

RULE MAKING ACTIVITIES

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

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

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

Office of Alcoholism and Substance Abuse Services

EMERGENCY RULE MAKING

Credentialing of Addictions Professionals

I.D. No. ASA-13-15-00015-E

Filing No. 168

Filing Date: 2015-03-16

Effective Date: 2015-03-16

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

Action taken: Repeal of Part 853; and addition of new Part 853 to Title 14 NYCRR.

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

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

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

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

ated or certified by OASAS; and new requirements for pre-employment background checks in OASAS certified and operated service providers, persons credentialed by the Office, and applicants for new operating certificates.

The amendments to Part 853, effective June 30, 2013 and subsequently September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014, September 12, 2014, December 14, 2014, and March 14, 2015 are necessary to implement the new process of criminal history background checks into the credentialing process for addictions professionals credentialed by OASAS. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification so OASAS will be more involved in credentialing decisions.

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

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

Subject: Credentialing of Addictions Professionals.

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

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

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

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

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

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

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

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

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

§ 853.9 adds requirements for criminal history information reviews of

all applicants for new, renewal or reinstated credentialed problem gambling counselor (“CPGC”) credentials; adds requirement for compliance by CPGCs with a Code of Conduct for “custodians” in all OASAS service providers.

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 13, 2015.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

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

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

2. Legislative Objectives:

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

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

A vulnerable persons’ central register contains the names of individuals found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All persons found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Persons having committed egregious or repeated acts of abuse or neglect are prohibited from future employment caring for

vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

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

3. Needs and Benefits:

OASAS is proposing to adopt the following regulation because The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires that allegations of abuse and neglect, and other significant incidents be reported to the Justice Center Vulnerable Persons Central Register via the toll free hotline. OASAS credentials addiction, prevention, and compulsive gambling professionals who will be affected by the Justice Center oversight as they work in OASAS certified facilities. This legislation conforms OASAS regulations to definitions, reporting, documentation and review requirements of the Justice Center. The legislation strengthens the role of the Incident Review Committee and links compliance with reporting and investigating incidents to a providers operating certificate renewal. Criminal history information reviews will be conducted on each prospective treatment provider, operator, employee, contractor, or volunteer of treatment facilities certified by the NYS Office of Alcoholism and Substance Abuse Services (“OASAS” or “Office”) who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities and any individual seeking to be credentialed by the Office. This will include OASAS credentialed professionals who will also be required to comply to an additional Code of Conduct of the Justice Center which could subject those persons to additional reasons for limitation or loss of their credential or their future employment in other covered agencies throughout New York State.

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

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

4. Costs:

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

5. Paperwork:

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

6. Local Government Mandates:

This regulation imposes no new mandates on local governments operating certified OASAS programs even if they employ OASAS credentialed professionals.

7. Duplications:

This proposed rule does not duplicate any State or federal statute or rule.

8. Alternatives:

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

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 and subsequently September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014, September 12, 2014, December 14, 2014 and March 14, 2015 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

3. Professional Services:

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

4. Compliance Costs:

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impact:

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

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

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

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

The proposed Rule requires persons who apply to the Office for a credential issued by the Office comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) regarding a criminal history information review prior to certification, credentialing or hiring, and compliance with a Code of Conduct established by the Justice Center. The Office will retain documentation of such review; this will not be an additional recordkeeping requirement for applicants or the Office. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic

location. No new professional services are required; no professional services will be lost. Credentialed persons must already comply with a code of ethics; it is not anticipated that additional character and competence requirements will increase or decrease the number of applicants or have an impact on the number of employment opportunities regardless of geographic location. Because these changes are statewide no region will experience any adverse impact because of population density or geography.

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

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

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

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

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

Assessment of Public Comment

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

EMERGENCY RULE MAKING

Criminal History Information Reviews

I.D. No. ASA-13-15-00016-E

Filing No. 169

Filing Date: 2015-03-16

Effective Date: 2015-03-16

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

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

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

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

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

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

The addition of Part 805, effective June 30, 2013, and subsequently effective September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014, September 12, 2014, December 14, 2014, and March 14, 2015 is necessary to implement the criminal history background check provisions as this is a new process for OASAS. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification.

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

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

Subject: Criminal History Information Reviews.

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

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

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

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

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

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

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

§ 805.6 sets forth in regulation the process involving the Office, an applicant for certification or credentialing, the Justice Center and the Division in relation to acquiring fingerprints necessary for a criminal history information review by the Office; requires providers to establish policies and procedures consistent with this regulation and to submit to the Office a criminal background check form.

§ 805.7 sets forth in regulation the process for the Office's conduct of a criminal history review for purposes of approval or denial of an application for employment, volunteering, certification or credentialing, such review to be consistent with the criteria in Article 23-A of the corrections law.

§ 805.8 sets forth standards for documentation and confidentiality.

§ 805.9 sets forth process for notification to the Office of any subsequent criminal charges or convictions related to a custodian, principal of a certified program, or credentialed person.

§ 805.10 sets forth the responsibilities of providers of services related to recordkeeping, notifications, retention and disposal of information.

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 13, 2015.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

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

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

2. Legislative Objectives:

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

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

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

3. Needs and Benefits:

OASAS is proposing to adopt the following regulation because criminal history information reviews conducted on each prospective treatment provider, operator, employee, contractor, or volunteer of treatment facilities certified by the NYS Office of Alcoholism and Substance Abuse Services ("OASAS" or "Office") who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities and any individual seeking to be credentialed by the Office will be sufficiently screened before such contact with patients, ensuring a safe and therapeutic environment.

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

4. Costs:

The Office will require additional staffing to review any criminal his-

tory information found to contain convictions. The Office anticipates no fiscal impact on providers or local governments, job creation or loss, because the Office will subsidize the cost of fingerprint production for applicants and prospective employees/volunteers of not-for-profit programs.

5. Paperwork:

The proposed regulation will require some additional information to be reported to the agency by providers regarding potential employees and/or volunteers, and by applicants for certification and/or credentialing. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs.

6. Local Government Mandates:

To the extent local governments already conduct criminal history information reviews on municipal employees, there are no new local government mandates.

7. Duplications:

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

8. Alternatives:

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

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 and subsequently on September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014, September 12, 2014, December 14, 2014, and March 14, 2015 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

3. Professional Services:

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

4. Compliance Costs:

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

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

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

5. Economic and Technological Feasibility:

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

municated electronically any additional recordkeeping will be minimal regardless of geographic location.

6. Minimizing Adverse Impact:

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

7. Small Business and Local Government Participation:

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

8. Not applicable. (establish or modify a violation or penalties associated with a violation)

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

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

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

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

The proposed regulation will not have an adverse impact on existing jobs or the development of new employment opportunities for New York residents. It is anticipated that the proposed regulation will not have an adverse impact on existing employees in the field of fingerprinting or history review. The proposed regulations should not impact the number of criminal history information reviews requested via federal and state existing database. The Office is unable to determine what affect the proposed regulation may have on the employment of independent fingerprinting services or Office employees in the future.

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

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

EMERGENCY RULE MAKING

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

I.D. No. ASA-13-15-00017-E

Filing No. 170

Filing Date: 2015-03-16

Effective Date: 2015-03-16

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

Action taken: Repeal of Part 836 and addition of new Part 836 to Title 14 NYCRR.

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

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

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

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

The amendments to Part 836, effective June 30, 2013 and subsequently September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014, September 12, 2014, December 14, 2014, and March 14, 2015 are necessary to implement the incident reporting and management provisions required by the statute and to ensure compliance with the criminal history background check provisions to further enhance patient safety.

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

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

Subject: Incident Reporting in OASAS Certified, Licensed, Funded or Operated Programs.

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

Substance of emergency rule: The Proposed Rule would Repeal the current Part 836 and Replace it with a new Part 836. The new Part incorporates amendments related to incident reporting consistent with statutory requirements, definitions and procedures of the Justice Center, pursuant to the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012).

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

Section 836.1 sets forth the background and intent and adds language referencing the purpose for establishing the Justice Center and for coordinating agency incident reviews with the Justice Center.

§ 836.2 sets forth the statutory authority for the promulgation of the rule by the Office of Alcoholism and Substance Abuse Services (“Office”); adds The Protection of People with Special Needs Act; removes re-

pealed statutes; adds the Vulnerable Persons Central Register in § 492 of the social services law.

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

§ 836.4 adds new definitions or amends to be consistent with the Justice Center: “Reportable incident”, “physical abuse”, “psychological abuse”, “deliberate inappropriate use of restraints”, “use of aversive conditioning”, “obstruction of reports of reportable incidents”, “unlawful use or administration of a controlled substance,” “neglect”, “significant incident”, “custodian”, “facility or provider agency”, “mandated reporter”, “human services professional”, “physical injury”, “delegate investigatory entity”, “Justice Center”, “Person receiving services,” “Personal representative,” “Abuse or neglect”, “subject of the report,” “other persons named in the report,” “Vulnerable Persons Central Register,” “vulnerable person”, “intentionally and recklessly”, “clinical records”, “Incident management programs”, “Incident report”, “Missing client”, “qualified person”, “staff”, “Incident review Committee”.

§ 836.5 adds requirements for providers of services’ policies and procedures related to, and implementation of, an Incident Management Program consistent with the requirements of Chapter 501 of the Laws of 2012.

§ 836.6 adds requirements for incident reporting, notice and investigation to incorporate changes in processes necessitated by Chapter 501 of the Laws of 2012.

§ 836.7 adds requirements for additional notice and reporting requirements for reportable and significant incidents necessitated by Chapter 501 of the Laws of 2012 such as: reporting “immediately” upon discovery of an incident; required reporting to the Justice Center Vulnerable Persons Central Register, Office and regional Field Office; includes all “custodians” as “mandated reporters” for purposes of this regulation.

§ 836.8 adds requirements for configuration of Incident Review Committees consistent with requirements of Chapter 501 of the Laws of 2012.

§ 836.9 adds requirements for recordkeeping and release of records to qualified persons consistent with requirements of Chapter 501 of the Laws of 2012.

§ 836.10 adds to a provider’s duty to cooperate regarding inspection of facilities by permitting the Justice Center access for purposes of an investigation of a reportable or significant incident consistent with requirements of Chapter 501 of the Laws of 2012.

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 13, 2015.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

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

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

2. Legislative Objectives:

The legislative objectives are the establishment of comprehensive protections for vulnerable persons against abuse, neglect and other harmful conduct. The Act created a Justice Center with responsibilities for ef-

fective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems.

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

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

3. Needs and Benefits:

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

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

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

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

4. Costs:

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

5. Paperwork:

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

6. Local Government Mandates:

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

7. Duplications:

This proposed rule does not duplicate any State or federal statute or rule.

8. Alternatives:

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

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 and subsequently September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014, September 12, 2014, December 14, 2014, and March 14, 2015 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

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

3. Professional Services:

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

4. Compliance Costs:

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impact:

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

7. Small Business and Local Government Participation:

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

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

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

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

The proposed regulation implements provisions of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) for the purpose of establishing a uniform incident reporting process via a state centralized hotline (Vulnerable Persons Central Register). The proposed regulation incorporates provisions from this Act into the OASAS incident reporting regulation which applies to all programs throughout the state in all geographic locations. Because the regulation applies to incident reporting and incident management in OASAS certified, operated, funded or licensed programs, there is no different application in any geographic location. The proposed regulation incorporates the OASAS incident reporting process into a larger oversight and enforcement entity under the Justice Center. These requirements apply to OASAS providers in all geographic regions. Reporting will be done electronically via telephone or other secure means which are not limited by geography. The new rule does not require any additional staff, although training will be required statewide and be largely provided by the Office or the Justice Center.

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

The proposed regulation implements provisions of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) for the purpose of ensuring persons who receive services from OASAS certified providers are assured of receiving treatment from custodians who have been appropriately trained and screened for any prior abusive behavior. The proposed rule incorporates definitions and procedures for reporting incidents to the Justice Center and highlights the role of investigations and a provider Incident Review Committee to be responsible for quality assurance, implementing corrective action plans related to repetitive incidents or patterns of lack of oversight. It also strengthens the link to program certification through the requirement for staff background checks and record retention and the review by OASAS quality assurance staff.

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

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

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

Assessment of Public Comment

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

EMERGENCY RULE MAKING

Patient Rights

I.D. No. ASA-13-15-00018-E

Filing No. 171

Filing Date: 2015-03-16

Effective Date: 2015-03-16

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

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

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

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

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

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

The repeal and addition of Part 815 related to Patient Rights, effective June 30, 2013 and subsequently September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014, September 12, 2014, December 14, 2014 and March 14, 2015 is necessary to implement the criminal history background check provisions as this is a new process for OASAS and to make patients aware of additional rights. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification.

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

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

Subject: Patient Rights.

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 13, 2015.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

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

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

2. Legislative Objectives:

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

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

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

3. Needs and Benefits:

This regulation governs the rights and responsibilities of patients in OASAS certified treatment programs. The regulation incorporates provisions of Chapter 501 of the Laws of 2012 to the extent they relate to

patients’ rights to report allegations of abuse and neglect or other significant incidents to the Vulnerable Persons Hotline. The requirement for staff, operators, volunteers and contractors, if appropriate, to have completed criminal history information reviews is incorporated as a right of patients to receive treatment in an environment that is therapeutic and free from concerns about harm from staff.

OASAS is proposing to adopt the following regulation because criminal history information reviews conducted on each prospective treatment provider, operator, employee, contractor, or volunteer of treatment facilities certified by the NYS Office of Alcoholism and Substance Abuse Services (“OASAS” or “Office”) who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities and any individual seeking to be credentialed by the Office will be sufficiently screened before such contact with patients, ensuring a safe and therapeutic environment.

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

4. Costs:

The Office anticipates no fiscal impact on providers or local governments, job creation or loss, because the Office will subsidize applicants and prospective employees/volunteers in not for profit providers for the cost of fingerprint production.

5. Paperwork:

The proposed regulation will require some additional information to be reported to the agency by applicants for employment or management contractors. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs. No additional paperwork will be required as it applies to patients.

6. Local Government Mandates:

To the extent local governments already conduct criminal history information reviews on municipal employees, there are no new local government mandates if a local government was to apply for certification. Municipalities that are program operators will also need to comply with the same rights of their patients as any other certified operator.

7. Duplications:

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

8. Alternatives:

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

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 and subsequently September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014, September 12, 2014, December 14, 2014 and March 14, 2015 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

The proposed regulation implements provisions of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) for the purpose of ensuring persons who receive services from OASAS certified providers are assured of receiving treatment from custodians who have been appropriately trained and screened for any prior abusive behavior.

The proposed regulation incorporates provisions from this Act into the OASAS Patient Rights regulation which applies to all programs throughout the state in all geographic locations. Because the regulation applies only to the rights and responsibilities of patients in certified programs, there is no different application in any geographic location.

3. Professional Services:

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

4. Compliance Costs:

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

Although providers will be required to retain documentation of fingerprint requests for employees, contractors, or volunteers they ultimately employ, this will not be a significant additional recordkeeping requirement because providers are already required to retain records related to such relationships. No additional professional services will be required of as a result of these amendments; nor will the amendments add to the professional service needs of local governments. Because of the electronic nature of the transactions, minimal paperwork will be involved on the part of business or local governments. The Office will subsidize applicants for all prospective employees or volunteers of not-for-profit providers, regardless of geographic location; there will be no disparate impact on providers based on location, size of business or municipality.

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impact:

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

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

The proposed regulation implements provisions of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) for the purpose of ensuring persons who receive services from OASAS certified providers are assured of receiving treatment from custodians who have been appropriately trained and screened for any prior abusive behavior. This regulation incorporates any relevant provisions into the OASAS Patient Rights regulation.

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

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

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

EMERGENCY RULE MAKING

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

I.D. No. ASA-13-15-00019-E

Filing No. 172

Filing Date: 2015-03-16

Effective Date: 2015-03-16

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

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

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

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

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

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

The amendments to Part 810, effective June 30, 2013 and subsequently September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014, September 12, 2014, December 14, 2014 and March 14, 2015 are necessary to implement the criminal history background check provisions as this is a new process for OASAS. Additionally, by statute (Mental Hygiene Law sections 19.20 and 19.20-a) requires OASAS, rather than the Justice Center, to conduct reviews of criminal history information and to make recommendations regarding hiring, credentialing and certification. Amendments will also streamline the process of program certification for needed services and is consistent with Governor Cuomo and the Sage Commission's "Lean Initiative" to improve efficiency in state government.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals receiving services within the OASAS treatment system. If OASAS did not promulgate regulations on an emergency basis, the process for OASAS to conduct this new process would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by insufficient safeguards regarding entities receiving operating certificates from the Office. If OASAS did not promulgate regulations related to the "Lean Initiative" on an emergency basis, the process for OASAS and applicants for certification of new providers would become increasingly cumbersome due to timetables, records management, and protracted reviews of submissions.

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

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

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

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

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

Amendments include:

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

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

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

§ 810.5 and 810.6 eliminates the requirement of a full review for a capital project proposed by a program that is not utilizing state funds from the DASNY Mental Hygiene bonding program; requires such proposals to receive an administrative review instead.

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

§ 810.8 amends requirements for the full review process of an application for certification to include required criminal history information review as a criteria for Office consideration whether or not to issue or renew and operating certificate; eliminates the "interim operating certificate" as it is not used; consolidates language related to due process for applicants denied certification; eliminates specific time frames for response and submission of documentation in a certification application and replaces them with "a reasonable time." Amendments also introduce an interim "threshold review" by the Office to reduce retention of incomplete applications and reduce staff time needed to track and follow-up on incomplete submissions.

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

§ 810.10 adds requirements for Office prior approval of any changes in programming or corporate structure post certification, including any reduction in the majority of owners or principals with prior substance use disorder treatment experience; eliminates specific timeframes for response and submission of documentation and replaces them with "a reasonable time."

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

§ 810.12 strengthens Office control of management contracts entered into by providers of services; requires administrators of contractors to complete a criminal history information review; retains in the governing authority to authority to remove any custodian regardless of change in employment status.

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

§ 810.14 adds requirement that staff credentials and employee or contractor compliance with the criminal history information review

requirements are part of the inspection and review process for re-certification.

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

§ 810.18 removes provisions for waiver; adds severability language.

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 13, 2015.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

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

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

2. Legislative Objectives:

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

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

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

Additional amendments adopt recommendations developed by the Office in response to Governor Cuomo and the Sage Commission's "Lean Initiative" to streamline government processes and procedures. The amendments eliminate specific time frames for response and submission of documentation in a certification application and replace them with "a reasonable time." Amendments also introduce an interim "threshold review" by the Office to reduce retention of incomplete applications and reduce staff time needed to track and follow-up on incomplete submissions. Amendments to the regulation serve as notice to the public of such changes in application processes.

3. Needs and Benefits:

OASAS is proposing to adopt the following regulation because The Protection of People with Special Needs Act (Chapter 501 of the Laws of

2012) requires that criminal history information reviews be conducted on each prospective treatment provider, operator, employee, contractor, or volunteer of treatment facilities certified by the NYS Office of Alcoholism and Substance Abuse Services ("OASAS" or "Office") who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities and any individual seeking to be credentialed by the Office.

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

OASAS is proposing to adopt these amendments to the certification application and review process because they will reduce administrative time spent tracking incomplete submissions and retaining and organizing incomplete submissions or those that are not serious about becoming providers.

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

4. Costs:

The Office anticipates no fiscal impact on providers or local governments, job creation or loss. No additional administrative costs to the agency are anticipated; no additional costs to programs/providers are anticipated.

5. Paperwork:

The proposed regulation will require some additional information to be reported to the agency by applicants for certification. To the extent feasible, such reporting shall be made electronically to avoid unnecessary paperwork costs. The proposed "Lean Initiative" amendments will reduce agency paperwork and storage of incomplete applications.

6. Local Government Mandates:

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

7. Duplications:

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

8. Alternatives:

The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires the adoption of this proposed regulation; failure to adopt the "Lean Initiative" amendments would continue to subject applicants and Office personnel to inefficient and cumbersome processes and procedures.

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The regulations will be effective on June 30, 2013 and subsequently September 25, 2013, December 20, 2013, March 20, 2014, June 17, 2014, September 12, 2014, December 14, 2014 and March 14, 2015 to ensure compliance with Chapter 501 of the Laws of 2012 and Governor Cuomo's "Lean Initiative" and Sage Commission mandates.

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

The proposed Rule requires persons who apply to the Office for certification to operate a treatment program to comply with the requirements of The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) and complete a criminal history information review prior to certification; amendments also streamline the application review process by the agency by affording flexibility in time schedules and a threshold review prior to a substantive review.

3. Professional Services:

The Office will retain documentation of such applicant review; this will not be an additional recordkeeping requirement for applicants or the Office. Every region of the state has resources for gathering fingerprints, the history information collection is done electronically from a central state or federal database, and communicated electronically, so any additional recordkeeping will be minimal regardless of geographic location.

No new professional services are required; no professional services will be lost.

4. Compliance Costs:

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impact:

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

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

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

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

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

The proposed regulation has been presented to, and approved by, the OASAS Advisory Council and to the Behavioral Health Services Advisory Council consisting of providers and other stakeholders from a range of corporate types and municipalities. It is not anticipated that this regulation will have an adverse impact on existing jobs or the development of new employment opportunities for New York residents. It is anticipated that the proposed regulation will not have an adverse impact on existing employees in the field of fingerprinting or history review. The proposed regulations should not impact the number of criminal history information reviews requested via federal and state existing database. The Office is unable to determine what affect the proposed regulation may have on the employment of independent fingerprinting services or Office employees in the future. The proposed regulation does not have an adverse impact on jobs or employment opportunities anywhere in the State, therefore, no region is disproportionately affected by the proposed regulation. This regulation will not require additional professional staff in existing certified providers; although entities will be required to maintain some records related to staff background, these should be minimal because much of the record exchange will be accomplished electronically.

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

Office of Children and Family Services

EMERGENCY RULE MAKING

Protection of Vulnerable Persons

I.D. No. CFS-13-15-00010-E

Filing No. 165

Filing Date: 2015-03-16

Effective Date: 2015-03-16

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

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

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f); Executive Law, sections 501(5) and 532-e; L. 2012, ch. 501

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

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

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

Effective on June 30, 2013 reports of suspected child abuse or neglect in a residential program no longer fall under the jurisdiction of the

Statewide Central Register of Child Abuse and Maltreatment (SCR). Any concerns regarding abuse or neglect of a child in a residential care program must be reported to the Vulnerable Persons Central Register (VPCR). The VPCR will also register reports of suspected abuse or neglect of persons residing in Family Type Homes for Adults (FTHA). Reports registered by the VPCR will be forwarded to Justice Center investigative staff or to investigative staff at the State Agency that licenses, certifies or operates the facility or provider agency. Regulations are required to provide direction to facilities, provider agencies, employees, local government staff and the public. It is imperative that rules be in place for the proper implementation of the Justice Center legislation.

In addition, these emergency regulations re-insert language at section 182-1.5 of Title 9 NYCRR to prohibit discrimination on the basis of sexual orientation, gender identity or expression. This language had been part of the regulations until June 2014 when they were inadvertently overwritten by other regulatory changes. This language is necessary to provide protection from such discrimination for the persons receiving services in the programs regulated by section 182-1.5 of Title 9 NYCRR.

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

Subject: Protection of vulnerable persons.

Purpose: To create a durable set of safeguards to protect vulnerable persons against abuse, neglect and other conduct.

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

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

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

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

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

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

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

Lastly, language inadvertently overwritten in June 2014 was re-inserted at section 182-1.5 of Title 9 of the NYCRR. The re-inserted language prohibits discrimination on the basis of sexual orientation, gender identity or expression. Inclusion of this language provides protection from such discrimination for the persons receiving services in the regulated programs.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 13, 2015.

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

Regulatory Impact Statement

1. Statutory authority:

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

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

Section 501(5) and 532-e of the New York State Executive Law authorizes the Commissioner of OCFS to promulgate rules and regulations for the establishment, operation and maintenance of division facilities and programs.

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

2. Legislative objectives:

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

3. Needs and benefits:

To the extent a change to the run away and homeless youth regulations is a technical change, the need is to reauthorize language already found in regulation and implemented by program.

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

4. Costs:

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

To the extent a change to the run away and homeless youth regulations is a technical change, there is no anticipated cost.

5. Local government mandates:

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

To the extent a change to the run away and homeless youth regulations is a technical change, there are no additional mandates.

6. Paperwork:

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

7. Duplication:

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

8. Alternatives:

These regulations are required to comply with Chapter 501 of the Laws of 2012 and add a technical change to 9 NYCRR 182-1.5.

9. Federal standards:

The regulatory amendments do not conflict with any federal standards.

10. Compliance schedule:

The regulations will be effective on March 16, 2015 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

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

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

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

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

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

3. Costs:

To the extent a change to the run away and homeless youth regulations is a technical change, there is no anticipated cost. All affected programs such as authorized agencies or facilities are currently subject to requirements governing reporting, record keeping, management of approved procedures and policies. As such the proposed regulations should not impose any additional costs associated with those functions. The statutory and regulatory requirements will necessarily require a reconfiguration of the current utilization of administrative costs to conform and comply with the requirements of the new law and conforming regulations. The statutory scheme provides for the enhancement of services for the protections of Vulnerable Persons, which will have added costs.

4. Economic and technological feasibility:

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

5. Minimizing adverse impact:

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

6. Small business and local government participation:

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

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

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

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

cies and facilities will be required to comply with investigations and information requests as required by the Justice Center for the Protection of People with Special Needs, as defined in Article 20 of the Executive Law.

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

3. Costs:

To the extent a change to the run away and homeless youth regulations is a technical change, there is no anticipated cost. An authorized agency or facility is currently subject to requirements governing reporting, record keeping, management of approved procedures and policies, so the proposed regulations should not impose any additional costs associated with those functions. The statutory and regulatory requirements will necessarily require a reconfiguration of the current utilization of administrative costs to conform and comply with the requirements of the new law and conforming regulations. The statutory scheme provides for the enhancement of services for the protections of Vulnerable Persons, which will have added costs.

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-13-15-00003-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Indigent Legal Services," by increasing the number of positions of Assistant Counsel from 4 to 5.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was

previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-13-15-00004-P

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

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

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

Subject: Jurisdictional Classification.

Purpose: To delete a subheading and positions from and classify positions in the exempt class.

Text of proposed rule: Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Department of Mental Hygiene, by deleting therefrom the subheading "New York State Developmental Disabilities Planning Council," and the positions of Assistant Public Information Officer, Executive Director, Secretary and Special Assistant; and, in the Department of Mental Hygiene under the subheading "Office for People with Developmental Disabilities," by deleting therefrom the positions of Assistant Counsel (in the Long Island Developmental Center) and Assistant Counsel (Valley Ridge Center), by adding thereto the position of Executive Director and by increasing the number of positions of Assistant Counsel from 8 to 10, Assistant Public Information Officer from 4 to 5, Associate Commissioner for County Services from 2 to 3, Secretary from 2 to 3 and Special Assistant from 8 to 9.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

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

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

Regulatory Impact Statement

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Jurisdictional Classification**I.D. No.** CVS-13-15-00005-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify a position in the non-competitive class.**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Corrections and Community Supervision, by increasing the number of positions of Deputy Superintendent of Correctional Mental Health Care Facility from 1 to 2.**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov**Public comment will be received until:** 45 days after publication of this notice.**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Jurisdictional Classification**I.D. No.** CVS-13-15-00006-P

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

Proposed Action: Amendment of Appendix 2 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify a position in the non-competitive class.**Text of proposed rule:** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Taxation and Finance, by increasing the number of positions of Tax Policy Analyst 3 from 8 to 9.**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov**Public comment will be received until:** 45 days after publication of this notice.**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Jurisdictional Classification**I.D. No.** CVS-13-15-00007-P

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

Proposed Action: Amendment of Appendix 1 of Title 4 NYCRR.**Statutory authority:** Civil Service Law, section 6(1)**Subject:** Jurisdictional Classification.**Purpose:** To classify positions in the exempt class.**Text of proposed rule:** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of Information Technology Services," by increasing the number of positions of Special Assistant from 11 to 17.**Text of proposed rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov**Data, views or arguments may be submitted to:** Ilene Lees, Counsel, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-2624, email: ilene.lees@cs.ny.gov**Public comment will be received until:** 45 days after publication of this notice.**Regulatory Impact Statement**

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Rural Area Flexibility Analysis

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

Job Impact Statement

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-01-15-00005-P, Issue of January 7, 2015.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Supplemental Military Leave Benefits

I.D. No. CVS-13-15-00014-P

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

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

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

Subject: Supplemental military leave benefits.

Purpose: To extend the availability of supplemental military leave benefits for certain New York State employees until December 31, 2015.

Substance of proposed rule: The proposed rule amends sections 21.15 and 28-1.17 of the Attendance Rules for Employees in New York State Departments and Institutions to continue the availability of the single grant of supplemental military leave with pay and further leave at reduced pay through December 31, 2015, and to provide for separate grants of the greater of 22 working days or 30 calendar days of training leave at reduced pay during calendar year 2015. Union represented employees already receive these benefits pursuant to memoranda of understanding (MOUs) negotiated with the Governor's Office of Employee Relations (GOER). The proposed rule merely amends section 21.15 of the Attendance Rules consistent with the current MOUs, and amends section 28-1.17 to extend equivalent benefits to employees serving in positions designated managerial or confidential (m/c).

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

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

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

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

With respect to training leave at reduced pay, many employees ordered to military duty in response to the war on terror also continue to perform other required military service unrelated to the war on terror. To support employees performing other military duty, including mandatory summer

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

The proposed rule extends the availability of supplemental military leave with pay, leave at reduced pay and training leave at reduced pay through December 31, 2015. Employees must establish eligibility for supplemental military leave (provided they have not already depleted the single grant of such leave), leave at reduced pay and training leave at reduced pay during 2015 by performing qualifying military service.

Employees on leave at reduced pay or training leave at reduced pay on January 1, 2015, have their rate of pay calculated from their base State pay as of January 1, 2015, reduced by the military pay rate applied to their most recent period in either reduced pay category prior to 2012. For employees who have used leave at reduced pay or training leave at reduced pay prior to year 2015, their pay for either type of reduced pay leave at any point between January 1, 2015 and December 31, 2015, will be calculated from their base State pay as of their last day in full pay status after January 1, 2012, prior to their initial use of leave of reduced pay or training leave at reduced pay, offset by the rate of military pay from their most recent period of reduced pay leave, prior to 2015. Employees whose initial use of either reduced pay leave category occurs during 2015 will have their pay rate determined by their base State pay on their last day of full pay status, minus military pay. For all employees receiving leave at reduced pay or training leave at reduced pay in 2015, the initial pay calculation will apply to all subsequent periods of reduced pay leave.

The proposed amendment provides that in no event shall supplemental military leave, leave at reduced pay or training leave at reduced pay be granted for military service performed after December 31, 2015, nor shall such leaves be available to employees who have voluntarily separated from State service or who are terminated for cause.

Text of proposed rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov

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

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

Consensus Rule Making Determination

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

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

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

The Governor's Office of Employee Relations has executed new MOUs with the Classified Service employee unions extending the availability of the single grant of supplemental military leave with pay and leave at

reduced pay, and training leave at reduced pay through December 31, 2015. The State Civil Service Commission shall amend the Attendance Rules in accordance with the MOUs and extend equivalent benefits to employees serving in m/c designated positions.

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

Job Impact Statement

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

Division of Criminal Justice Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Statement of Purpose for Medical and Physical Fitness Standards and Procedures for Police Officer Candidates

I.D. No. CJS-13-15-00023-P

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

Proposed Action: This is a consensus rule making to amend section 6000.2(b) of Title 9 NYCRR.

Statutory authority: Executive Law, sections 837(13) and 840(2)

Subject: Statement of purpose for medical and physical fitness standards and procedures for police officer candidates.

Purpose: To clarify the purpose for the physical fitness standards for police officer candidates.

Text of proposed rule: 1. Subdivision (b) of section 6000.2 of Title 9 of the New York Codes, Rules and Regulations is amended to read as follows:

(b) *In accordance with Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.), [The] the council also recognized the need to revise the physical fitness screening practice so that the test employed provides an objective, verifiable measure of physical fitness that is properly focused on job-related skills and aptitudes and provides an accurate assessment of a candidate's physiological capacity to learn and perform the essential job functions of an entry-level police officer. Pursuant to the statewide job task analysis, a battery of physical screening elements was developed[,] based upon the model formulated by the Cooper Institute for Aerobics Research. The analysis recommended the adoption of such elements for physical fitness screening and determined that such elements do not adversely impact a candidate based upon his/her sex. The physical fitness screening elements of the tests are job-related, consistent with business necessity and do not discriminate against qualified persons. Each of the physical fitness screening elements of the tests were validated and correlated to the performance of essential job functions.*

Text of proposed rule and any required statements and analyses may be obtained from: Rosemarie Hewig, Division of Criminal Justice Services, 80 South Swan Street, Albany, New York 12210, (518) 457-2409, email: Rosemarie.hewig@dcjs.ny.gov

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

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

Consensus Rule Making Determination

This proposal revises the statement of purpose for physical fitness standards and procedures for police officer candidates as set forth in subdivision (b) of section 6000.2 of Title 9 NYCRR. The physical fitness test bat-

tery and scores are based on physical fitness models developed by the Cooper Institute. This proposal merely clarifies that the physical fitness test provides an objective, verifiable measure of the candidate's physical fitness, and is properly focused on job-related skills and aptitudes, in accordance with Title VII of the Civil Rights Act of 1964 (42 U.S.C § 2000e et seq.). Given the ministerial nature and purpose of the proposal, which was unanimously approved by the Municipal Police Training Council, the Division of Criminal Justice Services has determined that no person is likely to object to the rule as written.

