

RULE MAKING ACTIVITIES

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

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

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

Department of Audit and Control

NOTICE OF ADOPTION

Employer Reporting—Definition of a Full Day Worked for Certain Employees Who Contract for Other Than a 5 Day Standard Work Week

I.D. No. AAC-24-15-00004-A
Filing No. 669
Filing Date: 2015-08-04
Effective Date: 2015-08-19

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

Action taken: Amendment of section 315.3 of Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11, 311, 34 and 334

Subject: Employer reporting- definition of a full day worked for certain employees who contract for other than a 5 day standard work week.

Purpose: To define a full day worked for certain employees who contract for other than a 5 day standard work week.

Text or summary was published in the June 17, 2015 issue of the Register, I.D. No. AAC-24-15-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@yahoo.com

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Reporting Requirements for Elected and Appointed Officials

I.D. No. AAC-24-15-00005-A
Filing No. 670
Filing Date: 2015-08-04
Effective Date: 2015-08-19

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

Action taken: Amendment of section 315.4 of Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11 and 311

Subject: Reporting Requirements for Elected and Appointed Officials.

Purpose: To update the reporting requirements for Elected and Appointed Officials.

Text or summary was published in the June 17, 2015 issue of the Register, I.D. No. AAC-24-15-00005-P.

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

Text of rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@yahoo.com

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Meeting Attendance for Members of the Investment Advisory Committee

I.D. No. AAC-33-15-00001-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 rulemaking to amend section 352.3 of Title 2 NYCRR.

Statutory authority: Retirement and Social Security Law, sections 11, 311, 13 and 313

Subject: Meeting Attendance for members of the Investment Advisory Committee.

Purpose: To allow members of the Investment Advisory Committee to attend via conference telephone or certain other electronic means.

Text of proposed rule: 352.3 Meeting and action of committee. The committee shall convene periodically at the request of the Comptroller. Where the committee votes to approve appointments to the Real Estate Advisory Committee, the committee shall act only upon the affirmative vote of a majority of the members in attendance or of four members, whichever is greater; *provided that members may participate in a meeting and vote on any matter before the committee at such meeting by means of conference telephone or similar communications equipment allowing all persons participating in the meeting to hear each other at the same time and participation by such means shall constitute attendance at such meeting.* The Comptroller or his representative shall preside at the meetings.

Text of proposed rule and any required statements and analyses may be obtained from: Jamie Elacqua, Office of the State Comptroller, 110 State Street, Albany, NY 12236, (518) 473-4146, email: jelacqua@osc.state.ny.us

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

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

Consensus Rule Making Determination

This is a consensus rulemaking proposed for the sole purpose of authorizing the Investment Advisory Committee to participate in meetings by means of conference telephone or similar communications equipment. This amendment relates to authorizing the Investment Advisory Committee to participate in meetings by means of conference telephone or similar communications equipment and it has been determined that no person is likely to object to the adoption of the rule as written.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Role and Responsibilities of the Agency Privacy Officer; Conform the Regulation to Law; Correcting Typographical Errors

I.D. No. AAC-33-15-00003-P

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

Proposed Action: This is a consensus rule making to amend Part 111 of Title 2 NYCRR.

Statutory authority: State Finance Law, section 8[14]; and Public Officers Law, section 94[2]

Subject: Role and responsibilities of the agency privacy officer; conform the regulation to law; correcting typographical errors.

Purpose: To clarify the role and responsibilities of the agency privacy officer, and to conform the regulation to law.

Text of proposed rule: Chapter IV. Miscellaneous Rules
Part 111. Personal Information Records
111.2 Definitions.

When used in this Part:

....

(d) Privacy [compliance] officer shall mean the office's [public information officer or the officer's designated representatives] *employee designated to oversee and implement the office's procedures to comply with the Personal Privacy Protection Law and such other privacy-related tasks as may be assigned.*

....

(f) *Personal information means any information concerning a data subject which, because of name, number, symbol, mark or other identifier, can be used to identify the data subject.*

(g) *System of records means any group of records under the actual or constructive control of any agency pertaining to one or more data subjects from which personal information is retrievable by use of the name, symbol, mark or other identifier of a data subject.*

111.4 Privacy [compliance] officer.

(a) The privacy [compliance] officer is responsible for:

....

