, and other documentation must be made available to the Department "upon request," rather than requiring that they be routinely submitted with all ACO applications. In addition, all documents are to be submitted and processed electronically.

Small Business and Local Government Participation:

The enactment of PHL Article 29-E, which requires the Department to adopt regulations establishing a process for issuing certificates of authority to ACOs, placed entities including local governments and small businesses on notice that such regulations would be forthcoming. Development of the proposed regulations included input from a variety of organizations representing health care providers and other stakeholders.

Rural Area Flexibility Analysis

Types and Numbers of Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, includes towns with population densities of 150 persons or less per square mile. The following 44 counties have a population less than 200,000:

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

The following 9 counties have certain townships with population densities of 150 persons or less per square mile:

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

There are 47 general hospitals, approximately 90 diagnostic and treatment centers, 159 nursing homes, and 92 certified home health agencies in rural areas. There are also other providers such as physician practices, behavioral health providers and organizations in rural areas that provide technical assistance that may opt to organize or otherwise participate in an ACO. These entities and organizations will not be affected differently than those in non-rural areas.

Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:

Pursuit of a certificate of authority is optional. The proposed regulations require an ACO or a prospective ACO to submit information to the Department as part of an initial application for a certificate of authority and requires an ACO that has been issued a certificate of authority to report information to the Department and maintain certain documentation in order to maintain its certificate of authority. Some ACOs that elect to pursue a certificate of authority may decide to retain professional services, such as accounting services, to help carry out the functions required under the proposed regulations, while others may find it sufficient to utilize existing staff for such purposes. The proposed regulations do not impose any obligations that are different for ACOs in rural areas than those in other areas.

Costs:

While an ACO may incur some administrative costs associated with the formation of the ACO, the federal ACA and PHL Article 29-E anticipate that ACOs have the potential to reduce unnecessary utilization of health care services among patients served by ACOs, leading to overall savings in the health care system. As an example, CMS reported that in 2012 the Medicare program realized $87 million in gross spending savings with direct Medicare savings of $33 million. CMS also has report that 70,000 potential hospital inpatient admissions were avoided and all ACOs reported they successfully met quality benchmarks.

Minimizing Adverse Impact:

The proposed regulations are consistent with PHL Article 29-E and its directive to closely follow the federal CMS ACO regulations. Where possible, efforts were made to streamline the administrative processes created by the rule. For example, the regulations require that reports, organizational charts, and other documentation must be made available to the Department "upon request," rather than requiring that they be routinely submitted with all ACO applications. In addition, all documents are to be submitted and processed electronically.

Rural Area Participation:

The enactment of PHL Article 29-E, which requires the Department to adopt regulations establishing a process for issuing certificates of authority to ACOs, placed entities including prospective ACOs on notice that such regulations would be forthcoming. Development of these regulations included input from a variety of organizations representing health care providers and other stakeholders, including those located in rural areas.

Job Impact Statement

Nature of Impact:

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. No adverse impact on jobs and employment opportunities is expected as a result of these proposed regulations.

Office of Mental Health

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Integrated Outpatient Services

I.D. No. OMH-41-14-00017-P

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

Proposed Action: Addition of Subpart 599-1 to Title 14 NYCRR.

Statutory authority: Social Services Law, sections 364, 364-a, 365-a(2)(c), 365-1(7); L. 2012, ch. 56, part L; Mental Hygiene Law, sections 7.09, 7.15, 31.04, 31.07, 31.09, 31.11, 31.13 and 31.19

Subject: Integrated Outpatient Services.

Purpose: Promote increased access to physical and behavioral health services at a single site and foster delivery of integrated services.

Substance of proposed rule (Full text is posted at the following State website:www.omh.ny.gov): The Proposed Rule relates to standards applicable to programs licensed or certified by the Department of Health (DOH; Public Health Law Article 28), Office of Mental Health (OMH; Mental Hygiene Law Articles 31 and 33) or Office of Alcoholism and Substance Abuse Services (OASAS; Mental Hygiene Law Articles 19 and 32) which desire to add to existing programs services provided under the licensure or certification of one or both of the other agencies.

§ 599-1.1 Background and Intent. This section speaks to the background and intent of the Proposed Rule as applicable to all three agencies (DOH, OMH, and OASAS). The purpose of the Rule is to promote increased access to physical and behavioral health services at a single site and to foster the delivery of integrated services based on recognition that behavioral and physical health are not distinct conditions.

§ 599-1.2 Legal Base. This section provides the Legal Base applicable to all three agencies for the promulgation of this Proposed Rule.

§ 599-1.3 Applicability. This section identifies providers of outpatient services or programs to which the standards outlined in the Proposed Rule would apply (e.g., providers certified or licensed, or in the process of pursuing licensure or certification, by at least two of the participating state agencies). Such providers would continue to maintain regulatory standards applicable to the host program's license or certification.

§ 599-1.4 Definitions. This section provides definitions as used in the Proposed Rule which would be applicable to any program licensed or certified by any of the three participating state agencies and identified as the host (program requesting the addition of services). Definitions specific to a host program's licensing agency are found in regulations of that agency. Among other things, the section defines an "integrated services provider" as a provider holding multiple operating certificates or licenses to provide outpatient services, who has also been authorized by a Commissioner of a state licensing agency to deliver identified integrated care services at a specific site in accordance with the provisions of this Part.

§ 599-1.5 Integrated Care Models. This section describes three (3) models for host programs: (a) Primary Care Host Model with compliance monitoring by DOH; (b) Mental Health Behavioral Care Host Model with compliance monitoring by OMH; and (c) Substance Use Disorder Behavioral Care Host Model with compliance monitoring by OASAS.

§ 599-1.6 Organization and Administration. This section requires any integrated services provider to be certified by the appropriate state agency and to revise any practices, policies and procedures as necessary to ensure regulatory compliance.

§ 599-1.7 Treatment Planning. This section requires treatment planning for any patient receiving behavioral health services (OMH and/or OASAS) from an integrated service provider and articulates the scope, standards and documentation requirements for such treatment plans including requirements of managed care plans where applicable.

§ 599-1.8 Policies and procedures. This section identifies minimum required policies and procedures for any integrated service provider.

§ 599-1.9 Integrated Care Services. This section identifies the minimum services required of any integrated services provider providing any of the three care models. The section also identifies services for each model which may be provided at an integrated services provider's option.

§ 599-1.10 Environment. This section outlines minimum physical plant requirements necessary for certifying existing facilities which want to provide integrated care services. The section requires programs seeking certification after the effective date of this Rule or who anticipate new construction or significant renovations to comply with requirements of 10 NYCRR Parts 711 (General Standards of Construction) and 715 (Standards of Construction for Freestanding Ambulatory Care Facilities).

§ 599-1.11 Quality Assurance, Utilization Review and Incident Reporting. This section outlines the requirements and obligations of an integrated service provider relative to QA/UR and Incident Reporting and are detailed by the type of model as the host program.

§ 599-1.12 Staffing. This section outlines staffing requirements by type of model as the host program and identifies specific requirements which may be unique to the primary care host model such as subspecialty credentials of a medical director.

§ 599-1.13 Recordkeeping. This section requires that a record be maintained for every individual admitted to and treated by an integrated services provider. Additional requirements include designated recordkeeping staff, record retention, and minimum content fields specific to each model. Confidentiality of records is assured via patient consents and disclosures compliant with state and federal law.

§ 599-1.14 Application and Approval. This section outlines the process whereby a provider seeking to become an integrated service provider may submit an application for review and approval. Applications are standardized for use by all three licensing agencies but shall be reviewed by both the agency that regulates the services to be added and the agency with authority for the host clinic. The section identifies minimum standards for approval.

§ 599-1.15 Inspection. This section requires the state licensing agency with authority to monitor the host clinic to have ongoing inspection responsibility pursuant to standards outlined in this Proposed Rule. The adjunct state licensing agency will not duplicate inspections for license renewal or compliance but shall be consulted about any deficiencies relative to the added services. The section identifies specific areas of review and requires one unannounced inspection prior to renewal of an Operating Certificate or License.

A copy of the full text of the regulatory proposal is available on the OMH website at: http://www.omh.ny.gov/omhweb/policy__and__regulations/.

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

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

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

Regulatory Impact Statement

Statutory Authority:

These proposed regulations concerning integrated outpatient services are being issued by the Office of Mental Health (OMH) and were developed with the Office of Alcoholism and Substance Abuse Services (OASAS), and the Department of Health (DOH). For OMH, the regulations will appear in a new Subpart 599-1 of Title 14 of the New York Codes, Rules and Regulations. OASAS and DOH each will issue an identical set of regulations which will appear in Part 825 of Title 14 of the New York Codes, Rules and Regulations (NYCRR) and Part 404 of Title 10 of the NYCRR, respectively.

These regulations are issued pursuant to the following:

Social Services Law (SSL) sections 365-a(2)(c) and 365-l(7) and Part L of Chapter 56 of the Laws of 2012, which authorize the Commissioners of DOH, OMH and OASAS, with the approval of the Director of the Budget, to promulgate regulations to facilitate integrated service delivery by providers.

Section 7.09 of the Mental Hygiene Law grants the Commissioner of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

Section 7.15 of the Mental Hygiene Law charges the Commissioner of Mental Health with the responsibility for planning, promoting, establishing, developing, coordinating, evaluating and conducting programs and services of prevention, diagnosis, examination, care, treatment, rehabilitation, training, and research for the benefit of persons with mental illness. Such law further authorizes the Commissioner to take all actions that are necessary, desirable, or proper to carry out the statutory purposes and objectives of the Office of Mental Health, including undertaking activities in cooperation and agreement with other offices within the Department of Mental Hygiene, as well as with other departments or agencies of state government.

Section 31.04 of the Mental Hygiene Law authorizes the Commissioner of Mental Health to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services for adults diagnosed with mental illness or children diagnosed with emotional disturbance, pursuant to an operating certificate.

Sections 31.07, 31.09, 31.13, and 31.19 of the Mental Hygiene Law authorize the Commissioner of Mental Health or his or her representatives to examine and inspect such programs to determine their suitability and proper operation. Section 31.16 authorizes such Commissioner to suspend, revoke or limit any operating certificate, under certain circumstances.

Section 31.11 of the Mental Hygiene Law requires every holder of an operating certificate to assist the Office of Mental Health in carrying out its regulatory functions by cooperating with the Commissioner of Mental Health in any inspection or investigation, permitting such Commissioner to inspect its facility, books and records, including recipients' records, and making such reports, uniform and otherwise, as are required by such Commissioner.

Article 33 of the Mental Hygiene Law establishes basic rights of persons diagnosed with mental illness.

Sections 364 and 364-a of the Social Services Law give the Office of Mental Health responsibility for establishing and maintaining standards for medical care and services in facilities under its jurisdiction, in accordance with cooperative arrangements with the Department of Health.

Legislative Objectives:

Pursuant to SSL sections 365-a (2)(c) and 365-l(7) and Part L of Chapter 56 of the Laws of 2012, the Commissioners of the Office of Mental Health (OMH), Office of Alcoholism and Substance Abuse Services (OASAS) and the Department of Health (DOH) are authorized, with the approval of the Director of the Budget, to promulgate regulations to facilitate integrated service delivery by providers.

Since 2012, OASAS, OMH and DOH have pursued an Integrated Licensure Pilot Project pursuant to this authority. The goals of that project have been to streamline the approval and oversight process for clinics interested in providing services under the licensure of more than one agency (OMH, DOH, OASAS) at one or more location(s), thereby:

- Providing an efficient approval process to add new services to a site that is not licensed for those services.
- Establishing a single set of administrative standards and survey process under which providers will operate and be monitored.
- Providing single state agency oversight of compliance with administrative standards for providers offering multiple services at a single site.

In addition, the project sought to improve the quality and coordination of care provided to people with multiple needs, by:

- Promoting integrated treatments records that comply with applicable Federal and State confidentiality requirements.
- Making optimal use of clinical resources jointly developed by OASAS and OMH that support evidence-based approaches to integrated dual disorders treatment.
- Ensuring that optimal clinical care and not revenue drive the program model.
- Providing an opportunity for optimal clinical care provided in a single setting creating cost efficiencies and increasing quality.

Highlights of the Project have included the formation of an interagency workgroup (OMH, DOH, OASAS) to develop a single set of administrative standards and a single application for licensure or certification. Though a provider may have multiple licenses, they are overseen by a single State agency utilizing a single review instrument.