Job Impact Statement

The proposal merely clarifies the statement of purpose for physical fitness standards and procedures for police officer candidates as set forth in subdivision (b) of section 6000.2 of Title 9 NYCRR. As such, it is apparent from the nature and purpose of the proposal that it will have no impact on jobs and employment opportunities.

Education Department

EMERGENCY RULE MAKING

Student Enrollment

I.D. No. EDU-52-14-00014-E

Filing No. 166

Filing Date: 2015-03-16

Effective Date: 2015-03-16

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

Action taken: Amendment of section 100.2(y) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2), (20), 3202(1), 3205(1), 3713(1) and (2)

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

Specific reasons underlying the finding of necessity: The proposed amendment is designed to: (1) address reports that districts are denying enrollment of unaccompanied minors and undocumented youths if they are unable to produce documents sufficiently demonstrating age, guardianship, and/or residency in a district; and (2) provide clear requirements for school districts regarding enrollment of students, particularly as it pertains to procedures for unaccompanied minors and other undocumented youths.

Many school districts across the State have experienced an influx of unaccompanied minors and other undocumented youths. It has been reported that some school districts are refusing to enroll unaccompanied minors and undocumented youths if they, or their families or guardians, are unable to produce documents sufficiently demonstrating guardianship and/or residency in a district. These enrollment policies, as well as highly restrictive requirements for proof of residency, may impede or prevent many unaccompanied minors and undocumented youths from enrolling or attempting to enroll in school districts throughout the State. The proposed amendment is necessary to ensure that all children are enrolled in school, regardless of immigration status, pursuant to New York State and Federal law and to ensure that all school districts understand and comply with their obligation to enroll all resident students regardless of their immigration status.

The proposed amendment was adopted as an emergency action at the December 15-16, 2014 Regents meeting, effective December 16, 2014. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on December 31, 2014. Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the March 16-17, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the March meeting, would be April 1, 2015, the date a Notice of Adoption would be published in the State Register. However, the December emergency rule will expire on March 15, 2015, 90 days from its filing with the Department of State on December 16, 2014. A lapse in the rule's effective date could disrupt enrollment of students, particularly unaccompanied minors and other undocumented youths, in potential violation of federal and State laws regarding access to a free public education system.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed rule adopted by emergency action at the December 2014 Regents meeting remains continuously in effect until the effective date of its permanent adoption.

It is anticipated that the proposed amendment will be presented for adoption as a permanent rule at the March 16-17, 2015 Regents meeting, which is the first meeting scheduled after expiration of the 45-day period for public comment pursuant to the State Administrative Procedure Act.

Subject: Student enrollment.

Purpose: Clarify requirements on student enrollment, particularly as to procedures for unaccompanied minors and other undocumented youth.

Text of emergency rule: Subdivision (y) of section 100.2 of the Regulations of the Commissioner of Education is amended, effective March 16, 2015, as follows:

(y) Determination of student residency and age. [The board of education or its designee shall determine whether a child is entitled to attend the schools of the district.]

(1) Each school district shall make publicly available its enrollment forms, procedures, instructions and requirements for determinations of student residency and age in accordance with this subdivision. Such publicly available information shall include a non-exhaustive list of the forms of documentation that may be submitted to the district by parents, persons in parental relation or children, as appropriate, in accordance with the provisions of this subdivision. Such list shall include but not be limited to all examples of documentation listed in this subdivision. By no later than January 31, 2015, such information shall be included in the district's existing enrollment/registration materials and shall be provided to all parents, persons in parental relation or children, as appropriate, who request enrollment in the district, and shall be posted on the school district's website, if one exists.

(2) When a child's parent(s), the person(s) in parental relation to the child or the child, as appropriate, requests enrollment of the child in the school district, such child shall be enrolled and shall begin attendance on the next school day, or as soon as practicable. Within three business days of such initial enrollment, the board of education or its designee must review all documentation submitted by the child's parent(s), the person(s) in parental relation to the child or the child, as appropriate, and make a residency determination in accordance with the following:

(i) Documentation Regarding Enrollment and/or Residency.

(a) The district shall not request on any enrollment/registration form(s) or in any meeting or other form of communication any of the following documentation and/or information at the time of and/or as a condition of enrollment:

(1) Social Security card or number; or

(2) any information regarding or which would tend to reveal the immigration status of the child, the child's parent(s) or the person(s) in parental relation, including but not limited to copies of or information concerning visas or other documentation indicating immigration status.

(b) The district may require that the parent(s) or person(s) in parental relation submit documentation and/or information establishing physical presence of the parent(s) or person(s) in parental relation and the child in the school district. Such documentation may include but shall not be restricted to: (1) a copy of a residential lease or proof of ownership of a house or condominium, such as a deed or mortgage statement; (2) a statement by a third-party landlord, owner or tenant from whom the parent(s) or person(s) in parental relation leases or with whom they share property within the district, which may be either sworn or unsworn; or (3) such other statement by a third party establishing the parent(s)' or person(s) in parental relation's physical presence in the district. If the documentation listed in this clause is not available, the district shall consider other forms of documentation and/or information establishing physical presence in the district, in lieu of those described in this clause, which may include but not be limited to those listed in clause (d) of this subparagraph.

(c) The district may also require the parent(s) or person(s) in parental relation to provide an affidavit either: (1) indicating that they are the parent(s) with whom the child lawfully resides; or (2) indicating that they are the person(s) in parental relation to the child, over whom they have total and permanent custody and control, and describing how they obtained total and permanent custody and control, whether through guardianship or otherwise. A district may also accept other proof, such as documentation indicating that the child resides with a sponsor with whom the child has been placed by a federal agency. A district may not require submission of a judicial custody order or an order of guardianship as a condition of enrollment.

(d) The district shall consider other forms of documentation produced by the child, the child's parent(s) or person(s) in parental relation, including but not limited to the following:

(1) pay stub;

(2) income tax form;

(3) utility or other bills;

(4) membership documents (e.g., library cards) based upon residency;

(5) voter registration document(s);

(6) official driver's license, learner's permit or non-driver identification;

(7) state or other government issued identification;

(8) documents issued by federal, state or local agencies (e.g., local social service agency, federal Office of Refugee Resettlement); or

(9) evidence of custody of the child, including but not limited to judicial custody orders or guardianship papers.

(ii) Documentation of Age. In accordance with Education Law § 3218:

(a) where a certified transcript of a birth certificate or record of baptism (including a certified transcript of a foreign birth certificate or record of baptism) giving the date of birth is available, no other form of evidence may be used to determine a child's age;

(b) where the documentation listed in clause (a) of this subparagraph is not available, a passport (including a foreign passport) may be used to determine a child's age; and

(c) where the documentation listed in both clauses (a) and (b) of this subparagraph are not available, the school district may consider certain other documentary or recorded evidence in existence two years or more, except an affidavit of age, to determine a child's age. Such other evidence may include but not be limited to the following:

(1) official driver's license;

(2) state or other government issued identification;

(3) school photo identification with date of birth;

(4) consulate identification card;

(5) hospital or health records;

(6) military dependent identification card;

(7) documents issued by federal, state or local agencies (e.g., local social service agency, federal Office of Refugee Resettlement);

(8) court orders or other court-issued documents;

(9) Native American tribal document; or

(10) records from non-profit international aid agencies and voluntary agencies.

(d) With respect to the documentation listed in clause (c) of this subparagraph, if the documentary evidence presented originates from a foreign country, a school district may request verification of such documentary evidence from the appropriate foreign government or agency, consistent with the requirements of the federal Family Educational Rights and Privacy Act (20 USC § 1232g), provided that the student must be enrolled within in accordance with paragraph (2) of this subdivision and such enrollment cannot be delayed beyond the period specified in paragraph (2) of this subdivision while the district attempts to obtain such verification.

(iii) School districts are required to comply with Public Health Law § 2164(7) and all other applicable provisions of the Public Health Law and its implementing regulations, including orders issued by a state or local health department pursuant to such laws or regulations, that impact a student's admission to or attendance in school. Nothing in this subdivision shall be construed to require the immediate attendance of an enrolled student lawfully excluded from school temporarily pursuant to Education Law § 906 because of a communicable or infectious disease that imposes a significant risk of infection of others, or an enrolled student whose parent(s) or person(s) in parental relation have not submitted proof of immunization within the periods prescribed in Public Health Law § 2164(7)(a), or an enrolled student who is suspended from instruction for disciplinary reasons pursuant to Education Law § 3214. Nothing in this subdivision shall be construed to interfere with the recordkeeping and reporting requirements imposed on school districts participating in the federal Student and Exchange Visitor Program (SEVP) in grades 9-12 pursuant to applicable federal laws and regulations concerning nonimmigrant alien students who identify themselves as having or seeking nonimmigrant student visa status (F-1 or M-1), and nothing herein shall be construed to conflict with such requirements or to relieve such nonimmigrant alien students who have or seek an F-1 or M-1 visa from fulfilling their obligations under federal law and regulations related to enrolling in grades 9-12 in SEVP schools.

(3) Within three business days of a child's initial enrollment, the board of education or its designee shall determine whether a child is entitled to attend the schools of the district. For purposes of this paragraph, prior to making a determination of entitlement to attend the schools of the district, the board or its designee shall afford the child's parent, the person in parental relation to the child or the child, as appropriate, an opportunity to submit information concerning the child's right to attend school in the district, which shall be the information submitted by the parent(s) or person(s) in parental relation pursuant to paragraph (2) of this subdivision.

(4) At any time during the school year, the board of education or its designee may determine, in accordance with paragraph (6) of this subdivision, that a child is not a district resident entitled to attend the schools of the district.

(5) Determinations regarding whether a child is entitled to attend a district's schools as a homeless child or youth must be made in accordance with subdivision (x) of this section.

(6) Any decision by a school official, other than the board or its designee, that a child is not entitled to attend the schools of the district shall include notification of the procedures to obtain review of the decision within the school district. Prior to making a determination of entitlement to attend the schools of the district, the board or its designee shall afford the child's parent, the person in parental relation to the child or the child, as appropriate, the opportunity to submit information concerning the child's right to attend school in the district *except as otherwise provided in paragraph (3) of this subdivision*. When the board of education or its designee determines that a child is not entitled to attend the schools of such district because such child is [neither] not a resident of such district [nor entitled to attend its schools pursuant to subdivision (x) of this section], such board or its designee shall, within two business days, provide written notice of its determination to the child's parent, to the person in parental relation to the child, or to the child, as appropriate. Such written notice shall state:

[(1)] (i) that the child is not entitled to attend the public schools of the district;

[(2)] (ii) the *specific* basis for the determination that the child is [neither] not a resident of the school district [nor entitled to attend its schools pursuant to subdivision (x) of this section], *including but not limited to a description of the documentary or other evidence upon which such determination is based*;

[(3)] (iii) the date as of which the child will be excluded from the schools of the district; and

[(4)] (iv) that the determination of the board may be appealed to the Commissioner of Education, in accordance with Education Law, section 310, within 30 days of the date of the determination, and that the *instructions, forms and procedures* for taking such an appeal, *including translated versions of such instructions, forms and procedures*, may be obtained from the Office of Counsel at www.counsel.nysed.gov, or by mail addressed to the Office of Counsel, New York State Education Department, State Education Building, Albany, NY 12234 or by calling the *Appeals Coordinator* at (518) 474-8927.

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. EDU-52-14-00014-EP, Issue of December 31, 2014. The emergency rule will expire May 14, 2015.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law section 207 empowers the Regents and Commissioner to adopt rules and regulations to carry out the State laws regarding education and the functions and duties conferred on the State Education Department (SED).

Education Law section 305(1) and (2) provide the Commissioner, as chief executive officer of the State education system, with general supervision over schools and institutions subject to the provisions of education law, and responsibility for executing Regents policies. Section 305(20) authorizes the Commissioner with such powers and duties as are charged by the Regents.

Education Law section 3202(1) specifies the school district in which children over five and under twenty-one years of age, who have not yet received a high school diploma and who are residing in New York State, are entitled to attend school without the payment of tuition, and is intended to assure that each child residing within the State is able to attend school on a tuition-free basis.

Education Law section 3205(1) requires each child of compulsory school age to attend upon full time day instruction.

Education Law section 3713(1) and (2) authorizes the State and school districts to accept Federal law making appropriations for educational purposes and authorizes the Commissioner to cooperate with Federal agencies to implement such law.

LEGISLATIVE OBJECTIVES:

Consistent with the above statutory authority, the proposed amendment will codify applicable federal and State laws, as well as existing State Education Department (SED) guidance to school districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitutional right to a free public education.

NEEDS AND BENEFITS:

Many school districts across the State have experienced an influx of unaccompanied minors and other undocumented youths. It has been reported that some school districts are refusing to enroll unaccompanied minors and undocumented youths if they, or their families or guardians, are unable to produce documents sufficiently demonstrating guardianship and/or residency in a district. These enrollment policies, as well as highly restrictive requirements for proof of residency, have impeded or prevented many unaccompanied minors and undocumented youths from enrolling in school districts throughout the State.

Under federal and State law, all children have a right to a free public education, regardless of immigration status. The New York Education Law entitles each person over five and under twenty-one years of age, who has not received a high school diploma, to attend a public school in the district in which such person resides. Furthermore, school districts must ensure that all resident students of compulsory school age attend upon full-time instruction [see Educ. Law §§ 3202(1), 3205]. Under federal law, school districts may not deny resident students a free public education on the basis of their immigration status. The United States Supreme Court has held that allowing undocumented students to be denied an education would, in effect, "deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation." *Plyler v. Doe*, 457 U.S. 202, 223 (1982). Under established law, the undocumented or non-citizen status of a student (or his or her parent or guardian) is irrelevant to such student's entitlement to an elementary and secondary public education (See, e.g., 42 U.S.C. §§ 2000c-6, 2000-d; 28 C.F.R. § 42.104(b)(2); 34 C.F.R. § 100.3(b)(2) (Titles IV and VI of the Civil Rights Act of 1964 and associated federal regulations, prohibiting discrimination on the basis of, inter alia, race, color, or national origin by public elementary and secondary schools). Moreover, unaccompanied minors and undocumented youth may also be entitled to the protections of the federal McKinney-Vento Homeless Education Assistance Improvements Act, 42 U.S.C. § 11431, et seq., and implementing State law and regulations concerning the education of homeless children. Together, these federal and State laws are driven by the dual purposes of ensuring student access to, and continuity within, a free public education system.

In late October 2014, the New York Civil Liberties Union released a study (See <http://www.nyclu.org/news/nyclu-survey-ny-school-districts-illegally-denying-education-immigrant-children>) indicating that as many as 20% of school districts in New York State may maintain facially impermissible enrollment policies, and noting the following findings:

- 73 school districts require birth certificates for enrollment, 19 of which specify they require a student's "original" birth certificate;
- 16 school districts require a student's immigration status for enrollment;
- 10 school districts require Social Security cards for enrollment;
- 6 districts ask students whether they are a "migrant worker" at enrollment; and
- 9 school districts ask students whether or not they are U.S. citizens in enrollment.

In addition, SED and the New York State Attorney General have received inquiries from districts across the State regarding their obligations under federal and State law. These inquiries make clear the need for more comprehensive action to address the lack of clarity among districts regarding lawful enrollment and registration policies.

The proposed amendment will codify applicable federal and State laws, as well as existing SED guidance to districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitutional right to a free public education. Specifically, the proposed amendment will establish:

- (1) Clear and uniform requirements, which comply with federal and State laws and SED guidance on enrollment of students, particularly for unaccompanied minors and undocumented youths;
- (2) Prohibited enrollment application policies which are unlawful and/or have had a disparate impact on unaccompanied minors and undocumented youths;
- (3) Flexible enrollment requirements, which allow districts to accept additional forms of proof beyond the highly restrictive forms listed in the enrollment instructions/materials of school districts under review to date; and
- (4) Ensure there is clear guidance to parents and guardians, and that enrollment instructions are provided publicly, in both paper and electronic forms.

COSTS:

Costs to State: none.

Costs to local governments: none.

Costs to private regulated parties: none.

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

The proposed amendment merely codifies applicable federal and State laws, as well as existing SED guidance to school districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitutional right to a free public education. In general, the proposed amendment will not impose any additional costs beyond those inherent in such applicable laws. There may be costs associated with making publicly available a district's enrollment forms, procedures, instructions and requirements for determinations of student residency and age. However, any such costs are believed to be minimal and capable of being absorbed using existing district staff and resources.

LOCAL GOVERNMENT MANDATES:

Each school district shall make publicly available its enrollment forms, procedures, instructions and requirements for determinations of student residency and age, including a non-exhaustive list of the forms of documentation that may be submitted to the district, as specified in the regulation. By no later than January 31, 2015, such information shall be included in the district's existing enrollment/registration materials and be provided to all parents/persons in parental relation or children, as appropriate, who request enrollment in the district, and be posted on the district's website, if one exists.

When a child's parent(s)/person(s) in parental relation or the child, as appropriate, requests enrollment of the child in the school district, such child shall be enrolled and begin attendance on the next school day, or as soon as practicable. Within three business days of initial enrollment, the board of education or its designee must review all documentation submitted by the child's parent(s), the person(s) in parental relation to the child or the child, as appropriate, and make a residency determination in accordance with the regulation. Prior to making a determination of entitlement to attend the schools of the district, the board or its designee shall afford the child's parent/person in parental relation or the child, as appropriate, an opportunity to submit information concerning the child's right to attend school in the district, as specified in the regulation. At any time during the school year, the board of education or its designee may determine, in accordance with the regulation, that a child is not a district resident entitled to attend the schools of the district. Determinations regarding whether a child is entitled to attend a district's schools as a homeless child or youth must be made in accordance with section 100.2(x) of the Commissioner's Regulations.

School districts are required to comply with Public Health Law § 2164(7) and all other applicable provisions of the Public Health Law and its implementing regulations, including orders issued by a state or local health department pursuant to such laws or regulations, that impact a student's admission to or attendance in school.

PAPERWORK:

The regulation provides that the district may require parents/persons in parental relation or the child, as appropriate, to submit documentation/information establishing physical presence in the school district, as specified in the regulation. If the documentation is not available, the district shall consider other forms of documentation/information establishing physical presence in the district, as specified in the regulation. The district may also require the parent(s)/person(s) in parental relation to provide an affidavit either: (1) indicating that they are the parent(s) with whom the child lawfully resides; or (2) indicating that they are the person(s) in parental relation to the child, over whom they have total and permanent custody and control, and describing how they obtained total and permanent custody and control, whether through guardianship or otherwise. A district may also accept other proof, such as documentation indicating that the child resides with a sponsor with whom the child has been placed by a federal agency. A district may not require submission of a judicial custody order or an order of guardianship as a condition of enrollment.

DUPLICATION:

The proposed amendment does not duplicate existing State or federal requirements, but merely codifies applicable federal and State laws, as well as existing SED guidance to school districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitutional right to a free public education.

ALTERNATIVES:

The proposed amendment is necessary to codify applicable federal and State laws, as well as existing SED guidance to school districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitutional right to a free public education. There are no significant alternatives to the proposed amendment and none were considered.

FEDERAL STANDARDS:

The proposed amendment is necessary to codify applicable federal and State laws, as well as existing SED guidance to school districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitutional right to a free public education. The proposed amendment will not impose any additional compliance requirements beyond those inherent in such applicable laws.

COMPLIANCE REQUIREMENTS:

It is anticipated regulated parties will be able to achieve compliance with the rule by its effective date. The proposed amendment merely codifies applicable federal and State laws, as well as existing SED guidance to school districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitutional right to a free public education. The proposed amendment will not impose any additional compliance requirements or costs beyond those inherent in such applicable laws.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to student enrollment, and will codify applicable federal and State laws, as well as existing State Education Department guidance to school districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitutional right to a free public education. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or other compliance requirements on small businesses. No further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to each school district in the State. There are presently 689 school districts in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment merely codifies applicable federal and State laws, as well as existing SED guidance to school districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitutional right to a free public education. The proposed amendment will not impose any additional compliance requirements beyond those inherent in such applicable laws.

Each school district shall make publicly available its enrollment forms, procedures, instructions and requirements for determinations of student residency and age, including a non-exhaustive list of the forms of documentation that may be submitted to the district, as specified in the regulation. By no later than January 31, 2015, such information shall be included in the district's existing enrollment/registration materials and be provided to all parents/persons in parental relation or children, as appropriate, who request enrollment in the district, and be posted on the district's website, if one exists.

When a child's parent(s)/person(s) in parental relation or the child, as appropriate, requests enrollment of the child in the school district, such child shall be enrolled and begin attendance on the next school day, or as soon as practicable. Within three business days of initial enrollment, the board of education or its designee must review all documentation submitted by the child's parent(s), the person(s) in parental relation to the child or the child, as appropriate, and make a residency determination in accordance with the regulation. Prior to making a determination of entitlement to attend the schools of the district, the board or its designee shall afford the child's parent/person in parental relation or the child, as appropriate, an opportunity to submit information concerning the child's right to attend school in the district, as specified in the regulation. At any time during the school year, the board of education or its designee may determine, in accordance with the regulation, that a child is not a district resident entitled to attend the schools of the district. Determinations regarding whether a child is entitled to attend a district's schools as a homeless child or youth must be made in accordance with section 100.2(x) of the Commissioner's Regulations.

School districts are required to comply with Public Health Law § 2164(7) and all other applicable provisions of the Public Health Law and its implementing regulations, including orders issued by a state or local health department pursuant to such laws or regulations, that impact a student's admission to or attendance in school.

The regulation provides that the district may require parents/persons in parental relation or the child, as appropriate, to submit documentation/information establishing physical presence in the school district, as specified in the regulation. If the documentation is not available, the district shall consider other forms of documentation/information establishing physical presence in the district, as specified in the regulation. The district may also require the parent(s)/person(s) in parental relation to provide an affidavit either: (1) indicating that they are the parent(s) with whom the child lawfully resides; or (2) indicating that they are the person(s) in parental relation to the child, over whom they have total and permanent custody and control, and describing how they obtained total and permanent custody and control, whether through guardianship or otherwise. A district may also accept other proof, such as documentation indicating that the child resides with a sponsor with whom the child has been placed by a federal agency. A district may not require submission of a judicial custody order or an order of guardianship as a condition of enrollment.

3. PROFESSIONAL SERVICES:

The proposed rule does not impose any additional professional service requirements on local governments.

4. COMPLIANCE COSTS:

The proposed amendment merely codifies applicable federal and State laws, as well as existing SED guidance to school districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitutional right to a free public education. In general, the proposed amendment will not impose any additional costs on local governments beyond those inherent in such applicable laws. There may be costs associated with making publicly available a district's enrollment forms, procedures, instructions and requirements for determinations of student residency and age. However, any such costs are believed to be minimal and capable of being absorbed using existing district staff and resources.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any additional technological requirements. Economic feasibility is addressed above under compliance costs.

6. MINIMIZE ADVERSE IMPACT:

The proposed amendment is necessary to codify applicable federal and State laws, as well as existing SED guidance to school districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitutional right to a free public education. The proposed amendment will not impose any additional compliance requirements on local governments beyond those inherent in such applicable laws.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the proposed amendment have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to the chief school officers of the five big city school districts.

8. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to codify applicable federal and State laws, as well as existing SED guidance to school districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitutional right to a free public education. Changes to such federal and State laws would be necessary before the proposed rule may be revised. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to all school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed amendment merely codifies applicable federal and State laws, as well as existing SED guidance to school districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitutional right to a free public education. The proposed amendment will not impose any additional compliance requirements beyond those inherent in such applicable laws.

Each school district shall make publicly available its enrollment forms, procedures, instructions and requirements for determinations of student residency and age, including a non-exhaustive list of the forms of documentation that may be submitted to the district, as specified in the regulation. By no later than January 31, 2015, such information shall be included in the district's existing enrollment/registration materials and be provided to all parents/persons in parental relation or children, as appropriate, who request enrollment in the district, and be posted on the district's website, if one exists.

When a child's parent(s)/person(s) in parental relation or the child, as appropriate, requests enrollment of the child in the school district, such child shall be enrolled and begin attendance on the next school day, or as soon as practicable. Within three business days of initial enrollment, the board of education or its designee must review all documentation submitted by the child's parent(s), the person(s) in parental relation to the child or the child, as appropriate, and make a residency determination in accordance with the regulation. Prior to making a determination of entitlement to attend the schools of the district, the board or its designee shall afford the child's parent/person in parental relation or the child, as appropriate,

an opportunity to submit information concerning the child's right to attend school in the district, as specified in the regulation. At any time during the school year, the board of education or its designee may determine, in accordance with the regulation, that a child is not a district resident entitled to attend the schools of the district. Determinations regarding whether a child is entitled to attend a district's schools as a homeless child or youth must be made in accordance with section 100.2(x) of the Commissioner's Regulations.

School districts are required to comply with Public Health Law § 2164(7) and all other applicable provisions of the Public Health Law and its implementing regulations, including orders issued by a state or local health department pursuant to such laws or regulations, that impact a student's admission to or attendance in school.

The regulation provides that the district may require parents/persons in parental relation or the child, as appropriate, to submit documentation/information establishing physical presence in the school district, as specified in the regulation. If the documentation is not available, the district shall consider other forms of documentation/information establishing physical presence in the district, as specified in the regulation. The district may also require the parent(s)/person(s) in parental relation to provide an affidavit either: (1) indicating that they are the parent(s) with whom the child lawfully resides; or (2) indicating that they are the person(s) in parental relation to the child, over whom they have total and permanent custody and control, and describing how they obtained total and permanent custody and control, whether through guardianship or otherwise. A district may also accept other proof, such as documentation indicating that the child resides with a sponsor with whom the child has been placed by a federal agency. A district may not require submission of a judicial custody order or an order of guardianship as a condition of enrollment.

The rule does not impose any additional professional service requirements on rural areas.

3. COMPLIANCE COSTS:

The proposed amendment merely codifies applicable federal and State laws, as well as existing SED guidance to school districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitutional right to a free public education. In general, the proposed amendment will not impose any additional costs on rural areas beyond those inherent in such applicable laws. There may be costs associated with making publicly available a district's enrollment forms, procedures, instructions and requirements for determinations of student residency and age. However, any such costs are believed to be minimal and capable of being absorbed using existing district staff and resources.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to codify applicable federal and State laws, as well as existing SED guidance to school districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitutional right to a free public education. The proposed amendment will not impose any additional compliance requirements on rural areas beyond those inherent in such applicable laws. The proposed rule has been carefully drafted to ensure that such State and federal requirements are met. Since these requirements apply to all school districts in the State, it is not possible to adopt different standards for those located in rural areas.

5. RURAL AREA PARTICIPATION:

The proposed rule was submitted for review and comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to codify applicable federal and State laws, as well as existing SED guidance to school districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitutional right to a free public education. Changes to such federal and State laws would be necessary before the proposed rule may be revised. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment relates to student enrollment, and will codify applicable federal and State laws, as well as existing State Education Department guidance to school districts, in order to ensure that unaccompanied minors and undocumented youths are provided their constitu-

tional right to a free public education. The proposed amendment does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

EMERGENCY RULE MAKING

Profession of Applied Behavior Analysis

I.D. No. EDU-52-14-00015-E

Filing No. 167

Filing Date: 2015-03-16

Effective Date: 2015-03-16

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

Action taken: Amendment of sections 29.2, 52.44, 52.45, 59.14, Subparts 79-17 and 79-18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6503-a, 6504(not subdivided), 6507(2)(a), 6509(9), 8800, 8801, 8802, 8803, 8804, 8805, 8806, 8807 and 8808; L. 2013, ch. 554; L. 2014, ch. 8

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to implement Chapter 554 of the Laws of 2013 and Chapter 8 of the Laws of 2014, which took effect on July 1, 2014. This amendment to the Education Law establishes and defines the practice of the profession of applied behavior analysis. Pursuant to Chapter 554, the purpose of applied behavior analysis is to provide behavioral health treatment for persons with autism and autism spectrum disorders and related disorders. It also establishes the requirements for licensed behavior analyst and certified behavior analyst assistant education programs, which include registration and curriculum requirements for programs offered in New York State that lead to licensure as a licensed behavior analyst or certification as a certified behavior analyst assistant. In addition, this amendment to the Education Law establishes a waiver of the licensure requirement for certain specified entities that provide applied behavior analysis services as defined in Article 167 of the Education Law. It further establishes requirements for the licensure of licensed behavior analysts and certified behavior analyst assistants, which include, but are not limited to, professional education, experience, examination and limited permit requirements. This amendment to the Education Law also provides a grandparenting licensure/certification pathway, which the Department is referring to as Pathway One, for individuals who are certified or registered by a national certifying body and submit an attestation of moral character and an application to the State Education Department within two years of the January 10, 2014 effective date of this provision of the statute. Although Pathway One will expire on January 9, 2016, the licenses and certifications issued under it will not. Additionally, this amendment adds the profession of applied behavior analysis to the list of health care professions that are subject to the Education Laws' unprofessional conduct provisions.

The proposed amendment was adopted as an emergency action at the December 15-16, 2014 Regents meeting, effective December 16, 2014. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on December 31, 2014. Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for adoption by regular action, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the March 16-17, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the March meeting, would be April 1, 2015, the date a Notice of Adoption would be published in the State Register. However, the December emergency rule will expire on March 15, 2015. If the rule were to lapse, it could disrupt the licensure process for applicants, who do not meet the requirements for licensure and/or certification under Pathway One, which could temporarily reduce the potential number of licensed professionals qualified to practice applied behavior analysis.

Therefore, emergency action is necessary at the February Regents meeting for the preservation of the public health and general welfare to ensure that the emergency rule adopted at the December 2014 Regents meeting remains continuously in effect until the effective date of its permanent adoption.

It is anticipated that the proposed rule will be presented for adoption as a permanent rule at the March 16-17, 2015 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period prescribed in the State Administrative Procedure Act for State agency rule makings.

Subject: Profession of Applied Behavior Analysis.

Purpose: To implement chapter 554 of the Laws of 2013 and chapter 8 of the Laws of 2014.

Substance of emergency rule: At their February 9-10, 2015 meeting, the Board of Regents readopted as an emergency action, effective March 16, 2015, the emergency rule adopted at the December 15-16, 2014 Regents meeting, to keep the rule continuously in effect until it can be presented and take effect as an emergency rule. The emergency rule amends section 29.2 of the Rules of the Board of Regents, adds sections 52.44 and 52.45 to the Regulations of the Commissioner of Education, amends section 59.14 of the Regulations of the Commissioner of Education, and adds Subparts 79-17 and 79-18 to the Regulations of the Commissioner of Education, relating to the licensure of behavior analysts and certification of behavior analyst assistants under Article 167 of the Education Law as added by Chapter 554 of the Laws of 2013 and Chapter 8 of the Laws of 2014. The following is a summary of the substance of the emergency rule:

Subdivisions (a) and (b) of section 29.2 of the Rules of the Board of Regents are amended to add the profession of applied behavior analysis to the list of health care professions that are subject to its unprofessional conduct provisions.

Section 52.44 is added to the Regulations of the Commissioner of Education to establish the requirements for licensed behavior analyst education programs. These requirements include registration and curriculum requirements for programs offered in New York State that lead to licensure as a licensed behavior analyst. Section 52.44 further requires licensed behavior analyst education programs to be a program in applied behavior analysis leading to a master's degree or higher degree, which must require at least one year of full-time study or the equivalent; or a program in applied behavioral analysis leading to an advanced certificate which ensures that each student holds a master's or higher degree in subject areas, including, but not limited to, psychology, education or other subject areas that address learning and behavioral change as determined by the Department.

Section 52.45 is added to the Regulations of the Commissioner of Education to establish the requirements for certified behavior analyst assistant education programs. These requirements include registration and curriculum requirements for programs offered in New York State that lead to certification as a certified behavior analyst assistant. Section 52.45 further requires certified behavior analyst assistant education programs to be a program in applied behavior analysis leading to a bachelor's or higher degree; or a program in applied behavior analysis leading to a certificate which ensures that each student holds a bachelor's degree or a higher degree in subject areas, including, but not limited to, psychology, education or other subject areas that address learning and behavioral change as determined by the Department.

Paragraph (1) of subdivision (a) of section 59.14 of the Regulations of the Commissioner of Education is amended to implement that portion of Chapter 554 of the Laws of 2013 which includes applied behavior analysis among the professions for which a waiver of certain corporate practice restrictions is available.

Subpart 79-17 is added to the Regulations of the Commissioner of Education to establish the requirements for licensure as a licensed behavior analyst, which include, but are not limited to, professional education, experience, examination, limited permit requirements and reiterates the exemptions to the practice of applied behavior analysis set forth in section 8807 of the Education Law, as added by Chapter 554 of the Laws of 2013 and Chapter 8 of the Laws of 2014.

Subpart 79-18 is added to the Regulations of the Commissioner of Education to establish the requirements for certification as a certified behavior analyst assistant, which include, but are not limited to, professional education, experience, examination, limited permit requirements and reiterates the exemptions to the practice of applied behavior analysis set forth in section 8807 of the Education Law, as added by Chapter 554 of the Laws of 2013 and Chapter 8 of the Laws of 2014.

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. EDU-52-14-00015-EP, Issue of December 31, 2014. The emergency rule will expire May 14, 2015.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority

to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Section 6503-a of the Education Law authorizes the State Education Department to issue a waiver of certain corporate practice restrictions for specified professions.

Section 6504 of the Education Law authorizes the Board of Regents to supervise the admission to and regulation of the practice of the professions.

Subparagraph (a) of subdivision (2) of section 6507 of the Education Law authorizes the Commissioner of Education to promulgate regulations in administering the admission to and the practice of the professions.

Section 6509(9) of the Education Law authorizes the Board of Regents to define unprofessional conduct in the professions.