(3) *insuring that appropriate procedures are developed and implemented so that [taking] one of the following actions is taken upon locating the record sought:*

(i) make the record available for inspection, in a printed form without codes or symbols, unless an accompanying document explaining such codes or symbols is also provided;

(ii) permit the data subject to copy the record; or

(iii) deny access to the record in whole or in part, and explain in writing the reasons therefor;

....

(b) The privacy [compliance] officer is responsible for ensuring that the office complies with the provisions of the Personal Privacy Protection Law and the regulations herein and for coordinating the response to requests for records or amendment or correction of records. In particular, the privacy [compliance] officer shall perform the functions of [his] the office [within the public information office which is located] at 110 State Street, Albany, 12236-0001. [He] *The officer* shall cause a public notice to be posted at 110 State Street, Albany, NY, and all other buildings occupied by this office, informing members of the public of [his] the *officer's* location and telephone number; of the times and places records will be available for inspection and copying; and of the right to appeal a denial of a request for a record or an amendment or correction thereto; which

shall include the name, address and telephone number of the privacy appeals officer.

(c) *The privacy officer shall coordinate with the Privacy Committee, as designated by the Comptroller, to develop and, from time to time, to update internal policies, procedures and guidance on the collection, use, safeguarding, disclosure and disposal of personal information. Those policies, procedures and guidance shall include, but not be limited to, addressing the following objectives:*

(1) *To compile and maintain an inventory of agency forms utilizing social security numbers as identifiers for data subjects and to work toward elimination of such use, absent an exception granted by the Privacy Committee;*

(2) *To review agency forms to insure that the proper privacy notice is used;*

(3) *To assist in the development of a process for review of new systems of data collection to insure that appropriate privacy notices are included and to provide mitigation strategies to reduce privacy impact;*

(4) *To recommend appropriate measures to communicate the importance of compliance with personal privacy protection measures to staff, including periodic training and outreach to build a culture of privacy across the office and transparency to the public;*

(5) *To assist in the identification and documentation of privacy risks and development of appropriate internal controls in coordination with the Internal Controls Officer and other staff with a privacy-related role;*

(6) *To operate an office-wide privacy incident response program to insure that incidents involving personal information are properly reported and mitigated, as appropriate.*

111.5 Proof of identity.

(a) When a request is made in person, [or when records are made available in person following a request made by mail,] this office may require the *requesting individual to present appropriate identification, such as a driver's license, an identifier assigned to the data subject by this office, a photograph or similar information that confirms that the person seeking the record is [sought pertains to] the data subject of such record.*

(b) When a request is made by mail or by email, this office may require verification of a signature or inclusion of an identifier generally known only by a data subject, or similar appropriate identification.

(c) *Proof of identity shall not be required regarding a request for a record accessible to the public pursuant to the Freedom of Information Law (Article 6 of the Public Officers Law).*

111.6 Request for a record or correction or amendment of a record or personal information.

(a) A request for a record or for correction or amendment of a record or personal information shall be made in writing, *submitted by mail or by email or in person, and must be accompanied by a reasonable proof of identity, as described in Section 111.5.* A request for correction or amendment of a record or personal information shall not include matters the determination of which is within the exclusive authority of the Comptroller pursuant to sections 74 and 374 of the Retirement and Social Security Law.

....

(d) Within five business days of the receipt of a request [from (sic)] for a record, this office shall provide access to the record, deny access, or acknowledge the receipt of the request in writing, stating the approximate date when the request will be granted or denied, which date shall not exceed 30 days from the date of the acknowledgement. Whenever access to a record is denied, it shall be in writing, explaining the reasons therefor, and identifying the persons to whom an appeal may be made.

(e) Within 30 business days of the receipt of a request [from (sic)] from a data subject for correction or amendment of a record or personal information, reasonably described, concerning the data subject, this office shall:

(1) make the amendment or correction in whole or in part and inform the data subject that, on request, such correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law; or

(2) deny in writing the request of the data subject to correct or amend, explaining the reasons therefor, and identify the person to whom an appeal may be directed.

....

111.7 Appeal.

....

(b) The time for deciding an appeal shall commence upon receipt of an appeal that identifies:

(1) the request for a record or amendment or correction of a record or personal information which has been denied in whole or in part;

- (2) the record that is the subject of the appeal; and
- (3) the name and return address of the data subject or the person making the appeal.

....

111.8 Statement of disagreement by data subject.

[(a) Upon receipt of a statement of disagreement by a data subject, this office shall:

- (1) clearly note any portions of the record that are disputed; and
- (2) attach the data subject’s statement as part of the record.