It was from the Project that development of this regulatory proposal was conceived, to be used by all three State oversight agencies to promote consistency in the provision of integrated services. This regulatory proposal is therefore crafted utilizing the principles of the Integrated Licensure Project (the "Project") as its basis:

- to allow a single outpatient clinic provider to deliver the desired range of cross-agency (DOH, OMH, OASAS) clinic services under a single license
- the clinic provider would need to possess licenses from at least 2 of the 3 participating State agencies within their network
- the current license of the clinic site would serve as the "host", allowing that State agency to assume all surveillance activities relative to the site
- the desired "add-on" services would be requested via the State agency currently with primary oversight responsibility for such services.

Needs and Benefits:

Physical and behavioral health conditions (i.e., mental illness and/or substance use disorders) often occur at the same time. Persons with behavioral disorders frequently experience chronic illnesses such as hypertension, diabetes, obesity, and cardiovascular disease. These illnesses can be prevented and are treatable. However, the difficulty in navigating complex healthcare systems calls for the implementation of regulatory changes to facilitate the ability of individuals with behavioral health disorders to seek integrated treatment for their physical conditions.

Primary care settings have, at the same time, become a gateway to the behavioral health system, as people seek care for mild to moderate behavioral health needs (e.g., anxiety, depression, or substance use) in primary health care settings. Health care providers have long recognized that many patients have both physical and behavioral health care needs, yet physical and behavioral health care services have traditionally been provided and paid for separately. Even behavioral health services have traditionally been treated in a bifurcated system (e.g., substance use disorder treatment is treated separately from mental health treatment).

The term "integrated care" describes the systematic coordination of primary and behavioral health care services. The growing awareness of the prevalence and cost of comorbid physical and behavioral health conditions, and the increased recognition that integrated care can improve outcomes and achieve savings, has led to increasing acceptance of delivery models that integrate physical and behavioral health care. Moreover, most patients prefer to have their physical and behavioral health care delivered in one place, by the same team of clinicians. Accordingly, these regulations will prescribe standards for the integration of physical and behavioral health care services in certain outpatient programs licensed by DOH, OMH, and/or OASAS.

The purpose of these regulations are to prescribe standards for the integration of physical and behavioral health care services in certain outpatient programs licensed by DOH, OMH, and/or OASAS.

Costs

Costs to Private Regulated Parties:

There are no additional costs to participating providers for this initiative. Integrated service sites will likely benefit from administrative process improvements related to facility licensure and recertification, which will be coordinated by a single host agency pursuant to this rule. Absent the process set forth in the regulations, providers would have to obtain the approval of another agency to provide such services and would be subject to the oversight of the other agency. Accordingly, the proposed regulations may reduce the administrative costs that would otherwise be incurred as a result of adding services. In addition, the ability of providers to integrate primary care and behavioral health services will improve the overall quality of care for individuals with multiple health conditions and will reduce overall health and behavioral health care costs.

Costs to Local Government:

The proposed regulations will not impose any additional costs on local governments. To the extent that a local government operates a provider that will be able to integrate services under the expedited process established by the regulations, it will benefit from the administrative efficiencies created by the regulations. In addition, as previously noted, the ability of providers to integrate primary care and behavioral health services will improve the overall quality of care for individuals with multiple health conditions and will reduce overall health and behavioral health care costs, which could have a beneficial impact on the local government.

Costs to OMH:

Approving and overseeing the addition of integrated services as set forth in the proposed regulations would not add any administrative burdens or costs to OMH, since it otherwise would have to approve and oversee the addition of mental health services. OASAS and DOH will approve and oversee the addition of substance use disorder and primary care services.

Costs to Other State Agencies:

Approving and overseeing the addition of integrated services as set forth in the proposed regulations would not add any administrative burdens or costs to OASAS or DOH, since they otherwise would have to approve and oversee the addition of substance use disorder and primary care services. OMH will approve and oversee the addition of mental health services.

Local Government Mandates:

This regulatory proposal will not result in any additional imposition of duties or responsibilities upon county, city, town, village, school or fire districts.

Paperwork:

Providers will be required to submit an application to deliver integrated services. The application has been significantly streamlined from a standard certification or licensing application, and providers will not be required to maintain any more documentation than already required under the regulations of their oversight agency. Under the regulations, integrated services providers will be able to use a single integrated record for patients receiving services, instead of maintaining two or three separate records currently required for patients receiving services at multiple sites.

Duplication:

This is a new initiative intended to streamline the administrative licensure and recertification processes for providers that qualify under this rule and hold multiple licenses or certifications. Without the proposed regulations, providers with multiple licenses would be subject to all the rules and site survey requirements imposed by each agency through which they are licensed.

Alternatives:

"Integrated licensure" is one model for providers to integrate physical and behavioral health services in a single location. Alternative models continue to be pursued (e.g., ambulatory services thresholds in clinics, the Collaborative Care Demonstration, the Delivery System Reform Incentive Payment (DSRIP) Program, the Patient Centered Medical Home and the Geriatric Services Demonstration). Such alternative models have not been rejected by the State oversight agencies. Rather, the barriers to the expansion of each alternative model continue to be examined for possible adoption on broader scales.

Federal Standards:

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

Compliance Schedule:

The regulatory amendment would be effective immediately upon adoption.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-(b)(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Rural Area Flexibility Analysis
No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

Job Impact Statement
No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. The proposed amendments will not have a substantial adverse impact on jobs and employment opportunities.

Department of Motor Vehicles

NOTICE OF ADOPTION

Dealer Plates

I.D. No. MTV-32-14-00004-A
Filing No. 848
Filing Date: 2014-09-30
Effective Date: 2014-10-15

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

Action taken: Amendment of Part 78 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 415(15)

Subject: Dealer Plates.

Purpose: Give the Commissioner discretion regarding the surrender of dealer plates.

Text or summary was published in the August 13, 2014 issue of the Register, I.D. No. MTV-32-14-00004-P.

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

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

Assessment of Public Comment
The agency received no public comment.

Office for People with Developmental Disabilities

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

HCBS Waiver Community Habilitation Services

I.D. No. PDD-41-14-00006-EP
Filing No. 849
Filing Date: 2014-09-30
Effective Date: 2014-10-01

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

Proposed Action: Amendment of Subpart 635-10 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00

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

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

OPWDD recently adopted amendments to regulations regarding community habilitation, effective October 1, 2014. The emergency/proposed regulations further amend these recently adopted amendments. (For ease of understanding, this emergency justification will refer to these recently adopted regulations as the "first amendments" and the emergency/proposed regulations which are the subject of this emergency justification as the "second amendments".) The first amendments offer another option to participants who live in OPWDD certified residential facilities who wish to have their habilitation services available in a variety of community settings in lieu of traditional day services. The first amendments also included provisions to make additional services available during weekday evening hours and on weekends to individuals who reside in Family Care Homes (FCH) and supportive Community Residences (CRs), including supportive Individualized Residential Alternatives (IRAs).

The second amendments eliminate the provisions that would have made those additional evening and weekend services available to individuals residing in FCHs and CRs. These changes were required by the federal Centers for Medicare and Medicaid Services (CMS).

The second amendments are being filed concurrently with the adoption of the first amendments, and therefore simply eliminate a service option that was not previously available to individuals who reside in FCHs and supportive CRs.

If OPWDD did not promulgate these regulations on an emergency basis, OPWDD would fail to meet a 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: HCBS Waiver Community Habilitation Services.

Purpose: To amend proposed Community Habilitation regulations that were adopted on October 1, 2014.

Text of emergency/proposed rule: Subparagraph 635-10.5(c)(7)(iii) is amended as follows:

(iii) For individuals who live in an IRA, CR, or FCH and receive community habilitation on a given day, additional billing limits are described in paragraph[s] (11) [and (12)] of subdivision (ab) of this section.

- Subparagraph 635-10.5(c)(7)(v) is amended as follows:

(v) Exceptions. The following applies only to requests made prior to [the effective date of these amendments] *October 1, 2014*.

(Note: clauses (a) – (c) are unchanged.)

- Subparagraph 635-10.5(c)(9)(iii) is amended as follows:

(iii) For individuals who live in an IRA, CR, or FCH and receive community habilitation on a given day, additional billing limits are described in paragraph[s] (11) [and (12)] of subdivision (ab) of this section.

- Subparagraph 635-10.5(c)(9)(vi) is amended as follows:

(vi) Exceptions. The following applies only to requests made prior to [the effective date of these amendments] *October 1, 2014*.

(Note: clauses (a) – (c) are unchanged)

- Subparagraph 635-10.5(ab)(1)(ii) is amended as follows:

(ii) Prior to [the effective date of these amendments] *October 1, 2014*, no individual who lived in a residence certified or operated by OPWDD (including a family care home) was eligible to receive CH services.

- Paragraph 635-10.5(ab)(11) is amended as follows:

(11) Billing limits for individuals who live in [a supervised] *an* IRA, [or supervised] CR,[.] *or FCH*.

(i) Community habilitation services may only be reimbursed if the services are delivered on weekdays and have a service start time prior to 3:00 p.m.

(ii) CH services may not be reimbursed on a given day that the individual receives:

(a) one full unit of group day habilitation services; or

(b) one full unit of prevocational services; or

(c) one full unit of a blended service (which is a combination of day habilitation and prevocational services); or

(d) any combination of two half units of: group day habilitation, prevocational services or blended services.

(iii) On a given day, a maximum of the following may be reimbursed:

(a) six hours of CH services; or

(b) the combination of:

(1) one half unit of: group day habilitation, prevocational services or blended services; and

(2) four hours of CH services.

- Paragraph 635-10.5(ab)(12) is deleted as follows and paragraphs (13) - (18) are renumbered to be (12) - (17):

[(12) Billing limits for individuals who live in a supportive IRA, supportive CR or FCH: On a given day, a maximum of the following may be reimbursed:

(i) eight hours of CH services; or

(ii) the combination of:

(a) one half unit of: group day habilitation services, supplemental group day habilitation services, prevocational services or blended services; and

(b) six hours of CH services; or

(iii) the combination of:

(a) one full unit or two half units of: group day habilitation services, supplemental group day habilitation services, prevocational services or blended services; and

(b) four hours of CH services; or

(iv) the combination of:

(a) one full unit and one half unit or three half units of: group day habilitation services, supplemental group day habilitation services, prevocational services or blended services (one half or one full unit of these must be supplemental group day habilitation services); and

(b) two hours of CH services.]

• Renumbered paragraph 635-10.5(ab)(12) is amended as follows:

(12) Where more than one agency delivers services on a given day to the same individual who lives in an IRA, CR, or family care home the total number of units and/or hours of CH services billed for that day by all agencies may not exceed the maximum allowed daily units and/or hours described in paragraph[s] (11) [and (12)] of this subdivision.

• Renumbered clause 635-10.5(ab)(14)(iii)(d) is amended as follows:

(d) Effective [on the effective date of these amendments] *October 1, 2014*, the fees for CH delivered to an individual who lives in a CR, IRA or FCH are as follows:

(Note: the remainder of clause (d) is unchanged)

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire December 28, 2014.

Text of rule and any required statements and analyses may be obtained from: Regulatory Affairs Unit, OPWDD, 44 Holland Avenue, 3rd Floor, Albany, NY 12229, (518) 474-1830, email: rau.unit@opwdd.ny.gov

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

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

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

2. Legislative Objectives: The proposed amendments further the legislative objectives embodied in sections 13.07, 13.09, and 16.00 of the Mental Hygiene Law. The proposed amendments establish revised standards for the provision of HCBS Waiver Community Habilitation Services.

3. Needs and Benefits: OPWDD recently adopted amendments to regulations regarding community habilitation, effective October 1, 2014. The emergency/proposed regulations further amend these recently adopted amendments. (For ease of understanding, this regulatory impact statement will refer to these recently adopted regulations as the "first amendments" and the emergency/proposed regulations which are the subject of this regulatory impact statement as the "second amendments".) The first amendments offer another option to participants who live in OPWDD certified residential facilities who wish to have their habilitation services available in a variety of community settings in lieu of traditional day services. The first amendments also included provisions to make additional services available during weekday evening hours and on weekends to individuals who reside in Family Care Homes (FCH) and supportive Community Residences (CRs), including supportive Individualized Residential Alternatives (IRAs).

The second amendments eliminate the provisions that would have made those additional evening and weekend services available to individuals residing in FCHs and CRs. These changes were required by the federal Centers for Medicare and Medicaid Services (CMS).

OPWDD expects that the second amendments will have no impact on service providers because these amendments simply eliminate a service that would have otherwise been made available only with adoption of the first amendments. The second amendments are being filed concurrently with the adoption of the first amendments, and therefore simply eliminate a service option that was not previously available to individuals who reside in FCHs and supportive CRs.