Section 8800 of the Education Law, as added by Chapter 554 of the Laws of 2013, establishes the new profession of applied behavior analysis.

Section 8801 of the Education Law, as added by Chapter 554 of the Laws of 2013, defines the profession of applied behavior analysis.

Section 8802 of the Education Law, as added by Chapter 554 of the Laws of 2013, defines the practice of applied behavior analysis by licensed behavior analysts and certified behavior analyst assistants.

Section 8803 of the Education Law, as added by Chapter 554 of the Laws of 2013, establishes protection for the titles "licensed behavior analyst" and "certified behavior analyst assistant."

Section 8804 of the Education Law, as added by Chapter 554 of the Laws of 2013, establishes the education, experience, examination, age, and moral character requirements for applicants seeking licensure as a licensed behavior analyst assistant and certification as a certified behavior analyst assistant.

Section 8805 of the Education Law, as added by Chapter 554 of the Laws of 2013, establishes a time limited licensure and certification pathway for individuals who meet the requirements for licensure or certification as a licensed behavior analyst or certified behavior analyst, except for the examination, experience and education requirements, if they are certified or registered by a national certifying body having certification or registration standards that are acceptable to the Commissioner of Education, and submit an application to the State Education Department within two years of the January 10, 2014 effective date of this provision of the statute.

Section 8806 of the Education Law, as added by Chapter 554 of the Laws of 2013, establish the requirements for limited permits for applicants for licensure as licensed behavior analysts and certification as certified behavior analyst assistants.

Section 8807 of the Education Law, as added by Chapter 554 of the Laws of 2013 and amended by Chapter 8 of the Laws of 2014, establishes exemptions from the applied behavior analysis licensure and certification requirements.

Section 8808 of the Education Law, as added by Chapter 554 of the Laws of 2013, authorizes the Board of Regents, upon the recommendation of the Commissioner of Education, to appoint a State Board for Applied Behavior Analysis to assist on matters of licensing and professional conduct.

2. LEGISLATIVE OBJECTIVES:

The proposed rule implements Chapter 554 of the Laws of 2013, which added Article 167 to the Education Law, by establishing the requirements for licensure as a licensed behavior analyst and certification as a certified behavior analyst assistant which include, but are not limited to, professional education, experience, examination and limited permit requirements and reiterates the exemptions to the practice of applied behavior analysis set forth in section 8807 of the Education Law, as added by Chapter 554 of the Laws of 2013 and amended by Chapter 8 of the Laws of 2014. Chapter 8 of the Laws of 2014 amended Chapter 554 to make changes necessary to the implementation of Chapter 554. The proposed rule also implements the statute by subjecting licensed behavior analysts and certified behavior analyst assistants to the general unprofessional conduct provisions for the health professions. In addition, the proposed rule implements the statute by establishing the program registration requirements for licensed behavior analyst and certified behavior analyst assistant education programs, which include registration and curriculum requirements for programs offered in New York State that lead to licensure or certification. The proposed rule further implements the statute by including applied behavior analysis among the professions for which a waiver of certain corporate practice restrictions is available.

Finally, Chapter 554 of the Laws of 2013 also provides a grandparenting licensure/certification pathway, which the State Education Department is referring to as Pathway One, for individuals who are certified or registered by a national certifying body and submit an attestation of moral character and an application to the State Education Department within two years of the January 10, 2014 effective date of this provision of the statute. Although Pathway One will expire on January 9, 2016, the licenses and certifications issued under it will not.

3. NEEDS AND BENEFITS:

The purpose of the proposed rule is to increase access to needed applied behavior analysis services to provide behavioral health treatment for persons with autism and autism spectrum disorders and related disorders, while protecting the public, by establishing licensure requirements for behavior analysts and certification requirements for behavior analyst assistants. The proposed rule is necessary to conform the Rules of the Board of Regents and the Regulations of the Commissioner of Education to Chapter 554 of the Laws of 2013 and Chapter 8 of the Laws of 2014.

As required by statute, the proposed rule is also needed to establish the program registration requirements for behavior analyst and behavior analyst assistant education programs offered in New York State that lead to licensure or certification. Additionally, the proposed rule is needed to subject licensed behavior analysts and certified behavior analyst assistants to the general unprofessional conduct provisions for the health professions. The proposed rule is further needed to include applied behavior analysis among the professions for which a waiver of certain corporate practice restrictions is available and reiterate the exemptions to the practice of applied behavior analysis set forth in statute.

4. COSTS:

(a) Costs to State government: The proposed rule implements statutory requirements and establishes standards as directed by statute, and will not impose any additional costs on State government beyond those imposed by the statutory requirements.

(b) Costs to local government: There are no additional costs to local governments.

(c) Cost to private regulated parties: The proposed rule does not impose any additional costs to regulated parties beyond those imposed by statute. As required by Education Law section 8804(1)(g), applicants for certification as a certified behavior analyst assistant must pay a fee to the Department of \$150 for their initial license and a triennial registration fee of \$75. Additionally, as required by Education Law section 8804(2)(g), applicants for licensure as a licensed behavior analyst must pay a fee to the Department of \$200 for their initial license and a triennial registration fee of \$100. Higher education institutions that seek to register behavior analyst and/or behavior analyst assistant education programs with the Department, including those in rural areas, may incur costs related to the development and maintenance of such education programs and their registration. It is anticipated that such costs will be minimal because several higher education institutions are already offering courses that would or could, with adjustments, meet the registration requirements for a behavior analyst and/or behavior analyst assistant education programs, and that higher education institutions should be able to use their existing staffs and resources to revise their courses and curricula to meet the licensed behavior analyst and/or certified behavior analyst assistant requirements.

(d) Cost to the regulatory agency: The proposed rule does not impose any additional costs on the Department beyond those imposed by statute. Any associated costs to the Department will be offset by the fees charged to applicants and no significant cost will result to the Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule implements the requirements of Article 167 of the Education Law, as added by Chapter 554 of the Laws of 2013 and amended by Chapter 8 of the Laws of 2014, by establishing the standards for individuals to be licensed to practice as licensed behavior analysts and certified to practice as certified behavior analyst assistants and standards for behavior analyst and behavior analyst assistant education programs provided by institutions of higher education to ensure that only those properly educated and prepared to be licensed behavior analysts and certified behavior analyst assistants hold themselves out as such. It does not impose any program, service, duty, or responsibility upon local governments.

6. PAPERWORK:

The proposed rule imposes no new reporting or other paperwork requirements beyond those imposed by the statute.

7. DUPLICATION:

The proposed rule is necessary to implement Chapter 554 of the Laws of 2013 and Chapter 8 of the Laws of 2014. There are no other state or federal requirements on the subject matter of this proposed rule. Therefore, the proposed rule does not duplicate other existing state or federal requirements.

8. ALTERNATIVES:

The proposed rule is necessary to conform the Rules of the Board of Regents and the Regulations of the Commissioner of Education to Chapter 554 of the Laws of 2013 and Chapter 8 of the Laws of 2014. There are no significant alternatives to the proposed rule and none were considered.

9. FEDERAL STANDARDS:

Since, there are no applicable federal standards for behavior analysts and behavior analyst assistants and behavior analyst and behavior analyst assistant education programs, the rule does not exceed any minimum federal standards for the same or similar subject areas.

10. COMPLIANCE SCHEDULE:

The proposed rule is necessary to conform the Rules of the Board of Regents and the Regulations of the Commissioner of Education to Chapter 554 of the Laws of 2013 and Chapter 8 of the Laws of 2014. With the exception of the Pathway One licensure provisions described above, which became effective January 10, 2014, all the Education Law provisions of Chapter 554 of the Laws of 2013 and Chapter 8 of the Laws of 2014 became effective July 1, 2014. The proposed rule was adopted by the Board of Regents on an emergency basis effective December 16, 2014 and is expected to be presented for permanent adoption at the March 16-17, 2015 Regents meeting with an effective date of April 1, 2015. It is anticipated that applicants for licensure or certification will be able to comply with the proposed rule by the effective date.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The purpose of the proposed rule is to implement Chapter 554 of the Laws of 2013, which establishes and defines the practice of the profession of applied behavior analysis (ABA) and Chapter 8 of the Laws of 2014, which amended Chapter 554 to make changes necessary to the implementation of Chapter 554.

Chapter 554 also provides a grandparenting licensure/certification pathway, which the State Education Department is referring to as Pathway One, for individuals who are certified or registered by a national certifying body and submit an attestation of moral character and an application to the State Education Department within two years of the January 10, 2014 effective date of this provision of the statute. Although Pathway One will expire on January 9, 2016, the licenses and certifications issued under it will not.

As of November 2014, the Behavior Analyst Certification Board listed 1,014 residents of New York State who possess a certification that may enable them to be licensed by New York State under the grandparenting provisions of the law that will remain in effect until January 9, 2016. The number of applicants who have been licensed in New York State under these grandparenting provisions as of December 4, 2014 is 551, including 104 persons who are also licensed in other professions in New York State, and 64 who reside outside the State. The number of persons who are certified as teachers in New York State who also hold this national certification is 173. As of December 1, 2014, the number of persons who have applied for licensure to whom the current regulations would apply is approximately 20. These 20 individuals are not eligible for licensure under Pathway One.

Additionally, the number of individuals who are providing applied behavior analysis services and activities and employed by a small business or local government in New York State is currently not available and is unknown. Some of these unknown individuals may further fall under one of the exemptions to the licensure and certification requirements set forth in section 8807 of the Education Law, as added by Chapter 554 of the Laws of 2013 and amended by Chapter 8 of the Laws of 2014. However, the number of these exempted individuals is not available and is unknown.

2. COMPLIANCE REQUIREMENTS:

The proposed rule implements Chapter 554 of the Laws of 2013 and Chapter 8 of the Laws of 2014, which establish the new profession of applied behavior analysis and the requirements for licensure as a licensed behavior analyst and certification as a certified behavior analyst assistant. These requirements include, but are not limited to, professional education, experience, examination and limited permit requirements. The proposed rule also reiterates the exemptions to the practice of applied behavior analysis set forth in section 8807 of the Education Law, as added by Chapter 554 of the Laws of 2013 and amended by Chapter 8 of the Laws of 2014. Individuals seeking licensure to practice in New York State will be required to submit an application with the State Education Department and meet all the requirements for licensure, which include, but are not limited to, the professional study, experience, and examination requirements specified in the proposed rule. Individuals seeking to work in New York State after completing all requirements for licensure except the examination and/or experience requirements will be required to submit a limited permit application to the State Education Department as specified in the proposed rule.

3. PROFESSIONAL SERVICES:

Unless one of the exemptions to the licensure and certification requirements apply to their employees, who provide applied behavior analysis services in the course of their employment, the proposed rule will require small businesses and local governments to use only licensed behavior analysts and/or certified behavior analyst assistants to provide applied behavior services. It is not anticipated that small businesses or local governments will need professional services to comply with the proposed rule.

4. COMPLIANCE COSTS:

The proposed rule does not impose any direct costs on small business or local governments. As stated above, unless one of the exemptions to the licensure and certification requirements set forth in section 8807 of the

Education Law, as added by Chapter 554 of the Laws of 2013 and amended by Chapter 8 of the Laws of 2014, applies to their employees, the proposed rule will require small businesses and local governments to use only licensed behavior analysts and/or certified behavior analyst assistants to provide applied behavior services. Sections 8804(1)(g) and (2)(g) of the Education Law, as added by Chapter 554 of the Laws of 2013, require a fee of \$150 for an initial license and a triennial registration fee of \$75 for certified behavior analyst assistants and a fee of \$200 for an initial license and a triennial registration fee of \$100 for each triennial registration period for licensed behavior analysts. Section 8806(3) of the Education Law, as added by Chapter 554 of the Laws of 2013, imposes a limited permit fee of \$70 to allow an individual who meets all the requirements for licensure, except the examination and/or experience requirements, to practice under supervision for one year.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule will not impose any technological requirements on regulated parties, including those that are classified as small businesses, and the proposed rule is economically feasible. See above "Compliance Costs" for the economic impact of the regulation.

6. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement the provisions of Chapter 554 of the Laws of 2013 and Chapter 8 of the Laws of 2014, which established the new profession of applied behavior analysis and the requirements for licensure as a licensed behavior analyst and certification as a certified behavior analyst assistant. These requirements include, but are not limited to, professional education, experience, examination and limited permit requirements. Chapter 554 and Chapter 8 authorize the State Education Department to define, in regulation, the standards to be met for licensure as a licensed behavior analyst and certification as a certified behavior analyst assistant. Individuals seeking licensure to practice in New York State will be required to submit an application with the State Education Department and meet all the requirements for licensure, which include, but are not limited to, the professional study, experience, and examination requirements specified in the proposed rule. Individuals seeking to work in New York State after completing all requirements for licensure except the examination and/or experience requirements will be required to submit a limited permit application to the State Education Department as specified in the proposed rule. The proposed fee structure was determined by the legislature to be the minimum needed to support additional costs. It is on a par with fee structures in other professions. It was determined that the licensure of behavior analysts and certification of behavior analyst assistants who meet minimum requirements established in the proposed rule best ensures the protection of the health and safety of the public.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

Statewide organizations representing all parties having an interest in the practice of applied behavior analysis, including the State Board for Applied Behavior Analysis, behavior analyst and behavior analyst assistant professional associations, psychological professional associations (because applied behavior analysis is encompassed in the practice of psychology), and applied behavior analysis educators, which include members who have experience in a small business environment, were consulted and provided input into the development of the proposed rule and their comments were considered in its development.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule will apply to all individuals seeking licensure as licensed behavior analysts or certification as a certified behavior analyst assistant and to higher education institutions that seek to register behavior analyst and/or behavior analyst assistant education programs with the State Education Department, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

As required by Chapter 554 of the Laws of 2013 and Chapter 8 of the Laws of 2014, which both became effective July 1, 2014 (with the exception of the grandfathering provisions set forth below), the proposed rule establishes the new profession of applied behavior analysis and the requirements for licensure as a licensed behavior analyst and certification as a certified behavior analyst assistant which include, but are not limited to, professional education, experience, examination and limited permit requirements and reiterates the exemptions to the practice of applied behavior analysis set forth in section 8807 of the Education Law, as added by Chapter 554 of the Laws of 2013 and amended by Chapter 8 of the Laws of 2014. Chapter 8 amended Chapter 554 to make changes necessary to the implementation of Chapter 554.

Chapter 554 of the Laws of 2013 also provides a grandparenting licensure/certification pathway, which the State Education Department is

referring to as Pathway One, for individuals who are certified or registered by a national certifying body and submit an attestation of moral character and an application to the State Education Department within two years of the January 10, 2014 effective date of this provision of the statute. Although Pathway One will expire on January 9, 2016, the licenses and certifications issued under it will not.

The proposed amendment to section 29.2 of the Rules of the Board of Regents and section 59.14 of the Regulations of the Commissioner of Education and addition of sections 52.44, 52.45 and Subparts 79-17 and 79-18 of the Regulations of the Commissioner of Education implement the licensure requirements for licensed behavior analysts and the certification requirements for certified behavior analyst assistants of Chapter 554.

The proposed amendment to subdivisions (a) and (b) of section 29.2 of the Rules of the Board of Regents adds the profession of applied behavior analysis to the list of health care professions that are subject to its unprofessional conduct provisions.

The proposed amendment to section 52.44 of the Regulations of the Commissioner of Education establishes the program registration requirements for licensed behavior analyst education programs. These requirements include registration and curriculum requirements for programs offered in New York State that lead to licensure as a licensed behavior analyst. The proposed amendment requires licensed behavior analyst education programs to be a program in applied behavior analysis leading to a master's degree or higher degree, which must require at least one year of full-time study or the equivalent; or a program in applied behavior analysis leading to an advanced certificate which ensures that each student holds a master's or higher degree in subject areas, including, but not limited to, psychology, education or other subject areas that address learning and behavioral change as determined by the Department.

The proposed amendment to section 52.45 of the Regulations of the Commissioner of Education establishes the requirements for certified behavior analyst assistant education programs. These requirements include registration and curriculum requirements for programs offered in New York State that lead to certification as a certified behavior analyst assistant. The proposed amendment requires certified behavior analyst assistant education programs to be a program in applied behavior analysis leading to a bachelor's or higher degree; or a program in applied behavior analysis leading to a certificate which ensures that each student holds a bachelor's degree or a higher degree in subject areas, including, but not limited to, psychology, education or other subject areas that address learning and behavioral change as determined by the Department.

The proposed amendment to paragraph (1) of subdivision (a) of section 59.14 of the Regulations of the Commissioner of Education implements that portion of Chapter 554 of the Laws of 2013 which includes applied behavior analysis among the professions for which a waiver of certain corporate practice restrictions is available.

Additionally, the proposed addition of Subpart 79-17 of the Regulations of the Commissioner of Education establishes the requirements for licensure as a licensed behavior analyst, which include, but are not limited to, professional education, experience, examination and limited permit requirements and reiterates the exemptions to the practice of applied behavior analysis set forth in Education Law 8807, as added by Chapter 554 and Chapter 8.

The proposed addition of Subpart 79-18 of the Regulations of the Commissioner of Education establishes the requirements for certification as a certified behavior analyst assistant, which include, but are not limited to, professional education, experience, examination and limited permit requirements and reiterates the exemptions to the practice of applied behavior analysis set forth in Education Law section 8807, as added by Chapter 554 and Chapter 8.

The proposed rule will not require any higher education institution to offer an education program that leads to licensure for behavior analysts and/or certification for behavior analyst assistants. The proposed rule will not impose any reporting, recordkeeping or other compliance requirements on higher education institutions in rural areas, unless they seek to register a behavior analyst and/or a behavior analyst assistant education program(s) with the Department. Such higher education institutions will have reporting and record keeping obligations related to the development and maintenance of their behavior analyst and/or behavior analyst assistant education programs, as well as the registration of such programs with the Department.

Individuals seeking licensure to practice in New York State will be required to submit an application to the State Education Department and meet all the requirements for licensure, which include, but are not limited to, the professional study, experience and examination requirements specified in the proposed rule. Individuals seeking to work in New York State after completing all requirements for licensure except the examination and/or experience requirements will be required to submit a limited permit application to the State Education Department.

The proposed rule will not impose any additional professional service requirements on entities in rural areas.

3. COSTS:

With respect to individuals seeking licensure as a licensed behavior analyst or certification as a certified behavior analyst assistant from the State Education Department, including those in rural areas, the proposed rule does not impose any additional costs beyond those required by statute. As required by Education Law section 8804(1)(g), applicants for certification as a certified behavior analyst assistant must pay a fee to the Department of \$150 for their initial license and a triennial registration fee of \$75. Additionally, as required by Education Law section 8804(2)(g), applicants for licensure as a licensed behavior analyst must pay a fee to the State Education Department of \$200 for their initial license and a triennial registration fee of \$100.

Moreover, after the expiration Pathway One on January 9, 2016, applicants for licensure as a licensed behavior analyst will incur the cost of a master's degree-level or higher degree-level education and applicants for certification as a certified behavior analyst assistant will incur the cost of a bachelor's degree-level or higher degree-level education.

The proposed rule will not require higher education institutions to offer education programs that prepare individuals for licensure as a licensed behavior analyst or certification as a certified behavior analyst assistant. However, higher education institutions that seek to register behavior analyst and/or behavior analyst assistant education programs with the Department, including those in rural areas, may incur costs related to the development and maintenance of such education programs and their registration. It is anticipated that such costs will be minimal because several higher education institutions are already offering courses that would or could, with adjustments, meet the registration requirements for a behavior analyst and/or behavior analyst assistant education programs, and that higher education institutions should be able to use their existing staffs and resources to revise their courses and curricula to meet the licensed behavior analyst and/or certified behavior analyst assistant requirements.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement the provisions of Chapter 554 of the Laws of 2013 and Chapter 8 of the Laws of 2014, which establish the new profession of applied behavior analysis and the licensure requirements for licensed behavior analysts and certification requirements for certified behavior analyst assistants, which include education, experience, examination, age, moral character and fee requirements. The statutory requirements do not make exceptions for individuals who live or work in rural areas. Nor do they make exceptions for higher education institutions located in rural areas. Thus, the State Education Department has determined that the proposed rule's requirements should apply to all individuals seeking licensure as a licensed behavior analyst or certification as a certified behavior analyst assistant and all higher education institutions seeking to register behavior analyst and/or behavior analyst assistant education programs with the Department, regardless of the geographic location to help insure continuing competency across the State. The Department has also determined that uniform standards for the Department's review of prospective registered behavior analyst and/or behavior analyst assistant education programs are necessary to ensure quality behavior analyst and behavior analyst assistant education in all parts of the State. Because of the nature of the proposed rule, alternative approaches for rural areas were not considered.

5. RURAL AREA PARTICIPATION:

Comments on the proposed rule were solicited from statewide organizations representing all parties having an interest in the practice of applied behavior analysis. These organizations included the State Board for Applied Behavior Analysis and behavior analyst and behavioral analyst assistant professional associations, psychological professional associations because applied behavior analysis is encompassed in the practice of psychology and applied behavior analysis educators. These groups have members who live or work or provide applied behavior analysis education in rural areas.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement the statutory requirements of Chapter 554 of the Laws of 2013 and Chapter 8 of the Laws of 2014, and, therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16 of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed rule is required to implement Chapter 554 of the Laws of 2013 and Chapter 8 of the Laws of 2014, which establish and define the

practice of applied behavior analysis. The proposed amendment to subdivisions (a) and (b) of section 29.2 of the Rules of the Board of Regents adds the profession of applied behavior analysis to the list of health care professions that are subject to its unprofessional conduct provisions. The proposed amendments to sections 52.44 and 52.45 of the Regulations of the Commissioner of Education establish the program registration requirements for behavior analyst and behavior analyst assistant education programs. These requirements include registration and curriculum requirements for programs offered in New York State that lead to licensure as a licensed behavior analyst or certification as a certified behavior analyst assistant. The proposed amendment to paragraph (1) of subdivision (a) of section 59.14 of the Regulations of the Commissioner of Education implement that portion of Chapter 554 of the Laws of 2013 which includes applied behavior analysis among the professions for which a waiver of certain corporate practice restrictions is available. The proposed addition of Subparts 79-17 and 79-18 establish the education, experience, examination, age and moral character requirements for applicants seeking licensure as a licensed behavior analyst or certification as a certified behavior analyst from the State Education Department and reiterate the exemptions to the practice of applied behavior analysis set forth in section 8807 of the Education Law, as added by Chapter 554 of the Laws of 2013 and amended by Chapter 8 of the Laws of 2014. It is not anticipated that the proposed rule will increase or decrease the number of jobs to be filled because, among other things, Chapter 554 of the Laws of 2013 provides for a grandparenting licensure/certification pathway, which the State Education Department is referring to as Pathway One, for individuals who are certified or registered by a national certifying body and submit an attestation of moral character and an application to the State Education Department within two years of the January 10, 2014 effective date of this provision of the statute. Although Pathway One will expire on January 9, 2016, the licenses and certifications issued under it will not. Additionally, the proposed additions of Subparts 79-17 and 79-18 of the Regulations of the Commissioner of Education contain special provisions that exempt certain specified individuals from the licensure and certification requirements. Because it is apparent from the nature of the proposed rule that it will not adversely impact the number of jobs or employment opportunities, a job impact statement is not required and one has not been prepared.

**EMERGENCY/PROPOSED
RULE MAKING
NO HEARING(S) SCHEDULED**

Pathways to Graduation and Regents Diploma Advanced Designation

I.D. No. EDU-13-15-00022-EP

Filing No. 177

Filing Date: 2015-03-17

Effective Date: 2015-03-17

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

Proposed Action: Amendment of section 100.5 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 305(1), (2), 308(not subdivided), 309(not subdivided) and 3204(3)

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to: (1) clarify the requirements for earning a Regents Diploma with advanced designation by students who elect to meet the requirements for a Regents diploma through the mathematics or science pathway options; and (2) allow students to earn a Regents diploma through the humanities pathway by passing either an additional Regents assessment, or Department approved alternative, in a different course in Social Studies or in English.

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the June 15-16, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the June meeting, would be July 1, 2015, the date a Notice of Adoption would be published

in the State Register. However, emergency action to adopt the proposed rule is necessary now for the preservation of the general welfare to immediately adopt technical amendments to: (1) clarify the requirements for earning a Regents Diploma with advanced designation by students who elect to meet the requirements for a Regents diploma through the mathematics or science pathway options; and (2) allow students to earn a Regents diploma through the humanities pathway by passing either an additional Regents assessment or Department approved alternative in a different course in Social Studies or in English; and thereby allow for their timely implementation in the 2014-2015 school year.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the June 15-16, 2015 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.

Subject: Pathways to Graduation and Regents Diploma Advanced Designation.

Purpose: (1) to clarify requirements for earning a Regents Diploma with advanced designation by students who elect to meet the requirements for a Regents diploma through the mathematics or science pathway options; and (2) to allow students to earn a Regents diploma.

Text of emergency/proposed rule: 1. Clause (f) of subparagraph (i) of paragraph (5) of subdivision (a) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective March 17, 2015, as follows:

(f) Requirements for pathway assessments:

(1) In addition to the requirements of clauses (a), (b), (c), (d) and (e) of this subparagraph, students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma pursuant to this section in June 2015 and thereafter, must also pass any one of the following assessments:

(i) one additional [social studies] Regents examination in a different course in social studies or a department-approved alternative; or

(ii) one additional Regents examination in a different course in mathematics or science or a department-approved alternative; or

(iii) one additional examination in a different course in English selected from the list of department-approved alternatives; or

[(ii)] (iv) a pathway assessment (e.g., languages other than English) approved by the commissioner in accordance with section 100.2(f)(2) of this Part; or

[(iv)] (v) a career and technical education (CTE) pathway assessment, approved by the commissioner in accordance with section 100.2(mm) of this Part, following successful completion of a CTE program approved pursuant to paragraph (6) of subdivision (d) of this section; or

[(v)] (vi) an arts pathway assessment approved by the commissioner in accordance with section 100.2(mm) of this Part.

2. Subparagraph (v) of paragraph (7) of subdivision (b) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective March 17, 2015, as follows:

(v) Earning a Regents diploma with advanced designation. To earn a Regents diploma with an advanced designation a student must complete, in addition to the requirements for a Regents diploma:

(a) additional Regents examinations in mathematics as determined by the commissioner or approved alternatives pursuant to section 100.2(f) of this Part.

(1) Beginning with the 2011-2012 school year and thereafter, students must pass two or three commencement level Regents examinations in mathematics through one of the following combinations:

[(1)] (i) Two examination combination. A student must pass:

[(i)] (a) Mathematics A and Mathematics B; or

[(ii)] (b) Mathematics A and Algebra 2/Trigonometry;

or

[(iii)] (c) Mathematics B and Integrated Algebra; or

[(2)] (ii) Three examination combination. A student must pass:

[(i) Mathematics A, Geometry and Algebra 1/Trigonometry; or

(ii) Integrated Algebra, Geometry and Mathematics B;

or

(iii) Integrated Algebra, Geometry and Algebra

2/Trigonometry] (a) Mathematics A or Integrated Algebra or Algebra I (common core); and

(b) Geometry or Geometry (common core); and

(c) Mathematics B or Algebra 2/Trigonometry or Algebra II (common core); and

(2) for students who elect to meet the requirements for a

Regents diploma through the mathematics pathway assessment in 100.5(a)(5)(i)(f)(1)(ii), such students must also pass one additional assessment in mathematics in a different course selected from the list of Department approved alternatives pursuant to 100.2(f) in addition to those specified in item (i) or (ii) of subclause (1) of this clause; and

(b) additional Regents examinations in science as determined by the commissioner or approved alternatives pursuant to section 100.2(f) of this Part.

(1) one additional Regents examination in science or a department-approved alternative, for a total of two Regents examinations, with at least one in life science and at least one in physical science; or

(2) for students who elect to meet the requirements for a Regents diploma through the science pathway assessment in 100.5(a)(5)(i)(f)(1)(ii), such students must also pass one additional Regents examination in science or a department-approved alternative, for a total of three Regents examinations, provided that the total number of science examinations passed include [with] at least one in life science and at least one in physical science; and

(c) . . .

3. Paragraph (2) of subdivision (g) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective March 17, 2015, as follows:

(2) Earning a Regents diploma with advanced designation. Notwithstanding the provisions of this section, to earn a Regents diploma with an advanced designation a student must complete, in addition to the requirements for a Regents diploma, additional Regents examinations in mathematics as determined by the commissioner or approved alternatives pursuant to section 100.2(f) of this Part.

(i) Beginning with the 2011-12 school year and thereafter, students must pass two or three commencement level Regents examinations in mathematics through one of the following combinations:

[(i)] (a) two examination combination. A student must pass:

[(a)] (1) mathematics A and mathematics B; or

[(b)] (2) mathematics A and algebra 2/trigonometry; or

[(c)] (3) mathematics B and integrated algebra; or

[(ii)] (b) three examination combination. A student must pass:

[(a)] (1) mathematics A or integrated algebra or algebra I

(common core); and

[(b)] (2) geometry or geometry (common core); and

[(c)] (3) mathematics B or algebra 2/trigonometry or algebra

II (common core); and

(ii) for students who elect to meet the requirements for a Regents diploma through the mathematics pathway assessment in 100.5(a)(5)(i)(f)(1)(ii), such students must also pass one additional assessment in mathematics in a different course selected from the list of Department approved alternatives pursuant to 100.2(f) in addition to those specified in clause (a) or (b) of subparagraph (i) of this paragraph;

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire June 14, 2015.

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Data, views or arguments may be submitted to: Ken Wagner, Deputy Commissioner, Office of Curriculum, Assessment and Educational Technology, EBA Room 875, 89 Washington Ave., Albany, NY 12234, (518) 474-5915, email: NYSEDP12@nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the State Education Department (SED), with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges SED with the general management and supervision of public schools and the educational work of the State.

Education Law section 207 empowers the Regents and the Commissioner to adopt rules and regulations to carry out laws regarding education and the functions and duties conferred on SED by law.

Education Law section 208 authorizes the Regents to establish examinations as to attainments in learning and to award and confer suitable certificates, diplomas and degrees on persons who satisfactorily meet the requirements prescribed.

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on

students who satisfactorily pass such examinations; and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

Education Law section 305 (1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education, and shall execute all educational policies determined by the Regents.

Education Law section 308 authorizes the Commissioner to enforce and give effect to any provision in the Education Law or in any other general or special law pertaining to the school system of the State or any rule or direction of the Regents.

Education Law section 309 charges the Commissioner with the general supervision of boards of education and their management and conduct of all departments of instruction.

Education Law section 3204 (3) provides for required courses of study in the public schools and authorizes SED to alter the subjects of required instruction.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the authority conferred by the above statutes and is necessary to implement policy enacted by the Regents relating to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement.

3. NEEDS AND BENEFITS:

In January 2015, the Board of Regents amended sections 100.2 and 100.5 of the Commissioner's Regulations to implement the 4+1 Pathways to graduation option allowing students to meet the requirements for a diploma in different ways.

The amendment created graduation pathways assessments in the Humanities, STEM, Biliteracy, CTE and the Arts and requires that, in addition to the four Regents Exams or department-approved alternative assessments required of all students in each of the areas of English, mathematics, science, and social studies, students may pass any one of the following to meet the fifth assessment requirement:

1. one additional social studies Regents examination or Department-approved alternative (Humanities Pathway); or

2. one additional Regents examination in a different course in mathematics or science or a Department-approved alternative (STEM Pathway); or

3. a pathway assessment approved by the Commissioner in accordance with § 100.2(f) of the Commissioner's regulations (which could include a Biliteracy [LOTE] Pathway); or

4. a career and technical education (CTE) pathway assessment, approved by the Commissioner in accordance with proposed § 100.2(mm) following successful completion of a CTE program approved pursuant to § 100.5(d)(6) of the regulations (CTE Pathway); or

5. an arts pathway assessment approved by the Commissioner in accordance with proposed § 100.2(mm).

As a result of adopting the pathways to graduation regulations, it is necessary to clarify how this provision impacts students who wish to earn the Regents Diploma with advanced designation. In addition, the proposed amendment would provide options for students who wish to pursue a pathway in the humanities, by allowing students to earn a Regents diploma through the humanities pathway by passing an additional Regents assessment, or a Department approved alternative, in a different course in either Social Studies or in English.

Currently, students who wish to earn a Regents diploma with advanced designation must meet the Regents diploma requirements (5 assessments) and pass 2 additional mathematics Regents exams and 1 additional science Regents exam for a total of 8 exams. In light of the new pathways options, students who elect to meet the Regents diploma requirements using a mathematics pathway, would not be able to meet the advanced diploma requirements because the Department does not offer enough mathematics Regents exams for 2 additional tests to be completed. The proposed amendment would allow students to meet the additional mathematics assessment requirements with both Regents examinations in math, and/or an examination in a different course selected from the list of Department approved alternatives in math. The proposed amendment would also clarify the requirements for students electing to meet the diploma requirements with a science pathway. They also would have to pass a total of 8 examinations, and if electing a science pathway, would have to pass a total of 3 science assessments rather than the previously required 2 science assessments.

The pathway options in humanities adopted by the Board in January provide only for additional assessments in social studies to meet the humanities requirement. The proposed amendment would allow a student to meet the humanities pathway requirement by passing either an additional Regents assessment or Department approved alternative in a different course in Social Studies or in English.