(b) When providing a data subject’s statement of disagreement to a person or governmental unit in conjunction with a disclosure made pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law, this office may also include a concise statement of its reasons for not making the requested amendment or correction.]

(a) If correction or amendment of a record or personal information is denied in whole or in part upon appeal, the determination rendered pursuant to the appeal shall inform the data subject of the right to:

(1) File with the office a statement of reasonable length setting forth the data subject’s reasons for disagreement with the determination;

(2) Request that such a statement of disagreement be provided to any person or governmental unit to which the record has been or is disclosed pursuant to paragraph (d), (i) or (l) of subdivision one of section 96 of the Public Officers Law.

(b) Upon receipt of a statement of disagreement from a data subject, the office shall clearly note any portions of the record that are disputed and attach the data subject’s statement as part of the record.

(c) When providing a data subject’s statement of disagreement to a person or governmental unit in conjunction with a disclosure made pursuant to paragraph (d), (i), or (l) of subdivision one of section 96 of the Public Officers Law, the office may also include a concise statement of its reasons for not making the requested amendment or correction.

111.9 Fees.

....

[(c) The actual cost of reproduction shall be based upon the average unit cost for copying a record, excluding fixed costs of this office such as operator salaries and overhead.]

Text of proposed rule and any required statements and analyses may be obtained from: Camille S. Jobin-Davis, Senior Attorney, Ethics Unit, Office of the State Comptroller, 110 State Street, Albany, NY 12236-0001, (518) 486-9587, email: cjodin-davis@osc.state.ny.us

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

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

Consensus Rule Making Determination

The proposed amendments to this Rule are limited to (a) specifying the role and responsibilities of the agency privacy officer, (b) conforming the regulation to law, and (c) correcting two typographical errors. The amendments are in keeping with extensive intra-agency discussions conducted by the Legal Division of the Office of the State Comptroller, including the Privacy Officer, the Privacy Committee, and legal staff, and will have little external effect. Accordingly, no person is likely to object to the adoption of the rule as written.

Department of Civil Service

NOTICE OF EXPIRATION

The following notices have expired and cannot be reconsidered unless the Department of Civil Service publishes new notices of proposed rule making in the NYS Register.

Jurisdictional Classification

I.D. No.	Proposed	Expiration Date
CVS-30-14-00006-P	July 30, 2014	July 30, 2015
CVS-30-14-00011-P	July 30, 2014	July 30, 2015

Department of Corrections and Community Supervision

NOTICE OF ADOPTION

Procedures for Implementing Standards of Inmate Behavior; Superintendent’s Hearing; Method of Determination; Juvenile Separation

I.D. No. CCS-24-15-00012-A

Filing No. 675

Filing Date: 2015-08-04

Effective Date: 2015-08-19

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

Action taken: Amendment of Part 254; and addition of new Part 321 to Title 7 NYCRR.

Statutory authority: Correction Law, section 112

Subject: Procedures for implementing standards of inmate behavior; Superintendent’s hearing; method of determination; juvenile separation.

Purpose: Set forth when an inmate’s age and intellectual capacity is considered in disciplinary cases. Juvenile disciplinary housing.

Text of final rule: Amend Section (a)(4) of 7NYCRR 254.6 as follows:

(4) When applicable, the information identified in subparagraphs (b)(1)(i), (ii), (iv), (v), and (2)(i), (ii), (iii), and subdivision (h) of this section, derived from the department’s electronic databases, shall automatically appear on a computer generated hearing record sheet that shall be provided to the hearing officer for use at the hearing.

Amend Section (b)(2)(i) to 7NYCRR 254.6:

(i) the incident occurred while the inmate was assigned to the special needs unit (SNU) at Wende, [Arthurkill] Clinton, Woodbourne, Bedford Hills or Sullivan Correctional Facilities, as indicated on the hearing record sheet;

Add a new Section (b)(2)(iii) and re-number the old Section (b)(2)(iii) to (b)(2)(iv) to 7NYCRR 254.6:

(iii) the incident occurred while the inmate was assigned to the correctional alternative rehabilitation program (CAR) at Sullivan Correctional Facility, as indicated on the hearing record sheet; or

([iii]iv) it appears to the hearing officer, based on the inmate’s testimony, demeanor, the circumstances of the alleged offense or any other reason, that the inmate may have been intellectually impaired at the time of the incident or may be intellectually impaired at the time of the hearing.