4. Costs:

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

The second amendments do not impose any new costs to the Agency, the State, or local governments because these amendments simply eliminate a service option that had not previously been available to individuals receiving services.

b. Costs to private regulated parties: The second amendments do not impose any new compliance requirements and therefore will not result in any increased compliance costs.

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 second amendments do not impose any new paperwork requirements because these amendments simply eliminate a service option that had not previously been available to individuals receiving services.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to these services.

8. Alternatives: OPWDD did not consider alternatives because the second amendments are required by CMS. However, the second amendments do not impose any new requirements and will not result in any increased compliance costs to regulated parties.

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

10. Compliance Schedule: The second amendments will be adopted as emergency/proposed regulations concurrently with the adoption of the first amendments. OPWDD intends to adopt the second amendments permanently after the conclusion of the mandated public comment period. The second amendments simply eliminate a service option that had not previously been available to individuals receiving services. OPWDD plans on communicating with providers and service recipients concerning these changes as soon a possible.

Regulatory Flexibility Analysis

1. Effect on small businesses and local governments: These emergency/proposed regulatory amendments apply to agencies that provide HCBS Waiver Community Habilitation (CH) services to individuals with developmental disabilities. Most CH services are expected to be delivered by voluntary provider agencies that employ more than 100 people overall and would therefore not be classified as small businesses. Some smaller agencies do, however, employ fewer than 100 employees overall and would, therefore, be considered to be small businesses. OPWDD estimates that approximately 252 provider agencies would be affected by the proposed amendments. OPWDD is unable to estimate the number of these provider agencies that would be considered to be small businesses.

The proposed amendments have been reviewed by OPWDD in light of their impact on these small businesses and on local governments. OPWDD has determined that these amendments will not have any negative effects on these small business providers of CH services or local governments.

OPWDD recently adopted amendments to regulations regarding community habilitation, effective October 1, 2014. The emergency/proposed regulations further amend these recently adopted amendments. (For ease of understanding, this regulatory flexibility analysis will refer to these recently adopted regulations as the "first amendments" and the emergency/proposed regulations which are the subject of this regulatory flexibility analysis as the "second amendments".) The first amendments offer another option to participants who live in OPWDD certified residential facilities who wish to have their habilitation services available in a variety of community settings. The first amendments also included provisions to make additional services available during weekday evening hours and on weekends to individuals who reside in Family Care Homes (FCH) and supportive Community Residences (CRs), including supportive Individualized Residential Alternatives (IRAs).

The second amendments eliminate the provisions that would have made those additional evening and weekend services available to individuals residing in FCHs and CRs. These changes were required by the federal Centers for Medicare and Medicaid Services (CMS).

The second amendments will have no impact on service providers or local governments because the second amendments simply eliminate services that would only have been made available with the adoption of the first amendments.

2. Compliance requirements: The second amendments do not impose any new compliance requirements beyond those required by the first amendments.

3. Professional services: There are no additional professional services required as a result of the second amendments and they will not add to the professional service needs of local governments.

4. Compliance costs: The second amendments do not impose any new compliance requirements and therefore will not result in any increased compliance costs.

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

6. Minimizing adverse impact: OPWDD did not consider approaches for minimizing adverse impact as suggested in 202-bb(2)(b) of the State Administrative Procedure Act (SAPA) because the second amendments are required by CMS. However, the second amendments do not impose any new compliance requirements and therefore will not result in any increased compliance costs to regulated parties, including small business providers.

7. Small business and local government participation: OPWDD has not met with providers or service recipients regarding this emergency/proposed amendment because CMS only recently told OPWDD that it was requiring these changes. OPWDD plans on communicating with providers and service recipients concerning these changes as soon as possible.

Rural Area Flexibility Analysis

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

The emergency/proposed regulations have been reviewed by OPWDD in light of their impact on rural areas.

OPWDD recently adopted amendments to regulations regarding community habilitation, effective October 1, 2014. The emergency/proposed regulations further amend these recently adopted amendments. (For ease of understanding, this rural area flexibility analysis will refer to these recently adopted regulations as the "first amendments" and the emergency/proposed regulations which are the subject of this rural area flexibility analysis as the "second amendments".) The first amendments offer another option to participants who live in OPWDD certified residential facilities who wish to have their habilitation services available in a variety of community settings. The first amendments also included provisions to make additional services available during weekday evening hours and on weekends to individuals who reside in Family Care Homes (FCH) and supportive Community Residences (CRs), including supportive Individualized Residential Alternatives (IRAs).

The second amendments eliminate the provisions that would have made those additional evening and weekend services available to individuals residing in FCHs and CRs. These changes were required by the federal Centers for Medicare and Medicaid Services (CMS).

The second amendments will have no impact on service providers or local governments in rural areas because the second amendments simply eliminate services that would only have been made available with the adoption of the first amendments.

2. Compliance requirements: The second amendments do not impose any new compliance requirements beyond those required by the first amendments.

The second amendments do not impose any compliance requirements on local governments in rural areas.

3. Professional services: There are no additional professional services required as a result of the second amendments and they will not add to the professional service needs of local governments.

4. Compliance costs: The second amendments do not impose any new compliance requirements and therefore will not result in any increased compliance costs.

5. Minimizing adverse impact: OPWDD could not consider approaches for minimizing adverse impact as suggested in 202-bb(2)(b) of the State Administrative Procedure Act (SAPA) because the second amendments are required by CMS. However, the second amendments do not impose any new compliance requirements and therefore will not result in any increased compliance costs to regulated parties, including rural area providers.

6. Rural area participation: OPWDD has not met with providers or service recipients regarding this emergency/proposed amendment because CMS only recently told OPWDD that it was requiring these changes. OPWDD plans on communicating with providers and service recipients concerning these changes as soon as possible.

Job Impact Statement

OPWDD is not submitting a Job Impact Statement for this proposed rulemaking because this rulemaking will not have a substantial adverse impact on jobs or employment opportunities.

OPWDD recently adopted amendments to regulations regarding community habilitation, effective October 1, 2014. The emergency/proposed regulations further amend these recently adopted amendments. (For ease of understanding, this job impact statement will refer to these recently adopted regulations as the "first amendments" and the emergency/proposed regulations which are the subject of this job impact statement as the "second amendments".) The first amendments offer another option to participants who live in OPWDD certified residential facilities who wish to have their habilitation services available in a variety of community settings in lieu of traditional day services. The first amendments also included provisions to make additional services available during weekday evening hours and on weekends to individuals who reside in Family Care Homes (FCH) and supportive Community Residences (CRs), including supportive Individualized Residential Alternatives (IRAs).

The second amendments eliminate the provisions that would have made those additional evening and weekend services available to individuals residing in FCHs and CRs. These changes were required by the federal Centers for Medicare and Medicaid Services (CMS).

The second amendments simply eliminate a service that would otherwise have been made available only with adoption of the first amendments. Since this service, and any possible jobs or employment opportunities that might have arisen from the service, will never take place, the proposed amendments will not have any substantial adverse impact on jobs or employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Approval of Petition of Durst Development LLC to Submeter Electricity at 625 West 57th Street

I.D. No. PSC-15-14-00007-A

Filing Date: 2014-09-29

Effective Date: 2014-09-29

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

Action taken: On 9/29/14, the PSC adopted an order approving the petition of Durst Development LLC to submeter electricity at 625 West 57th Street, New York, 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 Durst Development LLC to submeter electricity at 625 West 57th Street.

Purpose: To approve the petition of Durst Development LLC to submeter electricity at 625 West 57th Street.

Substance of final rule: The Commission, on September 29, 2014, adopted an order approving the petition of Durst Development LLC to submeter electricity at 625 West 57th Street, New York, 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-0104SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Rule 42 – Merchant Function Charge

I.D. No. PSC-41-14-00008-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 a proposal filed by Niagara Mohawk Power Corporation d/b/a National Grid to make a change to the rates, charges, rules, and regulations contained in its Schedules for Electric Service P.S.C. Nos. 220 and 214.

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

Subject: Rule 42 – Merchant Function Charge.

Purpose: To modify the calculation of two of the components of the Merchant Function Charge.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, tariff amendments and statements filed by Niagara Mohawk Power Corporation d/b/a National Grid (National Grid or the Company) to modify the calculation included in Rule 42 – Merchant Function Charge (MFC), contained in P.S.C. Nos. 220 and 214 – Electricity. The Company is proposing a change to the calculation of two of the components in the MFC: the Electricity Supply Uncollectible Expense and the Working Capital on Purchased Power Costs. These two components of the MFC are percentage factors multiplied by the electricity supply cost. The Company proposes that the Electric Supply Uncollectible Expense and Working Capital on Purchased Power Cost percentages should be applied to both the electricity supply cost and the Electricity Supply Reconciliation Mechanism (ESRM) on a customer's bill. The ESRM includes the reconciliation of forecast to actual supply costs and the New Hedge Adjustment for mass market customers. The proposed filing has an effective date of January 1, 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) 474-6530, 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-0437SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Establishment of a Clean Energy Fund and Related Actions

I.D. No. PSC-41-14-00009-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 actions described in the Clean Energy Fund Proposal filed by NYSERDA.

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

Subject: Establishment of a Clean Energy Fund and related actions.

Purpose: Consideration of proposal by NYSERDA for the establishment of a Clean Energy Fund and related actions.

Substance of proposed rule: The Public Service Commission is considering a proposal filed by the New York State Energy Research and Development Authority (NYSERDA) titled Clean Energy Fund Proposal. In Section X, NYSERDA requests that the Commission issue an order establishing a Clean Energy Fund as described in the proposal and take related actions. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(14-M-0094SP2)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Reallocation of EEPS and SBC Funds

I.D. No. PSC-41-14-00010-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 reallocating EEPS and SBC funds as described in the Clean Energy Fund Proposal filed by NYSERDA.

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

Subject: Reallocation of EEPS and SBC funds.

Purpose: Consideration of proposal by NYSERDA for reallocation of EEPS and SBC funds.

Substance of proposed rule: The Public Service Commission is considering a proposal filed by the New York State Energy Research and Development Authority (NYSERDA) titled Clean Energy Fund Proposal. In Section IX and X of the proposal, NYSERDA requests that the Commission issue an order that approves the reallocation of certain funds in the Energy Efficiency Portfolio Standard and System Benefit Charge Programs. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(14-M-0094SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Establishment of Annual Collections Caps and Collection and Spending Mechanisms as Described in the Clean Energy Fund Proposal

I.D. No. PSC-41-14-00011-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 the proposal for annual collections caps and particular collection and spending mechanisms described in the Clean Energy Fund Proposal filed by NYSERDA.

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

Subject: Establishment of annual collections caps and collection and spending mechanisms as described in the Clean Energy Fund Proposal.

Purpose: Consideration of proposal by NYSERDA for the establishment of annual collections caps and collection and spending mechanisms.

Substance of proposed rule: The Public Service Commission is considering a proposal filed by the New York State Energy Research and Development Authority (NYSERDA) titled Clean Energy Fund Proposal. NYSERDA requests that the Commission issue an order establishing annual collections caps, permitting collections up to but not exceeding those caps, and permit the use of currently uncommitted funds and collected funds on a "bill-as-you-go" fund management approach. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(14-M-0094SP3)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Funding and Management of the NY-Sun Program as Described in the Clean Energy Fund Proposal

I.D. No. PSC-41-14-00012-P

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

Proposed Action: The Commission is considering the proposal for funding and management of the NY-Sun program described in the Clean Energy Fund Proposal filed by NYSERDA.

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

Subject: Funding and management of the NY-Sun program as described in the Clean Energy Fund Proposal.

Purpose: Consideration of proposal by NYSERDA for the funding and management of the NY-Sun program.

Substance of proposed rule: The Public Service Commission is considering a proposal filed by the New York State Energy Research and Development Authority (NYSERDA) titled Clean Energy Fund Proposal. NYSERDA requests that the Commission issue an order establishing collections, funding, and management rules for the NY-Sun program for the period 2016 to 2023. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(14-M-0094SP4)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Funding and Collections for the New York Green Bank as Described in the Clean Energy Fund Proposal

I.D. No. PSC-41-14-00013-P

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

Proposed Action: The Commission is considering the proposal for funding and collections for the New York Green Bank described in the Clean Energy Fund Proposal filed by NYSERDA.

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

Subject: Funding and collections for the New York Green Bank as described in the Clean Energy Fund Proposal.

Purpose: Consideration of proposal by NYSERDA for the funding and collections for the New York Green Bank.