4. COSTS:

- (a) Costs to State government: none.
- (b) Costs to local government: none.
- (c) Costs to private regulated parties: none.
- (d) Costs to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment does not impose any additional costs on the State, school districts, charter schools or SED. The amendment clarifies the requirements for earning a Regents Diploma with advanced designation by students who elect to meet the requirements for a Regents diploma through the mathematics or science pathway options; and provides options for students who wish to pursue a pathway in the humanities, by allowing students to earn a Regents diploma through the humanities pathway by passing an additional Regents assessment, or a Department approved alternative, in a different course in either Social Studies or in English.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The amendment clarifies the requirements for earning a Regents Diploma with advanced designation by students who elect to meet the requirements for a Regents diploma through the mathematics or science pathway options; and provides options for students who wish to pursue a pathway in the humanities, by allowing students to earn a Regents diploma through the humanities pathway by passing an additional Regents assessment, or a Department approved alternative, in a different course in either Social Studies or in English.

6. PAPERWORK:

The amendment does not impose any specific additional recordkeeping, reporting or other paperwork requirements.

7. DUPLICATION:

The amendment does not duplicate existing State or federal requirements.

8. ALTERNATIVES:

There are no significant alternatives to the rule and none were considered. The amendment clarifies the requirements for earning a Regents Diploma with advanced designation by students who elect to meet the requirements for a Regents diploma through the mathematics or science pathway options; and provides options for students who wish to pursue a pathway in the humanities, by allowing students to earn a Regents diploma through the humanities pathway by passing an additional Regents assessment, or a Department approved alternative, in a different course in either Social Studies or in English.

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated regulated parties will be able to achieve compliance with the rule by its effective date.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment implements Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs. Specifically, the amendment clarifies the requirements for earning a Regents Diploma with advanced designation by students who elect to meet the requirements for a Regents diploma through the mathematics or science pathway options; and provides options for students who wish to pursue a pathway in the humanities, by allowing students to earn a Regents diploma through the humanities pathway by passing an additional Regents assessment, or a Department approved alternative, in a different course in either Social Studies or in English.

The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements and higher levels of student achievement, and does not impose any adverse economic impact, reporting, record keeping or any other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 689 public school districts in the State, and to charter schools that are authorized to issue Regents diplomas with respect to State assessments and high school graduation and diploma requirements. At present, there are 34 charter schools authorized to issue Regents diplomas.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements on school districts and charter schools. The amendment clarifies the requirements for earning a Regents Diploma with advanced

designation by students who elect to meet the requirements for a Regents diploma through the mathematics or science pathway options; and provides options for students who wish to pursue a pathway in the humanities, by allowing students to earn a Regents diploma through the humanities pathway by passing an additional Regents assessment, or a Department approved alternative, in a different course in either Social Studies or in English.

Currently, students who wish to earn a Regents diploma with advanced designation must meet the Regents diploma requirements (5 assessments) and pass 2 additional mathematics Regents exams and 1 additional science Regents exam for a total of 8 exams. In light of the new pathways options, students who elect to meet the Regents diploma requirements using a mathematics pathway, would not be able to meet the advanced diploma requirements because the Department does not offer enough mathematics Regents exams for 2 additional tests to be completed. The proposed amendment would allow students to meet the additional mathematics assessment requirements with both Regents examinations in math, and/or an examination in a different course selected from the list of department approved alternatives in math. The proposed amendment would also clarify the requirements for students electing to meet the diploma requirements with a science pathway. They also would have to pass a total of 8 examinations, and if electing a science pathway, would have to pass a total of 3 science assessments rather than the previously required 2 science assessments.

The pathway options in humanities adopted by the Board in January provide only for additional assessments in social studies to meet the humanities requirement. The proposed amendment would allow a student to meet the humanities pathway requirement by passing either an additional Regents assessment or Department approved alternative in a different course in Social Studies or in English.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements.

4. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on school districts or charter schools. The amendment clarifies the requirements for earning a Regents Diploma with advanced designation by students who elect to meet the requirements for a Regents diploma through the mathematics or science pathway options; and provides options for students who wish to pursue a pathway in the humanities, by allowing students to earn a Regents diploma through the humanities pathway by passing an additional Regents assessment, or a Department approved alternative, in a different course in either Social Studies or in English.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements or costs on school districts or charter schools.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on school districts or charter schools. The amendment clarifies the requirements for earning a Regents Diploma with advanced designation by students who elect to meet the requirements for a Regents diploma through the mathematics or science pathway options; and provides options for students who wish to pursue a pathway in the humanities, by allowing students to earn a Regents diploma through the humanities pathway by passing an additional Regents assessment, or a Department approved alternative, in a different course in either Social Studies or in English.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the rule have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to the chief school officers of the five big city school districts and to charter schools.

8. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs. The 4+1 pathway option would apply beginning with students who first enter grade nine in September 2011 and thereafter, or who are otherwise eligible to receive a high school diploma in June 2015 or thereafter. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule

Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each of the 689 public school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The proposed amendment also applies to charter schools in such areas, to the extent they offer instruction in the high school grades and issue Regents diplomas. At present, there is one charter school located in a rural area that is authorized to issue Regents diplomas.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional compliance requirements on school districts and charter schools that are located in rural areas. The amendment clarifies the requirements for earning a Regents Diploma with advanced designation by students who elect to meet the requirements for a Regents diploma through the mathematics or science pathway options; and provides options for students who wish to pursue a pathway in the humanities, by allowing students to earn a Regents diploma through the humanities pathway by passing an additional Regents assessment, or a Department approved alternative, in a different course in either Social Studies or in English.

Currently, students who wish to earn a Regents diploma with advanced designation must meet the Regents diploma requirements (5 assessments) and pass 2 additional mathematics Regents exams and 1 additional science Regents exam for a total of 8 exams. In light of the new pathways options, students who elect to meet the Regents diploma requirements using a mathematics pathway, would not be able to meet the advanced diploma requirements because the Department does not offer enough mathematics Regents exams for 2 additional tests to be completed. The proposed amendment would allow students to meet the additional mathematics assessment requirements with both Regents examinations in math, and/or an examination in a different course selected from the list of department approved alternatives in math. The proposed amendment would also clarify the requirements for students electing to meet the diploma requirements with a science pathway. They also would have to pass a total of 8 examinations, and if electing a science pathway, would have to pass a total of 3 science assessments rather than the previously required 2 science assessments.

The pathway options in humanities adopted by the Board in January provide only for additional assessments in social studies to meet the humanities requirement. The proposed amendment would allow a student to meet the humanities pathway requirement by passing either an additional Regents assessment or Department approved alternative in a different course in Social Studies or in English.

3. COMPLIANCE COSTS:

The proposed amendment does not impose any additional costs on school districts or charter schools that are located in rural areas. The amendment clarifies the requirements for earning a Regents Diploma with advanced designation by students who elect to meet the requirements for a Regents diploma through the mathematics or science pathway options; and provides options for students who wish to pursue a pathway in the humanities, by allowing students to earn a Regents diploma through the humanities pathway by passing an additional Regents assessment, or a Department approved alternative, in a different course in either Social Studies or in English.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on school districts or charter schools that are located in rural areas. The amendment clarifies the requirements for earning a Regents Diploma with advanced designation by students who elect to meet the requirements for a Regents diploma through the mathematics or science pathway options; and provides options for students who wish to pursue a pathway in the humanities, by allowing students to earn a Regents diploma through the humanities pathway by passing an additional Regents assessment, or a Department approved alternative, in a different course in either Social Studies or in English.

Because the Regents policy upon which the proposed amendment is based applies to all school districts and BOCES in the State and to charter schools authorized to issue Regents diplomas, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt schools in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

6. INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the

State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for high school graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs. The 4+1 pathway option would apply beginning with students who first enter grade nine in September 2011 and thereafter, or who are otherwise eligible to receive a high school diploma in June 2015 or thereafter. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 16. of the Notice of Emergency Adoption and Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment implements Regents policy to establish criteria for multiple, comparably rigorous assessment pathways for graduation and college and career readiness, including pathways that utilize career-focused integrated course and programs. Specifically, the amendment clarifies the requirements for earning a Regents Diploma with advanced designation by students who elect to meet the requirements for a Regents diploma through the mathematics or science pathway options; and provides options for students who wish to pursue a pathway in the humanities, by allowing students to earn a Regents diploma through the humanities pathway by passing an additional Regents assessment, or a Department approved alternative, in a different course in either Social Studies or in English.

The proposed amendment relates to State learning standards, State assessments, graduation and diploma requirements, and higher levels of student achievement, and will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

Local High School Equivalency Diplomas Based Upon Experimental Programs

I.D. No. EDU-52-14-00012-A

Filing No. 174

Filing Date: 2015-03-17

Effective Date: 2015-04-01

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

Action taken: Amendment of section 100.8 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101 (not subdivided), 207 (not subdivided), 208 (not subdivided), 209 (not subdivided), 305(1), (2), 309 (not subdivided) and 3204(3)

Subject: Local high school equivalency diplomas based upon experimental programs.

Purpose: To extend until 6/30/17 the provision for awarding local high school equivalency diplomas based upon experimental programs.

Text or summary was published in: the December 31, 2014 issue of the Register, I.D. No. EDU-52-14-00012-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Profession of Applied Behavior Analysis**I.D. No.** EDU-52-14-00015-A**Filing No.** 176**Filing Date:** 2015-03-17**Effective Date:** 2015-04-01

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

Action taken: Amendment of sections 29.2, 52.44, 52.45, 59.14, Subparts 79-17 and 79-18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 6503-a, 6504(not subdivided), 6507(2)(a), 6509(9), 8800, 8801, 8802, 8803, 8804, 8805, 8806, 8807 and 8808; L. 2013, ch. 554; L. 2014, ch. 8

Subject: Profession of Applied Behavior Analysis.

Purpose: To implement chapter 554 of the Laws of 2013 and chapter 8 of the Laws of 2014.

Substance of final rule: At their March 16-17, 2015 meeting, the Board of Regents amended section 29.2 of the Rules of the Board of Regents, added sections 52.44 and 52.45 to the Regulations of the Commissioner of Education, amended section 59.14 of the Regulations of the Commissioner of Education, and added Subparts 79-17 and 79-18 to the Regulations of the Commissioner of Education, effective April 1, 2015, relating to the licensure of behavior analysts and certification of behavior analyst assistants under Article 167 of the Education Law as added by Chapter 554 of the Laws of 2013 and Chapter 8 of the Laws of 2014. Since publication of the Notice of Emergency Adoption and Proposed Rule Making in the State Register on December 31, 2014, non-substantial revisions were made to the proposed rule as set forth in the Statement Concerning the Regulatory Impact Statement filed herewith. The following is a summary of the substance of the revised rule:

Subdivisions (a) and (b) of section 29.2 of the Rules of the Board of Regents are amended to add the profession of applied behavior analysis to the list of health care professions that are subject to its unprofessional conduct provisions.

Section 52.44 is added to the Regulations of the Commissioner of Education to establish the requirements for licensed behavior analyst education programs. These requirements include registration and curriculum requirements for programs offered in New York State that lead to licensure as a licensed behavior analyst. Section 52.44 further requires licensed behavior analyst education programs to be a program in applied behavior analysis leading to a master's degree or higher degree, which must require at least one year of full-time study or the equivalent; or a program in applied behavioral analysis leading to an advanced certificate which ensures that each student holds a master's or higher degree in subject areas, including, but not limited to, psychology, education or other subject areas that address learning and behavioral change as determined by the Department.

Section 52.45 is added to the Regulations of the Commissioner of Education to establish the requirements for certified behavior analyst assistant education programs. These requirements include registration and curriculum requirements for programs offered in New York State that lead to certification as a certified behavior analyst assistant. Section 52.45 further requires certified behavior analyst assistant education programs to be a program in applied behavior analysis leading to a bachelor's or higher degree; or a program in applied behavior analysis leading to a certificate which ensures that each student holds a bachelor's degree or a higher degree in subject areas, including, but not limited to, psychology, education or other subject areas that address learning and behavioral change as determined by the Department.

Paragraph (1) of subdivision (a) of section 59.14 of the Regulations of the Commissioner of Education is amended to implement that portion of Chapter 554 of the Laws of 2013 which includes applied behavior analysis among the professions for which a waiver of certain corporate practice restrictions is available.

Subpart 79-17 is added to the Regulations of the Commissioner of Education to establish the requirements for licensure as a licensed behavior analyst, which include, but are not limited to, professional education, experience, examination, limited permit requirements and reiterates the exemptions to the practice of applied behavior analysis set forth in section 8807 of the Education Law, as added by Chapter 554 of the Laws of 2013 and Chapter 8 of the Laws of 2014.

Subpart 79-18 is added to the Regulations of the Commissioner of Education to establish the requirements for certification as a certified behavior analyst assistant, which include, but are not limited to, profes-

sional education, experience, examination, limited permit requirements and reiterates the exemptions to the practice of applied behavior analysis set forth in section 8807 of the Education Law, as added by Chapter 554 of the Laws of 2013 and Chapter 8 of the Laws of 2014.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 79-17.3(c) and 79-18.3(c).

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Revised Regulatory Impact Statement

Since the publication of a Notice of Emergency Action and Proposed Rule Making in the State Register on December 31, 2014, a nonsubstantial revision was made to the proposed regulation, as follows:

In subdivision (c) of section 79-17.3 and subdivision (c) of section 79-18.3, the term "passing score" was replaced with the term "converted passing score" in order to clarify the text of the proposed regulation.

The above nonsubstantial revision does not require any changes to the previously published Regulatory Impact Statement.

Revised Regulatory Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on December 31, 2014, a nonsubstantial revision was made to the proposed regulation as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above nonsubstantial revision does not require any changes to the previously published Regulatory Flexibility Analysis for Small Businesses and Local Governments.

Revised Rural Area Flexibility Analysis

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on December 31, 2014, a nonsubstantial revision was made to the proposed regulation as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The above nonsubstantial revision does not require any changes to the previously published Rural Area Flexibility Analysis.

Revised Job Impact Statement

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on December 31, 2014, a nonsubstantial revision was made to the proposed regulation as set forth in the Statement Concerning the Regulatory Impact Statement submitted herewith.

The revised proposed rule is necessary to implement Chapter 554 of the Laws of 2013, which establishes and defines the practice of the new profession of applied behavior analysis and establishes the licensure requirements for licensed behavior analysts and certified behavior analyst assistants to provide behavior health treatment for persons with autism, autism spectrum disorders and related disorders. The revised proposed rule is also necessary to implement Chapter 8 of the Laws of 2014 which amended Chapter 554 to make changes necessary to the implementation of Chapter 554.

The revised proposed rule will not have a substantial impact on jobs and employment opportunities. Because it is evident from the nature of the revised proposed rule that it will not affect job and employment opportunities, no 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.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the December 31, 2014 State Register, 17 comments were received. Several responses commended the State Education Department (SED) for quickly establishing the ABA Board and developing proposed regulations. Support was expressed for the proposed rule's 1,500 hours of supervised experience requirement for licensed behavior analysts (LBA) applicants. Concerns expressed were:

- Experience requirements may create a barrier to licensure for individuals who obtained their experience outside of N.Y. and should be amended to recognize experience obtained under supervisors "certified by a national entity whose certification is accredited by the National Commission for Certifying Agencies" or to allow "equivalent" experience appropriately supervised from other jurisdictions.

DEPARTMENT RESPONSE: SED disagrees. Education Law § 8805 provides a grandparenting licensure/certification pathway (Pathway One)

for individuals who are certified or registered by a national certifying body, submit an attestation of moral character, and apply by January 9, 2016. Sections 79-17.2(e)(1)(ii) and 79-18.2(e)(1)(i) allow individuals who gained their experience in states without ABA licensure to use such experience towards licensure in N.Y. if their supervisor was licensed in a profession (e.g., psychology) that is authorized to provide ABA services within its scope of practice in that state.

- The rule should be revised to make Behavior Analyst Certification Board (BACB) certification the main/permanent requirement for licensure/certification or match BACB standards to ensure equivalent treatment. The proposed rule should not limit licensure to those who provide behavioral health treatment to individuals with autism, autism spectrum disorders and related disorders but should be extended to those outside the scope of an autism diagnosis.

DEPARTMENT RESPONSE: Education Law § 8805 recognizes certification from a national certifying body, like BACB, for licensure purposes for a limited time. Article 167 of the Education Law (which established the ABA profession) does not recognize BACB certification for any other purpose. Pathway One provides for appropriate access to ABA services while appropriate licensing occurs. Article 167 gives the Regents and SED the authority to implement education, experience, supervision, examination, and moral character requirements for applicants for licensure. The proposed rule is consistent with the legislative intent. Education Law §§ 8802(1) and (2) limit the licensure of licensed behavior analysts (LBA) and certification of certified behavior analysts assistants (CBBAs) to individuals who provide ABA services to individuals with autism, autism spectrum disorders and related disorders. Absent a statutory change, the proposed rule cannot expand the scope of practice to include the provision of ABA services to individuals who have a diagnosis other than autism, autism spectrum disorders and related disorders. SED disagrees that clients of professionals not formally trained in ABA will be at risk because §§ 29.1(b)(9) and 29.2(a)(5) provide that it is professional misconduct for a licensed professional to accept and perform professional responsibilities the licensee knows, or has reason to know, he or she is not competent to perform. Education Law § 8807 establishes exemptions to the ABA licensure requirements such that if the provision of ABA services is within the scope of practice of another profession, the licensed professional can provide those services without ABA licensure or BACB's certification.

- The proposed rule might interfere with graduates' ability to apply for both the BACB designation and licensure in N.Y. as it is inconsistent with BACB's standards and rules.

DEPARTMENT RESPONSE: The proposed rule's educational requirements which require coursework in autism, autism spectrum disorders and related disorders, differ from BACB's educational requirements which focus on the general application of ABA. Higher education institutions seeking to offer educational programs leading to licensure as an LBA or certification as a CBAA must be registered under §§ 52.44 and 52.45 of the regulation. However, nothing precludes them from seeking to have their coursework accepted by BACB or impairs an applicant's ability to apply for both the BACB designation and licensure in N.Y. SED provided the proposed rule's education requirements to all higher education institutions with ABA programs so they have the information needed to develop programs that comply with the proposed regulation.

- If the narrow scope of practice of ABA and narrow training requirements take effect, fewer students will come to N.Y. for their training; limiting the ability of institutions to recruit nationally and internationally and exacerbating the shortage of these professionals.

DEPARTMENT RESPONSE: SED disagrees, finding that approximately 50 college and university programs provide degrees, certificates and courses in ABA. All would be eligible to be registered as licensure-qualifying. Other than this commenter, no programs have expressed concern that their graduates may leave N.Y. to practice elsewhere.

- There will be confusion among practitioners and consumers if an acknowledgement is not made of behavior analysts working with populations other "persons with autism and autism spectrum disorders."

DEPARTMENT RESPONSE: SED may issue guidance if this needs to be clarified in the future.

- The proposed rule's two hours of weekly supervision would create a barrier to licensure by increasing time, workload and financial commitments on the part of agencies, supervisors, and applicant for licensure. SED should accept BACB supervision requirements or permit a grandparenting period to allow individuals already in the process of obtaining supervised experience to complete BACB supervision requirements instead.

DEPARTMENT RESPONSE: BACB's supervision requirement for a BCBA is 5% of the total hours spent in supervised experience (i.e., 40 hours of experience would require two hours of supervision). The proposed rule's requirement of two hours of supervision would equate to 5% for those completing 40 hours of experience. Applicants should benefit from intensive supervised experience to provide the best possible ser-

vices to this vulnerable population. Section 79-17.2 provides applicants with the option of completing their supervised experience as part of a master's degree program or advanced certificate program. Education Law § 8805 provides Pathway One for those who are certified or registered by a national certifying body, like BACB, and apply by January 9, 2016. Thus, individuals, who are in the process of completing BACB's supervised experience requirements and obtain their BCBA certification, prior to the expiration of this grandparenting period, can use such certification to apply for licensure. After January 9, 2016, if SED determines there is a barrier to licensure for those already in the process of completing their supervised experience under BACB requirements, it may consider such experience as satisfying the experience requirements for licensure/certification.

- Section 79-17.2(e)(1)(i)(b), which permits supervision by an authorized health care practitioner, is too broad in scope. BACB's supervised experience requirements should be adopted instead. The Department and ABA Board should use their statutory discretion to revise the experience requirement to only permit supervision by an LBA or other licensed professional whose scope of practice, training and competence include designing, delivering and overseeing ABA services, rather than merely prescribing or ordering such services. Confusion may arise if the new regulations do not reference the BACB and its relationship to N.Y.

DEPARTMENT RESPONSE: Under Education Law § 8807's exemptions, if ABA services are provided within the scope of practice of a particular profession, a licensed individual can provide ABA services and supervise applicants for licensure without being an LBA or BACB certified. The supervisor qualification provisions are consistent with this statute. Under §§ 29.1(b)(9) and 29.2(a)(5), it is professional misconduct for a licensed professional to fail to exercise appropriate supervision over a supervisee. SED may issue guidance if it determines there is confusion in the field or among consumers.

- The rule should be revised to adopt the BACB examination for licensure/certification as there are no other psychometrically and legally validated exams in the practice of behavioral analysis and it will save the expense of developing and managing alternative examinations.

DEPARTMENT RESPONSE: SED is reviewing its examination options and will issue a Request for Proposals for the examination which will require a proper job analysis be conducted and the examination be properly validated before use. SED does not believe the BACB test currently tests all competencies needed for N.Y. licensure.

- Including a passing score is unnecessary and may restrict the ABA Board and SED as they investigate options for examinations. Further study is recommended to develop procedures and criteria for identifying an "acceptable" licensing examination.

DEPARTMENT RESPONSE: Sections 79-17.3(c) and 79-18.3(c) do not establish a passing score. These provisions establish a converted score of at least 75 as determined by the ABA Board. To address this misunderstanding, SED made non-substantial revisions in §§ 79-17.3(c) and 79-18.3(c) to replace "passing score" with "converted passing score."

- Under the regulation, after completion of only 150 hours of supervised experience and completion of a degree, the supervisee is eligible to sit for the licensing exam, which is in direct conflict with BACB's requirement that all supervision hours (up to 1,500) be completed prior to sitting for the exam.

DEPARTMENT RESPONSE: The statute provides the Regents and SED with the discretion to permit applicants to sit for the licensure/certification examination prior to completing all of the supervised experience requirements. This is consistent with other professions (e.g., psychology and mental health) and SED is unaware of any issues.

- The limited permit provisions of § 79-17.4 are in direct conflict with the international standard of practice in which persons who have not passed the BACB exam cannot use the titles LBA or CBAA.

DEPARTMENT RESPONSE: Limited permits to practice are authorized by Education Law § 8806 and individuals are subject to supervision under § 79-17.2. Section 79-17.2(c)(3) provides that the setting must provide titles which clearly indicate unlicensed individuals' training status under Education Law § 8807(4). Thus, applicants with limited permits will not be using the title LBA or CBAA while gaining experience. These provisions are similar to the limited permit provisions in other professions, including psychology.

- Sections 52.44(a) and 52.45(a), which establish college and university program registration requirements for programs leading to licensure, should be changed to make them consistent and clear that the subject areas include education and psychology.

DEPARTMENT RESPONSE: These provisions are intended to establish the curricular requirements solely for the registration of programs in Applied Behavior Analysis. Under §§ 79-17.1(b)(2) and 79-18.1(b)(2), individuals who complete registered programs in the professions of psychology or education could seek licensure/certification in the profession of ABA and meet the education requirements for such licensure/certification.

- The time for colleges and universities to register programs should be extended one additional year, from September 1, 2019 to September 1, 2020, to allow sufficient time to develop program requirements and allow for SED approval. SED should consider grandfathering programs at N.Y. colleges and universities containing course sequences that have been approved by BACB and, in states that do not have licensure of LBAs or CBAs, recognize college or university programs already approved by BACB. SED and the ABA Board could allow those programs containing course sequences currently approved by BACB to be considered automatically registered by SED. The proposed regulations appear to permit education requirements to be met by colleges and universities in other states only for programs leading to licensure.

DEPARTMENT RESPONSE: SED's Office of Comparative Education and Office of Professional Education Program Review and several universities have advised that the deadline is achievable, however, SED may consider extending it, if necessary. It is not accurate to say that the proposed regulations permit education requirements to be met by applicants from colleges and universities in other states only for programs leading to licensure. Under the rule, applicants who have completed a master's degree or advanced certificate programs in ABA in all jurisdictions that include curricular content required for licensure/certification in N.Y. may have this education accepted to meet the education requirements for licensure. Applicants would be able to remedy deficiencies and would need to take coursework not required for BCBA certification in autism, autism spectrum disorders and related disorders.

- SED should support a legislative extension of Pathway One to September 1, 2020.

DEPARTMENT RESPONSE: This is unnecessary as 738 LBAs are currently licensed and there should be enough LBAs to provide services by the time Pathway One expires.

NOTICE OF ADOPTION

Certification Requirements for Teaching Assistants

I.D. No. EDU-52-14-00028-A

Filing No. 178

Filing Date: 2015-03-17

Effective Date: 2015-04-01

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

Action taken: Amendment of sections 80-1.1 and 80-5.6 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2), 3001(2), 3004(1), 3006(1)(b) and 3009(1)

Subject: Certification requirements for teaching assistants.

Purpose: To provide extensions in one year increments on the validity of a Level II teaching assistant certificate for candidates pursuing citizenship. It also defines "school year" for the purposes of calculating experience to meet the certification requirements for a Level I, II or III teaching assistant certificate. It further provides a technical amendment to eliminate the words "without fee" in the definition of internship certificate in order to be consistent with other regulations which require a fee for an internship certificate.

Text or summary was published in the December 31, 2014 issue of the Register, I.D. No. EDU-52-14-00028-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Epinephrine Auto-Injectors

I.D. No. EDU-01-15-00011-A

Filing No. 175

Filing Date: 2015-03-17

Effective Date: 2015-04-01

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

Action taken: Addition of section 136.6 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2), 921(1) and (2); L. 2014, ch. 424

Subject: Epinephrine auto-injectors.

Purpose: Prescribe standards for provision, maintenance, and administration of epinephrine auto-injectors in the event of an emergency.

Text or summary was published in the January 7, 2015 issue of the Register, I.D. No. EDU-01-15-00011-P.

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

Text of rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@nysed.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS:

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

Since publication of a Notice of Proposed Rule Making in the State Register on January 7, 2015, the State Education Department received the following comments:

1. COMMENT:

Mandating a specific training program before permitting someone from administering emergency medication, WILL have a monetary effect on districts because it will mean that school functions, sports and trips will require a trained person (of which there will be very few voluntarily trained people for at least the early years of this ruling) meaning that districts will need to send a nurse to fill the training requirement, and not the willing parent or trained volunteer as is now allowed.

DEPARTMENT RESPONSE:

Pursuant to the statute, this regulation is merely permissive and now allows school districts, board of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools to provide and maintain on-site in each instructional school facility epinephrine auto-injectors for use during emergencies in accordance with Public Health Law section 3000-c. If a school chooses to participate and provides epinephrine pursuant to a collaborative agreement for use during emergencies, the regulation, in conformance with the statute, requires that personnel be properly trained by completing a course approved by the Department of Health prior to administration in an emergency situation. The proposed training course will be available online at no cost to schools for those who choose to provide and maintain epinephrine auto-injectors on-site in instructional school facilities.

2. COMMENT:

The proposed rule will require that many individuals be trained for diverse situations. For example, a physical education teacher may be trained because he is a coach, but he will not be accompanying a group on a social studies field trip. The social studies trip will then require another person to be trained. Schools will probably end up not having field trips in order to comply. It is also possible that students will not mention their allergic condition if they feel they could be disqualified from attending an event or preventing their classmates from doing so. This could have devastating consequences.

DEPARTMENT RESPONSE:

Both the statute and regulation govern the provision of epinephrine auto-injectors on-site in instructional school facilities. Instructional school facility is defined by the regulation to only include those buildings or other facilities maintained by a school district, board of cooperative educational services, a county vocational education and extension board, charter school, or non-public elementary and secondary school where

instruction is provided to students pursuant to its curriculum. Therefore, the situations described above would not be impacted by this rule allowing for the provision of epinephrine auto-injectors. Additionally the current State Education Department policy that permits certain licensed health professionals to train an unlicensed person to administer epinephrine via auto-injector to a student with a health care provider order for such, will continue to be permitted.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Supplementary Teaching Certificates in Bilingual Education and English to Speakers of Other Languages (ESOL)

I.D. No. EDU-13-15-00021-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 80-4.3 and 80-5.18 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207 (not subdivided), 305(1), (2), 3001(2), 3004(1), 3006(1)(b) and 3009(1)

Subject: Supplementary Teaching Certificates in Bilingual Education and English to Speakers of Other Languages (ESOL).

Purpose: To provide additional pathways for teacher certification candidates to obtain supplementary bilingual education extension and the ESOL supplementary certificate, for a three year period to conclude on June 30, 2018.

Text of proposed rule:

1. Clause (c) of subparagraph (iii) of paragraph (4) of subdivision (a) of section 80-4.3 of the Regulations of the Commissioner of Education is amended, effective July 1, 2015, to read as follows:

(c) [The] (1) *Except as otherwise provided in this clause, the candidate shall be matriculated in a registered program leading to a bilingual extension of a certificate as a teacher in the classroom teaching service, as prescribed in section 52.21(b)(4) of the Title, provided that such program must require the candidate to pass an assessment of proficiency in the language of the bilingual education extension sought as a condition for entry into the program.*

(2) *Candidates seeking a bilingual extension of a certificate as a teacher in the classroom teaching service during the time period of July 1, 2015 through June 30, 2018, may: (i) submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination bilingual extension assessment, or (ii) submit evidence of having at least two years of satisfactory bilingual teaching experience, in lieu of being matriculated in a registered program leading to a bilingual extension of a certificate as a teacher in the classroom teaching service as otherwise required by this clause.*

2. Subclause (1) of clause (d) of subparagraph (4) of subdivision (a) of section 80-4.3 of the Regulations of the Commissioner of Education is amended, effective July 1, 2015, to read as follows:

(1) *The candidate shall have completed three semester hours in bilingual education as prescribed in the requirements for a bilingual extension, set forth in this section, including study in theories of bilingual education and multicultural perspectives, provided however, that on and after July 1, 2015 until June 30, 2018, candidates who submit evidence of having achieved a satisfactory level of performance on the New York State Teacher Certification Examination bilingual extension assessment, as provided for in clause (c) of this subparagraph, may meet this coursework requirement by submitting evidence of being enrolled in a course satisfactorily meeting the requirements of this subclause, and further provided that the coursework requirement shall not be applicable to candidates who have submitted evidence of having at least two years of satisfactory bilingual teaching experience and having achieved a satisfactory level of performance on the New York State Teacher Certification Examination bilingual extension assessment, as provided for in clause (c) of this subparagraph.*

3. Clause (f) of subparagraph (ii) of paragraph (4) of subdivision (c) of section 80-5.18 of the Regulations of the Commissioner of Education is amended, effective July 1, 2015, to read as follows:

(f) [For] (1) *For candidates seeking a certificate for teaching English to speakers of other languages on and after July 1, 2015 until June 30, 2018, the candidate may meet the requirements of this clause by either:*

(i) *completing, or being enrolled in, a course leading to three semester hours in methods of second language teaching in the elementary and secondary grades; or*

(ii) *by submitting evidence of at least two years of satisfactory experience teaching English to speakers of other languages*

(2) On or after July 1, 2018, candidates seeking a certificate for teaching English to speakers of other languages, the candidate shall have completed six semester hours of coursework in methods of second language teaching in the elementary and secondary grades and six semester hours in teaching literacy skills, as prescribed in the pedagogical core for the initial certificate in this certificate title, set forth in section 80-3.7 of this part.

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building, Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: Peg Rivers, State Education Department, Office of Higher Education, Room 979 EBA, 89 Washington Ave., Albany, NY 12234, (518) 486-3633, email: regcomments@nysed.gov

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

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

Education Law section 207 empowers the Board of Regents and the Commissioner of Education to adopt rules and regulations to carry out the laws of the State regarding education and the functions and duties conferred on the State Education Department by law.

Education Law section 305(1) and (2) provide that the Commissioner, as chief executive officer of the State system of education and of the Board of Regents, shall have general supervision over all schools and institutions subject to the provisions of the Education Law, or of any statute relating to education, and shall execute all educational policies determined by the Board of Regents.

Education Law section 3001(2) establishes certification by the State Education Department as a qualification to teach in the State's public schools.

Education Law section 3004(1) authorizes the Commissioner to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in the State's public schools.

Education Law section 3006(1)(b) provides that the Commissioner may issue any certificates that the Regents prescribe.

Education Law section 3009(1) provides that no part of the school moneys apportioned to a district shall be applied to the payment of the salary of an unqualified teacher, nor shall his salary or part thereof, be collected by a district tax except as provided in the Education Law.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority in that it will provide additional pathways to obtain the supplementary bilingual education extension and the English to Speakers of Other Languages (ESOL) supplementary certificate for a limited period and thereby ensure that there are sufficient numbers of certified ESOL teachers and certified content area teachers with bilingual education extensions to meet the educational needs of students who are English Language Learners pursuant to Commissioner's Regulations Part 154.

NEEDS AND BENEFITS:

Over the past 10 years, New York State ELL student enrollment has increased by 20 percent. According to the U.S. Department of Education, ELL student enrollment has increased by 18 percent nationally. Currently in the State, over 230,000 ELLs make up 8.9 percent of the total public student population. Students in the State speak over 140 languages, with 61.5 percent of ELL students having Spanish as their home language. In addition, 41.2 percent of ELL students were born outside of the United States.

In the landmark 1974 decision, *Lau v. Nichols*, the United States Supreme Court established the right of ELL students to have "a meaningful opportunity to participate in the educational program." That same year, an agreement between the New York City Board of Education and ASPIRA of New York (called the ASPIRA Consent Decree) assured that ELL students would be provided bilingual education. As such, ELL students must be provided with equal access to all school programs and services offered to non-ELL students, including access to programs required for graduation. Education Law § 3204 and Commissioner's Regulations Part 154 contain standards for educational services provided to ELL students in the State.