Add a new Section h to 7NYCRR 254.6:

(h) *Juveniles.* When an inmate is under the age of 18 at the time of the incident, as indicated on the hearing record sheet, the hearing officer shall consider the inmate’s age as a mitigating factor. The written statement of the disposition of the charges, if any, shall, in accordance with section 254.7(a)(5) of this Part, reflect how the inmate’s age affected the disposition (e.g., reduction of a penalty, alternative to a confinement penalty, dismissal of one or more charges).

Amend Section (a)(5) of 7NYCRR 254.7:

(5) As soon as possible, but not later than 24 hours after the conclusion of the hearing, the inmate shall be given a written statement of the disposition of the charges. This statement shall set forth the evidence relied upon by the hearing officer in reaching his decision[.]; the reasons for any penalties imposed; [and,] if applicable, pursuant to section 254.6(b) of this Part, [reflect]how the inmate’s mental condition or intellectual capacity was considered; and, if applicable, pursuant to section 254.6(h) of this Part, how age affected this disposition.

Add a new Part 321 to read as follows:

PART 321

JUVENILE SEPARATION UNITS

(Statutory authority: Correction Law, §§ 112)

Section 321.1 Disciplinary confinement of juvenile inmates.

An inmate under the age of eighteen years of age who receives a disciplinary confinement penalty in accordance with section 253.7 or 254.7 of this Title shall serve that penalty in a juvenile separation unit (JSU) as defined in section 321.2 of this Part: except that if the inmate is housed at Woodbourne or Greene Correctional Facility and receives a disciplinary confinement penalty of thirty days or less, the inmate shall serve that penalty in either JSU at Greene, or in a cell at Woodbourne

with out-of-cell time at least equal to what is available to an inmate housed in a JSU.

Section 321.2 Juvenile separation unit

A JSU is a separate housing location within a correctional facility designed for inmates under eighteen years of age who, due to their behavior, would otherwise be serving a disciplinary confinement penalty in a SHU or in another housing unit. The unit is designed to meet the educational and other needs of the inmates, while maintaining adequate safety and security on the unit, with a goal of expediting their transition back to general population and encouraging their interactions with others. Although a JSU is not operated as a disciplinary housing unit, in light of the security concerns associated with the behaviors that resulted in their confinement and other penalties, inmates on the unit may be subject to limitations on the quantity and type of property they are permitted to have in their cells and may receive access to programs that are more restrictive than those afforded general population inmates in order to maintain security and order on the unit. An inmate housed in a JSU shall be offered six hours of out-of-cell time on weekdays, excluding holidays. The out-of-cell time shall consist of a minimum of four hours of education and other appropriate programming, and weather permitting, two hours of outside exercise. A minimum of two hours of out-of-cell outside exercise shall also be offered on weekends and holidays, weather permitting. An inmate can be denied out-of-cell activities described in this section, if the commissioner or his or designee determines that the inmate's participation in such activities presents an imminent risk of danger to the inmate or to others.

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 254.6(h), 254.7(a)(5) and 321.1.

Text of rule and any required statements and analyses may be obtained from: Kevin P. Bruen, Deputy Commissioner and Counsel, NYS Department of Corrections and Community Supervision, 1220 Washington Avenue - Harriman State Campus - Building 2, (518) 457-4951, email: Rules@Doccs.ny.gov

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

Changes made to the last published rule do not necessitate revision to the previously published RIS, RFA, RAFA and JIS for the Notice of Proposed Rulemaking to Department of Corrections and Community Supervision 7NYCRR Part 254 and Part 312.

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

A Notice of Proposed Rule Making was published in the State Register on June 17, 2015. The Department of Corrections and Community Supervision (DOCCS) received four set of comments during the public comment period associated with the proposed rulemaking. A summary of the comments received and the Department's responses are set forth below (if substantially the same comment was made by more than one commenter, it will only be addressed once).

Comment:

The proposed new section 254.6(h) extends consideration of age as a mitigating factor in disciplinary hearings only to those individuals in state correctional facilities who are under the age of 18. Based upon their review of purported authoritative sources, the commentator believe that consideration of age as a mitigating factor should not be limited to 16 and 17 year olds, but rather should be extended through the age of 25. In addition, the new Juvenile Separation Units created under new Part 321 should also be available to older inmates.