Substance of proposed rule: The Public Service Commission is considering a proposal filed by the New York State Energy Research and Development Authority (NYSERDA) titled Clean Energy Fund Proposal. NYSERDA requests that the Commission issue an order establishing collections and funding for the Green Bank. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(14-M-0094SP5)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Funding and Management of a Market Development Program as Described in the Clean Energy Fund Proposal

I.D. No. PSC-41-14-00014-P

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

Proposed Action: The Commission is considering the proposal for funding and management of a Market Development Program as described in the Clean Energy Fund Proposal filed by NYSERDA.

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

Subject: Funding and management of a Market Development Program as described in the Clean Energy Fund Proposal.

Purpose: Consideration of proposal by NYSERDA for the funding and management of a Market Development Program.

Substance of proposed rule: The Public Service Commission is considering a proposal filed by the New York State Energy Research and Development Authority (NYSERDA) titled Clean Energy Fund Proposal. NYSERDA requests that the Commission issue an order establishing a Market Development Program and collections, funding, and management rules for that program. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(14-M-0094SP6)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Funding and Management of a Technology and Business Innovation Program as Described in the Clean Energy Fund Proposal

I.D. No. PSC-41-14-00015-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 management of a Technology and Business Innovation Program as described in the Clean Energy Fund Proposal filed by NYSERDA.

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

Subject: Funding and management of a Technology and Business Innovation Program as described in the Clean Energy Fund Proposal.

Purpose: Consideration of proposal by NYSERDA for the funding and management of a Technology and Business Innovation Program.

Substance of proposed rule: The Public Service Commission is considering a proposal filed by the New York State Energy Research and Development Authority (NYSERDA) titled Clean Energy Fund Proposal. NYSERDA requests that the Commission issue an order establishing a Technology and Business Innovation Program and collections, funding, and management rules for that program. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

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

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

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

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

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

(14-M-0094SP7)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Inter-Carrier Telephone Service Quality Standards and Metrics

I.D. No. PSC-41-14-00016-P

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

Proposed Action: The Commission is considering modification to existing inter-carrier telephone quality measures and standards as proposed by the Carrier Working Group.

Statutory authority: Public Service Law, section 94(2)

Subject: Inter-carrier telephone service quality standards and metrics.

Purpose: To review recommendations from the Carrier Working Group and incorporate modifications to the existing guidelines.

Substance of proposed rule: The Commission is considering modifications to the New York State Inter-Carrier Service Quality Guidelines (the C2C Guidelines), which were established, and are routinely updated, in Case 97-C-0139. Revisions to the C2C Guidelines are proposed by the Carrier Working Group (CWG), an industry group that meets regularly and whose active participants includes the incumbent and competitive local exchange telecommunications carriers in New York State and the Staff of the Department of Public Service. Specific modifications to the C2C Guidelines being considered by the Commission in this action include: administrative changes and process changes for specific products offered in the following metrics:

1. Order Confirmation Timeliness. The OR-1 metric measures the amount of elapsed time (in hours and minutes) between receipt of a valid order request (Verizon Ordering Interface) (or fax date and time stamp) and distribution of a Service Order confirmation. Rejected orders will have the clock re-started upon receipt of a valid order. These metrics are proposed for deletion due to no activity: OR-1-04-3210, OR-1-06-3341, OR-1-19-5030 and these are proposed due to low activity: OR-1-04-2214, OR-1-04-2341, OR-1-04-3341, OR-1-06-2214,OR-1-06-2341. OR-2 measures the amount of elapsed time (in hours and minutes) between receipt of an order request and distribution of a Service Order reject, both based on Ordering Interface System (Request Manager) or fax date and time stamp. OR-2-04-2200, OR-2-06-2200, OR-2-06-2341 is deleted due to low activity. OR-13-01-3523 measures the percentage of large job hot cut project negotiations completed and is proposed for deletion due to no activity.

2. Pre-Ordering Performance. Pre-Ordering PO-2-02-6060, PO-2-03-6060, PO-2-03-6080 measures the OSS Interface Availability and have little or no activity. The OSS Interface Availability metric is a measurement of the time during which the electronic OSS Interface is actually available as a percentage of scheduled availability.

3. Maintenance and Repair. The MR-1 Response Time OSS Maintenance Interface sub-metrics measures the response time defined as the time, in seconds, that elapses from receipt of a request at Verizon's access platform to issuance of a response from Verizon's access platform. These metrics, based on little or no activity, are proposed to be deleted: MR-1-09-6095, MR-1-04-6050. The MR-2 Trouble Report Rate metric measures the total initial Customer Direct (CD) or Customer Referred (CR) troubles (Category 1) reported, where the trouble disposition was found to be in the network, per 100 lines/circuits/trunks in service. These metrics, based on little or no activity, are proposed to be deleted: MR-2-01-2200, MR-2-02-2341, MR-2-03-2341, MR-2-05-2200, MR-2-05-2341, MR-2-05-3341. The MR-3 metrics measure the percent of reported Network Troubles not repaired and cleared by the date and time committed. These metrics, based on little or no activity, are proposed to be deleted: MR-3-01-2341, MR-3-02-2341, MR-3-03-2100, MR-3-03-2341, MR-3-03-3341. The MR-4 metric measures trouble duration intervals. These metrics, based on little or no activity, are proposed to be deleted: MR-4-01-2216, MR-4-01-2217, MR-4-01-2341, MR-4-01-3216, MR-4-01-3341, MR-4-02-2341, MR-4-03-2341, MR-4-04-2216, MR-4-04-2217, MR-4-04-2341, MR-4-04-3216, MR-4-06-2216, MR-4-06-2217, MR-4-06-3216, MR-4-07-2341, MR-4-08-2216, MR-4-08-2217, MR-4-08-2341, MR-4-08-3216. The MR-5 Repeat Trouble Reports metric measures the percent of troubles closed that have an additional trouble closed within 30 days for which a network trouble is found. The MR-5 metrics proposed to be deleted are: MR-5-01-2200, MR-5-01-2341.

4. Provisioning Performance. The PR-1 sub-metric measures the average interval offered for completed and cancelled orders. The metrics proposed to be deleted are: PR-1-01-2341, PR-1-01-3341, PR-1-02-2341, PR-1-02-3341, PR-1-03-2120, PR-1-04-2100, PR-1-04-3112, PR-1-05-2100, PR-1-05-3112, PR-1-09-2210, PR-1-09-3210, PR-1-09-3511, PR-1-09-3512, PR-1-09-3530, PR-1-13-3529. The PR-3 sub-metric measures the percent of POTS orders completed in a specified numbers (by metrics) - of business days, between application and work completion dates. These metrics, based on little or no activity, are proposed to be deleted: PR-3-06-2100, PR-3-09-2100, PR-3-10-3341, PR-3-11-3528, PR-3-12-3531, PR-3-12-3532, PR-3-13-3531, PR-3-13-3532. The PR-4 sub-metric measures the percent of Order completed after the due date. These metrics, based on little or no activity, are proposed to be deleted: PR-4-01-2210, PR-4-01-2211, PR-4-01-2213, PR-4-01-3210, PR-4-01-3213, PR-4-02-2200, PR-4-02-2341, PR-4-02-3200, PR-4-03-2200, PR-4-03-2341, PR-4-03-3341, PR-4-03-3530, PR-4-04-2341, PR-4-04-3341, PR-4-05-2341. The PR-5 sub-metric measures facility missed orders with calculations for the report month including orders complete in the billing system. These metrics, based on little or no activity, are proposed to be deleted: PR-5-01-2200, PR-5-01-2341, PR-5-01-3341, PR-5-02-2200, PR-5-02-2341, PR-5-02-3341. The PR-6 sub-metric measures the percent of lines/circuits/trunks installed where a reported trouble was found in the Verizon network within 30 days of order completion. These metrics, based on little or no activity, are proposed to be deleted: PR-6-01-2200, PR-6-01-2341, PR-6-03-2100, PR-6-03-2200, PR-6-03-2341, PR-6-03-3341, PR-6-03-5000. The PR-8

sub-metric measures the number of open orders that at the close of the reporting period have been in a hold status for more than 30 calendar days, as a percent of orders completed in the reporting period. These metrics, based on little or no activity, are proposed to be deleted: PR-8-01-2100, PR-8-01-2200, PR-8-01-2341, PR-8-01-3112.

5. Network Performance. The NP-1 sub-metric measure the percent of dedicated one-way Final Trunk Groups (FTGs) carrying traffic from Verizon's tandem to the CLEC that exceed blocking design threshold. The NP-2 metric includes physical collocation arrangement products ordered and provisioned via the state tariffs. These metrics, based on little or no activity, are proposed to be deleted: NP-1-01-5000, NP-1-02-5000, NP-2-01-6701, NP-2-05-6701.

6. A change in the performance standard to "No Standard" for MR-2-01-5000 (Network Trouble Report Rated UNE Interconnection Trunks (CLEC)).

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.

(97-C-0139SP34)

Department of State

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Appraiser Certification and License Update Requirements

I.D. No. DOS-41-14-00020-P

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

Proposed Action: Amendment of sections 1103.2(a), (b)(2), (c)(2), (d)(2), 1103.6(b), (e), (g), 1103.10(b) and 1107.12; and addition of sections 1103.2(c)(3), (d)(3) and 1107.4(a)(1) to Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d, art. 6-E

Subject: Appraiser Certification and License Update Requirements.

Purpose: To conform current appraiser qualifications to federal standards.

Text of proposed rule: 19 NYCRR § 1103.2(a) is amended to read as follows:

(a) Education requirements for New York State appraiser assistants. An applicant must satisfactorily complete the following courses *within the five (5) year period prior to the date of submission of an appraiser assistant application*:

(1) Residential 5 (R-5) - Basic Appraisal Principles	30 hours
(2) Residential 6 (R-6) -Basic Appraisal Procedures	30 hours
(3) USPAP or its equivalent, as further defined in section 1103.7 of this Part	15 hours
(4) Residential 7 (R-7) - Residential Market Analysis and Highest and Best Use	15 hours
(5) Residential 8 (R-8) – Residential Appraisal Site Valuation and Cost Approach	15 hours
(6) Residential 9 (R-9) -Residential Sales Comparison and Income Approach	30 hours
(7) Residential 10 (R-10) -Residential Report Writing and Case Studies	15 hours
(8) Supervisory Appraiser/Trainee Appraiser Course	*4 hours*
Total [150]	*154* hours

19 NYCRR § 1103.2(b)(2) is amended to read as follows:

(2) In addition to the education requirements in paragraph 1 of this subdivision, a licensed real estate appraiser applicant must also satisfactorily complete two years of real property appraisal experience as provided in section 160-k of the Executive Law. *Applicants for a license as a real estate appraiser shall also successfully complete 30 semester hours of college-level education from an accredited college, junior college, community college or university, or hold an associate degree, or higher from an accredited college, junior college, community college or university. The college or university must be a degree-granting institution accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education. If an accredited college or university accepts the College-Level Examination Program (CLEP) and examination(s) and issues a transcript for the exam showing its approval, it will be considered as credit for the college course. Applicants with a college degree from a foreign country may have their education evaluated for equivalency by one of the following:*

(i) An accredited, degree-granting domestic college or university;

(ii) The American Association of Collegiate Registrars and Admissions Officers (AACRAO);

(iii) A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services (NACES); or

(iv) A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.

19 NYCRR § 1103.2(c)(2) is amended, and a new § 1103.2(c)(3) is added to read as follows:

(2) In addition to the aforementioned education requirements, prospective licensees for a New York State certified residential real estate appraiser certification shall [either:

(i) hold an associate degree, or higher, from an accredited college, junior college, community college, or university; or

(ii) have successfully completed 21 semester hours in the following courses from an accredited college, junior college, community college, or university: English composition; principles of economics (micro or macro); finance; algebra, geometry, or higher mathematics; statistics; computer science; and business or real estate law.] *hold a bachelor's degree or higher from an accredited college or university. The college or university must be a degree-granting institution accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education.*

(3) Applicants with a college degree from a foreign country may have their education evaluated for equivalency by one of the following:

(i) An accredited, degree-granting domestic college or university;

(ii) The American Association of Collegiate Registrars and Admissions Officers (AACRAO);

(iii) A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services (NACES);

(iv) A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.