At its September 2014 meeting, the Board of Regents adopted a number of changes to Commissioner's Regulations Part 154, including the addition of a Section 154-2 which establishes standards for English language learner ("ELL") programs beginning with the 2015-2016 school year in school districts and BOCES to assure that such students are provided opportunities to achieve the same educational goals and standards that have

been established by the Board of Regents for all students. In order to meet the requirements of this regulation, some districts and BOCES may need to hire additional certified ESOL teachers and certified content area teachers with bilingual education extensions.

School districts have expressed concern that they will not be able find teachers that hold ESOL certification or teachers with Bilingual Education Extensions due to a shortage in these certificate titles.

Teachers with ESOL certification are certified to teach English to students who speak languages other than English as their first language. Teachers who have a supplemental bilingual education extension are teachers certified in a specific content area who have separately demonstrated an ability to speak, read and write in a particular foreign language sufficient to teach that specific content area to English language learners.

Commissioner's Regulations section 80-4.3 currently allows certified teachers in the classroom teaching service to obtain a supplementary bilingual education extension to authorize such teachers to teach bilingual ELL students where there is a demonstrated shortage while the teacher is matriculated in a program at an institution of higher education leading to an extension in bilingual education. The supplementary bilingual education extension currently requires demonstrated Languages Other Than English (LOTE) proficiency and three semester hours of coursework in bilingual education, including study in theories of bilingual education and multicultural perspectives.

Commissioner's Regulations section 80-5.18 currently allows a certified teacher in the classroom teaching service to obtain a supplementary certificate in English as a Second Language to allow these teachers to teach English to speakers of other languages while meeting the requirements for the Initial or Professional ESOL certificate. Currently, a supplementary certificate in ESOL requires six semester hours of content in the area of the certificate title and six hours in literacy. The supplementary certificate is valid for three years as long as the teacher holds a valid permanent, initial or professional certificate.

Both the supplementary bilingual education extension and the supplementary ESOL certificate require a certification signed by the superintendent, attesting to the fact that there is a demonstrated shortage of such certified teachers. In addition, the school district or BOCES will provide appropriate support to the candidate to ensure the maintenance of quality instruction for students, and the district will require the teacher to be enrolled in study at an institution of higher education leading to the Initial or Professional certificate.

The Department is recommending changes, to be effective for a three year period, from July 1, 2015 until June 30, 2018, to the supplementary bilingual education extension and the ESOL supplementary certificate to allow more teachers to be eligible for these certificates. This will assist school districts and BOCES in finding certified ESOL teachers and bilingual teachers to instruct these students.

With respect to the supplementary bilingual education extension, the proposed amendment presents two additional pathways in lieu of matriculation in a registered program to the Board for its consideration.

Pathway I allows a candidate who has completed, or is currently enrolled in, a course leading to three semester hours in bilingual education, including study in theories of bilingual education and multicultural perspectives, to submit evidence of having achieved a satisfactory level of performance on a bilingual extension assessment in lieu of the current requirement to be matriculated in a registered preparation program.

Pathway II allows a candidate to submit evidence of having two years of satisfactory bilingual teaching experience and evidence of a satisfactory level of performance on the bilingual extension assessment in lieu of the current requirement to be matriculated in a registered preparation program.

With respect to the ESOL supplementary certificate, the proposed amendment presents two additional pathways.

Pathway I allows a candidate who has achieved a satisfactory level of performance on the ESOL CST, and who has completed, or is currently enrolled in, a course leading to three semester hours in methods of second language teaching in the elementary and secondary grades to be eligible for the ESOL supplementary certificate. The candidate would have three years to complete the balance of the currently required coursework, which includes three additional semester hours in methods of second language teaching in the elementary and secondary grades, and six semester hours of coursework in teaching literacy skills.

Pathway II allows a candidate who has achieved a satisfactory level of performance on the ESOL CST to submit evidence of having two years of satisfactory experience teaching English to speakers of other languages in lieu of the coursework requirements in methods of second language teaching in the elementary and secondary grades, and in teaching literacy skills. The candidate would have three years to complete the balance of the currently required coursework, as outlined above.

The Department is recommending that these additional pathways for the supplementary bilingual education extension and the ESOL supplementary certificate be available for a three year period, to conclude on

June 30, 2018. If an extension of the time period for these changes becomes necessary, the Department will make a subsequent recommendation to the Board to extend the availability of these pathways prior to expiration of these changes.

COSTS:

(a) Costs to State government: The amendment will not impose any additional costs on State government including the State Education Department. The Department will use existing staff and resources to process applications for supplementary bilingual education extensions and the ESOL supplementary certificates.

(b) Costs to local government: The amendment will not impose any direct costs on local governments, including school districts and BOCES.

(c) Cost to private regulated parties. The proposed amendment will not impose costs on private regulated parties, over and above existing costs for a supplementary bilingual education extension and/or a supplementary certificate in ESOL.

(d) Costs to regulating agency for implementation and continued administration of this rule: As stated above in "Costs to State Government," the amendment will not impose any additional costs on the State Education Department.

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty or responsibility on school districts beyond those already imposed by State law or regulation. The proposed amendment provides additional pathways for candidates to obtain the supplementary bilingual education extension and the ESOL supplementary certificate, for a three year period to conclude on June 30, 2018.

PAPERWORK:

1. With respect to the supplementary bilingual education extension:

A candidate choosing to proceed under Pathway I, who has completed or is currently enrolled in a course leading to three semester hours in bilingual education, including study in theories of bilingual education and multicultural perspectives, shall submit evidence of having achieved a satisfactory level of performance on a bilingual extension assessment in lieu of the current requirement to be matriculated in a registered preparation program.

A candidate choosing to proceed under Pathway II shall submit evidence of having two years of satisfactory bilingual teaching experience and evidence of a satisfactory level of performance on the bilingual extension assessment in lieu of the current requirement to be matriculated in a registered preparation program.

2. With respect to the ESOL supplementary certificate:

A candidate choosing to proceed under Pathway I, who has achieved a satisfactory level of performance on the ESOL CST, and who has completed, or is currently enrolled in, a course leading to three semester hours in methods of second language teaching in the elementary and secondary grades will be eligible for the ESOL supplementary certificate. The candidate would have three years to complete the balance of the currently required coursework, which includes three additional semester hours in methods of second language teaching in the elementary and secondary grades, and six semester hours of coursework in teaching literacy skills.

A candidate choosing to proceed under Pathway II, who has achieved a satisfactory level of performance on the ESOL CST, shall submit evidence of having two years of satisfactory experience teaching English to speakers of other languages in lieu of the coursework requirements in methods of second language teaching in the elementary and secondary grades, and in teaching literacy skills. The candidate would have three years to complete the balance of the currently required coursework.

DUPLICATION:

The proposed amendment does not duplicate existing State or federal requirements.

ALTERNATIVES:

No significant alternatives were considered.

FEDERAL STANDARDS:

There are no Federal standards that address the certification requirements for teaching assistants in New York.

COMPLIANCE SCHEDULE:

It is anticipated that parties will be able to achieve compliance with the rule by its effective date.

Regulatory Flexibility Analysis

The purpose of the proposed amendment is to provide additional pathways for teacher certification candidates to obtain the supplementary bilingual education extension and the ESOL supplementary certificate, for a three year period to conclude on June 30, 2018. The proposed amendment is applicable to certain specified candidates for teacher certification and does not impose any reporting, recordkeeping or other compliance requirements on small businesses or local governments, and will not have an adverse economic impact, on small businesses. Because it is evident from

the nature of the rule that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will affect all teacher certification candidates throughout the State who are seeking either a supplementary bilingual education extension or an English to Speakers of Other Languages (ESOL) supplementary certificate, including those candidates located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The purpose of the proposed rule is to provide additional pathways for teacher certification candidates to obtain the supplementary bilingual education extension and the ESOL supplementary certificate, during a three year period to conclude on June 30, 2018, and thereby ensure that there are sufficient numbers of certified ESOL teachers and certified content area teachers with bilingual education extensions to meet the educational needs of students who are English Language Learners pursuant to Commissioner's Regulations Part 154.

With respect to the supplementary bilingual education extension, the proposed amendment presents two additional pathways in lieu of matriculation in a registered program.

Pathway I allows a candidate who has completed, or is currently enrolled in, a course leading to three semester hours in bilingual education, including study in theories of bilingual education and multicultural perspectives, to submit evidence of having achieved a satisfactory level of performance on a bilingual extension assessment in lieu of the current requirement to be matriculated in a registered preparation program.

Pathway II allows a candidate to submit evidence of having two years of satisfactory bilingual teaching experience and evidence of a satisfactory level of performance on the bilingual extension assessment in lieu of the current requirement to be matriculated in a registered preparation program.

With respect to the ESOL supplementary certificate, the proposed amendment presents two additional pathways.

Pathway I allows a candidate who has achieved a satisfactory level of performance on the ESOL CST, and who has completed, or is currently enrolled in, a course leading to three semester hours in methods of second language teaching in the elementary and secondary grades to be eligible for the ESOL supplementary certificate. The candidate would have three years to complete the balance of the currently required coursework, which includes three additional semester hours in methods of second language teaching in the elementary and secondary grades, and six semester hours of coursework in teaching literacy skills.

Pathway II allows a candidate who has achieved a satisfactory level of performance on the ESOL CST to submit evidence of having two years of satisfactory experience teaching English to speakers of other languages in lieu of the coursework requirements in methods of second language teaching in the elementary and secondary grades, and in teaching literacy skills. The candidate would have three years to complete the balance of the currently required coursework, as outlined above.

3. COMPLIANCE COSTS:

The proposed amendment will not impose costs on private regulated parties located in rural areas, over and above existing costs for certification. The proposed amendment will not impose any additional costs on candidates above those required for a supplementary bilingual education extension and/or a supplementary certificate in ESOL. The amendment will not impose any direct costs on local governments, including school districts and BOCES.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on entities in rural areas beyond those already imposed by State law or regulation. The proposed amendment provides additional pathways for teacher certification candidates to obtain the supplementary bilingual education extension and the ESOL supplementary certificate, for a three year period to conclude on June 30, 2018. The State Education Department does not believe that establishing different standards for candidates who live or work in rural areas is warranted. A uniform standard ensures the quality of certified teachers in all parts of the State.

5. RURAL AREA PARTICIPATION:

The proposed amendment was submitted for review and comment to the Department's Rural Education Advisory Committee, which includes representatives of school districts in rural areas.

Job Impact Statement

The purpose of the proposed amendment is to provide additional pathways for candidates to obtain the supplementary bilingual education extension

and the English to Speakers of Other Languages (ESOL) supplementary certificate, for a three year period to conclude on June 30, 2018, and thereby ensure that there are sufficient numbers of certified ESOL teachers and certified content area teachers with bilingual education extensions to meet the educational needs of students who are English Language Learners pursuant to Part 154 of the Commissioner's Regulations. Because it is evident from the nature of the proposed amendment that it will have no impact on the number of jobs or employment opportunities in New York State, no further 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.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Special Education Itinerant Services (SEIS)

I.D. No. EDU-13-15-00030-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 200.9 of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), (20), 4003(1), (2), 4401(5), 4405(4) and 4410(10); and L. 2014, ch. 56, part A, section 11

Subject: Special Education Itinerant Services (SEIS).

Purpose: To revise the SEIS tuition reimbursement methodology to provide that reimbursement is to be paid upon the actual provision of SEIS to the student, in conformity with Chapter 56 of the Laws of 2014; allow flexibility in how the minimum billable units of service adjustment are applied; and clarify that consultation with a student's regular early childhood provider is expressly included as a potential function of a special education itinerant teacher.

Text of proposed rule: Subparagraph (ix) of paragraph 2 of subdivision (f) of section 200.9 of the Regulations of the Commissioner of Education is amended, effective July 1, 2015, as follows:

(ix) The tuition rate for programs for preschool students with disabilities receiving special education itinerant services pursuant to section 4410(1)(k) of the Education Law, shall be established using the reimbursement methodology as set forth in paragraph (1) of this subdivision and subparagraphs (i) through (viii) of this paragraph, with the following modifications:

(a) ...

(b) ...

(c) Rates for the certified special education teacher providing special education itinerant services shall be published as half hour rates and billing by providers to municipalities must be done in half hour blocks of time. Billable time includes time spent providing direct and/or indirect special education itinerant services as defined in section 200.16(i)(3)(ii) of this Part in accordance with the student's individualized education program (IEP). The difference between the total number of hours employed in the special education itinerant teacher's standard work week minus the hours of direct and/or indirect special education itinerant service hours must be spent on required functions. Such functions include but are not limited to: coordination of service when both special education itinerant services and related services are provided to a student pursuant to section 4410(1)(j) of the Education Law; preparation for and attendance at committee on preschool special education meetings; conferencing with the student's parents; *consultation with the student's regular early childhood provider*, classroom observation; and/or travel for the express purposes of such functions as stated above. For the purpose of this subparagraph, parent conferencing may include parent education for the purpose of enabling parents to perform appropriate follow-up activities at home. Billable time shall not be less than 66 percent [or more than 72 percent] of any special education itinerant teacher's total employment hours; *provided that the approved reimbursement methodology, developed by the commissioner and approved by the Director of the Budget, may adjust this billable time threshold.* Providers shall maintain adequate records to document direct and/or indirect service hours provided as well as time spent on all other activities related to each student served.

(d) Special education itinerant service rates will be calculated so that reimbursable expenditures shall be divided by the product of the number of days in session for which the program operates times the number of direct and/or indirect special education itinerant service hours per day times two. In instances where the special education itinerant services are provided in a group session, i.e., two or more students with a disability within the same block of time, the half hour rate must be prorated

to each student receiving services. Special education itinerant service rates shall be paid [on the basis of enrollment as defined in section 175.6(a)(1) and (2) of this Title for the period of enrollment as defined by the student's IEP] based on the number of half hour units delivered, provided that the total number of units delivered shall not exceed the recommendations for such services in the student's IEP.

(e) ...

Text of proposed rule and any required statements and analyses may be obtained from: Kirti Goswami, State Education Department, Office of Counsel, State Education Building Room 148, 89 Washington Ave., Albany, NY 12234, (518) 474-6400, email: legal@mail.nysed.gov

Data, views or arguments may be submitted to: James P. DeLorenzo, Assistant Commissioner P-12, State Education Department, Office of Special Education, State Education Building, Room 309, 89 Washington Ave., Albany, NY 12234, (518) 402-3353, email: spedpubliccomment@mail.nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Education Law section 101 continues the existence of the Education Department and charges the Department with the general management and supervision of public schools and the educational work of the State.

Education Law 207 grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Education Law 305(1) and (2) provide the Commissioner, as chief executive officer of the State education system, with general supervision over schools and institutions subject to the provisions of education law, and responsibility for executing Regents policies. Section 305(20) authorizes the Commissioner with such powers and duties as are charged by the Regents.

Education Law sections 4003 and 4405(4) authorize the Commissioner of Education to develop a tuition reimbursement methodology for child care institutions, approved private programs and special act school districts. The sections establish that reimbursement rates be effective July first through June thirtieth and subject to approval by the Director of the Budget.

Education Law section 4401(5) establishes the basis for calculating tuition rates.

Education Law section 4410(10) authorizes the Commissioner to annually determine tuition rates for approved special services or programs provided to preschool children in conformance with the methodology established pursuant to Education Law section 4405(4) and subject to the approval of the Director of the Budget.

Section 11 of Part A of Chapter 56 of the Laws of 2014 amended Education Law § 4410(10)(a)(i) to provide that, commencing with the 2015-16 school year, approved programs providing SEIS must be reimbursed based on the actual attendance of preschool children receiving SEIS services.

2. LEGISLATIVE OBJECTIONS:

The proposed amendment is consistent with the above authority and is necessary to conform the Commissioner's Regulations to Education Law § 4410(10)(a)(i), as amended by § 11 of Part A of Chapter 56 of the Laws of 2014.

3. NEEDS AND BENEFITS:

Currently, pursuant to Commissioner's Regulation section 200.9(f)(2)(ix)(d), SEIS rates are paid on the basis of enrollment as defined in section 175.6(a)(1) and (2). Chapter 56 of the Laws of 2014 amended Education Law § 4410(10)(a)(i) to provide that, commencing with the 2015-16 school year, approved programs providing SEIS must be reimbursed based on the actual attendance of preschool children receiving SEIS services. According to the legislative intent contained in the 2014-15 Executive Budget Briefing Book, this provision was recommended by the Executive in order to limit "payment to program operators only for services that are actually provided, incentivizing delivery of these mandated services to children."

In order to effectuate the statutory requirement that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's IEP.

Section 200.9(f)(2)(ix)(c) currently requires that that SEIS billable time may not be less than 66 percent or more than 72 percent of any special education itinerant teacher's total employment hours in order to ensure that a certain percentage of teacher time is spent directly providing instructional services to students. Data analysis and stakeholder discussions conducted as part of a preschool tuition reimbursement study issued by the Department in December 2014 demonstrated that there are certain circumstances in which meeting this billable time threshold may be difficult, for example depending on varying travel time that may be required in certain regions of the State.

In order to allow for individual factors to be considered when applying the billable time adjustment, section 200.9(f)(2)(ix)(c) would be amended to provide that the approved tuition reimbursement methodology, developed by the Commissioner and approved by the Director of the Budget, may alter the billable time threshold.

The SEIS rate reimburses the employment hours of a special education itinerant teacher. These hours include billable time, defined in 200.9(f)(2)(ix)(c) as "time spent providing direct and/or indirect special education itinerant services" and other functions not limited to "coordination of service when both special education itinerant services and related services are provided to a student...preparation for and attendance at committee on preschool special education meetings; conferencing with a student's parents; classroom observation; and/or travel..." The proposed amended regulations would clarify that "consultation with the student's regular early childhood provider" is an expected function of a special education itinerant teacher.

4. COSTS:

a. Costs to State government: None.

b. Costs to local governments: None.

c. Costs to regulated parties: None.

d. Costs to the State Education Department of implementation and continuing compliance: None.

The proposed amendment is necessary to implement § 11 of Part A of Chapter 56 of the Laws of 2014 and does not impose any additional costs on the State, local governments, private regulated parties or the State Education Department beyond those inherent in the statute. Consistent with § 11 of Part A of Chapter 56 of the Laws of 2014, which requires that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's individualized education program (IEP). The proposed amendment would also allow flexibility in how the minimum billable units of service adjustment are applied, and clarify that consultation with a student's regular early childhood provider is expressly included as a potential function of a special education itinerant teacher.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment is necessary in part to implement § 11 of Part A of Chapter 56 of the Laws of 2014 and does not impose any additional program, service, duty or responsibility upon local governments beyond those inherent in the statute. Consistent with § 11 of Part A of Chapter 56 of the Laws of 2014, which requires that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's individualized education program (IEP). The proposed amendment would also allow flexibility in how the minimum billable units of service adjustment are applied, and clarify that consultation with a student's regular early childhood provider is expressly included as a potential function of a special education itinerant teacher.

6. PAPERWORK:

The proposed amendment does not impose any specific additional recordkeeping, reporting or other paperwork requirements.

7. DUPLICATION:

The proposed amendment is necessary in part to implement § 11 of Part A of Chapter 56 of the Laws of 2014 and will not duplicate, overlap or conflict with any other State or federal statute or regulation.

8. ALTERNATIVES:

There are no significant alternatives to the rule and none were considered. The proposed amendment is necessary to implement § 11 of Part A of Chapter 56 of the Laws of 2014. The proposed amendment would also allow flexibility in how the minimum billable units of service adjustment are applied, and clarify that consultation with a student's regular early childhood provider is expressly included as a potential function of a special education itinerant teacher.

9. FEDERAL STANDARDS:

The proposed amendment does not exceed any minimum standards of the federal government for the same or similar subject areas and is not required by federal law or regulations, but will ensure consistency with recent changes to State statute.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties will be able to achieve compliance with the proposed amendment by its effective date. The proposed amendment is necessary in part to implement § 11 of Part A of Chapter 56 of the Laws of 2014 and does not impose any additional compliance requirements or costs beyond those inherent in the statute. Consistent with § 11 of Part A of Chapter 56 of the Laws of 2014, which requires that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's individualized education program (IEP). The proposed amend-

ment would also allow flexibility in how the minimum billable units of service adjustment are applied, and clarify that consultation with a student's regular early childhood provider is expressly included as a potential function of a special education itinerant teacher.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

The proposed amendment is applicable to approved providers of Special Education Itinerant Services (SEIS) to students with disabilities. Approved providers include public school districts, boards of cooperative educational services (BOCES), municipalities, Article 28 hospitals, and private agencies (for-profit or not-for-profit) approved by the Commissioner to provide SEIS. There are 334 approved SEIS programs. Of that number, 236 are private agencies, 73 are public school districts, 16 are BOCES, 6 are municipalities, 2 are Article 28 hospitals, 1 is a State-operated school (School for the Deaf). The Department does not keep data regarding the number of SEIS providers that are small businesses, but of the 213 SEIS providers that submitted financial reports for the 2012-13 year, 96 identified themselves as proprietary, partnership, or for-profit.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements. Currently, pursuant to Commissioner's Regulation section 200.9(f)(2)(ix)(d), SEIS rates are paid on the basis of enrollment as defined in section 175.6(a)(1) and (2). Section 11 of Part A of Chapter 56 of the Laws of 2014 amended Education Law § 4410(10)(a)(i) to provide that, commencing with the 2015-16 school year, approved programs providing SEIS must be reimbursed based on the actual attendance of preschool children receiving SEIS services. According to the legislative intent contained in the 2014-15 Executive Budget Briefing Book, this provision was recommended by the Executive in order to limit "payment to program operators only for services that are actually provided, incentivizing delivery of these mandated services to children." In order to effectuate the statutory requirement that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's IEP.

Section 200.9(f)(2)(ix)(c) currently requires that that SEIS billable time may not be less than 66 percent or more than 72 percent of any special education itinerant teacher's total employment hours in order to ensure that a certain percentage of teacher time is spent directly providing instructional services to students. Data analysis and stakeholder discussions conducted as part of a preschool tuition reimbursement study issued by the Department in December 2014 demonstrated that there are certain circumstances in which meeting this billable time threshold may be difficult, for example depending on varying travel time that may be required in certain regions of the State. In order to allow for individual factors to be considered when applying the billable time adjustment, section 200.9(f)(2)(ix)(c) would be amended to provide that the approved tuition reimbursement methodology, developed by the Commissioner and approved by the Director of the Budget, may alter the billable time threshold.

The SEIS rate reimburses the employment hours of a special education itinerant teacher. These hours include billable time, defined in 200.9(f)(2)(ix)(c) as "time spent providing direct and/or indirect special education itinerant services" and other functions not limited to "coordination of service when both special education itinerant services and related services are provided to a student...preparation for and attendance at committee on preschool special education meetings; conferencing with a student's parents; classroom observation; and/or travel..." The proposed amended regulations would clarify that "consultation with the student's regular early childhood provider" is an expected function of a special education itinerant teacher.

3. PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional professional services requirements.

4. COMPLIANCE COSTS:

The proposed amendment is necessary to implement § 11 of Part A of Chapter 56 of the Laws of 2014 and does not impose any additional costs on small businesses or local governments beyond those inherent in the statute. Consistent with § 11 of Part A of Chapter 56 of the Laws of 2014, which requires that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's individualized education program (IEP). The proposed amendment would also allow flexibility in how the minimum billable units of service adjustment are applied, and clarify that consultation with a student's regular early childhood provider is an expected function of a special education itinerant teacher.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements or costs.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement § 11 of Part A of Chapter 56 of the Laws of 2014 and does not impose any additional compliance requirements or costs. Consistent with § 11 of Part A of Chapter 56 of the Laws of 2014, which requires that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's individualized education program (IEP). The proposed amendment would also allow flexibility in how the minimum billable units of service adjustment are applied, and clarify that consultation with a student's regular early childhood provider is an expected function of a special education itinerant teacher.

7. LOCAL GOVERNMENT PARTICIPATION:

Copies of the rule have been provided to District Superintendents with the request that they distribute them to school districts within their supervisory districts for review and comment. Copies were also provided for review and comment to the chief school officers of the five big city school districts.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to all of the 334 approved providers of Special Education Itinerant Services (SEIS) in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The Department collects data with respect to the county where the provider is located. Of the 334 approved SEIS providers, 84 are located in a county will less than 200,000 inhabitants and 67 are located in a county that has a township with population densities of 150 persons or less per square mile.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES:

The proposed amendment does not impose any additional compliance requirements on entities in rural areas. Currently, pursuant to Commissioner's Regulation section 200.9(f)(2)(ix)(d), SEIS rates are paid on the basis of enrollment as defined in section 175.6(a)(1) and (2). Section 11 of Part A of Chapter 56 of the Laws of 2014 amended Education Law § 4410(10)(a)(i) to provide that, commencing with the 2015-16 school year, approved programs providing SEIS must be reimbursed based on the actual attendance of preschool children receiving SEIS services. According to the legislative intent contained in the 2014-15 Executive Budget Briefing Book, this provision was recommended by the Executive in order to limit "payment to program operators only for services that are actually provided, incentivizing delivery of these mandated services to children." In order to effectuate the statutory requirement that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's IEP.

Section 200.9(f)(2)(ix)(c) currently requires that that SEIS billable time may not be less than 66 percent or more than 72 percent of any special education itinerant teacher's total employment hours in order to ensure that a certain percentage of teacher time is spent directly providing instructional services to students. Data analysis and stakeholder discussions conducted as part of a preschool tuition reimbursement study issued by the Department in December 2014 demonstrated that there are certain circumstances in which meeting this billable time threshold may be difficult, for example depending on varying travel time that may be required in certain regions of the State. In order to allow for individual factors to be considered when applying the billable time adjustment, section 200.9(f)(2)(ix)(c) would be amended to provide that the approved tuition reimbursement methodology, developed by the Commissioner and approved by the Director of the Budget, may alter the billable time threshold.

The SEIS rate reimburses the employment hours of a special education itinerant teacher. These hours include billable time, defined in 200.9(f)(2)(ix)(c) as "time spent providing direct and/or indirect special education itinerant services" and other functions not limited to "coordination of service when both special education itinerant services and related services are provided to a student...preparation for and attendance at committee on preschool special education meetings; conferencing with a student's parents; classroom observation; and/or travel..." The proposed amended regulations would clarify that "consultation with the student's regular early childhood provider" is an expected function of a special education itinerant teacher.

The proposed amendment does not impose any additional professional services requirements.

3. COMPLIANCE COSTS:

The proposed amendment is necessary to implement § 11 of Part A of Chapter 56 of the Laws of 2014 and does not impose any additional costs on the State, local governments, private regulated parties or the State Education Department beyond those inherent in the statute. Consistent with § 11 of Part A of Chapter 56 of the Laws of 2014, which requires that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d)

would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's individualized education program (IEP). The proposed amendment would also allow flexibility in how the minimum billable units of service adjustment are applied, and clarify that consultation with a student's regular early childhood provider is an expected function of a special education itinerant teacher.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment is necessary to implement § 11 of Part A of Chapter 56 of the Laws of 2014 and does not impose any additional compliance requirements or costs on entities in rural areas beyond those inherent in the statute. Consistent with § 11 of Part A of Chapter 56 of the Laws of 2014, which requires that SEIS be reimbursed based on actual attendance, section 200.9(f)(2)(ix)(d) would be amended to require SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's individualized education program (IEP). The proposed amendment would also allow flexibility in how the minimum billable units of service adjustment are applied, and clarify that consultation with a student's regular early childhood provider is an expected function of a special education itinerant teacher.

Because the statute and Regents policy upon which the proposed amendment is based applies to all SEIS providers in the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt providers in rural areas from coverage by the proposed amendment.

5. RURAL AREA PARTICIPATION:

Comments on the proposed amendment were solicited from the Department's Rural Advisory Committee, whose membership includes school districts located in rural areas.

Job Impact Statement

The proposed amendment relates to modifications of the reimbursement methodology for preschool Special Education Itinerant Services (SEIS), and will not have an adverse impact on jobs or employment opportunities. The proposed amendment is necessary to conform the Commissioner's Regulations with § 11 of Part A of Chapter 56 of the Laws of 2014, which amended Education Law § 4410 to require that SEIS be reimbursed based on actual attendance. Consistent with the statute, the proposed amendment requires SEIS rates be paid for each unit of service delivered, not to exceed the recommendations for such services in the student's individualized education program (IEP). The proposed amendment would also allow flexibility in how the minimum billable units of service adjustment are applied, and clarify that consultation with a student's regular early childhood provider is an expected function of a special education itinerant teacher. Because it is evident from the nature of the amendment that it will have a positive impact, or no impact, on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

necessary to reduce harvest of striped bass and to allow New York to remain in compliance with the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan (FMP) for Striped Bass. Non-compliance with the FMP risks a total closure of all of New York's striped bass fisheries.

The promulgation of this regulation on an emergency basis is necessary because the normal rule making process would not allow the rule to take effect before the start of the 2015 striped bass fishing season. New management measures adopted by ASMFC require that striped bass harvests be reduced by at least 25 percent, and that new regulations be enacted before the start of the state's 2015 fishing seasons, as specified in Addendum IV to Amendment 6 of the ASMFC Interstate FMP for Striped Bass. Current regulations allow the recreational season for striped bass on the Hudson River to open on March 16. The new regulations will delay the opening until April 1. This proposed rule must be in effect before March 16.

In addition this rule will open the commercial striped bass season one month earlier and require commercial striped bass harvesters to renew their permits one month earlier. The rule will also suspend the 2015 full share tag allocation requalification process.

It is in the best interests of the general welfare of New York State's recreational and commercial fishing interests not to delay the implementation of these regulations.

Subject: To amend 6 NYCRR Parts 10 and 40 pertaining to commercial and recreational regulations for striped bass.

Purpose: Reduce fishing mortality of striped bass to promote stable fish populations, and to remain in compliance with the ASMFC FMP.

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

Existing paragraph 10.1(b)(18) is amended to read as follows:

(b) Table A. Sportfishing regulations

	Species	Open Season	Minimum length	Daily limit
(18)	Striped Bass (in the Hudson River and tributaries north of the George Washington Bridge and all inland waters)	[March 16] April 1 through November 30	[18'' TL] 18'' to 28'' TL or > 40'' TL (total length see ECL § 13-0339[4])	1

Subparagraph 10.2(j)(2)(f) is amended to read as follows:

(2) Table D: Fishing regulations for Delaware River and its West Branch bordering Pennsylvania

	Species	Open Season	Minimum length	Daily limit
(f)	Striped bass	All year	28''	[2] /

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

Species	Open Season	Minimum length	Possession Limit
Striped Bass (except the Hudson River north of the George Washington Bridge)	April 15 – Dec. 15	[Licensed Party/Charter Boat anglers] 28'' TL [All other anglers 28'' to 40'' TL] [>40'' TL(Total length)] *	[2] / [1] [1]

Species Red drum through Atlantic menhaden remain the same. Paragraph 40.1(g)(4) is repealed.

Department of Environmental Conservation

**EMERGENCY/PROPOSED
RULE MAKING
NO HEARING(S) SCHEDULED**

To Amend 6 NYCRR Parts 10 and 40 Pertaining to Commercial and Recreational Regulations for Striped Bass

I.D. No. ENV-13-15-00031-EP

Filing No. 180

Filing Date: 2015-03-17

Effective Date: 2015-03-17

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

Proposed Action: Amendment of Parts 10 and 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-1521, 13-0339, 13-0347 and 13-0105

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

Specific reasons underlying the finding of necessity: This rule making is

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

Species	Open Season	Minimum length	Trip Limit
Striped Bass (the area east of a line drawn due north from the mouth of Wading River Creek & east of a line at 73 degrees 46 minutes west longitude, which is near the terminus of East Rockaway Inlet.)	[Jul] June 1 - Dec 15#	Not less than [24] 28" TL nor greater than [36] 38" TL	See Subdivision (j) of this section

Species Red drum through Anadromous river herring remain the same. Subparagraph 40.1(j)(8)(v) is amended to read as follows:

(v) Beginning in 2005, and continuing at five year intervals, each striped bass commercial harvesters permit holder in the full share category must file with the department a complete copy of his or her federal or state income tax records from one of the preceding three years. Such tax records must be filed before the June 1 deadline for receipt of applications. Such tax records must demonstrate that the permit holder has, as stated in subparagraph (ii) above, maintained the 50 percent earned income level in order to remain a participant in the full share category. Failure to file a timely and complete copy of federal or state income tax records which demonstrate that the permit holder has maintained the 50 percent earned income level will result in the permit holder being placed into the partial share category. Thereafter, the rules pertaining to partial share permit holders provided in subparagraph (iv) above apply. This requirement shall be suspended in 2015, until either reinstated upon notification by the department or replaced with an alternate system of determining shares and qualifications for shares.

Paragraph 40.1(j)(9) is amended to read as follows:

(9) Applications for striped bass commercial harvesters permits will be accepted until close of business [June] May 1. Any application for a striped bass commercial harvesters permit received after close of business [June] May 1 will not be entertained by the department.

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 June 14, 2015.

Text of rule and any required statements and analyses may be obtained from: Carol Hoffman, NYSDEC, Bureau of Marine Resources, 205 N Belle Mead Road - Suite 1, East Setauket, NY 11733, (631) 444-0476, email: carol.hoffman@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: Pursuant to the State Environmental Quality Review act, a negative declaration is on file with the department.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) section 13-0105 stipulates that the management of the state's anadromous species, such as striped bass, shall be consistent with interstate or state-federal fishery management plans (FMP). ECL sections 11-0303 and 13-0339 authorize New York State Department of Environmental Conservation (DEC) to establish by regulation measures for the management of striped bass, including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, and other management measures. ECL sections 11-1521 and 13-0347 establish additional provisions for striped bass management in the Hudson River and marine district, respectively.