Response:

The age parameters set forth in proposed new section 254.6(h) were the result of negotiations between DOCCS and an experienced inmate legal services organization that is well versed in the law, as well as the purported authoritative sources referenced by the commentator. The age parameters were memorialized in a settlement agreement that was "so ordered" by a State Supreme Court Justice. DOCCS believes that it strikes the right balance between acknowledging the needs of young inmates with the need to maintain safety and security. Adoption of the commentator's suggested changes would also have significant fiscal costs.

Comment:

The minimum amount of out-of-cell time set forth in the proposed new section 321.2 is insufficient for juveniles.

Response:

The minimum amount of out-of-cell time set forth in proposed new section 321.2 was the result of negotiations between DOCCS and an experienced inmate legal services organization that is well versed in the law as well as the purported authoritative sources referenced by the commentator. The minimum amount out-of-cell opportunities provided to juveniles is memorialized in a settlement agreement that was "so ordered" by a State Supreme Court Justice.

Comment:

The proposed new section 254.6(h) requires that hearing officers "shall consider the inmate's age as a mitigating factor" and "shall reflect how the inmate's age affected the disposition." The commentator believes that youth should be a "per se" mitigating factor in a disciplinary hearing. While it appears that for 16 and 17 year olds it will be mandatory that age be "considered," the meaning of that consideration is not stated. Furthermore the reference to existing section 254.7(a)(5) in proposed new section 254.6(h) does not make sense because the existing section does not reference age.

Response:

The proposed new section 254.6(h) requires the hearing officer to set forth how the inmate's age affected the disposition. This language adequately informs the hearing officer regarding what it means to consider age as a mitigating factor on an individualized basis in a given case. In response to the comments, a nonsubstantive change to 254.6(h) will be made at the time of adoption to provide examples (e.g., reduction of a penalty, alternatives to a confinement penalty, dismissal of one or more charges). A nonsubstantive change to existing section 254.7(a)(5) will also be made at the time of adoption to reference proposed new section 254.6(h) and its requirement to set forth how age affected the disposition.

Comment:

The commentator believes that advocates should be provided to assist young people in the disciplinary process. The complexity of presenting youth as a mitigating factor and adequately presenting what an appropriate individualized penalty should be for a particular young person requires assistance that is more substantive than the current regulations permit.

Response:

Age is a readily ascertainable fact. Hearing Officers are receiving training on why and how to consider age as a mitigating factor in Tier III disciplinary proceedings. Adoption of the commentator's suggested changes would have significant fiscal costs and unduly burden the inmate disciplinary process.

Comment:

Under new proposed section 321.2, a 16 or 17 year old can be denied out-of-cell activities based on a determination "that the inmate's participation in such activities presents an imminent risk of danger to the inmate or to others." Yet there is no restriction on the length of time for the denial of out-of-cell activities, no requirement of professional counseling or frequent visitation nor is there a definition for the term "imminent risk."

Response:

The meaning of "imminent risk" for purposes of the proposed regulation is a term of general usage and does not need to be defined in DOCCS regulations. An inmate's assigned Offender Rehabilitation Coordinator and other counseling professionals are available to inmates as needed. They will be able to apply the term on individualized bases in given cases. The commentator's suggested changes are unnecessary.

Comment:

Section 253.6 should be amended to provide that the hearing officer in a Tier II disciplinary hearing must take an inmate's age into account as a mitigating factor. Although the sanction in a Tier II disciplinary hearing is limited to no more than 30 days in a SHU cell or keeplock, such a punishment still represents a significant period of confinement that violates the UN Committee Against Torture's recommendations and is contraindicated by current psychological research on adolescent development. The commentator believes that under no circumstances should a young adolescent spend 30 days in SHU. In fact, he believes that adolescents should spend no time in SHU at all.

Response:

The scope of the regulatory changes being proposed were the result of negotiations between DOCCS and an experienced inmate legal services organization that is well versed in the law and in the purported authoritative sources referenced by the commentator. The parameters of the required changes were memorialized in a settlement agreement that was "so ordered" by a State Supreme Court Justice.

Notwithstanding the foregoing, Part 321 precludes juveniles from serving even thirty days in segregated confinement. In addition, a nonsubstantive change to section 321.1 will be made at the time of adoption to specifically provide that if the inmate is housed at Woodbourne or Greene Correctional Facility and receives a disciplinary confinement penalty of thirty days or less, the inmate shall serve that penalty in either the JSU at Greene, or in a cell at Woodbourne with out-of-cell time at least equal to what is available to an inmate housed in a JSU.