19 NYCRR § 1103.2(d)(2) is amended, and a new § 1103.2(d)(3) is added to read as follows:

(2) In addition to the aforementioned education requirements, prospective licensees for a NYS certified general real estate appraiser certification shall [either:

(i)] hold a bachelor's degree, or higher, from an accredited college or university[; or

(ii) have successfully completed 30 semester hours in the following courses from an accredited college, junior college, community college or university: English composition; micro economics; macro economics; finance; algebra, geometry or higher mathematics; statistics; computer science; business or real estate law; and two elective courses in accounting, geography, agricultural economics, business management, or real estate]. *The college or university must be a degree-granting institution accredited by the Commission on Colleges, a regional or national accreditation association, or by an accrediting agency that is recognized by the U.S. Secretary of Education.*

(3) Applicants with a college degree from a foreign country may have their education evaluated for equivalency by one of the following:

(i) An accredited, degree-granting domestic college or university;

(ii) The American Association of Collegiate Registrars and Admissions Officers (AACRAO);

(iii) A foreign degree credential evaluation service company that is a member of the National Association of Credential Evaluation Services (NACES);

(iv) A foreign degree credential evaluation service company that provides equivalency evaluation reports accepted by an accredited degree-granting domestic college or university or by a state licensing board that issues credentials in another discipline.

19 NYCRR § 1103.6(b) is amended to read as follows:

(b) R-6/Basic Appraisal Procedures	
A. Overview of Approaches to Value	10 hours
B. Valuation Procedures	8 hours
1. Defining the Problem	
2. Collecting and Selecting Data	
3. Analyzing	
4. Reconciling and Final Value Opinion	
5. Communicating the Appraisal	
C. Property Description	4 hours
1. Geographic Characteristics of the Land/Site	
2. Geologic Characteristics of the Land/Site	
3. Location and Neighborhood Characteristics	
4. Land/Site Considerations for Highest and Best Use	
5. Improvements - Architectural Styles and Types of Construction	
6. Special Energy Efficient Characteristics of the Improvements	
D. Residential *or General* Applications	6 hours
Final Examinations (75-100 questions)	2 hours
Total	30 hours

19 NYCRR § 1103.6(e) is amended to read as follows:

(e) R-9/Residential Sales Comparison and Income Approaches	
A. Valuation Principles and Procedures	1 hour
- Sales Comparison Approach	
B. Valuation Principles and Procedures	1 hour
- Income Approach	
C. Finance and Cash Equivalency	2 hours
- Identification of Seller Concessions and Their Impact on Value	
D. Financial Calculator Introduction	2 hours
E. Identification, Derivation and Measurement of Adjustments	9 hours
F. Gross Rent Multipliers	2 hours
G. Partial Interests	2 hours
H. Reconciliation	2 hours
I. Case Studies and Applications	7 hours
Final Examination (75-100 questions)	2 hours
Total	30 hours

19 NYCRR § 1103.6(g) is amended to read as follows:

(g) R-11/Advanced Residential Applications and Case Studies	
A. Complex Property, Ownership and Market Conditions	3 hours
B. Deriving and Supporting Adjustments	3 hours
C. Residential Market Analysis	3 hours
- Seller Concessions	
- Special Energy Efficient Items (i.e. Green Buildings)	
D. Advanced Case Studies	5 hours
Final Examination (35-30 questions)	1 hour
Total	15 hours

19 NYCRR § 1103.10(b) is amended to read as follows:

(b) G-5/General Appraiser Sales Comparison Approach	
A. Value Principles	7 hours
B. Procedures	6 hours
C. Identification and Measurement of Adjustments	5 hours
D. Reconciliation	5 hours
E. Case Studies	5 hours
1. Seller Concessions	
2. Special Energy Efficient Items (i.e. Green Buildings)	
Final Examination (75-100 questions)	2 hours
Total	30 hours

A new 19 NYCRR § 1107.4(a)(1) is added to read as follows:

(1) Notwithstanding this subdivision (a) of this Section, an applicant for recertification or renewal of license may receive credit of up to 50% of the hourly requirements by presenting evidence of acceptable equivalency experience as provided by subdivisions (b)-(d) of this Section.

19 NYCRR § 1107.12 is amended to read as follows:

Approval may be granted for courses of study which cover real estate appraisal related topics such as the following:

(a) ad valorem taxation;

(b) arbitration[s], *dispute resolution*;

(c) [business] courses related to *the practice of* real estate appraisal *or consulting*;

(d) [construction estimating] *development cost estimating*;

(e) ethics and standards of professional practice*, USPAP*;

(f) land use planning, zoning [and taxation];

(g) [litigation;]

[(h)] management, leasing, [brokerage,] time sharing;

(h)[(i)] property development, *partial interests*;

[(j) real estate appraisal (valuations/evaluations);]

(i)[(k)] real estate (financing and investment);

(j)[(l)] real estate law*, easements, and legal interests*;

(k)[(m)] real estate litigation*, damages, condemnation*;

(l)[(n)] real estate appraisal related computer applications;

(m)[(o)] real estate securities and syndication;

[(p) real property exchange;]

(n) developing opinions of real property value in appraisals that also include personal property and/or business value;

(o) seller concessions and impact on value; and

(p) energy efficient items and "green building" appraisals; and

(q) any other subject matter directly related to real estate appraisal.

Text of proposed rule and any required statements and analyses may be obtained from: David A. Mossberg, Esq., New York State Dept. of State, 123 William Street, 20th Fl., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.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:

Executive Law section 160-d (Art. 6-E) authorizes the New York State Board of Real Estate Appraisal (the "Board") to adopt regulations in aid or furtherance of the statute. One of the purposes of Executive Law Article 6-E is to ensure the qualification of licensed and certified real estate appraisers. To meet this purpose, the Department of State (the "Department"), in conjunction with the Board, has issued rules and regulations which are found at Chapter XXXI of Title 19 of the NYCRR and is proposing this rulemaking.

2. Legislative objectives:

Pursuant to Executive Law Article 6-E, the Department, in conjunction with the Board, licenses and regulates real estate appraisers. To provide protections against unqualified appraisers, the statute requires licensees and certificate holders to satisfy minimum educational and experiential requirements. The proposed rule advances this legislative objective by ensuring that appraiser applicants satisfy the minimum standards required for licensure or certification.

3. Needs and benefits:

The Federal Appraisal Qualifications Board (the "AQB"), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989

(Title XI), establishes minimum qualification standards for real property appraisers. Recent changes to the AQB requirements mandate that new appraisers seeking certification or licensure satisfy new requirements with respect to hours of education and experience. States are required to implement appraiser standards that are no less stringent than those issued by the AQB.

By adding the regulations as proposed, the Department will meet updated AQB requirements and ensure that appraiser applicants meet federal minimum qualification standards.

4. Costs:

a. Costs to regulated parties:

The Department anticipates that individuals seeking new licensure and/or certification will have to assume additional costs associated with new educational requirements. Such costs however are necessary to ensure that the State's appraiser licensing and certification program remains in good standing.

b. Costs to the Department of State:

The Department does not anticipate any additional costs to implement the rule. Existing staff will handle the processing of applications received from both individual applicants seeking appraiser licensure or certification, and occupational schools seeking approvals for courses that incorporate the updated requirements.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

In applying for an appraisal license or certification, applicants are required to complete an application establishing that they have satisfied the educational and hours of experience standards set by statute for the relevant license or certification. The proposed rule would retain this existing requirement.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department considered not proposing these amendments. It was determined, however, that the proposed regulatory amendments are necessary to meet the Department's obligation to ensure that licenses are granted to qualified applicants in compliance with minimum federal standards established by the AQB. If the Department fails to adopt these requirements, the New York appraisal program could lose Federal recognition. This could result in federal financial institutions and many State financial institutions being prohibited from accepting appraisals from New York real estate appraisers. This would affect virtually all mortgage and refinance transactions. Appraisers licensed or certified by the State of New York would possibly be prohibited from preparing an appraisal for any such transaction. The hardship and disruption for the State's financial community, as well as for buyers and sellers of real estate within the State would be significant if the Department does not adopt the instant rulemaking.

9. Federal standards:

The Federal Appraisal Qualifications Board (the "AQB"), in accordance with the authority granted to said body pursuant to Title XI, establishes minimum qualification standards for real property appraisers. States are required to implement appraiser standards that are no less stringent than those issued by the AQB.

10. Compliance schedule:

The rule will be effective January 1, 2015. Insofar as the AQB and the Department have conducted outreach to the regulated public and considered the relevant changes that will be effected by this rulemaking, licensees and prospective licensees will be able to comply with the rule.

Regulatory Flexibility Analysis

1. Effect of rule:

The proposed rulemaking amends experiential and educational qualification standards for individuals applying for state licensure or certification as a real estate appraiser. To provide protections against unqualified appraisers, Article 6-E of the Executive Law requires licensees and certificate holders to satisfy minimum standards. The proposed rule advances this legislative objective by ensuring that appraiser applicants satisfy the minimum educational standards required for licensure or certification as established by state and federal laws, regulations and guidelines. The Federal Appraisal Qualifications Board (the "AQB"), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), establishes minimum qualification standards for real property appraisers. States are required to implement appraiser standards that are no less stringent than those issued by the AQB.

By amending the regulations as proposed, the Department will satisfy recently updated AQB requirements and ensure that appraiser applicants meet such minimum qualification standards.

The proposed amendments will: 1) require new appraiser assistants to complete an additional 4-hour trainee course; 2) require new licensed appraisers to complete 30 hours of college-level education prior to licensure; 3) require new certified residential appraisers to hold a bachelor's degree or higher prior to certification; 4) require new certified general appraisers to hold a bachelor's degree or higher prior to certification; 5) amend various course outlines to conform to AQB standards; 6) amend equivalency standards for renewals and certifications to conform to AQB standards; and 7) amend topics of course study for which the Department may grant course approvals.

The rule does not apply to local governments.

2. Compliance requirements:

Because the proposed rulemaking applies only to individuals seeking licensure and/or certification, small businesses and local governments will not have additional reporting, recordkeeping or other affirmative obligations with the implementation of these regulations. The existing state statutes and regulations already require minimum education and experience for licensure; the proposed rulemaking will supplement these current requirements by satisfying new federal AQB requirements.

3. Professional services:

Small businesses and local governments will not need professional services to comply with this rule. Further, applicants seeking licensure or certification will not need to rely on any new professional services in order to comply with the rule. Applicants and licensees are already required to satisfy minimum education and experience qualifications pursuant to Article 6-E of the Executive Law and AQB standards. Because licensees must already complete approved education courses and attain a specified amount of hours of experience, conforming the regulations to the updated AQB standards will not result in their needing to rely on any new professional services.

4. Compliance costs:

The Department anticipates that individuals seeking new licensure and/or certification will have to assume additional costs associated with new educational requirements. Such costs however are necessary to ensure that the State's appraiser licensing and certification program remains in good standing.

The rule does not impose any compliance costs on local governments.

5. Economic and technological feasibility:

Small businesses and local governments will not incur any significant costs as a result of the implementation of, or require technical expertise to comply with, these rules.

6. Minimizing adverse impact:

The Department did not identify any alternatives which would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance. The rule does not impose any additional reporting or recordkeeping requirements on licensees and does not require prospective licensees to take any affirmative acts to comply with the rule other than those acts that are already required pursuant to Executive Law, Article 6-E and the AQB standards. The instant rulemaking is necessary to ensure that the State's appraiser licensing and certification program maintains its good standing. If the Department fails to adopt these requirements, the New York appraisal program could lose Federal recognition. This could result in federal financial institutions and many State financial institutions being prohibited from accepting appraisals from New York real estate appraisers. This would affect virtually all mortgage and refinance transactions. Appraisers licensed or certified by the State of New York would possibly be prohibited from preparing an appraisal for any such transaction. The hardship and disruption for the State's financial community, as well as for buyers and sellers of real estate within the State would be significant if the Department does not adopt the instant rulemaking.

7. Small business and local government participation:

No significant comments have been received regarding the proposed rulemaking. On April 8, 2014 the Department and the New York State Board of Real Estate Appraisal discussed at an open meeting the updated AQB requirements. Moreover, the Department and the AQB have conducted outreach to regulated parties regarding the new requirements, including a description of the changes which has been available on the Department's website. Finally, the Notice of Proposed Rule Making will be published by the Department in the State Register. The publication of the rule in the State Register will provide notice to local governments and additional notice to small businesses of the proposed rulemaking. Additional comments will be received and entertained.

8. Compliance:

The rule will be effective January 1, 2015.

9. Cure period:

The Department is not providing for a cure period prior to enforcement of these regulations. Prior to proposing this rule, information regarding the updated AQB requirements was provided on the Department's website and discussed at an open meeting. As such, licensees have had sufficient

prior notice of the proposed regulation and will be given additional notice by way of publication of this Notice of Proposed Rulemaking. The proposed rulemaking is necessary to ensure that new applicants seeking licensure and/or certification satisfy minimum standards established by federal guidelines.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed rulemaking is not expected to have any adverse impact on rural areas. The proposed rule amends current educational and experiential requirements for certain real estate appraiser applicants by conforming them to federal minimum standards.