Regulations adopted by DEC must be consistent with the requirements of applicable fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of FMPs adopted pursuant to the Atlantic Coastal Fishery Cooperative Management Act.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries in such a way as to protect this natural resource for its

intrinsic value to the marine ecosystem and to optimize resource use for commercial and recreational harvesters while remaining compliant with marine fisheries conservation and management policies and interstate fishery management plans.

3. Needs and benefits:

This rule making is necessary for New York State to remain in compliance with fishery management plans adopted by the Atlantic States Marine Fisheries Commission (ASMFC). All member states and jurisdictions of ASMFC must comply with the provisions of FMPs and management measures adopted by ASMFC. These FMPs and management measures are designed to promote the long-term sustainability of managed marine species, preserve the States' marine resources, and protect the interests of both commercial and recreational fishermen. All member states must promulgate any regulations necessary to implement the provisions of the FMPs and remain compliant with the FMPs. New York State must amend 6 NYCRR Parts 10 and 40 to ensure that the State's regulations are consistent with recently adopted Addendum IV to Amendment 6 of the ASMFC Interstate Fishery Management Plan for Atlantic Striped Bass. Failure to adopt these regulations may result in New York State being found non-compliant with the recommendations of the FMP and subject to the imposition of a moratorium on the harvest of striped bass in New York State.

More than ninety (90) percent of boat operators who hold a party and charter license also have a striped bass party and charter permit. The striped bass party and charter permit allows customers to harvest two striped bass, and requires operators to maintain trip-level fishing records of catch and effort expended. The regular party and charter license also requires operators to maintain trip level fishing records of catch and effort expended. Repeal of the striped bass party and charter permit ensures all recreational fishers harvest only one striped bass, to remain in compliance with the ASMFC FMP.

The proposal suspends the commercial striped bass harvesters' tag allocation requalification process for 2015, pending an alternative system for determining shares and qualifications, in accordance with the recommendations of the Marine Resources Advisory Council (MRAC). MRAC has recommended procedures to make the commercial striped bass harvesters permits transferable. The transfer process is expected to be enacted in 2016, and the tag allocation process is likely to be replaced with an alternate system of determining allocations and harvester qualifications. Thus, the current 2015 tag allocation process is likely to be rendered obsolete in the near future.

The proposal will open the commercial striped bass season one month earlier and require commercial striped bass harvesters to renew their permits one month earlier. The earlier opening of the commercial striped bass harvest season may offset raising the new minimum size limit, and provide increased opportunities for fishers to harvest striped bass when they are in the bays. The commercial quota would remain as specified in the FMP.

4. Costs:

The proposed rule does not impose any costs to DEC, local municipalities, or the regulated public.

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

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

8. Alternatives:

"No action" alternative: Under this alternative New York State would not amend 6 NYCRR Parts 10 and 40. This alternative was rejected because of New York State's obligations to comply with the ASMFC FMP for Atlantic striped bass.

The ASMFC Interstate Fishery Management Plan for Atlantic striped bass has been amended to provide further protection to the species. DEC must amend 6 NYCRR Sections 10.1, 10.2, and 40.1 to be compliant with the provisions of the ASMFC FMPs.

The "No Acton" alternative would also mean that New York State would not suspend the 2015 commercial tag allocation requalification. This alternative was rejected, because, if the requalification were to occur in 2015, commercial striped bass harvesters would have the burden of submitting tax records to DEC for review, only to have the process rendered obsolete in the near future.

The "No Acton" alternative would also mean that New York State would not open the commercial striped bass season one month earlier and require commercial striped bass harvesters to renew their permits one month earlier. This would deny commercial fishers increased opportunities to harvest striped bass when the fish are in the bays.

9. Federal standards:

The amendment to 6 NYCRR Parts 10 and 40 is in compliance with the recently adopted addendum to the ASMFC FMP for Atlantic striped bass.

10. Compliance schedule:

Regulated parties will be notified by mail, through appropriate news releases and via DEC's website of the changes to the regulations. The proposed regulations will take effect upon filing with the Department of State.

Regulatory Flexibility Analysis

1. Effect of rule:

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

DEC is proposing amendments to 6 NYCRR in order to remain in compliance with Addendum IV to Amendment 6 of the Striped Bass FMP.

The amendment of 6 NYCRR Parts 10 and 40 revises the size and possession limits for the striped bass recreational fishery, in both the marine and coastal district, and inland waters, including the Hudson and Delaware Rivers and their tributaries; as well as new open season dates for the Hudson River and its tributaries. It will also implement new size limits and a new open season date for the marine commercial fishery, temporarily suspend the tag allocation requalification process for 2015, repeal the striped bass party and charter boat permit, and require commercial striped bass harvesters to renew their permits one month earlier.

Specifically, for the Delaware River, the proposal is for one fish at 28 inches Total Length for recreational fisheries. For the Hudson River (north of the George Washington Bridge), the proposal is for one fish, either between 18 and 28 inches total length OR one "trophy" fish of at least 40 inches total length. Additionally, the start date of the open season will be approximately two weeks later, from the current March 16, to the proposed April 1 for the recreational fishery. For the Marine and Coastal Waters, (including Hudson River south of the George Washington Bridge), the proposal is for one fish at 28 inches Total Length for all recreational fishers. The proposal also repeals the striped bass party and charter permit that allows customers to possess two striped bass. For-hire vessels will still need to have a regular party and charter license in order to be able to operate.

For the commercial fishery: the proposal is for a change in the current slot size limit of 24-36 inches Total Length to a proposed slot of 28-38 inches Total Length; as well as a proposal to suspend the commercial striped bass harvesters tag allocation requalification process for 2015, pending an alternative system for determining tag shares and qualifications. Also, this rule will open the commercial striped bass season one month earlier and require commercial striped bass harvesters to renew their permits one month earlier. This rule making may have an impact on the commercial and recreational fisheries, including private recreational fishers, and party and charter boat operators. It may also have an indirect effect on their supporting industries. These proposals are intended to reduce the catch for commercial and recreational fishers as required by ASMFC. In 2014, DEC issued 457 striped bass commercial harvesters permits, 490 party and charter boat licenses, and 444 striped bass party and charter boat permits, in the marine and coastal district. 367 striped bass commercial harvesters received a Full share individual quota allocation of striped bass tags; 90 received a Part share allocation. There are approximately 515 bait licenses sold state-wide each year; an unknown number of these license holders sell bait used to harvest striped bass. The total number of bait and tackle shops in NY is also unknown. In addition, approximately 200 Hudson River marine permit gear licenses are sold annually; most of these permits are used for taking river herring to be used for striped bass bait.

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

2. Compliance requirements:

All commercial licensed fishers, as well as party and charter boat license holders, as part of their mandatory reports to DEC, are already required to maintain daily or trip level fishing records of catch and effort expended.

3. Professional services:

None.

4. Compliance costs:

This rule making will not impose any costs to DEC or local governments. There are no initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule. The proposal may reduce harvests for an unknown number of commercial and recreational fishers.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. There is no additional technology required for small businesses, and this action does not apply to local governments.

6. Minimizing adverse impact:

The promulgation of this regulation is necessary for New York to remain in compliance with the FMP for striped bass. The regulations are intended to protect the striped bass resource and avoid the adverse impacts that would be associated with closure of the fishery due to non-compliance with the FMP. Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment, as well as wholesale and retail outlets and other support industries. These regulations are being adopted in order to stabilize the stocks spawning stock biomass and to allow for rebuilding to the target level.

7. Small business and local government participation:

New York hosted two ASMFC public hearings on Addendum IV to which recreational and commercial fishers were invited. There was no special effort to contact local governments because the proposed rule does not affect them.

8. For rules that either establish or modify a violation or penalties associated with a violation:

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

9. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: DEC will conduct an initial review of the proposed rule within three years, as required by SAPA section 207.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

There are no rural areas within the marine and coastal district. Secondly, the marine and coastal district striped bass fisheries directly affected by the proposed rule are not located adjacent to any rural areas of the State. Five Hudson River watershed (includes the Hudson Valley) counties fall into the rural area category: Columbia, Greene, Putnam, Rensselaer, and Ulster counties. Two Delaware River counties are also in the rural area category: Delaware and Sullivan counties. The proposed regulations will affect individuals who participate in the Atlantic striped bass fishery, and may also have an indirect effect on supporting industries.

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

There is no commercial fishing allowed for striped bass in rural inland waters of New York State. Party and charter boat businesses that target striped bass on the Hudson River are not required to submit fishing reports to DEC. This proposed rule will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas.

3. Costs:

There will be no initial capital or annual costs to comply with the new regulations.

4. Minimizing adverse impact:

The promulgation of this regulation is necessary in order for DEC to comply with the Atlantic States Marine Fisheries Commission Addendum IV to Amendment 6 of the Atlantic Striped Bass Interstate Fishery Management Plan. The regulations are intended to create a sustainable fishery in New York water and avoid the adverse economic and social impacts that would be associated with closure of the fishery. Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect for the fisheries in question, as well as wholesale and retail outlets and other support industries. These regulations are being adopted in order to provide the appropriate level of protection and allow for harvest consistent with the capacity of the resource to sustain such effort.

River herring are harvested in the Hudson River and its tributaries, and used for striped bass bait. Opening the Hudson River striped bass recreational season at a later date will likely not affect many commercial river herring fishers or bait shops. Harvest data reported to DEC show that less than 3% of the total harvest of river herring occurs before April 1st.

5. Rural area participation:

DEC staff met with the affected parties of inland waters at two public hearings, to inform them of the striped bass stock status and initiate discussions of potential fishing restrictions necessary to protect the stock and to maintain acceptable fishing mortality. DEC has also been advised by the Hudson River Estuary Management Advisory Committee to gain their input on the regulation change. Marine and Coastal District fishers were also informed of proposed changes at the November 18, 2014 and January 13, 2015 Marine Resources Advisory Council (MRAC) meetings. DEC has maintained a regular dialogue with fishermen by phone and e-mail regarding the issue. Moreover, DEC has and will continue to provide notice to affected fishers through mailings, newspapers and other media outlets, including those in rural counties and towns.

6. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

DEC will conduct an initial review of the proposed rule within three years, as required by SAPA section 207.

Job Impact Statement

1. Nature of impact: The promulgation of this regulation is necessary in order for DEC to comply with the Atlantic States Marine Fisheries Commission Addendum IV to Amendment 6 of the Atlantic Striped Bass Interstate Fishery Management Plan.

Amendments to 6 NYCRR Parts 10 and 40 will implement possession and size limits for the recreational striped bass fishery, in both the marine and coastal district, and inland waters, including the Hudson and Delaware Rivers and their tributaries, as well as new open season dates for the Hudson River and its tributaries. It will also implement new size limits for the commercial marine fishery, open the commercial season one month earlier; and require commercial striped bass harvesters to renew their permits one month earlier. The rule will also temporarily suspend the striped bass commercial harvester tag allocation requalification process for 2015.

Specifically, the proposed rule decreases the recreational striped bass daily possession limit from two fish to one fish for the Delaware River, including both its West Branch bordering Pennsylvania and East Branch in New York and changes the opening recreational striped bass season date for the Hudson River and tributaries north of the George Washington Bridge from March 16 to April 1. The rule changes the minimum length for recreational striped bass for the Hudson River and tributaries north of the George Washington Bridge, from 18 inches, to either one fish of 18 to 28 inch slot size, or one fish greater than 40 inches. It changes the marine recreational fishing regulations for striped bass from two fish with a minimum length of 28 inches for licensed party and charter boat fishers, and one fish of 28 to 40 inch slot size, plus one fish greater than 40 inches, for private fishers, to one fish at 28 inches for all recreational anglers and repeals the marine and coastal district striped bass party and charter boat permit that allows customers to possess two striped bass. The proposed rule changes the minimum length for commercial striped bass from a 24 to 36 inch slot size, to a 28 to 38 inch slot size. In addition, the proposed rule will open the commercial striped bass season one month earlier and require commercial striped bass harvesters to renew their permits one month earlier. The rule will also temporarily suspend the 2015 tag allocation requalification process for striped bass commercial harvesters.

This rule making may have an impact on the commercial and recreational fisheries, including private recreational fishers, and party and charter boat operators. It may also have an indirect effect on their supporting industries. These proposals may reduce the catch for commercial and recreational fishers.

2. Categories and numbers affected: In 2014, DEC issued 457 striped bass commercial harvesters permits, 490 party and charter boat licenses, and 444 striped bass party and charter boat permits, in the marine and coastal district. 367 striped bass commercial harvesters received a full share individual quota allocation of striped bass tags; 90 received a part share allocation. There are approximately 515 bait licenses sold state-wide each year; an unknown number of these license holders sell bait used to harvest striped bass. The total number of bait and tackle shops in New York is also unknown. In addition, approximately 200 Hudson River marine permit gear licenses are sold annually; most of these permits are used for taking river herring to be used for striped bass bait.

Recreational and commercial fishing is a major generator of revenue in New York. According to the National Marine Fisheries Service, the 2013 dockside value of the striped bass commercial fishery in New York was \$3,393,905. In 2014, the National Marine Fisheries Service also reported 1,079,265 recreational angler trips targeting striped bass in New York. According to the US Fish and Wildlife Service, in 2011, there were 1.9 million recreational anglers in all waters of New York, generating an estimated 2 billion dollars in total expenditures.

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

4. Minimizing adverse impact: The promulgation of this regulation is necessary in order for DEC to comply with the ASMFC Addendum IV to Amendment 6 of the striped bass FMP. The regulations are intended to optimize resource use for commercial and recreational harvesters consistent with fisheries conservation and management policies and interstate fishery management plans. These regulations are being adopted to provide the appropriate level of protection and allow for harvest consistent with the capacity of the resource to sustain such effort.

If the ASMFC determines a state to be in non-compliance with a specific FMP, the state may be subject to a complete prohibition on all fishing for the associated species in the waters of that state until the state does come into compliance with the FMP. The proposed regulations are intended to avoid the adverse economic and social impacts that would be associated with closure of the fishery.

A moratorium on the harvest of striped bass would have a severe adverse impact on the commercial and recreational fisheries, as well as their supporting industries. Ultimately, the maintenance of long-term

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

River herring are used for striped bass bait. Opening the Hudson River striped bass recreational season at a later date will likely not affect many commercial river herring fishers or bait shops. Harvest data reported to DEC show that less than 3% of the total harvest of river herring occurs before April 1.

Commercial striped bass fishers must tag every fish they harvest. Each fisher is issued an individual quota of either a full share of tags or a part share of tags, depending on the percentage of their earned income that comes from fishing. Full share quota fishers would have had to submit tax records to DEC in 2015, to verify that they still qualify to receive a full share of tags. Suspending the striped bass commercial harvesters requalification process for 2015 is not expected to have a large impact on commercial fishers. Those in the part share category can still be upgraded to full share in 2015 by submitting their tax records to DEC. Those in the full share category will remain full share for 2015.

Opening the commercial fishing season date on June 1 instead of July 1 may help offset economic hardships imposed by raising the minimum size limit, and would allow fishers to harvest striped bass when they are inside marine and coastal district bays. The annual pound quota would remain as specified in the FMP.

For-hire vessels in the marine and coastal district are required to have a party and charter boat license. Those who fish for striped bass are additionally required to have a striped bass party and charter boat permit. More than 90 per cent of those who have a party and charter license also have a striped bass party and charter permit. The striped bass party and charter permit allows customers to harvest two striped bass. The current proposal allows all recreational fishers to only harvest one striped bass. If striped bass regulations are again changed in the future, all party and charter boat license holders will be able to harvest the same possession limit.

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

6. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: DEC will conduct an initial review of the rule within three years, as required by SAPA section 207.

Department of Financial Services

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

Independent Dispute Resolution for Emergency Services and Surprise Bills

I.D. No. DFS-52-14-00009-ERP

Filing No. 162

Filing Date: 2015-03-12

Effective Date: 2015-03-31

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

Action Taken: Addition of Part 400 to Title 23 NYCRR.

Statutory authority: Financial Services Law, sections 202, 301, 302 and art. 6; Insurance Law, section 301; L. 2014, ch. 60, part H

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

Specific reasons underlying the finding of necessity: Long sought and much needed legislation to address the issue of unexpected and sometimes excessive bills for emergency services and surprise bills was enacted as Part H of Chapter 60 of the New York Laws of 2014, which was signed into law by the Governor on March 31, 2014. Part H of Chapter 60 will take effect on March 31, 2015.

The Department has been aware for several years that consumers, who did their best to stay in-network, nonetheless received large bills for unexpected out-of-network services. In 2012, the Department released "An

Unwelcome Surprise,” a report detailing the issues that lead to consumers receiving unexpected medical bills from out-of-network providers. The report stated that unexpected and sometimes excessive medical bills from out-of-network providers contribute to the growing problem of consumer medical debt, which continues to be a significant cause of personal bankruptcy. Chapter 60 of the Laws of 2014 added a new Article 6 to the Financial Services Law to address this problem. Article 6 provides that consumers must be held harmless for out-of-network emergency bills and surprise bills, and directs the provider and the health plan to work out payment for these bills. Article 6 establishes an independent dispute resolution process, by which a dispute involving a bill for emergency services or a surprise bill may be resolved.

The Department has worked diligently with stakeholders to develop the rule necessary to implement the independent dispute resolution process. A proposed rule was published in the State Register on December 31, 2014. Extensive comments were received from many stakeholders, which the Department considered in formulating this rulemaking being promulgated on an emergency basis. The Department intends to publish a revised proposed regulation, which will again permit stakeholders to submit comments, before the regulation is finalized.

It is critical for the protection of the public that the appropriate regulations are in place on and after the effective date of Chapter 60 to allow health plans, providers, and as applicable, patients, to dispute payments for emergency services or surprise bills. Therefore, it is necessary to promulgate the rule on an emergency basis for the furtherance of the general welfare.

Subject: Independent Dispute Resolution for Emergency Services and Surprise Bills.

Purpose: To establish a dispute resolution process for emergency services and surprise bill and standards for that process.

Substance of emergency/revised rule: Section 400.0 is the preamble.

Section 400.1 describes the applicability of the regulation and states that the regulation is applicable to health care services provided in New York State.

Section 400.2 provides definitions.

Section 400.3 establishes the independent dispute resolution entity (IDRE) certification requirements. IDREs apply for certification to the superintendent and must demonstrate that they are able to review disputes involving payment for emergency services and surprise bills. IDREs must ensure that reviews are completed in the required timeframes, and must have a network of reviewers, including physicians.

Section 400.4 details prohibited conflicts of interest. IDRE and IDRE reviewers may not have a prohibited affiliation with a health care plan, provider, facility, developer of a health care service or patient involved in the dispute.

Section 400.5 details the responsibilities of health care plans for disputes regarding emergency services and surprise bills. Health care plans must pay the claim and may attempt to negotiate the amount. Health care plans must provide the insured with notice that the insured shall incur no greater out-of-pocket costs for the services than the insured would have incurred with a participating physician or health care provider. Health care plans are also required to provide information on their websites about surprise bills.

Section 400.6 details the responsibilities of non-participating physicians and non-participating referred health care providers for disputes regarding emergency services and surprise bills. Non-participating physicians and non-participating referred health care providers must hold insured patients that complete an assignment of benefits form harmless for surprise bills. Non-participating physicians must also include a claim form and an assignment of benefits form with a bill to an insured.

Section 400.7 establishes the process to submit disputes regarding emergency services or surprise bills. Health care plans, non-participating physicians, non-participating referred health care providers and patients may submit disputes involving payment for emergency services and surprise bills to an IDRE. The parties must complete an application in the form and manner determined by the superintendent and the parties must provide information about the dispute.

Section 400.8 establishes the responsibilities of an IDRE. Within three business days of receipt of an application submitted by a health care plan, non-participating physician, non-participating referred health care provider or a patient, an IDRE shall screen the application for any conflicts of interest, eligibility and request any additional information. If the requested information is not received within five business days, the IDRE shall make a determination based on the information available to the IDRE. If the IDRE determines, in a case involving a health care plan, based on the health care plan's payment and the non-participating physician's or non-participating referred health care provider's fee, that a settlement between the health care plan and the non-participating physician or non-participating referred health care provider is reasonably likely,

or that both the health care plan's payment and the non-participating physician's or non-participating referred health care provider's fee represent unreasonable extremes, the IDRE may direct both parties to attempt a good faith negotiation for settlement. The IDRE shall have the dispute reviewed by a neutral and impartial reviewer with training and experience in health care billing, reimbursement, and usual and customary charges. All determinations shall be made in consultation with a neutral and impartial licensed reviewing physician in active practice in the same or similar specialty as the physician providing the service that is subject to the dispute. To the extent practicable, the reviewing physician shall be licensed in this State. An IDRE shall make a determination within 30 days of receiving the request for the dispute resolution. For disputes involving a health care plan, the IDRE must choose as the reasonable fee either the health care plan's payment or the non-participating physician's or non-participating referred health care provider's fee. For disputes that do not involve a health care plan, the IDRE must determine the reasonable fee. In determining a reasonable fee, the IDRE must use the conditions and factors set forth in Financial Services Law Section 604.

Section 400.9 establishes IDRE record retention and compliance requirements. An IDRE shall retain case records in accordance with 11 NYCRR 243 (Insurance Regulation 152) for audit and examination purposes for a period of six years from the date of the IDRE's determination. An IDRE shall provide any information as required or requested by the superintendent within two business days or such other period acceptable to the superintendent.

Section 400.10 establishes payment responsibility for the IDRE. If an IDRE determines the health care plan's payment is reasonable, payment for the dispute resolution process shall be the responsibility of the non-participating physician or as applicable, non-participating referred health care provider. If an IDRE determines the non-participating physician's or non-participating referred health care provider's fee is reasonable, payment for the dispute resolution process shall be the responsibility of the health care plan. If good faith negotiations directed by the IDRE results in a settlement between the health care plan and the non-participating physician or non-participating referred health care provider, the health care plan and the non-participating physician or non-participating referred health care provider shall evenly divide and share the prorated cost for dispute resolution. For disputes that are rejected as ineligible or due to the requesting non-participating physician, non-participating referred health care provider or health care plan's failure to submit information, an IDRE may charge an application processing fee, which shall be the responsibility of the requesting physician, health care provider or health care plan.

This notice is intended to serve as both a notice of emergency adoption and a notice of revised rule making. The notice of proposed rule making was published in the *State Register* on December 31, 2014, I.D. No. DFS-52-14-00009-P. The emergency rule will expire June 9, 2015.

Emergency rule compared with proposed rule: Substantial revisions were made in sections 400.2, 400.4, 400.5, 400.6, 400.7, 400.8 and 400.9.

Text of rule and any required statements and analyses may be obtained from: Colleen Rumsey, New York State Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 474-0154, email: colleen.rumsey@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 authority of the Superintendent of Financial Services (“Superintendent”) to promulgate new Part 400 to 23 NYCRR derives from Financial Services Law Sections 202, 301, 302 and Article 6 and Insurance Law Section 301.

Section 202 of the Financial Services Law establishes the office of the Superintendent and designates the Superintendent as the head of the Department of Financial Services (“Department”).

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

Section 302 of the Financial Services Law and Section 301 of the Insurance Law 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.

Article 6 of the Financial Services Law establishes an independent dispute resolution (“IDR”) process through which a dispute involving a bill for emergency services or a surprise bill may be resolved. This law grants the Superintendent the power to certify entities performing the IDR and authorizes the Superintendent to promulgate regulations establishing standards for the IDR process.

2. Legislative objectives: In 2012, the Department released “An Unwelcome Surprise,” a report detailing the issues that lead to consumers

receiving unexpected medical bills from out-of-network providers. The report stated that unexpected and sometimes excessive medical bills from out-of-network providers contribute to the growing problem of consumer medical debt, which continues to be a significant cause of personal bankruptcy. The report found that consumers have experienced surprise bills when they do everything they can to stay in-network, yet receive bills from non-participating providers. The report also found that there are often high and unexpected bills for emergency care. Chapter 60 of the Laws of 2014 added a new Article 6 to the Financial Services Law to address this problem. Article 6 provides that consumers must be held harmless for out-of-network emergency bills and surprise bills, and directs the provider and the health plan to work out payment for these bills. Article 6 establishes an IDR process by which a dispute involving a bill for emergency services or a surprise bill may be resolved. The statute also gives the Superintendent the authority to grant and revoke certifications of independent dispute resolution entities ("IDREs") and to adopt rules necessary in order to implement the IDR process.

3. Needs and benefits: Article 6 establishes an IDR process by which a dispute for a bill for emergency services or a surprise bill may be resolved. This rule is necessary in order to implement the IDR process required under the statute.

This rule details certification requirements for IDREs, and requires each proposed IDRE to demonstrate that it meets these requirements. The rule prohibits a proposed IDRE and its reviewers from having affiliations with entities involved in the dispute because of a potential conflict of interest.

The rule sets forth the responsibilities of health care plans, providers, patients and IDREs in relation to the IDR process and details the process to submit disputes regarding emergency services and surprise bills. The rule provides that once a dispute is submitted for review by an IDRE, the parties must provide certain information specified by the statute. Within three days of receipt of a dispute, the IDRE shall screen the application for conflicts of interest, review the application to determine if the dispute is eligible for the IDR process and, if necessary, contact the parties for additional information needed to determine eligibility. Within three days of determining that the dispute is eligible, the IDRE shall send notification of the assignment to the parties and ask for all information to be submitted within five business days. The IDRE may direct the parties to attempt a good faith negotiation for settlement and the IDRE must have the dispute reviewed by a neutral and impartial reviewer with knowledge of billing and usual, customary, and reasonable rates, in consultation with a licensed physician in active practice. The IDRE must make a determination within 30 days of receipt of the request for independent dispute resolution, choosing either the provider bill or the health plan payment.

The rule establishes requirements for record retention and compliance by IDREs and describes how payment for the independent dispute resolution process will work. The losing party pays the cost of the dispute resolution with an exception for a patient who brings a dispute, does not prevail, and for whom payment would pose a hardship.

4. Costs: Insurers and providers should incur minimal additional costs to comply with the requirements of the rule. This rule implements the IDR process required by Financial Services Law Article 6. The minimal costs for physicians may include costs to provide an assignment of benefits form with bills for out-of-network services, although some physicians may have similar processes already. If a physician or other provider submits a dispute for resolution, the person or persons who already handle billing for the physician or provider would most likely be able to submit the dispute. Other costs include the cost of the IDR process, which is paid by the losing party to the dispute as required by Financial Services Law Article 6. The Department will contract with IDREs and approve the fees the IDREs charge for the IDR process. The minimal costs for insurers may also include costs to provide insureds with notice about a surprise bill and information how to proceed. However, insurers currently provide an explanation of benefits to insureds and the requisite notice may be contained within the existing explanation of benefits or accompany it in order to mitigate costs.

The Department will incur costs to implement the independent dispute resolution process as the Department is responsible for overseeing the process and certifying the IDREs. However, these costs will be incurred due to the statute. Moreover, the costs to the Department should be minimal as the independent dispute resolution entities will conduct the actual review of the disputes. 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: This rule implements the IDR process by which a dispute for a bill for emergency services or a surprise bill may be resolved and identifies the information that must be submitted to the IDRE, as required pursuant to Financial Services Law Article 6. Health care plans, providers

and patients will need to submit an application in order to pursue a dispute. This rule also requires an IDRE to retain case records in accordance with 11 NYCRR 243 for audit and examination for a period of six years from the date of the IDRE's determination. The IDRE must maintain on file each attestation required to be submitted under the rule for six years from the date of the determination. The rule further requires an IDRE to provide the Superintendent data, information and reports as the Superintendent determines necessary to evaluate the dispute resolution process within two business days or such other period acceptable to the superintendent.

7. Duplication: This rule will not duplicate any existing state rule.

8. Alternatives: This rule implements the IDR process for bills for emergency services and surprise bills. The Department met with stakeholders during the development of the rule. Alternatives were suggested during these meetings regarding the reviewer of the dispute. Suggested alternatives included to have the dispute reviewed solely by a physician reviewer, solely by a non-physician reviewer, solely by a retired physician, solely by an in-network physician and solely by an out-of-network physician. Financial Services Law Section 601 requires that IDREs use licensed physicians in active practice in the same or similar specialty as the physician providing the service that is the subject of the dispute. The Department decided that IDREs must use a non-physician reviewer to render a determination in consultation with a physician reviewer. The regulation also includes standards to prohibit conflicts of interest. The Department believes this approach is consistent with the law, will ensure fair decisions, and will help to minimize the costs of the review.

The Department also considered alternatives regarding the notice that the health plan must send to the insured and non-participating provider when a claim for a surprise bill is received. The Department originally considered requiring health plans to send a detailed notice upon receipt of a potential surprise bill to both the insured and the non-participating provider. Stakeholders indicated that, without an assignment of benefits form, health plans would be unable to determine whether a claim may be for a surprise bill upon receipt and that it would be cumbersome to send the notice in response to all claims involving the services of non-participating providers. Therefore, the rule requires health plans to provide detailed notice to the insured and non-participating provider only when an assignment of benefits form is submitted with the claim or the health plan otherwise determines that the claim is for a surprise bill. When the health plan receives a claim that may be a surprise bill but is not submitted with an assignment of benefits form, the health plan must send an abbreviated notice to the insured directing the insured to contact the health plan or visit its website for information regarding surprise bills.

A suggested alternative was to require the IDRE to divulge the name of the reviewer and reviewing physician. As with the current External Appeal process for independent review of utilization review denials by health plans, anonymity provides the reviewer and the reviewing physician the ability to independently determine the dispute without the concern that they could be contacted by a party involved in the dispute. The IDREs may have difficulty attracting reviewers and physicians to their panels if their identity is revealed. The IDRE will provide a biography of the reviewer and the reviewing physician in order to show that they meet the required qualifications.

A suggestion was made to permit IDRE determinations to be reconsidered. Financial Services Law Sections 605(c) and 607(c) provide that the determination of the IDRE is binding but admissible in court proceedings and reconsideration is not contemplated.

A suggestion was made to prohibit information from being submitted to the IDRE regarding in-network rates, Medicare and Medicaid rates. Financial Services Law Section 604 sets forth the criteria that the IDRE must consider, which includes UCR and does not include other rates. However, the Law does not prohibit any other information from being submitted. Nevertheless, the IDRE is not bound by any other additional information submitted.

9. Federal standards: Public Health Service Act Section 2719A (42 U.S.C. § 300gg-19a) requires health care plans to cover emergency services. Federal regulations implementing this law (45 CFR § 147.138(b)) require health care plans and insurers to reimburse out-of-network providers of emergency services the greatest amount of the following three amounts: (1) the amount negotiated with in-network providers for the emergency service, excluding any in-network copayment or coinsurance; (2) the amount for the emergency service calculated using the same method the plan generally uses to determine payments for out-of-network services, excluding any in-network copayment or coinsurance; or (3) the amount that would be paid under Medicare (Part A or B of Title XVIII of the Social Security Act) for the emergency service, excluding any in-network copayment or coinsurance. Health care plans must reimburse out-of-network providers of emergency services at least the amount described in the federal rule but may pay the out-of-network provider additional amounts. The IDR process established under this rule will allow health care plans and providers to dispute amounts above the federal requirement.

10. Compliance schedule: The rule will take effect on March 31, 2015 and will affect health care services provided on and after March 31, 2015.

Revised Regulatory Flexibility Analysis

1. Effect of the rule: This rule affects all health maintenance organizations (“HMOs”) and insurers authorized to do business in New York State that use the independent dispute resolution (“IDR”) process set forth in the regulation to resolve disputes for bills for emergency services and surprise bills. Based upon information that those HMOs and insurers have provided in their annual statements and filed with the Department of Financial Services (“Department”), they are not “small businesses” as defined in State Administrative Procedures Act Section 102(8) because they are not independently owned and operated and do not employ 100 or fewer employees.

Small businesses that may be impacted by this rule include physicians and certain other health care providers that participate in the IDR process. The Department does not maintain records of the number of physicians and health care providers licensed in this state. However, the Department has established no reporting requirements with respect to those small businesses. The rule is likely to have a favorable economic impact on small businesses that opt to utilize the IDR process to resolve disputes with insurers, rather than retain attorneys to resolve those disputes on their behalf in court.

This rule does not apply to or affect local governments.

2. Compliance requirements: This regulation will not impose any reporting, recordkeeping, or other compliance requirements on small businesses or local governments. The regulation only implements the IDR process for bills for emergency services and surprise bills as required pursuant to Financial Services Law Article 6.

3. Professional services: This regulation does not require any small business affected by this rule to use any professional services to comply with this regulation. Local governments are not affected by the rule, and thus will have no need for such services.

4. Compliance costs: This rule will have no impact on compliance costs for local governments, and may only have a minimal impact on compliance costs for small businesses. Those costs may include costs to provide an assignment of benefits form with bills for out-of-network services, although some physicians may have similar processes already. Other costs include the cost of the IDR, which is paid by the losing party to the dispute. However, the rule only establishes standards for an IDR process that is prescribed by statute. Furthermore, any costs to small businesses to participate in the IDR process should be much less than costs to litigate a bill dispute in court.

5. Economic and technological feasibility: Small businesses and local governments should not incur any economic or technological impact as a result of the regulation.

6. Minimizing adverse impact: This rule should have no adverse impact on small businesses or local governments because it only establishes standards for an IDR process prescribed by statute, and participation in the IDR process is voluntary. The rule may have a positive economic impact on providers who obtain favorable determinations with respect to disputes with insurers regarding reimbursement for emergency services and surprise bills.