Comment:

Disciplinary segregation time in a rehabilitation unit should be capped for adolescents within the NYCRR. The UN Rapporteur on Torture recommends a cap of 15 days in isolation for any inmate. While the proposed juvenile separation units would ameliorate some of the effects of extreme isolation, the commenter believe a cap of no more than 15 days in a rehabilitative unit would be appropriate for a young person. The guidelines should specify that a juvenile is only to be kept on such a unit for a long as it takes to secure the facility or ensure safety of the individual, but never more than 15 days.

Response:

Under proposed new 321.2, JSUs would provide significant out-of-cell opportunities that cannot be said to result in "extreme isolation.

Comment:

There should be a presumption against disciplinary segregation for young prisoners. While a new segregation unit with increased programming is a welcome change, very few young people should be placed in such a unit. The commenter recommends that adolescents should only be placed in a juvenile separation when the facility or the safety of the adolescent requires temporary segregation for the shortest period of time possible.

Response:

Proposed new section 254.6(h) states that hearing officer shall consider a juvenile inmate's age as a mitigating factor. In response to the comments, a nonsubstantive change to section 254.6(h) will be made at the time of adoption to provide examples (e.g., reduction of a penalty, alternatives to a confinement penalty, dismissal of one or more charges). DOCCS believes that the hearing officer who is tasked with ascertaining the facts and circumstances in a given case is in the best position to determine the degree of mitigation that age warrants.

Comment:

The proposed amendments are unclear as to where the adolescents will be placed during the hearing process. The new rules should specifically state that they are to be keeplocked in their cells or in the new juvenile separation units while awaiting the outcome of their hearings. Additionally, the rules should specify that any predisposition time spent in keeplock must be counted toward a subsequently imposed sanction.

Response:

DOCCS will continue to strive to reduce and or eliminate segregation for juvenile inmate during the pendency of the hearing process.

Comment:

Although the commentator applauds DOCCS' efforts to create a more educational and lenient environment for young adolescents who have engaged in acts of inmate misconduct, he believes the proposed JSUs, which would provide six hours a day out-of-cell time on weekdays and only two hours on weekend days is insufficient to meet the needs of juveniles. Additionally, it should be specified that outside exercise time includes aggregate recreation and the ability to participate in sports like basketball and track.

Finally, the commenter strongly urge the adoption of programming, time cuts, and reduced or alternative SHU sanctions for all prisoners in disciplinary confinement, especially prisoners under the age of 25. He believes it is in DOCCS' best interest to change SHU practices for all inmates in order to avoid further law suits and legislative action. He believes DOCCS is in the best position to liberalize its own practices and urges DOCCS to take this opportunity to institute significant evidence-based reforms.

Response:

The overwhelming number of inmates, young and old, have no or only limited experience with segregated confinement. Inmates attend a wide variety of educational, vocational and recreational programs and work in myriad inmate job assignments. Such an open and progressive system requires that inmates that have proven, especially in a correctional setting, to pose a threat to safety and security be separated from the general inmate population for as long as is deemed just and proper. The proposed JSUs will give an unprecedented level of out-of-cell activities for juvenile inmates considering the security concerns associated with the behaviors that resulted in their placement.

Note: Comments that were outside the scope of the regulations being proposed or the authority of DOCCS, were not addressed herein.

Department of Economic Development

NOTICE OF ADOPTION

Empire State Post Production Tax Credit Program

I.D. No. EDV-03-15-00001-A

Filing No. 674

Filing Date: 2015-08-04

Effective Date: 2015-08-19

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

Action taken: Addition of Part 230 to Title 5 NYCRR.

Statutory authority: L. 2010, ch. 57 as amended by L. 2013, ch. 59

Subject: Empire State Post Production Tax Credit Program.

Purpose: Establish application procedure for the Empire State Post Production Tax Credit Program.

Text or summary was published in the January 21, 2015 issue of the Register, I.D. No. EDV-03-15-00001-P.

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

Revised rule making(s) were previously published in the State Register on June 10, 2015.

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

Evaluation and Process of the Initial Application

Comment: In order to determine eligibility to participate in the program, initial applications should be evaluated based upon whether projected total qualified production costs attributable to the use of tangible property or the performance of services at a qualified post production facility equal or exceed 75% of total qualified production costs, rather than 75% of total post production costs. This change will ensure that significant costs, such as compensation to composers and fees for music licenses, which cannot be incurred in a post qualified production facility do not prevent post production projects from reaching the 75% threshold.