The Federal Appraisal Qualifications Board (the "AQB"), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), establishes minimum qualification standards for real property appraisers. States are required to implement appraiser standards that are no less stringent than those issued by the AQB.

By amending the regulations as proposed, the Department of State (the "Department") will meet updated AQB requirements and ensure that appraiser applicants meet minimum qualification standards.

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

The Department does not anticipate any additional reporting, record-keeping or other compliance requirements as a result of this rule or that professional services are likely to be needed in rural areas to comply with the rule. Existing statutes and regulations already require minimum educational and experiential requirements for licensure; the rulemaking will not impose any new reporting, record-keeping or other compliance requirements on public or private entities in rural areas other than those acts that are already required pursuant to Executive Law Article 6-E and the AQB standards.

3. Costs:

The proposed rulemaking does not impose any costs on rural areas to comply this rule.

4. Minimizing adverse impact:

The Department did not identify any alternatives which would achieve the results of the proposed rule and at the same time be less restrictive and less burdensome.

5. Rural area participation:

No significant comments have been received regarding the proposed rulemaking. On April 8, 2014 the Department and the New York State Board of Real Estate Appraisal discussed at an open meeting the updated AQB requirements. Moreover, the Department and the AQB have conducted outreach to regulated parties regarding the new requirements including a description of the changes which has been available on the Department's website. Finally, the Notice of Proposed Rule Making will be published by the Department in the State Register. The publication of the rule in the State Register will provide notice to interested parties in rural areas of the proposed rulemaking. Additional comments will be received and entertained.

Job Impact Statement

1. Nature of impact:

The proposed rulemaking will not have a significant adverse impact on employment opportunities. The proposed rule amends current educational and experiential requirements for certain real estate appraiser applicants by conforming them to federal minimum standards.

The Federal Appraisal Qualifications Board (the "AQB"), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), establishes minimum qualification standards for real property appraisers. States are required to implement appraiser standards that are no less stringent than those issued by the AQB. By amending the regulations as proposed, the Department of State (the "Department") will meet updated AQB requirements and ensure that appraiser applicants meet minimum qualification standards.

The proposed amendments will: 1) require new appraiser assistants to complete an additional 4-hour trainee course; 2) require new licensed appraisers to complete 30 hours of college-level education prior to licensure; 3) require new certified residential appraisers to hold a bachelor's degree or higher prior to certification; 4) require new certified general appraisers to hold a bachelor's degree or higher prior to certification; 5) amend various course outlines to conform to AQB standards; 6) amend equivalency standards for renewals and certifications to conform to AQB standards; and 7) amend topics of course study for which the Department may grant course approvals.

While the Department anticipates that applicants seeking licensure and certification will have to assume some costs associated with satisfying new educational standards, including in some instances college level studies, such costs will not have a significant adverse impact on employment opportunities.

2. Categories and numbers affected:

The proposed rulemaking will not have a significant adverse impact on employment opportunities. The instant rulemaking merely conforms existing educational and experiential regulations to updated minimum standards established by the AQB.

3. Regions of adverse impact:

The proposed rulemaking will not have any disproportionate regional adverse impact on jobs or employment opportunities.

4. Minimizing adverse impact:

The proposed rulemaking will not have a significant adverse impact on employment opportunities. Moreover, the Department did not identify any alternatives which would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance. The instant rulemaking is necessary to ensure that the State's appraiser licensing and certification program maintains good standing. If the Department fails to adopt these requirements, the New York appraisal program could lose Federal recognition. This could result in federal financial institutions and many State financial institutions being prohibited from accepting appraisals from New York real estate appraisers. This would affect virtually all mortgage and refinance transactions. Appraisers licensed or certified by the State of New York would possibly be prohibited from preparing an appraisal for any such transaction. The hardship and disruption for the State's financial community, as well as for buyers and sellers of real estate within the State would be significant if the Department does not adopt the instant rulemaking.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Appraiser Certification and License Update Requirements

I.D. No. DOS-41-14-00021-P

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

Proposed Action: Amendment of sections 1102.2(a), (b), (c), 1102.3(a), 1103.4(b)(1), (c) and 1104.1(b)(1); repeal of section 1102.4; and addition of new section 1102.4 to Title 19 NYCRR.

Statutory authority: Executive Law, section 160-d, art. 6-E

Subject: Appraiser Certification and License Update Requirements.

Purpose: To conform current appraiser qualifications to federal standards while simultaneously removing unnecessary requirements.

Text of proposed rule: Subdivisions (a), (b), and (c) of 19 NYCRR § 1102.2 are amended to read as follows:

(a) Applicants for residential licensing must have at least 2,000 hours of real estate appraisal experience over a period of not less than 24 months. [At least 75 percent of that experience must be residential appraisal experience.]

(b) Applicants for residential certification must have at least 2,500 hours of real estate appraisal experience over a period of not less than 24 months. [At least 75 percent of that experience must be residential appraisal experience.] The residential experience must include experience in single-family, two- to four-family, cooperatives, condominiums, or other residential experience. [At least 80 percent of the residential experience must be in the single-family category. At least 10 percent of the residential experience must be in each of the remaining residential categories set forth in § 1102.3 of this Part.]

(c) Applicants for general certification must have at least 3,000 hours of experience over a period of not less than 30 months*, of which, a minimum of 1500 hours must be in non-residential appraisal work. Such appraisal experience must be obtained over a period of not less than 24 months.* [At least 75 percent of that experience must be general real estate experience. The general experience must include experience in multi-family properties, commercial, industrial or other non-residential categories. At least 60 percent of the general experience must be in one of the general categories as set forth in § 1102.3 of this Part. At least 20 percent of the general experience must be in each of the remaining categories.]

Subdivision (a) of 19 NYCRR § 1102.3 is amended to read as follows:

(a) Hours of experience shall be credited to an applicant *based on actual time spent on appraisal assignments up to a maximum numbers of hours* in accordance with the following schedule. [However, to ensure that experience is distributed over a reasonable period of time, an applicant may not claim or be credited with more than 400 experience hours for any calendar quarter.]

APPRAISAL EXPERIENCE SCHEDULE

Type of Property Appraised	Assigned hours

Residential	
Residential Single-Family (Single Coop or Condo)	6
Residential Multi-Family (2-4 units)	12
Vacant Lot (Residential, 1-4 units)	3
Farm (Less than 100 acres, with residence)	12
General	
Land: Farms of 100 acres or more in size, undeveloped tracts, residential multifamily sites, commercial sites, industrial sites	18
Residential Multi-Family (5-12 units):	
Apartments, condominiums, townhouses and mobile home parks	36
Residential Multi-Family (13+ units):	
Apartments, condominiums, townhouses and mobile home parks	48
Commercial/Industrial Single-Tenant: Office buildings, R&D, retail stores, restaurants, service stations, warehouses, day care centers, etc.	36
Commercial/Industrial Multi-Tenant: Office buildings, R&D, shopping centers, hotels, warehouses	60
Manufacturing plants	48
Institutional: Rest homes, nursing homes, hospitals, schools, churches, government buildings	48

Subdivisions (a), (b), (c), and (d) of 19 NYCRR § 1102.4 are repealed as follows:

[(a) For standard appraisals, an applicant shall receive full credit for an appraisal if the applicant performed at least 75 percent of the work associated with the appraisal even if the applicant's work was reviewed by a supervising appraiser who signed the appraisal report. For the purposes of this section, the work associated with an appraisal shall include preparation of the appraisal report.

(b) For standard appraisals, an applicant shall receive pro rata credit for performing less than 75 percent of the work associated with an appraisal. For example, if an applicant performed 50 percent of the work associated with an appraisal, the applicant may claim 50 percent of the experience credit associated with performing that type of appraisal. However, an applicant shall not receive any credit for an appraisal if the applicant performed less than 25 percent of the work associated with the appraisal.

(c) For review appraisals, an applicant shall receive 25 percent of the hours normally credited for an appraisal if the applicant performed a review appraisal, which shall include a field review, a documentary review, or a combination of both.

(d) An applicant shall have the burden of establishing to the satisfaction of the Department of State that the applicant actually performed the work associated with the appraisal or appraisals which the applicant claims appraisal-experience credit.]

19 NYCRR § 1102.4 is added to read as follows:

§ 1102.4 Acceptable experience

An applicant shall have the burden of establishing to the satisfaction of the Department of State that the applicant actually performed the work associated with the appraisal or appraisals which the applicant claims appraisal-experience credit. Experience credit will only be granted for hours actually worked on an appraisal assignment provided that no applicant shall be permitted to claim experience hours in excess of the maximum hours per assignment as provided for by Section 1102.3 of this Part.

Subdivisions (b), and (c) of 19 NYCRR § 1103.4 are amended to read as follows:

(b) Supervising appraiser qualifications. Persons wishing to become a supervisor of one or more appraiser assistants must provide evidence of having a general or residential appraiser certification in New York State and must have been state certified for a minimum of three years[.] *and complete the Supervisory Appraiser/Trainee Appraiser course.*

(1) Notwithstanding any other law, rule or regulation, all supervisory appraisers must complete the Supervisory Appraiser/Trainee Appraiser course no later than December 31, 2015 or prior to entering into any new Supervisory/Trainee Appraiser relationship after January 1, 2015.

(c) Ineligibility. An individual who has had a real estate broker, salesperson or an appraisal license or certification revoked or suspended *or has been subject to any disciplinary action that affects the Supervisory Appraiser's legal eligibility to engage in appraisal practice* within the last three years is ineligible to receive instructor approval from the Department and is ineligible to supervise appraiser assistants.

Subdivision (b)(1) of 19 NYCRR § 1104.1 is amended to read as follows:

(1) the state or territory's certification and licensing program *is in compliance with the provisions of* [has not been disapproved by the appraisal subcommittee of the Federal Financial Institutions Examination Council pursuant to] Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989;

Text of proposed rule and any required statements and analyses may be obtained from: David A. Mossberg, Esq., New York State Dept. of State, 123 William Street, 20th Fl., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.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:

Executive Law section 160-d (Art. 6-E) authorizes the New York State Board of Real Estate Appraisal (the "Board") to adopt regulations in aid or furtherance of the statute. One of the purposes of Executive Law Article 6-E is to ensure the qualification of licensed and certified real estate appraisers. To meet this purpose, the Department of State (the "Department"), in conjunction with the Board, has issued rules and regulations which are found at Chapter XXXI of Title 19 of the NYCRR and is proposing this rulemaking.

2. Legislative objectives:

Pursuant to Executive Law Article 6-E, the Department, in conjunction with the Board, licenses and regulates real estate appraisers. To provide protections against unqualified appraisers, the statute requires licensees and certificate holders to satisfy minimum educational requirements. The proposed rule advances this legislative objective by ensuring that appraiser applicants satisfy the minimum educational standards required for licensure or certification.

3. Needs and benefits:

The Federal Appraisal Qualifications Board (the "AQB"), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), establishes minimum qualification standards for real property appraisers. States are required to implement appraiser standards that are no less stringent than those issued by the AQB.

In addition, as part of the Governor's Lean Initiative, the Department has reviewed internal processes for reviewing and issuing appraiser certifications and licenses. The Department and the Board have determined that portions of the existing application requirements exceed AQB standards and are unnecessarily complicated and burdensome to applicants.

By adopting the regulations as proposed, the Department will remove unnecessary application review processes, as well as conform current qualification standards to recent updates to federal law imposed by the AQB.

4. Costs:

a. Costs to regulated parties:

The Department does not anticipate that regulated parties will have any additional costs associated with this rulemaking.

b. Costs to the Department of State:

The Department does not anticipate any additional costs to implement the rule. Existing staff will continue to handle the processing of applications for both individual applicants and for occupational schools seeking approvals for courses that may incorporate the proposed changes.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

In applying for an appraisal license or certification, applicants are required to complete an application establishing that they have satisfied the minimum standards required by statute for the relevant license or certification. The proposed rule would retain this existing requirement.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department considered not proposing the instant rulemaking. It was determined, however, that the proposed regulatory amendments are necessary to meet the Department's obligation to ensure that licenses are granted to qualified applicants in compliance with minimum federal standards established by the AQB. In addition, not proposing this rulemaking would keep in place unnecessary requirements that have burdened and complicated the review process for appraiser applications.

9. Federal standards:

The AQB, in accordance with the authority granted to said body pursuant to Title XI, establishes minimum qualification standards for real property appraisers. States are required to implement appraiser standards that are no less stringent than those issued by the AQB.

10. Compliance schedule:

The rule will be effective January 1, 2015. Insofar as the AQB and the Department have conducted outreach to the regulated public concerning the proposed changes, and have considered changes that would be effected by this rulemaking, it is believed that licensees and prospective licensees will be able to comply with the rule.