7. Small business and local government participation: Interested parties, including small businesses, were afforded the opportunity to comment on this regulation, and the Department held numerous meetings with stakeholders to discuss the regulation. Interested parties were also given an opportunity to comment on the proposed rulemaking that was published in the State Register on December 31, 2014.

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

Interested parties, including those located in rural areas, were given an opportunity to comment on the drafting of this rule and the Department held several meetings with HMOs, insurers, physicians, other providers and consumer groups. Interested parties were also given an opportunity to comment on the proposed rulemaking that was published in the State Register on December 31, 2014.

Revised Job Impact Statement

The Department of Financial Services finds that this rule should have no substantial adverse impact on job or employment opportunities in New York. The rule implements Article 6 of the Financial Services Law, which establishes an independent dispute resolution (“IDR”) process by which health maintenance organizations, insurers, physicians, and in certain cases, patients and other health care providers may submit a dispute involving bills for emergency services and surprise bills for IDR. Article 6 provides that the Superintendent shall select and certify an independent dispute resolution entity (“IDRE”) to oversee the IDR process. Serving as an IDRE is voluntary.

Because Article 6 requires the IDRE to utilize licensed physicians for the IDR process, this rulemaking is likely to promote job and employment opportunities in the State.

Assessment of Public Comment

The Department of Financial Services (“Department”) received comments from ten interested persons in response to its proposed new Part 400 to 23 NYCRR, some of which were incorporated into the emergency and revised rulemaking, discussed below.

Comments:

Commenters requested that 23 NYCRR Section 400.1 apply to coverage in the New York State of Health (NYSOH) and to certain out-of-state services, and questioned whether the regulation applies to dental coverage.

Response:

The independent dispute resolution (IDR) process applies to NYSOH coverage. The IDR process is not applicable to stand-alone dental coverage. Dental services do not meet the definition of “surprise bill” because a participating physician would not be providing the referral or services and dental coverage would not typically cover emergency services as defined in Financial Services Law Section 603.

A service associated with a surprise bill need not be provided in its entirety in New York to be subject to the IDR process. E.g., an insured is covered under an HMO or insurance policy or contract that is issued for delivery in New York and has blood drawn in New York by a participating physician. The participating physician sends the sample to an out-of-state laboratory that regularly conducts business with the New York provider. In such cases, the laboratory may be providing services in New York and subject to the IDR process. The intent of the legislation is to protect patients from surprise bills when they receive services from their participating physicians in New York.

Comments:

Commenters requested revision of the 23 NYCRR Section 400.2 definitions of “reviewer” to remove the requirement for experience with usual and customary costs, “reviewing physician” to add conflict of interest standards, and “usual and customary cost”.

Response:

The definition of “reviewer” was not revised because Financial Services Law Section 604 requires the IDRE to consider the usual and customary cost. The definition of “reviewing physician” was not revised because conflict of interest prohibitions are in 23 NYCRR Section 400.4(d). The definition of “usual and customary cost” was revised to mirror the definition in Financial Services Law Section 603(i). The database referenced in the definition of “usual and customary cost” is not expected to include all charges for each health care service. It is understood that some charges may not be reported to the database.

Comments:

Commenters requested revisions to 23 NYCRR Sections 400.3 and 400.4 to (1) prohibit IDREs from reviewing disputes when they acquire or become controlled by an advocacy group or association of providers or health plans; (2) include officers, directors, or managers of a physician’s medical group, independent practice association, or health care facility when determining conflicts of interests for IDREs; (3) prohibit a reviewer or physician from reviewing a dispute when they have a conflict with an affiliate of the health plan involved in the dispute when all IDREs have disqualifying conflicts of interest; (4) prohibit the reviewing physician from contracting to participate with the health plan that is a party to the dispute; (5) require the reviewing physician to be retired or prohibited from providing out-of-network services; and (6) remove the control test for determining IDRE conflicts of interest.

Response:

The regulation incorporates the changes requested in (1) – (3).

The regulation does not incorporate the changes requested in (4) – (6). Financial Services Law Section 601 requires IDREs to use licensed physicians in active practice in the same or similar specialty as the physician providing the service and, to the extent practicable, the physicians must be licensed in New York. Including retired physicians in the IDRE panel is not permitted. Prohibiting reviewing physicians from providing out-of-network services would limit the IDRE’s ability to attract physicians to its panel. The reviewing physician may not review disputes involving a health plan when the reviewing physician has a material familial, financial or professional affiliation with the health plan. The control test is necessary to identify what constitutes a conflict of interest.

Comments:

Commenters requested revisions to 23 NYCRR Section 400.5 to (1) only require the health plan to provide the insured with IDRE information when it pays less than the provider’s charge; (2) remove the reference to a substantially similar assignment of benefits form; (3) set a timeframe for payment to the physician or provider when the IDRE finds in their favor; (4) remove the requirement for health plans to provide notice describing how to initiate the IDR process when the non-participating physician submits the claim; (5) remove the requirement for health plans to provide

notice to insureds when health plans determine a bill is a surprise bill before receipt of the assignment of benefits form; (6) limit the health plan's obligation to notify the insured that the claim could be a surprise bill to claims from providers likely to have surprise bills; and (7) reiterate that the IDR process is not applicable to certain emergency services specifically exempted by law. Commenters also questioned the applicability of the hold harmless protection to surprise bills, and the effective dates for the hold harmless protections for emergency services.

Response:

The regulation incorporates the changes requested in (1) – (2), and also requires the health plan to pay additional amounts to the provider within 30 days of the IDRE's determination.

The requirement to send the non-participating physician notice was not changed, as it is important that physicians be informed of the IDR process during the claim adjudication process.

The provision requiring notice when a health plan otherwise determines that a bill is a surprise bill was not removed. Some health plans are able to identify surprise bills upon claim submission and the regulation does not impose an obligation on health plans that are unable to identify a surprise bill without an assignment of benefits form. The requested change to limit notice only when the claim involves a provider likely to have surprise bills was not made. Consumers must be informed of their protections, and the notification requirements are not burdensome.

23 NYCRR Section 400.1 states that the regulation does not apply to emergency services subject to Financial Services Law Section 602(b).

The requested change regarding the hold harmless protection for surprise bills was not made. The intent of the legislation was to remove insureds from payment disputes between health plans and providers. The legislation requires health plans to provide coverage for surprise bills and specifically provides that the insured cannot be subject to any greater out-of-pocket costs than the insured would have incurred with a participating physician or provider.

The regulation was revised to address the varying effective dates for the hold harmless provisions for emergency services.

Comments:

Commenters requested changes to 23 NYCRR Section 400.6 to (1) remove the requirement that non-participating referred health care providers include a claim form and an assignment of benefits form when they bill patients; (2) permit a non-participating physician to have "at least" seven business days to respond to a health plan's offer, except when the seven business days would cause the health plan to violate Insurance Law Section 3224-a; and (3) prohibit physicians from seeking payment for emergency services beyond the health plan's payment once a claim has been submitted to the IDRE.

Response:

The regulation incorporates the change requested in (1). The regulation was also revised to allow the non-participating physician or provider "at least" seven business days to respond to a health plan's offer. This provision is intended to allow the provider time to respond but was never intended to permit the health plan to delay payment.

Once an IDRE renders a determination, the parties are bound by the determination and insureds are only responsible for their in-network cost-sharing.

Comments:

Commenters requested changes to 23 NYCRR Section 400.7 to (1) require the fees submitted by the health plan to represent the final payment to the physician; (2) extend the period of time for fee information to 24 months; (3) permit multiple CPT codes to be submitted if more than one is applicable to a patient; (4) delete the references to "if applicable" and "if available" after "usual and customary cost"; (5) prohibit health plans from submitting Medicaid, Medicare, or other network fee data to the IDRE; (6) remove the usual and customary cost from the information that health plans and providers submit; (7) require health plans to provide the names and numbers for the physicians who received the listed payments; and (8) clarify the criteria used to determine a gross disparity when determining a reasonable fee.

Response:

The regulation was revised to (1) provide that the fee information must reflect the final payment; and (2) permit fee examples from the last 24 months, because physicians and health plans may not have three examples from the previous 12 months for services that are infrequently provided.

The IDR process will review the services provided to the patient, which may consist of one or many procedure codes.

The language "if applicable" was intended to address when the usual and customary cost does not exist. The Department added language that the usual and customary cost is to be provided when the benchmarking database contains the usual and customary cost for the service.

The intent of the term "if available" was to permit physicians to submit the usual and customary cost if they have access to the information, but not require them to submit it. The regulation was revised to remove the

physician's and provider's obligation to submit the usual and customary cost.

The regulation requires health plans to provide the usual and customary cost since they likely have access to the information. If the IDRE gains access to the usual and customary cost data in a cost efficient manner, the Department will consider removing the requirement.

Financial Services Law Section 604 requires the IDRE to consider specifically enumerated factors, including the usual and customary cost but not including other rates. The law does not prohibit any other information from being submitted. However, the IDRE is not bound by additional information submitted.

With respect to the health plan providing the names and contact numbers for the physicians who received the payments, the regulation provides that the IDRE may request any information it needs from the parties to the IDR.

The IDRE must consider the criteria found in Financial Services Law Section 604 to determine a gross disparity.

Comments:

The Department received comments requesting revisions to 23 NYCRR Section 400.8 of the regulation to (1) state that the IDRE must choose either the health plan's payment or the provider's charge; (2) require the IDRE to divulge the name of the reviewer and reviewing physician; and (3) permit an appeal of a dispute in cases of gross negligence or abuse of discretion by an IDRE.

Response:

The regulation was changed to reference requirements in Financial Services Law Sections 605 and 607 that the IDRE choose either the health plan's payment or the provider's charge.

Changes were not made to require the IDRE to divulge the reviewer or reviewing physician. Anonymity provides the reviewer and the reviewing physician the ability to independently determine the dispute without the concern that they could be contacted by the parties involved in the dispute. IDREs may have difficulty attracting reviewers and physicians to their panels if their identity is revealed. IDREs will provide biographies to show the reviewers meet the qualifications required to review disputes.

Finality of the IDR is important for the process to run effectively and the law states that the decision is binding but admissible in court proceedings.

Comment:

A commenter recommended revising 23 NYCRR Section 400.9(e) to require IDREs to comply with privacy and confidentiality requirements.

Response:

The Department added a requirement that the IDRE comply with Parts 420 and 421 of 11 NYCRR with respect to confidentiality of information.

Comments:

Commenters requested (1) dispute information be made available upon request to the Department; (2) the cost of the IDR process should be low; (3) the penalties for violating Insurance Law Section 2601(a)(7) be added; (4) the IDR process favor the physician's bill; and (5) the effective date be changed to April 1, 2015.

Response:

(1) Requests made to the Department for dispute information will be individually reviewed and determined in accordance with applicable law.

(2) The regulation does not address actual costs of the IDR process; only the party responsible to pay the costs.

(3) The regulation does not specify the penalties for violating Insurance Law Section 2601(a)(7) because they are specified in Insurance Law Section 109.

(4) The IDR process was intended to provide an independent, unbiased review for physician and health plan billing disputes.

(5) An effective date set by law cannot be changed by regulation.

NOTICE OF ADOPTION

Life Insurance Reserves

I.D. No. DFS-04-15-00005-A

Filing No. 179

Filing Date: 2015-03-17

Effective Date: 2015-04-01

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

Action taken: Amendment of Parts 98 and 100 of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; Insurance Law, sections 301, 1304, 1308, 4217, 4218, 4221, 4224, 4240 and 4517

Subject: Life insurance reserves.

Purpose: To modernize the current regulatory scheme with respect to universal life insurance with secondary guarantee reserves.

Text or summary was published in the January 28, 2015 issue of the Register, I.D. No. DFS-04-15-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Amanda Fenwick, New York State Department of Financial Services, One Commerce Plaza, Albany, New York 12257, (518) 474-7929, email: amanda.fenwick@dfs.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2018, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

Sixth Amendment to Insurance Regulation 147 (11 NYCRR 98)

The Department of Financial Services ("Department") received one public comment on the proposed sixth amendment to 11 NYCRR 98 (Insurance Regulation 147). The commenter asked the Department to confirm that the proposed amendment encompasses products with shadow accounts. The Department confirms that products with shadow accounts are included. No changes were made to the text of the amendment.

Fourth Amendment to Insurance Regulation 179 (11 NYCRR 100)

The Department of Financial Services ("Department") received one public comment on the proposed fourth amendment to 11 NYCRR 100 (Insurance Regulation 179). The commenter asked the Department to confirm that the proposed amendment encompasses products with shadow accounts. The Department confirms that products with shadow accounts are included. No changes were made to the text of the amendment.

Department of Health

EMERGENCY RULE MAKING

Children's Camps

I.D. No. HLT-13-15-00008-E

Filing No. 163

Filing Date: 2015-03-13

Effective Date: 2015-03-13

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

Action taken: Amendment of Subpart 7-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

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

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

Among the facilities covered by Chapter 501 are children's camps having enrollments with 20 percent or more developmentally disabled campers. These camps are regulated by the Department and, in some cases, by local health departments, pursuant to Article 13-B of the Public Health Law and 10 NYCRR Subpart 7-2. Given the effective date of Chapter 501 and its relation to the start of the camp season, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such camps. Absent emergency promulgation, such persons would be denied initial coordinated protections until the 2015 camp season. Promulgating these regulations on an emergency basis will provide such protection, while still providing a full opportunity for comment and input as part of a formal rulemaking process which will also occur pursuant to the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to sections 201 and 225 of the Public Health Law.

Promulgating the regulations on an emergency basis will ensure that campers with special needs promptly receive the coordinated protections to be provided to similar individuals cared for in other settings. Such

protections include reduced risk of being cared for by staff with a history of inappropriate actions such as physical, psychological or sexual abuse towards persons with special needs. Perpetrators of such abuse often seek legitimate access to children so it is critical to camper safety that individuals who that have committed such acts are kept out of camps. The regulation provides an additional mechanism for camp operators to do so. The regulations also reduce the risk of incidents involving physical, psychological or sexual abuse towards persons with special needs by ensuring that such occurrences are fully and completely investigated, by ensuring that camp staff are more fully trained and aware of abuse and reporting obligations, allowing staff and volunteers to better identify inappropriate staff behavior and provide a mechanism for reporting injustice to this vulnerable population. Early detection and response are critical components for mitigating injury to an individual and will prevent a perpetrator from hurting additional children. Finally, prompt enactment of the proposed regulations will ensure that occurrences are fully investigated and evaluated by the camp, and that measures are taken to reduce the risk of re-occurrence in the future. Absent emergency adoption, these benefits and protections will not be available to campers with special needs until the formal rulemaking process is complete, with the attendant loss of additional protections against abuse and neglect, including physical, psychological, and sexual abuse.

Subject: Children's Camps.

Purpose: To include camps for children with developmental disabilities as a type of facility with in the oversight of the Justice Center.

Substance of emergency rule: The Department is amending 10 NYCRR Subpart 7-2 Children's Camps as an emergency rulemaking to conform the Department's regulations to requirements added or modified as a result of Chapter 501 of the Laws of 2012 which created the Justice Center for the Protection of Persons with Special Needs (Justice Center). Specifically, the revisions:

- amend section 7-2.5(o) to modify the definition of "adequate supervision," to incorporate the additional requirements being imposed on camps otherwise subject to the requirements of section 7-2.25
- amend section 7-2.24 to address the provision of variances and waivers as they apply to the requirements set forth in section 7-2.25
- amend section 7-2.25 to add definitions for "camp staff," "Department," "Justice Center," and "Reportable Incident"

With regard to camps with 20 percent or more developmentally disabled children, which are subject to the provisions of 10 NYCRR section 7-2.25, add requirements as follows:

- amend section 7-2.25 to add new requirements addressing the reporting of reportable incidents to the Justice Center, to require screening of camp staff, camp staff training regarding reporting, and provision of a code of conduct to camp staff
- amend section 7-2.25 to add new requirements providing for the disclosure of information to the Justice Center and/or the Department and, under certain circumstances, to make certain records available for public inspection and copying
- amend section 7-2.25 to add new requirements related to the investigation of reportable incidents involving campers with developmental disabilities
- amend section 7-2.25 to add new requirements regarding the establishment and operation of an incident review committee, and to allow an exemption from that requirement under appropriate circumstances
- amend section 7-2.25 to provide that a permit may be denied, revoked, or suspended if the camp fails to comply with the regulations, policies or other requirements of the Justice Center

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 10, 2015.

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:

The Public Health and Health Planning Council is authorized by Section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. Article 13-B of the PHL sets forth sanitary and safety requirements for children's camps. PHL Sections 225 and 201(1)(m) authorize SSC regulation of the sanitary aspects of businesses and activities affecting public health including children's camps.

Legislative Objectives:

In enacting to Chapter 501 of the Laws of 2012, the legislature established the New York State Justice Center for the Protection of People

with Special Needs (Justice Center) to strengthen and standardize the safety net for vulnerable people that receive care from New York's Human Services Agencies and Programs. The legislation includes children's camps for children with developmental disabilities within its scope and requires the Department of Health to promulgate regulations approved by the Justice Center pertaining to incident management. The proposed amendments further the legislative objective of protecting the health and safety of vulnerable children attending camps in New York State (NYS).

Needs and Benefits:

The legislation amended Article 11 of Social Services law as it pertains to children's camps as follows. It:

- included overnight, summer day and traveling summer day camps for children with developmental disabilities as facilities required to comply with the Justice Center requirements.
- defined the types of incident required to be reported by children's camps for children with developmental disabilities to the Justice Center Vulnerable Persons' Central Registry.
- mandated that the regulations pertaining to children's camps for children with developmental disabilities are amended to include incident management procedures and requirements consistent with Justice Center guidelines and standards.
- required that children's camps for children with developmental disabilities establish an incident review committee, recognizing that the Department could provide for a waiver of that requirement under certain circumstances.
- required that children's camps for children with developmental disabilities consult the Justice Center's staff exclusion list (SEL) to ensure that prospective employees are not on that list and to, where the prospective employee is not on that list, also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment (SCR) to determine whether prospective employees are on that list.
- required that children's camps for children with developmental disabilities publicly disclose certain information regarding incidents of abuse and neglect if required by the Justice Center to do so.

The children's camp regulations, Subpart 7-2 of the SSC are being amended in accordance with the aforementioned legislation.

Costs:

Cost to Regulated Parties:

The amendments impose additional requirements on children's camp operators for reporting and cooperating with Department of Health investigations at children's camps for children with developmental disabilities (hereafter "camps"). The cost to affected parties is difficult to estimate due to variation in salaries for camp staff and the amount of time needed to investigate each reported incident. Reporting an incident is expected to take less than half an hour; assisting with the investigation will range from several hours to two staff days. Using a high estimate of staff salary of \$30.00 an hour, total staff cost would range from \$120 to \$1600 for each investigation. Expenses are nonetheless expected to be minimal statewide as between 40 and 50 children's camps for children with developmental disabilities operate each year, with combined reports of zero to two incidents a year statewide. Accordingly, any individual camp will be very unlikely to experience costs related to reporting or investigation.

Each camp will incur expenses for contacting the Justice Center to verify that potential employees, volunteers or others falling within the definition of "custodian" under section 488 of the Social Services Law (collectively "employees") are not on the Staff Exclusion List (SEL). The effect of adding this consultation should be minimal. An entry level staff person earning the minimum wage of \$7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the Justice Center, within a few hours.

Similarly, each camp will incur expenses for contacting the Office of Children and Family Services (OCFS) to determine whether potential employees are on the State Central Registry of Child Abuse and Maltreatment (SCR) when consultation with the Justice Center shows that the prospective employee is not on the SEL. The effect of adding this consultation should also be minimal, particularly since it will not always be necessary. An entry level staff person earning the minimum wage of \$7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the OCFS, within a few hours. Assuming that each employee is subject to both screens, aggregate staff time required should not be more than six to eight hours. Additionally, OCFS imposes a \$25.00 screening fee for new or prospective employees.

Camps will be required to disclose information pertaining to reportable incidents to the Justice Center and to the permit issuing official investigating the incident. Costs associated with this include staff time for locating information and expenses for copying materials. Using a high estimate of staff salary of \$30.00 an hour, and assuming that staff may take up to two hours to locate and copy the records, typical cost should be under \$100.

Camps must also assure that camp staff, and certain others, who fall

within the definition of mandated reporters under section 488 of the Social Services Law receive training related to mandated reporting to the Justice Center, and the obligations of those staff who are required to report incidents to the Justice Center. The costs associated with such training should be minimal as it is expected that the training material will be provided to the camps and will take about one hour to review during routine staff training. Camps must also ensure that the telephone number for the Justice Center reporting hotline is conspicuously posted for campers and staff. Cost associated with such posting is limited, related to making and posting a copy of such notice in appropriate locations.

The camp operator must also provide each camp staff member, and others who may have contact with campers, with a copy of a code of conduct established by the Justice Center pursuant to Section 554 of the Executive Law. The code must be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct must be acknowledged, and the recipient must further acknowledge that he or she has read and understands it. The cost of providing the code, and obtaining and filing the required employee acknowledgment, should be minimal, as it would be limited to copying and distributing the code, and to obtaining and filing the acknowledgments. Staff should need less than 30 minutes to review the code.

Camps will also be required to establish and maintain a facility incident review committee to review and guide the camp's responses to reportable incidents. The cost to maintain a facility incident review committee is difficult to estimate due to the variations in salaries for camp staff and the amount of time needed for the committee to do its business. A facility incident review committee must meet at least annually, and also within two weeks after a reportable incident occurs. Assuming the camp will have several staff members participate on the committee, an average salary of \$50.00 an hour and a three hour meeting, the cost is estimated to be \$450.00 dollars per meeting. However, the regulations also provide the opportunity for a camp to seek an exemption, which may be granted subject to Department approval based on the duration of the camp season and other factors. Accordingly, not all camps can be expected to bear this obligation and its associated costs.

Camps are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Finally, the regulations add noncompliance with Justice Center-related requirements as a ground for denying, revoking, or suspending a camp operator's permit.

Cost to State and Local Government:

State agencies and local governments that operate children's camps for children with developmental disabilities will have the same costs described in the section entitled "Cost to Regulated Parties." Currently, it is estimated that five summer day camps that meet the criteria are operated by municipalities. The regulation imposes additional requirements on local health departments for receiving incident reports and investigations of reportable incidents, and providing a copy of the resulting report to the Department and the Justice Center. The total cost for these services is difficult to estimate because of the variation in the number of incidents and amount of time to investigate an incident. However, assuming the typically used estimate of \$50 an hour for health department staff conducting these tasks, an investigation generally lasting between one and four staff days, and assuming an eight hour day, the cost to investigate an incident will range \$400.00 to \$1600. Zero to two reportable incidents occur statewide each year, so a local health department is unlikely to bear such an expense. The cost of submitting the report is minimal, limited to copying and mailing a copy to the Department and the Justice Center.

Cost to the Department of Health:

There will be routine costs associated with printing and distributing the amended Code. The estimated cost to print revised code books for each regulated children's camp in NYS is approximately \$1600. There will be additional cost for printing and distributing training materials. The expenses will be minimal as most information will be distributed electronically. Local health departments will likely include paper copies of training materials in routine correspondence to camps that is sent each year.

Local Government Mandates:

Children's camps for children with developmental disabilities operated by local governments must comply with the same requirements imposed on camps operated by other entities, as described in the "Cost to Regulated Parties" section of this Regulatory Impact Statement. Local governments serving as permit issuing officials will face minimal additional reporting and investigation requirements, as described in the "Cost to State and Local Government" section of this Regulatory Impact Statement. The proposed amendments do not otherwise impose a new program or responsibilities on local governments. City and county health departments continue to be responsible for enforcing the amended regulations as part of their existing program responsibilities.

Paperwork:

The paperwork associated with the amendment includes the completion and submission of an incident report form to the local health department and Justice Center. Camps for children with developmental disabilities will also be required to provide the records and information necessary for LHD investigation of reportable incidents, and to retain documentation of the results of their consultation with the Justice Center regarding whether any given prospective employee was found to be on the SEL or the SCR.

Duplication:

This regulation does not duplicate any existing federal, state, or local regulation. The regulation is consistent with regulations promulgated by the Justice Center.

Alternatives:

The amendments to the camp code are mandated by law. No alternatives were considered.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Federal Standards:

Currently, no federal law governs the operation of children's camps.

Compliance Schedule:

The proposed amendments are to be effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Types and Estimated Number of Small Businesses and Local Governments:

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. About 30% of summer day camps are operated by municipalities (towns, villages, and cities). Typical regulated children's camps representing small business include those owned/operated by corporations, hotels, motels and bungalow colonies, non-profit organizations (Girl/Boy Scouts of America, Cooperative Extension, YMCA, etc.) and others. None of the proposed amendments will apply solely to camps operated by small businesses or local governments.

Compliance Requirements:

Reporting and Recordkeeping:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties," "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.

Other Affirmative Acts:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement.

Professional Services:

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Compliance Costs:

Cost to Regulated Parties:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Cost to State and Local Government:

The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in the "Cost to Regulated Parties" section of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

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

Minimizing Adverse Impact:

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Small Business and Local Government Participation:

No small business or local government participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the regulations, and training will be provided to affected entities with regard to the new requirements.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. Currently, there are seven day camps and ten overnight camps operating in the 44 counties that have population less than 200,000. There are an additional four day camps and three overnight camps in the nine counties identified to have townships with a population density of 150 persons or less per square mile.

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

Reporting and Recordkeeping:

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Other Compliance Requirements:

The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Professional Services:

Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Compliance Costs:

Cost to Regulated Parties:

The costs imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Economic and Technological Feasibility:

There are no changes requiring the use of technology.

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

Minimizing Adverse Economic Impact on Rural Area:

The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized, and no impacts are expected to be unique to rural areas.

Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.

Rural Area Participation:

No rural area participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the routine regulations, and training will be provided to affected entities with regard to the new requirements.

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a (2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types and assisting with the investigation of new reportable incidents are expected to be completed by existing camp staff, and should not be appreciably different than that already required under current requirements.

EMERGENCY RULE MAKING

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

I.D. No. HLT-13-15-00020-E

Filing No. 173

Filing Date: 2015-03-17

Effective Date: 2015-03-17

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

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

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

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

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

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

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

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

Substance of emergency rule: The Department proposes to amend 18 NYCRR Parts 487 and 488 to address the creation of the Justice Center for the Protection of Persons with Special Needs (Justice Center) pursuant to Chapter 501 of the Laws of 2012, and to conform the Department’s regulations to requirements added or modified as a result of that Chapter Law. Specifically, the amendments:

- add definitions specific to facilities subject to the Justice Center of “abuse,” “mistreatment,” “neglect,” “misappropriation of property,” “reasonable cause,” “reportable incident,” “Justice Center,” “significant incident,” “custodian,” “facility subject to the Justice Center,” “psychological abuse,” “Department,” and “unlawful use or administration of a controlled substance” at sections 487.2(d)(1)-(13) and 488.2(c)(1)-(13);
- amend sections 487.5 and 488.5 to add occurrences which would constitute a reportable incident to the list of occurrences which residents should not experience, and to require the operator of certain facilities to conspicuously post the telephone number of the Justice Center incident reporting hotline;
- amend sections 487.7 and 488.7 to clarify a facility’s obligations regarding what incidents must be investigated, how they must be investigated and who must investigate them;
- amend sections 487.7 and 488.7 to replace outdated references to the State Commission on Quality of Care for the Mentally Disabled with references to the Justice Center;
- amend sections 487.7 and 488.7 to add a requirement addressing when reports must be provided to the Justice Center, and requiring such reports to conform to the requirements of the Justice Center;

- amend sections 487.9 and 488.9 to add a requirement for staff training in the identification of reportable incidents and facility reporting procedures, and to add a requirement for certain facilities regarding the provision of a code of conduct to employees, volunteers, and others providing services at the facility who could be expected to have resident contact;

- amend sections 487.9 and 488.9 to add a requirement that certain facilities consult the Justice Center’s staff exclusion list with regard to prospective employees, volunteers, and others, and that when such person is not on the staff exclusion list, that such facilities also consult the State Central Registry, with regard to such persons. The facility must maintain documentation of such consultation. The amendments also address the hiring consequences associated with the outcome of those consultations;

- amend sections 487.9 and 488.9 to specifically include investigation of reportable incidents to the administrative obligations of facilities, and to the duties of a case manager;

- amend sections 487.9 and 488.9 to require the operator of a facility to designate an additional employee to be a designated reporter;

- amend sections 487.10 and 488.10 to add a new requirement that certain facilities provide certain information to the Justice Center, and make certain information public, at the request of the Justice Center, and to allow sharing of information between the Department and the Justice Center;

- add new sections 487.14 and 488.13 to address reporting of certain incidents; and

- add new sections 487.15 and 488.14 to address the investigation of reportable incidents involving facilities subject to the Justice Center.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 14, 2015.

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

Summary of Regulatory Impact Statement

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

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

Regulatory Flexibility Analysis

Effect on Small Businesses and Local Governments:

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

Most of the five-hundred twenty-two (522) certified adult homes in New York State, including the forty-seven (47) which fall under the

purview of the Justice Center, are operated by small businesses as defined in Section 102 of the State Administrative Procedure Act. Those entities would be subject to all of the above additional requirements.

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

Compliance Requirements:

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

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

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

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

Professional Services:

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

Compliance Costs:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Impact:

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

These amendments will not have an adverse impact on the ability of small businesses or local governments to comply with Department requirements, as full compliance would require minimal enhancements to present hiring and follow-up practices.

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

Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Of the forty-seven (47) current facilities that will fall under the purview of the Justice Center for the Protection of People with Special Needs (Justice

Center), six (6) are located in rural counties, as follows: Allegany County, Cayuga County, Greene County, Genesee County, Monroe County and Rensselaer County. Of the 522 adult homes and enriched housing programs statewide, including those not under the purview of the Justice Center, 160 are in rural areas.

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

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

Other Compliance Requirements:

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

Professional Services:

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

Compliance Costs:

Cost to Regulated Parties:

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

Economic and Technological Feasibility:

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

Minimizing Adverse Economic Impact on Rural Area:

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

Rural Area Participation:

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

Job Impact Statement

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

State Liquor Authority

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Updated Application Processes for Various Licenses and Permits

I.D. No. LQR-13-15-00002-P

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

Proposed Action: This is a consensus rule making to amend sections 30.2, 32.2, 33.2, 35.5 and 40.1; and repeal section 40.2 of Title 9 NYCRR.

Statutory authority: Alcohol Beverage Control Law, sections 93-a(3), 93(4), 99-b(2), 99(3) and 109(1)

Subject: Updated application processes for various licenses and permits.

Purpose: To update permit filing procedures and contact information at the authority.

Text of proposed rule: Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), is hereby amended to include amendments to parts 30.2, 32.2, 33.2, 35.5, and 40.1. In addition, Part 40.2 is hereby repealed.

§ 30.2 Place of filing

Applications for such permits shall be filed [at the zone office of the Liquor Authority for the zone in which the applicant's place of business is located] *on a form and in a manner as designated by the Authority.*

§ 32.2 Place of filing

Applications for temporary solicitor's employment permits should be filed [in the zone office of the Liquor Authority for the zone where the applicant's place of business is located] *on a form and in a manner as designated by the Authority.*

§ 33.2 Place of filing

(a) An application for a permit to purchase alcoholic beverages[, except a plenary permit,] shall be filed [with the zone office of the Liquor Authority at Albany, Buffalo, or New York City, whichever is nearest to the business address of the applicant] *on a form and in a manner as designated by the Authority.*

(b) An application for a permit to sell alcoholic beverages[, except a plenary permit,] shall be filed [with the zone office of the Liquor Authority at Albany, Buffalo, or New York City, whichever is nearest to the premises where the sale will be held] *on a form and in a manner as designated by the Authority.*

(c) An application for a negotiator's permit shall be filed [with the zone office of the Liquor Authority at Albany, Buffalo, or New York City, whichever is nearest the licensed premises of the wholesaler in this State with whom negotiations will be had] *on a form and in a manner as designated by the Authority.*

(d) An application for a plenary permit under subdivision (j) of section 33.1 hereof shall be filed [with the New York City office of the Liquor Authority] *on a form and in a manner as designated by the Authority.*

(e) An application for a permit by a summer licensee to store alcoholic beverages shall be filed [with the zone office of the Liquor Authority at Albany, Buffalo, or New York City, whichever has jurisdiction over the county in which the licensed premises are located] *on a form and in a manner as designated by the Authority.*

(f) *An application for a special events permit shall be filed on a form and in a manner as designated by the Authority.*

§ 35.5. Review process

(a) Applications shall be reviewed by the Licensing Bureau. A determination on an application shall be made within 10 business days of the authority's receipt of the application.

(b) In the event that the application is disapproved, the licensee may seek reconsideration of the determination by the members of the authority.

(c) Requests for reconsideration shall be submitted in writing to the [Office of Counsel] *Chairman's Office*, 80 South Swan Street, Suite 900, Albany, NY 12210-8002. Such requests shall then be reviewed by a member of the authority. A determination on the request shall be made within 10 business days after receipt of the request.

(d) A decision by a member of the authority on a request for reconsideration shall be considered a final determination of the authority.

§ 40.1 Application forms

The Liquor Authority will prescribe the form *and manner of filing* of applications for renewal of licenses. [An original and duplicate form of renewal application will be mailed to each licensee, together with instructions governing the execution and filing of the application with the Liquor Authority.] No application will be accepted except on the forms *and in the manner* prescribed by the Liquor Authority and unless accompanied by the documents hereinafter prescribed.