Regulatory Flexibility Analysis

1. Effect of rule:

To provide protections against unqualified appraisers, Article 6-E of the Executive Law requires appraisal licensees and certificate holders to satisfy minimum experiential and other requirements. The proposed rule advances this legislative objective by ensuring that appraiser applicants satisfy the minimum standards required for licensure or certification as established by state and federal standards. The Federal Appraisal Qualifications Board (the "AQB"), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), establishes minimum qualification standards for real property appraisers. States are required to implement appraiser standards that are no less stringent than those issued by the AQB.

As part of the Governor's Lean Initiative, the Department of State (the "Department") has reviewed internal processes for reviewing and issuing appraiser certifications and licenses. The Department and the New York State Board of Real Estate Appraisal (the "Board") have determined that portions of the existing application requirements exceed AQB standards and are unnecessarily complicated and burdensome to applicants.

By adopting the regulations as proposed, the Department will remove unnecessary application review processes as well as conform current qualification standards to recent updates imposed by the AQB. Specifically, the proposed rulemaking will achieve the following: 1) remove percentage distribution requirements of appraiser experience under the minimum hour requirements; 2) update general certification requirements to conform to AQB standards; 3) clarify that credit hours for experience will be based on actual time spent on preparing an appraisal; 4) update qualifications of appraiser supervisors to conform to AQB standards; and 5) update reciprocity requirements for certification and/or licensure to conform to AQB standards.

The rule does not apply to local governments.

2. Compliance requirements:

Insomuch as the proposed rulemaking applies to individuals seeking licensure and/or certification, small businesses and local governments will not have additional reporting, recordkeeping or other affirmative obligations with the implementation of these regulations. The existing statutes and regulations already require minimum standards for licensure; the proposed rulemaking merely updates these current requirements to satisfy recently updated AQB standards. Further, the proposed rulemaking will clarify and simplify the application requirements, thus easing compliance for applicants.

3. Professional services:

Small businesses and local governments will not need professional services to comply with this rule. Further, applicants seeking licensure or certification will not need to rely on any new professional services in order to comply with the rule. Applicants and licensees are already required to satisfy minimum qualifications pursuant to Article 6-E of the Executive Law and AQB standards.

4. Compliance costs:

The Department does not anticipate additional costs to appraiser applicants and/or licensees as a result of this rulemaking.

The rule does not impose any compliance costs on local governments.

5. Economic and technological feasibility:

Small businesses and local governments will not incur any significant costs as a result of the implementation of, or require technical expertise to comply with, these rules.

6. Minimizing adverse impact:

The Department did not identify any alternatives which would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance. The rule does not impose any additional reporting or record keeping requirements on licensees and does not require prospective licensees to take any affirmative acts to comply with the rule other than those acts that are already required pursuant to Executive Law, Article 6-E and the AQB standards.

7. Small business and local government participation:

No significant comments have been received regarding the proposed rulemaking. On April 8, 2014 the Department and the New York State Board of Real Estate Appraisal discussed at an open meeting the updated AQB requirements as well as removing current standards which the Department identified as unnecessary and unduly complicated for applicants. In addition, the Notice of Proposed Rule Making will be published by the Department of State in the State Register. The publication of the rule in the State Register will provide further notice of the proposed rulemaking to all interested parties, including those in rural areas. Additional comments will be received and entertained during the public comment period associated with this Notice of Proposed Rulemaking.

8. Compliance:

The rule will be effective January 1, 2015.

9. Cure period:

The Department is not providing for a cure period prior to enforcement of these regulations. Prior to proposing this rule, information regarding the updated AQB requirements was provided on the Department's website and discussed at an open meeting. In addition, since the proposed rulemaking seeks to ease current requirements on appraiser applicants, a cure period is not necessary. Further, the proposed rulemaking is necessary to ensure that the applicants seeking licensure and/or certification satisfy minimum standards established by federal guidelines.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The proposed rulemaking is not expected to have any adverse impact on rural areas. The Federal Appraisal Qualifications Board (the "AQB"), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), establishes minimum qualification standards for real property appraisers. States are required to implement appraiser standards that are no less stringent than those issued by the AQB. The proposed rulemaking seeks to update current appraiser requirements to meet updated AQB standards while simultaneously removing unnecessary requirements to licensure/certification.

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

The Department does not anticipate any additional reporting, recordkeeping or other compliance requirements of this rule or that professional services are likely to be needed in rural areas to comply with the rule. Existing statutes and regulations already require minimum education requirements for licensure; the rulemaking will not impose any new reporting, record-keeping or other compliance requirements on public or private entities in rural areas other than those acts that are already required pursuant to Executive Law, Article 6-E and the AQB standards.

3. Costs:

The proposed rulemaking does not impose any costs on rural areas to comply this rule.

4. Minimizing adverse impact:

The Department did not identify any alternatives which would achieve the results of the proposed rule and at the same time be less restrictive and less burdensome.

5. Rural area participation:

No significant comments have been received regarding the proposed rulemaking. On April 8, 2014 the Department and the New York State Board of Real Estate Appraisal discussed at an open meeting the updated AQB requirements as well as removing current standards which the Department identified as unnecessary and unduly complicated for applicants. In addition, the Notice of Proposed Rule Making will be published by the Department of State in the State Register. Publication of the Notice in the State Register will provide notice of the proposed rulemaking to all interested parties, including those in rural areas. Additional comments will be received and entertained during the public comment period associated with this Notice of Proposed Rulemaking.

Job Impact Statement

1. Nature of impact:

The proposed rulemaking will not have an adverse impact on employment opportunities. The Federal Appraisal Qualifications Board (the "AQB"), in accordance with the authority granted to said body pursuant to Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (Title XI), establishes minimum qualification standards for real property appraisers. States are required to implement appraiser standards that are no less stringent than those issued by the AQB.

As part of the Governor's Lean Initiative, the Department of State (the "Department") has reviewed internal processes for reviewing and issuing appraiser certifications and licenses. The Department and the New York State Board of Real Estate Appraisal (the "Board") have determined that portions of the existing application requirements exceed AQB standards. These processes, which are required by the current State regulations, are not necessary to establish an applicant's qualifications or competency and have been unnecessarily complicating the application process, thereby leading to delays in licensure. The Department has determined that the current requirements have contributed to an almost 90% rejection rate of

applicants' initial applications, which, in some cases, has resulted in delays of up to 30 additional days before new licenses can be granted.

The proposed rulemaking would remove unnecessary application review processes as well as conform current qualification standards to recent updates in the federal law imposed by the AQB. Specifically, the proposed rulemaking would achieve the following: 1) remove percentage distribution requirements for appraiser experience under the minimum hour requirements; 2) update general certification requirements to conform to AQB standards; 3) clarify that credit hours for experience will be based on actual time spent on preparing an appraisal; 4) update qualifications of appraiser supervisors to conform to AQB standards; and 5) update reciprocity requirements for certification and/or licensure to conform to AQB standards.

2. Categories and numbers affected:

The proposed rulemaking will not have any adverse impact on employment opportunities. The instant rulemaking merely conforms existing regulations to updated minimum standards established by the AQB. In addition, the proposed rulemaking eases the burden on appraiser applicants by removing unnecessarily complicated review processes and standards. The rulemaking will not have any foreseeable impact on jobs or employment opportunities for real estate appraisers.

3. Regions of adverse impact:

The proposed rulemaking will not have any disproportionate regional adverse impact on jobs or employment opportunities.

4. Minimizing adverse impact:

The proposed rulemaking will not have any adverse impact on employment opportunities. Moreover, the Department did not identify any alternatives which would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance.

Workers' Compensation Board

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Annual Assessments for Employers

I.D. No. WCB-41-14-00004-P

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

Proposed Action: Addition of Part 318 to Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, section 151

Subject: Annual assessments for employers.

Purpose: Create process for determining and collecting assessments.

Substance of proposed rule (Full text is posted at the following State website:wcb.ny.gov): The proposed regulation adds new Part 318 to comply with Chapter 57 of the Laws of 2013 which requires the Board to streamline the manner in which it collects its administrative and special fund assessments to one that will be consistent among the various categories of payers and will be based upon active coverage.

Section 318.2 states that the assessment rate will be established by November 1st annually and apply to policies effective on or before January 1st of the next calendar year.

Section 318.3 establishes that the rate will apply to standard premium and defines the expenses to be covered by the assessment rate.

Section 318.4 states that the rate established by November 1st of each year for the succeeding calendar year shall be applied to a base of standard premium as defined below.

Standard premium is defined as follows:

(a) Carriers and State Insurance Fund – For employers securing workers' compensation coverage via a policy issued either by an authorized carrier or the State Insurance Fund, standard premium shall mean the full annual value of premiums booked for each policy written or renewed during a specific reporting period as determined on forms prescribed by the Chair.

(b) Private and Public Self-Insured Employers – Standard written premium for self-insured employers shall be determined by applying payroll by classification codes to applicable loss cost rates. Loss cost rates for self-insured employers shall be furnished by the Chair based, in whole or in part at the discretion of the Chair, upon comparable rates applicable to carrier policies which may be adjusted for administrative expenses. To the extent there are no corresponding class codes for one or more classifications of payroll, the Chair shall establish an equivalent rate.

Estimated statewide premiums shall be determined by combining the standard premium for all employers.

Section 318.5 establishes that the assessment rate shall be a percentage of standard premiums and calculated as follows:

Total estimated annual expenses as defined in 318.3, Divided By, Total estimated statewide premiums as defined in 318.4.

The estimated statewide premiums may, where appropriate, reflect projected changes in overall premium levels that may result from loss cost rate changes approved by the Department of Financial Services.

Section 318.6 establishes that rate adjustments will be addressed as follows:

(a) If the rate established for any given year results in the collection of assessments which exceed the amounts described herein, the assessment rate for the next calendar year shall be reduced accordingly. However, the assessment rate for each calendar year shall ensure that the clearing account described in section 318.7 maintains a balance of at least ten percent of the annual projected assessments.

(b) If it appears that the rate established for any given year will not produce assessment revenue sufficient to meet all estimated annual expenses as described herein, the Board may make adjustments to the existing published rate prior to the beginning of the next calendar year. Any such mid-year rate adjustments must be published at least 45 days prior to becoming effective and will apply to policies with effective dates between the effective date of the adjusted rate through December 31 of that calendar year or until the Board issues a new rate, whichever is later.

Section 318.7 establishes that all assessment monies received shall first be deposited into a clearing account established for the purpose of receiving assessments. Assessment revenue will be applied pursuant to WCL § 151(8) in accordance with each then applicable financing agreement prior to application for any other purpose. Once any and all amounts required by applicable financing agreements have been met for the year, assessments will then be applied from the clearing account, at the discretion of the Chair, to the administrative and special fund expenses described herein.

Section 318.8 establishes that assessment should be remitted as follows:

(a) The assessment rate established by the Board shall apply to all employers required to secure compensation for their employees.

(b) Until such time as the Board can establish a direct employer payment process, the remittance to the Board of all required assessments shall be as follows:

1. For those employers obtaining coverage: (a) through a policy with the State Insurance Fund; (b) through a policy with an authorized carrier; (c) through a county self-insurance plan under Article V of the WCL; or (d) through a private or public group self-insurer; such assessment amounts shall be collected from the employer and remitted to the Board by the State Insurance Fund, carrier, county plan, or self-insured group. The State Insurance Fund, carrier, county plan, or self-insured group shall complete the reports identified in section 318.9 herein, apply the applicable assessment rate as established by the Board and timely remit both the report and the corresponding payment to the Board on the schedule set forth in paragraph (c) below.

2. For those private or public employers that self-insure individually, said employers shall pay assessment amounts directly to the Board. Such employers shall complete the report identified in section 318.9 herein, apply the applicable assessment rate as established by the Board and, timely remit both the report and the corresponding payment to the Board on the schedule set forth in paragraph (c) below.

(c) Both the report identified in section 318.9 below and the required assessment payment shall be remitted to the Board in accordance with the following schedule:

Assessments related to the quarter ending March 31 postmarked on or before April 30.

Assessments related to the quarter ending June 30 postmarked on or before July 31.

Assessments related to the quarter ending September 30 postmarked on or before October 31.

Assessment related to the quarter ending December 31 postmarked on or before January 31.

(d) If the above cited due dates fall on a weekend or holiday the remittances shall be due the next following business day.

(e) In addition at any time prior to March 31, June 30, September 30, or December 31, the Board may identify any employer that has refused or neglected to pay assessments pursuant to WCL § 50(3-a)(7)(b). In such instance the Board shall calculate a charge to be imposed on such employer in addition to the assessment required herein. Such charge shall be a percentage of the standard premium as defined herein and shall range from between 10 and 30 percent based upon: 1) the length of time the employer has been delinquent in its WCL § 50(3-a)(7)(b) assessment obligations; 2) the amount of the WCL § 50(3-a)(7)(b) assessment delinquency; and 3) the amount of the insolvent group self-insurance trust's obligations that

remain unmet at the time of the calculation of the surcharge, the Board shall inform the employer's current provider of coverage of the neglect or delinquency. The employer's current provider of coverage shall collect and remit such additional surcharge in the manner provided for above. All monies recovered from the payment of such charge shall be credited to: 1) the employer's unmet obligations under the WCL; and 2) the group self-insurance Trusts' unmet obligations under the WCL.

Section 318.9 describes the required reports:

(a) The assessment payment remitted quarterly shall be accompanied by reports prescribed by the Chair. Depending upon whether the remitter is a carrier, the State Insurance Fund, private or public self-insured employer, or private or public group self-insured employer, these reports may contain but not be limited to: written premium; total payroll; payroll by classification; adjustments from prior periods; etc. Annual reports prescribed by the Chair may also be required.

(b) All such prescribed reports will require an attestation by an authorized representative that all information is true, correct and complete. A payer that knowingly makes a material misrepresentation of information related to assessments shall be guilty of a Class E Felony.

(c) To the extent that a payer is also required to report the information requested by this section, or substantially similar values, to other governmental entities including but not limited to state and federal agencies, then the information reported by the payer to the Board shall be consistent with the payer's reporting to other entities. To the extent that the payer's reporting to the Board is materially inconsistent with the payer's reports to other governmental entities, then the payer shall disclose such inconsistency in the reports submitted to the Board and supply an explanation for such inconsistency.

Section 318.10 establishes that, in the event of a carrier, the State Insurance Fund, a private or public self-insured employer, or a private or public group self-insured employer's failure to remit assessment payments and reports in accordance with the requirements contained herein the Board may undertake any or all of the following collection activities with respect to the assessments:

(a) Refer the matter to the Office of the Attorney General for commencement of a collection action;

(b) Withhold any and all payments to the carrier, the State Insurance Fund, private or public self-insured employer or private or public group self-insured employer including but not limited to special fund reimbursements, until such time as all assessments have been paid in full;

(c) The failure of a private or public self-insured employer or private or public group self-insured employer to timely remit assessments and required reports shall constitute good cause for the Board to revoke said self-insurers self-insured status.

In the event that a carrier, the State Insurance Fund, a private or public self-insured employer, or a private or public group self-insured employer has underpaid an assessment as the result of inaccurate reporting, such payer shall pay all overdue assessments in full within 30 days of notification by the Board and may be subject to interest at a rate of 9% annually on the unpaid amount. Further, in the event that it is determined that the payer knew or should have known that the reported information was inaccurate an additional penalty of up to 20% of the unpaid amount may be imposed by the Board against such carrier, the State Insurance Fund, private or public self-insured employers.

Section 318.11 establishes that on an annual basis in conjunction with the November 1 publication of the assessment rate, the Board will prepare a report which supports the assessment rate established for policies effective in the succeeding calendar year. Such report shall also be prepared in the event an assessment rate modification is required pursuant to Section 318.6. Such report will include a summary of the projections or estimates made in the development of the assessment rate including the expenses covered by the rate and underlying assessment base.

Section 318.12 establishes that the Chair may conduct periodic audits on employers, self-insurers, carriers and the State Insurance Fund concerning any information or payment related to assessments.

Text of proposed rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, 328 State Street, Office of General Counsel, Schenectady, NY 12305-3218, (518) 486-9564, email: regulations@wcb.ny.gov

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

Public comment will be received until: 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:

Workers' Compensation Law (WCL) section 117(1) authorizes the Chair of the Workers' Compensation Board (Board) to make reasonable regulations consistent with the provisions of the Workers' Compensation Law and the Labor Law. Chapter 57 of the Laws of 2013 amends several sections of the WCL including section 151 which is repealed and a new section added.

WCL section 151 directs the Board to promulgate an assessment rate by November 1 of each year and assess that rate by January 1 of the succeeding year. Specifically, Section 151(2) WCL states:

"on the first day of November two thousand thirteen, and annually thereafter, the chair shall establish an assessment rate for all affected employers in the state of New York in an amount expected to be sufficient to produce assessment receipts at least sufficient to fund all estimated annual expense pursuant to subdivision one of this section except those expenses for which an assessment is authorized for self- insurance pursuant to subdivision five of section fifty of this chapter. Such rate shall be assessed effective the first of January of the succeeding year and shall be based on a single methodology determined by the chair." The assessment rate funds statutorily required programs such as the Board's administrative expenses (151 WCL), the liabilities of the Special Disability Fund (15-8 WCL), the Fund for Reopened Cases (25-a WCL) and the Special Fund for Disability Benefits (214 WCL).

2. Legislative Objectives:

The legislation enacted sweeping reforms to the manner in which the Board collects its assessments.

The Board currently issues bills for the liabilities associated with each of the assessments noted above which, in total, are approximately $1.2 billion for 2013. The new process will eliminate the need for the Board to issue bills for these assessments and instead move towards a "pass through" assessment whereby employers ultimately remit their share of the assessment directly to the Board. As written, the legislation envisions an employer based assessment process. Ultimately, it is expected that the assessments will be collected directly from employers. However, it is not feasible to go directly from a carrier based to employer based assessment.

A transitional period is anticipated in the legislation as evidenced by the language which states that until such time as the Board establishes a direct employer payment process, assessments shall be remitted to the Board by carriers, the State Insurance Fund, county plans and groups. Individual private and public self-insurers shall continue to pay assessments directly. Finally, the legislation also allows the Board to enter into an agreement with the Dormitory Authority and issue up to $900 million in bonds to address unmet self-insured obligations. The debt service costs of any such bonds issued would be included in the annual rate. The debt service for these bonds as well as the WAMO bonds would take priority over the administrative expenses, special funds and interdepartmental funds.

3. Needs and Benefits:

The new legislation and supporting regulations will address many issues with the current process. Specifically:

- Currently, a disconnect exists between the amounts that carriers collect from their policy holders and the amounts that the Board bills those carriers. The new rule will result in the Board no longer issuing assessment bills and instead promulgating a rate that will fund the required programs. Carriers will collect the amount driven by the rate from their policyholders and remit that amount to the Board. Eventually, the employers will remit to the Board directly.
- The base factors currently used to calculate the various payers proportionate share of assessments are not currently audited and/or verified. The new process will include mechanisms to audit the data including verification of amounts included on other State mandated forms like the NYS-45 required by the Departments of Tax and Finance and Labor.
- The current process of assessments being based on paid indemnity for certain payers requires the accrual and funding of significant long term liabilities. This requires carriers, State Insurance Fund and self-insured's to hold aside monies to pay assessment liabilities that they will not have to actually remit until several years later.
- The current process is administratively onerous and lacks transparency for both the Board and the various payers. The new process will result in more verification and audit of the data submitted.
- Each carrier, State Insurance Fund, private and public self-insurer is receiving as many as 23 invoices from the Board annually. Also, the data collection used to apportion the different assessments is manual and paper-based. The system used to calculate and bill the assessments is a custom module to the financial system used by the Board that is difficult to maintain, particularly when upgrades and/or legislative changes are necessary. The Board will no longer issue invoices and eventually a system will be implemented to allow payers to view and pay their assessments electronically.

4. Costs:

This proposal will not impose any new costs on the regulated parties, the Board, the State or local governments since all of these entities are currently required to pay assessments. The total projected need for 2014 of $893 million is significantly less than the average amounts billed for as-

sessments for the past three years of more than $1 billion. The Fund for Reopened Cases was closed to new cases and for the short term will not be included in the assessment rate because the fund balance will support the claims. Additionally, roughly $7.4 million was billed on average related to the administration of the Disability Benefits program; these amounts will be rolled into the workers' compensation assessment rate. Although many of the payers of the Disability Benefit assessment will still be paying Board assessments (as they also write workers' compensation or have an active self-insurance program) they will no longer be paying a separate assessment related to Disability Benefits. This adjustment adds to the administrative efficiency of the new method as it is not cost beneficial to have a separate rate and/or assessment for less than 1% of the overall amounts collected in a given year. Collectively, it is estimated that the municipal self-insurers will pay $90 million less in assessments for 2014. However, the impact on the specific payers will be determined based on actual payroll.

For policies effective for calendar year 2014, the rate will be established as a percentage of standard premiums as follows: Total Estimated Annual Expenses Divided by Total Estimated Statewide Premiums. The estimated annual expenses to be covered by the rate total $893 million. Statewide standard premiums are projected to be $6.4 billion. Accordingly, the assessment rate for 2014 is set at 13.8%.

5. Local Government Mandates:

Since local governments have always been required to pay Board assessments, this law does not impose any new requirements on these entities.

6. Paperwork:

This proposed rule modifies the reporting requirements for municipalities, but does not impose additional reporting requirements. Eventually, it is the Board's intent to streamline the reporting process and allow entities to report and pay their assessments electronically, but this is not an enhancement we could offer at the outset given the abbreviated timeframes for implementation.

7. Duplication:

The proposed rule does not duplicate or conflict with any state or federal requirements.

8. Alternatives:

The legislation directed the Board to promulgate an assessment rate and rules and regulations to establish the process by which carriers, self-insured's, State Insurance Fund and the political subdivisions would pay the assessments to the Board. Because of the short timeframes to implement a new assessment process, and the ultimate goal of transitioning to an employer based payment stream, the only practical basis on which to calculate the assessment in the short term is premium. Premium information is readily available for the vast majority (more than 80%) of employers that obtain a policy from a carrier or the State Insurance Fund. A standard premium equivalent can be determined for the self-insured employers (both private and municipal) thus providing a similar basis for all employers, regardless of what type of coverage they maintain.

9. Federal Standards:

There are no federal standards applicable to this proposed rule.

10. Compliance Schedule:

It is expected that the affected parties will be able to comply with this change immediately.

Regulatory Flexibility Analysis

1. Effect of rule:

Pursuant to Section 50 Workers' Compensation Law (WCL), most businesses and local governments are required to carry workers' compensation coverage for their employees. They may obtain a policy from the State Insurance Fund, apply to, and become self-insured or obtain a policy from an insurance carrier licensed to write workers' compensation in New York. All entities that carry workers compensation are required to pay assessments to the Workers Compensation Board (Board). There are approximately 1,900 payers in New York currently paying assessments including the carriers, State Insurance Fund, private and public self-insurers. Most small businesses and local governments are currently paying Board assessments. Depending on how they secure their workers compensation will determine the impact of the apportionment methodology and new rate on their assessment amounts. However, virtually all categories of payers will see a net decrease in their assessments whether they are carrier covered or self- insured.

2. Compliance requirements:

There is minimal impact on local governments and small businesses to comply with this rule.

3. Professional services:

It is believed that no professional services will be needed to comply with this rule.

4. Compliance costs:

This proposal will not impose any compliance costs on small business or local governments.

5. Economic and Technological Feasibility:

No implementation or technology costs are anticipated for small businesses and local governments for compliance with the proposed rule. Therefore, it will be economically and technologically feasible for small businesses and local governments affected by the proposed rule to comply with the rule.

6. Minimizing adverse impact:

Because the net result of the change in the assessment methodology, the proposed rule would be beneficial to local governments and small businesses. This rule provides only a benefit to small businesses and local governments.

7. Small business and local government participation:

The Board received input from various stakeholder groups which provide coverage for many small businesses and local governments. A decrease in assessments was recognized as a major benefit to these groups.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

This rule applies to all carriers, the State Insurance Fund, self-insured employers and political subdivisions in all areas of the state.

2. Reporting, recordkeeping and other compliance requirements:

This rule applies to all carriers, the State Insurance Fund, self-insured employers and political subdivisions in all areas of the state. Impact on reporting and compliance for all entities is minimal.

3. Costs:

This proposal will not impose any compliance costs on rural areas.

4. Minimizing adverse impact:

This proposed rule is designed to minimize adverse impact for small businesses and local government that already exist in the current regulations. This rule provides only a benefit to small businesses and local governments.

5. Rural area participation:

The Board consulted with carriers and some municipalities on the rule making process.

Job Impact Statement

The proposed regulation will not have an adverse impact on jobs. The regulation merely changes the apportionment and methodology for entities to calculate and pay their required assessments to the Workers' Compensation Board. These regulations ultimately benefit the participants to the workers' compensation system by streamlining the assessment process and reducing their liability.