Text of proposed rule and any required statements and analyses may be obtained from: Paul Karamanol, Senior Attorney, State Liquor Authority, 80 South Swan Street, Suite 900, Albany, NY 12210, (518) 474-3114, email: paul.karamanol@sla.ny.gov

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

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

Consensus Rule Making Determination

This statement is being submitted pursuant to subparagraph (i) of paragraph (b) of subdivision (1) of section 202 of the State Administrative Procedure Act and in support of the New York State Liquor Authority's

("Authority") Notice of Proposed Rulemaking seeking to amend Parts 30.2, 32.2, 33.2, 35.5, 40.1 and to repeal Part 40.2 of Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (N.Y.C.R.R.)

It is apparent from the nature and purpose of these proposed amendments that no person is likely to object to their adoption as written. Part 30.2 sets forth filing information for Broker's Permits. Part 32.2 sets forth filing information for Annual Temporary Solicitor's Employment Permits. Part 33.2 sets forth filing information for several Miscellaneous Permits. Part 35.5 sets forth the review process for applications for Special Permits to Remain Open During Certain Hours of the Morning. Parts 40.1 and 40.2 set forth the filing process for Renewal Applications. All of said applications are now filed electronically, and as a result, the references to filing processes for these applications are outdated. The proposed amendments to Parts 30.2, 32.2, 33.2, 35.5, 40.1 and proposed deletion of Part 40.2 corrects these outdated references.

Consistent with the definition of "consensus rule" as set forth in section 102(11) of the State Administrative Procedure Act, the Authority has determined that this proposal, which updates multiple incorrect references to application processes, is non-controversial in nature and, therefore, no person is likely to object to its adoption as written.

Job Impact Statement

This statement is being submitted pursuant to subdivision (2) of section 201-a of the State Administrative Procedure Act and in support of the New York State Liquor Authority's ("Authority") Notice of Proposed Rulemaking seeking to amend Parts 30.2, 32.2, 33.2, 35.5, and 40.1 and to repeal Part 40.2 of Title 9, Subtitle B, of the Official Compilation of Codes, Rules and Regulations of the State of New York (N.Y.C.R.R.)

It is apparent from the nature and purpose of these proposed amendments that they have no impact on jobs or employment opportunities in New York. These proposed amendments merely update filing processes for various applications to update and allow for the current practice of electronic filing. As a result, the Authority has determined that these proposed amendments will have no substantial adverse impact on any private or public sector jobs or employment opportunities and therefore a full Job Impact Statement is not warranted.

Office of Mental Health

EMERGENCY RULE MAKING

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

I.D. No. OMH-13-15-00001-E

Filing No. 160

Filing Date: 2015-03-11

Effective Date: 2015-03-11

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

Action taken: Amendment of Parts 501 and 550; repeal of Part 524; and addition of new Part 524 to Title 14 NYCRR.

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

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

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

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

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

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals with mental illness who receive services in the OMH system. If OMH did not promulgate regulations on an emergency basis, many of the protections established by the PPSNA vital to the

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

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

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

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

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

- 14 NYCRR Part 501 is amended by adding a new Subdivision (a) to Section 501.5, "Obsolete or Outdated References," that replaces any reference throughout OMH regulations to the Commission on Quality of Care and Advocacy for Persons with Disabilities with a reference to the Justice Center for the Protection of People with Special Needs.

- 14 NYCRR Part 524 (Incident Management) has been repealed and revised to incorporate categories of "reportable incidents" as established by the PPSNA and includes enhanced provisions regarding incident investigations. The amendments make changes related to definitions, reporting, investigation, notification and committee review of events and situations that occur in providers of mental health services licensed or operated by OMH. It is OMH's expectation that implementation of these amendments will enhance safeguards for persons with mental illness, which, in turn, will allow individuals to focus on their recovery. The amendments also require distribution of the Code of Conduct, developed by the Justice Center, to all employees. Providers must maintain signed documentation from such employees, indicating that they have received, and understand, the Code.

- Revisions to 14 NYCRR Part 550 are intended to facilitate and implement the consolidation of the criminal background check function in the Justice Center, and to make other conforming changes to the criminal background check function established by the PPSNA.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 8, 2015.

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

Regulatory Impact Statement

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

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

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

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

3. Needs and Benefits: The amendments include new and modified requirements for incident management programs, codified at 14 NYCRR

Part 524, and also add and revise provisions of Parts 501 and 550 to implement Chapter 501 of the Laws of 2012. Known as "The Protection of People with Special Needs Act," this new law requires the establishment of comprehensive protections for vulnerable persons, including persons with mental illness, against abuse, neglect and other harmful conduct.

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

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

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

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

4. Costs:

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

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

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

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

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

5. Local Government Mandates: There are no new requirements

imposed by the rule on any county, city, town, village; or school, fire, or other special district.

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

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

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

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

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

Regulatory Flexibility Analysis

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

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

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

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

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

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

4. Compliance costs: There may be modest costs for small business

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

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

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

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

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

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

Rural Area Flexibility Analysis

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

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

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

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

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

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

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

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

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

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

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

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

Job Impact Statement

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

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

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

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

NOTICE OF ADOPTION

Clinic Treatment Programs

I.D. No. OMH-02-15-00003-A

Filing No. 161

Filing Date: 2015-03-11

Effective Date: 2015-04-01

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

Action taken: Amendment of Part 599 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.09, 31.04, 43.01, 43.02 and 43.02(b)

Subject: Clinic Treatment Programs.

Purpose: Amend reimbursement structure for delivery of psychotherapy services; eliminate utilization threshold for court-mandated services.

Text or summary was published in the January 14, 2015 issue of the Register, I.D. No. OMH-02-15-00003-P.

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

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

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 2020, 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 Motor Vehicles

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Registration of Pick Up Trucks

I.D. No. MTV-13-15-00011-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 106.6 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 401(7) and (15)

Subject: Registration of pick up trucks.

Purpose: To allow the registration of pick up trucks in the passenger class up to 6,000 pounds.

Text of proposed rule: Subdivision (b) of Part 106.6 is amended to read as follows:

(b) A pickup truck which is used exclusively for non-commercial purposes with an unladen weight of [five] six thousand [and five hundred] pounds or less, and with no business advertising may receive a passenger registration, at the registrant's option. This subdivision shall also apply to pick-up trucks weighing [five] six thousand [and five hundred] pounds or less that are leased and rented, provided that the lessee or renter of the pickup truck certifies on a form, provided by the leasing or rental company, that the pickup truck shall be used exclusively for non-commercial purposes. No rental or leasing company shall permit the registration of a pickup truck if the renter or lessee fails to complete the certification required by this subdivision or if such company knows or has reason to know that the renter or lessee is operating a pickup truck for commercial purposes.

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

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

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

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department. VTL section 401(7) provides the registration fee schedule for vehicles “constructed or specially equipped for the transportation of goods, wares and merchandise, commonly known as auto trucks...” Section 401(15) specifically authorizes the Commissioner of Motor Vehicles to promulgate regulations “...for the proper enforcement of the provisions of this section with respect to the registration of auto trucks...”

2. Legislative objectives: The proposal is consistent with the legislative objectives underlying the registration requirements for motor vehicles: to identify vehicles as belonging to a particular class, to insure that appropriate fees are paid and, indirectly, to authorize or prohibit the use of particular roadways by particular types of vehicles.

3. Needs and benefits: In 2000, the Department adopted amendments to Part 106.6 to provide:

A pickup truck which is used exclusively for non-commercial purposes with an unladen weight of five thousand pounds or less, and with no business advertising may receive a passenger registration, at the registrant’s option.

In 2000, the Department explained in its Regulatory Impact Statement that sales of light duty trucks, including pickup trucks, had increased substantially. More and more, pickup trucks were being sold to customers who intended to use them for daily transportation and other personal uses, rather than in connection with a commercial enterprise. Despite that, DMV regulations and procedures required that “unmodified” pickups be issued commercial class license plates. As a result, such vehicles were prohibited from using many of the State’s parkways and other roadways, on which the regulating jurisdictions prohibit the use of “commercial” vehicles. While those jurisdictions are not required to use a vehicle’s registration classification as the sole or primary determinant of a vehicle’s status under their particular regulations, they often do. In fact, particularly given the trend in the vehicle population toward SUV’s and “modified” pickup trucks, which are issued passenger registrations, the unmodified pickup is not substantially different in terms of construction, size or usage than other vehicles which are permitted to use these roadways under current regulations of the responsible jurisdictions. In DMV’s view, this needlessly glorified form over substance, and should be rectified.

Section 401(7) has been relied upon by DMV to mandate issuance of commercial plates for pickups. While we believe that this statute would still require the payment of the 401(7) fee for unmodified pickups, which are constructed to transport “goods, wares and merchandise,” it does not mandate the issuance of any particular license plate, which rests with the Commissioner’s regulatory authority under Section 401(15).

Since the adoption of the regulation in 2000, the Department has received numerous requests from citizens encouraging DMV to raise the threshold for registering pickups with passenger plates. These citizens primarily argue that since many SUV’s weigh more than 5,000 pounds and operate freely on the parkways, pickup trucks, which are not significantly different in size and weight than many SUV’s, should also be allowed to operate on parkways. The Department found this argument persuasive in 2004 and raised the weight limit for pickups registered as passenger vehicles to 5,500 pounds. This applied to all pickups, including leased and rented vehicles, as well as those purchased outright by the consumer.

Recently, several members of the State Legislature and the New York State Automobile Dealers Association (NYSADA) have asked the DMV to again raise the weight threshold for the registration of pickup trucks in the passenger class, particularly due to the changing configurations and weights of both pickup trucks and passenger vehicles.

NYSADA points out that certain pickup trucks exceed the 5,500 pound threshold by simply adding options. For example, the 2014 Toyota Tundra Platinum, in two wheel drive, has a curb weight of 5,560 pounds, while the Toyota Tundra Limited has a curb weight of 5,375 pounds. Popular accessories, such as bed liners and running boards add to the weight. NYSADA also points out that heavy non-commercial vehicles such as the Chevrolet Suburban, the Cadillac Escalade and Ford Expedition, all of which weigh more than 5,500 pounds, are registered as passenger vehicles and may operate on our State’s parkways.

Increasing the weight threshold from 5,500 to 6,000 pounds for the registration of pickup trucks in the commercial class will benefit consumers who purchase such vehicles and wish to operate them on our State’s parkways.

4. Costs: There are no costs to consumers, state agencies or local governments. As indicated, the fee for registration for unmodified pickups will continue to be imposed under Section 401-7 of the VTL, and is not, therefore, impacted by the proposal.

5. Local government mandates: The proposal does not impose any mandates on local governments.

6. Paperwork: The proposal does not impose any additional paper requirements on the Department.

7. Duplication: This proposal does not duplicate, overlap or conflict with any relevant rule or legal requirement of the State and federal governments.

8. Alternatives: The Department canvassed the State Department of Transportation, the Division of State Police, the Palisades Interstate Parks Commission, and the Office of Parks, Recreation and Historic Preservation about the proposed rulemaking. None of the agencies had an objection to raising the registration threshold to 6,000 pounds. The Superintendent of State Police suggested that the DMV also consider using vehicle height and length in determining the suitability for parkway infrastructure. Although this is a valid point, incorporating height and length into the DMV’s registration process would pose substantial administrative obstacles. We also canvassed the NYC Department of Transportation but received no response. A no action alternative was considered but not adopted due to the benefits to consumers.

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

10. Compliance schedule: The Department will be able to achieve compliance with the proposed amendment as soon as it is adopted.

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

A regulatory flexibility analysis for small business and local governments, a rural area flexibility analysis, and a job impact statement are not required for this rulemaking proposal because it will not adversely affect small businesses, local governments, rural areas, or jobs.

This proposal sets forth criteria for the registration of pickup trucks in the passenger class. Due to its narrow focus, this rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. No local government activities are involved.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED****Off Premise Sales of Motor Vehicles**

I.D. No. MTV-13-15-00012-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 78.8 of Title 15 NYCRR.

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

Subject: Off premise sales of motor vehicles.

Purpose: Provides guidance of off premise sales of motor vehicles by registered dealers.

Text of proposed rule: Paragraph (2) of subdivision (c) of section 78.8, and such subdivision are amended to read as follows:

(c) A dealer may conduct a *maximum of two (2) sales per calendar year* at additional locations if:

(2) the dealer [mans] *staffs, for the entire duration of the sale, a booth or desk at the away-from-premises location which has the dealer’s name, registered street address, registration number and telephone number [prominently] displayed proportionate to the size of the sign or in letters at least [two] four inches high[,] with a stroke of three-fourths of one inch on a sign at least 18 square feet in size.* All sales must take place at the booth or desk;

Paragraphs (1), (2), (3), (4), (5) and (6) of subdivision (d) of section 78.8 are amended to read as follows:

(1) a written request from a dealer, [a dealer association or a manufacturer] *on a form prescribed by the commissioner,* is received at least [fifteen] *twenty* days before the sale is to begin;

(2) *the sale location is within twenty (20) miles of the dealer’s registered location, provided, however, in the counties of Westchester, Rockland, Bronx, New York, Kings, Queens, Richmond, Nassau and Suffolk, the sale location is within six (6) miles of the dealer’s registered location; and*

(3) the sale is to be of ten *consecutive* days duration or less; [and]

(4) neither the dealer nor the away-from-premises location has a history of violations[.] ; *and*

(5) *all third party participants in such sale are identified at the time of the request, and, in the case of banks and/or credit lenders, are certified by the New York State Department of Financial Services to operate in New York State,*

(6) *the sale location complies with all applicable local zoning requirements and, if required, all necessary permits have been acquired and are maintained at the dealer’s registered location.*

Subdivision (e) is relettered (g) and new subdivisions (e) and (f) are added to section 78.8 to read as follows:

(e) The provision of subdivision (c) of this section regarding the maximum number of sales per calendar year and the provision of paragraph (2) of subdivision (d) of this section regarding the location of sales shall not apply to sales of recreational vehicles. For the purpose of this section, the term "recreational vehicle" shall have the same meaning as "house coach" as such term is defined in section one hundred nineteen of the Vehicle and Traffic Law.

(f) All advertising for sales away from the dealer's registered location shall include the dealer's name, registered street address, facility registration number and telephone number.

(g) A display of a vehicle at which the dealer has no sales personnel or employee present shall be considered a display and not a sale and is permitted without compliance with this section. A display of a vehicle at which the dealer has a sales person or employee present requires the dealer to comply with this section[.]; provided, however, that a display of vehicles at an event, such as an auto show, in which numerous manufacturers participate and which is for the purpose of display is permitted without compliance with this section.

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

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

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

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department. VTL section 415 controls the registration, rights and responsibilities of dealers.

2. Legislative objectives: VTL 415(1)(c) provides that a dealer must have a "place of business," which "means a designated location at which the business of the dealer is conducted, and, in relation to a retail dealer, facilities for displaying new or used motor vehicles." However, under the Commissioner's broad regulatory authority, Section 78.8 establishes the parameters for conducting off-premise sales. The purpose of the proposed regulation is to provide more specific guidance for off-premise sales by dealers.

3. Needs and benefits: The proposed rule is necessary to provide specific guidance for the conduct of off-premise sales in New York State. Over the past several years, an increasing number of dealerships have exploited loopholes in the current regulation by using third-party promotional companies to sell vehicles, instead of the dealer's own employees, selling vehicles far from their relevant market area, and conducting almost constant off-premise sales, making it a part of their every-day business model, rather than a "special event" conducted periodically. These amendments are intended to control these excesses.

Specifically, the proposed regulation provides that: a dealer may conduct a maximum of two off-premise sales per calendar year, more prominent signage must be displayed at the off-premise site, the Commissioner must be given at least 20 days' notice before the sale, on a form to be prescribed by the Commissioner, sales must be held within a designated distance from the dealer's registered place of business, all third party participants must be identified at the time of the request, and the place of sale must comply with local zoning requirements. The rule provides that the maximum number of off-premise sale events shall not apply to the sales of recreational vehicles.

This proposed regulation provides the necessary regulatory framework for the conduct of off-premise sales, while permitting such sales to continue, particularly since they benefit both the dealers who conduct such sales and the customers who purchase motor vehicles at such sales.

4. Costs: a. to regulated parties:

Dealers may need to purchase a new sign to comport with the regulation. The cost will be de minimus.

b. cost to the State, the agency and local governments: This proposed rule will have no fiscal impact on the DMV. In addition, it will not impact local governments, since the regulation concerns the regulation of off-premise sales by dealers.

c. source: The Department's Office of Vehicle Safety provided this information.

5. Local government mandates: The proposed rule will not impact local governments, since it concerns the regulation of off-premise sales by dealers.

6. Paperwork: The proposed rule will require a dealership to request permission to conduct an off-premise sale using a new DMV form, on which the dealership would certify its compliance with all relevant DMV requirements and restrictions. Currently, dealers request permission in a

letter to the DMV. The dealer associations that reviewed the proposed rule recommended that the DMV collect the information required on the new form.

7. Duplication: This proposed regulation does not duplicate or conflict with any State or Federal rule.

8. Alternatives: The Department sought comments from the New York State Automobile Dealers Association, the Greater New York Automobile Dealers Association, the Eastern New York Coalition of Automotive Retailers, the Rochester Automobile Dealers Association, the Syracuse Automobile Dealers Association, and the Niagara Frontier Automobile Dealers Association, regarding the proposed regulation. As a result of those comments the Department made some changes to our initial proposal. New language was added to provide that compliance with section 78.8 does not apply to the display of vehicles at an event, such as an auto show, in which numerous manufacturers participate. Additionally, the proposed rule will require applicants for off-premise sales to complete a form prescribed by the Commissioner. Such applicant will be required to submit information suggested by the dealer associations, such as the name of the dealer's employees/salespersons, so that such employees are identified as NYS employees subject to NYS labor laws, worker's compensation laws, benefits, and tax liabilities. Some of the dealers recommended that a \$50,000 bond be posted by those conducting off-premise sales. We rejected this proposal due to the undue burden it would impose on used car dealers.

9. Federal standards: The rule does not exceed any Federal standards.

10. Compliance schedule: The Department expects that all regulated parties will be in compliance upon adoption of the regulation.

Regulatory Flexibility Analysis

1. Effect of rule: There are currently over 11,800 dealers in New York State, the majority of which are small businesses. This proposed regulation would have no impact on local governments.

2. Compliance requirements: Dealers who wish to conduct off-premise sales would be required to comply with the proposed rule. Such requirements include signage standards, limitations on the distance a sale can be conducted from the dealer's place of business, notification of third party participants, compliance with local zoning requirements, and submitting a form, prescribed by the Commissioner, when applying to conduct an off-premise sale.

3. Professional services: This regulation would not require dealers to obtain new professional services.

4. Compliance costs: Dealers may need to construct or purchase a new sign that comports with the regulation, but such cost will be de minimus.

5. Economic and technological feasibility: The proposal is economically and technologically feasible for dealers to comply with as it does not impose any new technological requirements.

6. Minimizing adverse impact: The Department sought comments from the New York State Automobile Dealers Association, the Greater New York Automobile Dealers Association, the Eastern New York Coalition of Automotive Retailers, the Rochester Automobile Dealers Association, the Syracuse Automobile Dealers Association, and the Niagara Frontier Automobile Dealers Association, regarding the proposed regulation. As a result of those comments the Department made some changes to our initial proposal. New language was added to provide that compliance with section 78.8 does not apply to the display of vehicles at an event, such as an auto show, in which numerous manufacturers participate. Additionally, the proposed rule will require applicants for off-premise sales to complete a form prescribed by the Commissioner. Such applicant will be required to submit information suggested by the dealer associations, such as the name of the dealer's employees/salespersons, so that such employees are identified as NYS employees subject to NYS labor laws, worker's compensation laws, benefits, and tax liabilities. Some of the dealers recommended that a \$50,000 bond be posted by those conducting off-premise sales. We rejected this proposal due to the undue burden it would impose on used car dealers.

7. Small business and local government participation: See response to number 6 above.

Rural Area Flexibility Analysis and Job Impact Statement

A rural area flexibility analysis and a job impact statement are not required for this rulemaking proposal because it will not adversely affect rural areas or job creation.

This proposal concerns the off-site sales by motor vehicle dealers. Due to its narrow focus, this rule will not impose an adverse economic impact on rural areas or on employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Montgomery County Motor Vehicle Use Tax

I.D. No. MTV-13-15-00013-P

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

Proposed Action: This is a consensus rule making to amend section 29.12 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a) and 401(6)(d)(ii); Tax Law, section 1202(c)

Subject: Montgomery County motor vehicle use tax.

Purpose: To impose a Montgomery County motor vehicle use tax.

Text of proposed rule: Section 29.12 is amended by adding a new subdivision (am) to read as follows:

(am) Montgomery County. The Montgomery County Legislature adopted a local law on January 9, 2015 to establish a Montgomery County Motor Vehicle Use Tax. The County Executive of the Montgomery County Legislature entered into an agreement with the Commissioner of Motor Vehicles for the collection of the tax in accordance with the provisions of this Part, for the collection of such tax on original registrations made on and after July 1, 2015 and upon the renewal of registrations expiring on and after September 1, 2015. The County Treasurer is the appropriate fiscal officer, except that the County Attorney is the appropriate legal officer of Montgomery County referred to in this Part. The tax due on passenger motor vehicles for which the registration fee is established in paragraph (a) of subdivision (6) of Section 401 of the Vehicle and Traffic Law shall be \$5.00 per annum on such motor vehicles weighing 3,500 lbs. or less and \$10.00 per annum for such motor vehicles weighing in excess of 3,500 lbs. The tax due on trucks, buses and other commercial motor vehicles for which the registration fee is established in subdivision (7) of Section 401 of the Vehicle and Traffic Law used principally in connection with a business carried on within Montgomery County, except for vehicles used in connection with the operation of a farm by the owner or tenant thereof shall be \$10.00 per annum.

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

Data, views or arguments may be submitted to: Ida L. Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: heidi.bazicki@dmv.ny.gov

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

Consensus Rule Making Determination

This proposed regulation would create a new 15 NYCRR Part 29.12(am) to provide for the collection of a Montgomery County motor vehicle use tax by the Department of Motor Vehicles. Pursuant to the authority contained in Tax Law section 1202(c) and Vehicle and Traffic Law section 401(6)(d)(ii), the Commissioner must collect a motor vehicle use tax if a county has enacted a local law requiring the collection of such tax.

On January 9, 2015, the Montgomery County Legislature enacted a local requiring that a motor vehicle use tax be imposed on passenger and commercial vehicles. Pursuant to this local law, the Commissioner is required to collect the tax on behalf of the county and transmit the revenue to the County, minus the administrative costs required to process the tax. The tax is five dollars per annum on a passenger vehicle weighing 3,500 pounds or less, ten dollars per annum on a passenger vehicle weighing more than 3,500 pounds, and ten dollars per annum on all commercial vehicles. There are certain exempt vehicles, such as vehicles used by non-profit religious, charitable, or educational organizations, and vehicles used only in connection with the operation of a farm by the owner or tenant of the farm.

This is a consensus rule because the Commissioner has no discretion about whether to collect the tax, i.e., it must be collected per the mandate of the Montgomery County local law. The merits of the tax may have been debated before the Montgomery County Legislature, but are no longer the subject of debate—it is now the law. DMV is merely carrying out the will expressed by the County Legislature.

Job Impact Statement

A Job Impact Statement is not submitted with this rule because it will not have an adverse impact on job creation or development.

Office for People with Developmental Disabilities

EMERGENCY RULE MAKING

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

I.D. No. PDD-13-15-00009-E

Filing No. 164

Filing Date: 2015-03-13

Effective Date: 2015-03-15

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

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

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

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

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

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

OPWDD filed emergency regulations effective June 30, 2013 through September 25, 2013, and replacement emergency regulations effective September 26, 2013; December 25, 2013; March 24, 2014; June 22, 2014; September 17, 2014; and December 15, 2014 to implement many of the provisions contained in the PPSNA. The December 15, 2014 replacement emergency regulations are now expiring. New emergency regulations are necessary to continue implementing regulations that are in conformance with the PPSNA. If OPWDD did not file new emergency regulations effective March 15, 2015, regulatory requirements would revert to the regulations that were in effect prior to June 30, 2013.

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

OPWDD was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes. OPWDD is making only one revision in the new emergency regulations, compared with the December 15, 2014 regulations, based on input from the field and experience with the new systems and requirements gained over the past year and eighteen months. By filing new emergency regulations, OPWDD is able to revise the regulations to reflect recent input and current needs.

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

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

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

- Revisions to 14 NYCRR Part 624 (now titled “Reportable incidents and notable occurrences”) to incorporate categories of “reportable incidents” as established by the PPSNA. Programs and facilities certified or operated by OPWDD must report “reportable incidents” to the Vulnerable Persons’ Central Register (VPCR), a part of the Justice Center for the Protection of People with Special Needs (Justice Center). Part 624 is amended to incorporate other revisions related to the management of reportable incidents in conformance with various provisions of the PPSNA.

- Revisions to 14 NYCRR Section 633.7 concern the code of conduct adopted by the Justice Center in accordance with Section 554 of the Executive Law and impose requirements on programs certified or operated by OPWDD. The code of conduct must be read and signed by custodians who have regular and direct contact with individuals receiving services as specified in the regulations.

- Revisions to 14 NYCRR Section 633.22 reflect the consolidation of the criminal history record check function in the Justice Center. The Justice Center will receive requests for criminal history record checks and will process those requests, instead of OPWDD.

- A new 14 NYCRR Section 633.24 contains requirements for background checks (in addition to criminal history record checks).

- Revisions to Part 687 incorporate changes to criminal history record check and background check requirements in family care homes.

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

- The amendments delete the current categories and definitions of events and situations that must be reported to agencies and OPWDD. The amendments add definitions of “reportable incidents.” Types of reportable incidents are “abuse,” “neglect,” and “significant incidents.” The amendments also add definitions of “notable occurrences.” Part 624 includes requirements for reporting and investigating these types of events.

- The requirements of Part 624 are limited to events and situations that occur under the auspices of an agency.

- A new Part 625 contains requirements that apply to events and situations which are not under the auspices of an agency.

- The amendments mandate the use of OPWDD’s Incident Report and Management Application (IRMA), a secure electronic statewide incident reporting system, for reporting information about specified events and situations, and remove the current requirement to submit a paper based incident report to OPWDD in certain instances.

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

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

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

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

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

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

- The amendments add requirements that agencies check the “Staff

Exclusion List” of the Vulnerable Persons’ Central Register as a part of the background check process.

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 10, 2015.

Text of rule and any required statements and analyses may be obtained from: Regulatory Affairs Unit, Office for People With Developmental Disabilities, 44 Holland Avenue, 3rd Floor, Albany, NY 12229, (518) 474-7700, email: RAU.Unit@opwdd.ny.gov

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

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

The PPSNA creates a Vulnerable Persons’ Central Register (VPCR). This register will contain the names of custodians found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All custodians found to have committed such acts have

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

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

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

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

4. Costs:

a. Costs to the Agency and to the State and its local governments: OPWDD will not incur significant additional costs as a provider of services. While the regulations impose new requirements on providers, OPWDD expects that they will comply with the new requirements with no additional staff. Furthermore, OPWDD has already implemented some of the new requirements contained in the regulations in state-operated services through implementation of policy/procedure changes. There may be minimal one-time costs associated with notification and training of staff.

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

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

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

b. Costs to private regulated parties: It is difficult to estimate the cost impact on private regulated parties, however, OPWDD expects that cost to providers will be minimal. OPWDD already requires the reporting and investigation of incidents. The implementation of these reforms in general will not result in costs. There may be costs associated with the amendment of Section 424-a of the Social Service Law (as reflected in these regulations) which requires background checks of the Statewide Central Register of Child Abuse and Maltreatment (which cost \$25 per check). However, OPWDD cannot estimate how many additional checks will be required. There may also be additional costs associated with the need for clinical assessments needed to demonstrate psychological abuse. There may be costs associated with the requirement that agencies conduct a "reasonably diligent search" for records of past abuse/neglect related to background checks required in accordance with Section 16.34 of the Mental Hygiene Law. Again, OPWDD is not able to estimate these cost impacts. Concerning the reforms to Part 624 that are in addition to the changes needed to implement the PPSNA, most of the amendments have either already been implemented by OPWDD policy directives (e.g.

mandate to use IRMA), merely clarify existing requirements or interpretive guidance, or can be implemented without cost to the agency (e.g. restrictions on committee review).

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

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

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

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

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

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

10. Compliance Schedule: The regulations will be effective on March 15, 2015 to ensure continued compliance with Chapter 501 of the Laws of 2012. The emergency regulations replace prior emergency regulations that were effective December 15, 2014 and expired on March 14, 2015.

Regulatory Flexibility Analysis

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

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

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

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

The PPSNA expanded requirements to obtain background checks of the

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

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

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

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

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

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

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

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

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

4. Compliance costs: There may be modest costs for small business providers associated with the amendments. There may be costs associated

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

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

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

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

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

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

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

2012. OPWDD also hosted many informational sessions regarding the requirements in the prior emergency regulations during the spring and summer of 2013, including in-person sessions, webinars and state-wide videoconferences. OPWDD informed providers about the new requirements and invited public comment on the requirements. OPWDD has also responded to numerous questions and comments on prior emergency regulations. Finally, OPWDD has posted extensive information about the new requirements on its website.

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

Rural Area Flexibility Analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Minimizing adverse impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated

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

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

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

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

Job Impact Statement

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

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

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

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

The PPSNA and these implementing regulations will also mean that some functions that are currently performed by OPWDD staff will instead be performed by the staff of the Justice Center. OPWDD expects that the

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

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

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether Leatherstocking Should be Permitted to Recover a Shortfall in Earnings

I.D. No. PSC-13-15-00024-P

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

Proposed Action: The Public Service Commission is considering whether to grant, modify or deny, in whole or in part, the request of Leatherstocking Gas Company, LLC to recover a shortfall in earnings accumulated over the seven years ending 2022, prospectively.

Statutory authority: Public Service Law, sections 4(1) and 66(12)

Subject: Whether Leatherstocking should be permitted to recover a shortfall in earnings.

Purpose: To decide whether to approve Leatherstocking's request to recover a shortfall in earnings.

Substance of proposed rule: In licensing proceedings pursuant to § 68 of the Public Service Law (Cases 15-G-0098 and 15-G-0099), Leatherstocking Gas Company, LLC (Leatherstocking) seeks Certificates of Public Convenience and Necessity approving the exercise of gas franchises granted by the Town and Village of Windsor, Broome County, and the construction of gas plant in those municipalities. As part of the licensing proceedings, Leatherstocking proposed initial rates to be charged customers in the various service classes. In testimony accompanying its petitions, Leatherstocking requested that it be permitted to recover from ratepayers a shortfall in earnings expected to accumulate over the seven years ending 2022, in a prospective period. The Public Service Commission is considering whether to grant, modify or deny, in whole or in part, this request.

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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: elaine.agresta@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.

(15-G-0098SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Whether to Permit the Use of the Quadlogic Controls S-10T Electric Submeter

I.D. No. PSC-13-15-00025-P

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

Proposed Action: The Public Service Commission is considering whether

to approve, deny or modify, in whole or in part, a petition filed by Quadlogic Controls Corporation for approval to use the Quadlogic S-10T electric submeter in residential applications.

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

Subject: Whether to permit the use of the Quadlogic Controls S-10T electric submeter.

Purpose: To permit the use of the Quadlogic S-10T submeter.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Quadlogic Controls Corporation to use the S-10T Residential Smart Meter in residential submetering applications, and any other related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@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.

(15-E-0125SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Whether to Permit the Use of the Sensus Smart Point Gas AMR/AMI Product

I.D. No. PSC-13-15-00026-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by Consolidated Edison and Orange and Rockland Utilities for approval to use the Sensus Smart Point Gas AMR/AMI product.

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

Subject: Whether to permit the use of the Sensus Smart Point Gas AMR/AMI product.

Purpose: To permit the use of the Sensus Smart Point Gas AMR/AMI product.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny, or modify, in whole or in part, the petition filed by Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities, Inc., to use the Sensus Smart Point Gas Module AMR/AMI device in commercial and residential natural gas meter applications, and any other related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@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.

(15-G-0094SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Whether to Permit the Use of the Measurlogic DTS 310 Electric Submeter

I.D. No. PSC-13-15-00027-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by Measurlogic Incorporated for approval to use the Measurlogic DTS 310 electric submeter in residential applications.

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

Subject: Whether to permit the use of the Measurlogic DTS 310 electric submeter.

Purpose: To permit the use of the Measurlogic DTS 310 submeter.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by Measurlogic Corporation to use the DTS 310 electric submeter for use in residential submetering applications. The Commission may also consider other related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@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.

(15-E-0136SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Whether to Permit the Use of the SATEC EM920 Electric Meter

I.D. No. PSC-13-15-00028-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by SATEC Incorporated for approval to use the SATEC EM920 socket type electric meter.

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

Subject: Whether to permit the use of the SATEC EM920 electric meter.

Purpose: To permit necessary to permit the use of the SATEC EM920 electric meter.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or in part, the petition filed by SATEC Incorporated for approval to use the SATEC EM920 electric meter in industrial and large commercial accounts, and to determine power quality analysis for residential submetering buildings.

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: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@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.

(15-E-0137SP1)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Whether to Permit the Use the Triacta Power Technologies 6103, 6112, 6303, and 6312 Electric Submeters

I.D. No. PSC-13-15-00029-P

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

Proposed Action: The Public Service Commission is considering whether to approve, deny or modify, in whole or in part, a petition filed by Triacta Power Technologies for approval to use the Triacta 6103, 6112, 6303, and 6312 residential electric submeters.

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

Subject: Whether to permit the use the Triacta Power Technologies 6103, 6112, 6303, and 6312 electric submeters.

Purpose: To permit the use of the Triacta submeters.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Triacta Power Technologies for approval to use the Triacta 6103, 6112, 6303, and 6312 electric submeters in residential submetering applications. The Commission may also consider other related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@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.

(15-E-0133SP1)