Answer: The existing language mirrors the language of the statute. In addition, costs for compensation of composers and music licenses are already excluded from the definition of post production costs pursuant to section 230.2(m).

Comment: Section 230.4(a)(4) of the regulations should be changed to indicate that the Department "will issue a certificate of conditional eligibility" rather than that the Department "may issue a certificate of conditional eligibility." This change will reflect that eligibility for the program is as of right, and not subject to the Department's discretion.

Answer: The existing language reflects the Department's administrative process with respect to the generation of certificates of conditional eligibility, not discretion on the part of the Department as to whether an applicant is eligible to participate in the program. Accordingly, this change will not be made.

Other Comments

Comment: The term "qualified film" should be changed to "qualified film and television productions."

Answer: The definition of the term "qualified film" already includes television productions pursuant to section 230.2(q). Therefore, this proposed change is unnecessary.

State Board of Elections

EMERGENCY RULE MAKING

Independent Expenditure Disclosure

I.D. No. SBE-16-15-00019-E

Filing No. 673

Filing Date: 2015-08-04

Effective Date: 2015-08-04

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

Action taken: Repeal of section 6200.10; and addition of new section 6200.10 to Title 9 NYCRR.

Statutory authority: L. 2014, ch. 55

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

Specific reasons underlying the finding of necessity: The Commissioners determined that it is necessary for the preservation of the general welfare that this amendment be adopted on an emergency basis as authorized by section 202(6) of the State Administrative Procedure Act, effective immediately upon filing with the Department of State. This amendment is adopted as an emergency measure because time is of the essence and to adopt the regulation in the normal course of business would be contrary to the public interest as a necessary change in the agency's regulations would not be effective for the June 1, 2014 effective date.

The General Government Budget Bill (Chapter 55 of the laws of 2014) created the new independent expenditure disclosure requirements.

Subject: Independent Expenditure Disclosure.

Purpose: The purpose of this rule is to set forth the requirements for Committees to disclose independent expenditure financial activity.

Substance of emergency rule: Chapter 55 of the Laws of 2014 increased the disclosure and reporting requirements for independent expenditure committees. The purpose of this regulation is to set forth the requirements to achieve compliance of reporting and disclosure requirements by Independent Expenditure Committees.

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. SBE-16-15-00019-EP, Issue of April 22, 2015. The emergency rule will expire October 2, 2015.

Text of rule and any required statements and analyses may be obtained from: Cheryl Couser, New York State Board of Elections, 40 N. Pearl Street, Suite 5, Albany, NY 12207, (518) 474-2063, email: Cheryl.Couser@elections.ny.gov

Regulatory Impact Statement

1. Statutory authority: Chapter 55 of the Laws of 2014.

2. Legislative objectives: The SFY 2014-2015 New York State Budget set forth new requirements for the increased disclosure of Independent Expenditure activity.

3. Needs and benefits: The New York State Election Law mandates how financial activity, including independent expenditures, is to be disclosed. Article 14 of the Election law sets forth the requirement that independent expenditures be disclosed through the filing of campaign financial disclosure reports.

Chapter 55 of the Laws of 2014 set forth definitions on what an independent expenditure is and how they are to be disclosed in order to promote public transparency of political activity. The effective date of this law was June 1, 2014.

4. Costs: Regulated parties should incur minimal costs for additional compliance requirements. Those entities that engage in certain independent expenditure activities have been required to register and report with the New York State Board of Elections. Chapter 55 of the Laws of 2014 requires an increased level of record keeping and reporting.

5. Local government mandates: There are no additional responsibilities imposed by this rule upon any county, city, town, village, school district, fire district or other special district.

6. Paperwork: This rule requires Committees to make additional electronic disclosures for any contribution received over \$1,000 or any expenditure made over \$5,000 within certain set time frames. This could include 24 hour disclosures of activity or weekly disclosure of such activity.

In addition, for any Independent Expenditure communication which cost more than \$1,000 in the aggregate are required to include attribution on the communication. Such attribution would include the name of the person who paid for the Independent Expenditure and a statement that the communication was not expressly authorized or requested by any candidate or by any candidate's political committee or its agents.

Lastly, a copy of all political communications paid for by an Independent Expenditure Committee must be submitted to the NYSBOE.

7. Duplication: The Federal Elections Commission and the New York City Campaign Finance Board have other legal requirements that may duplicate, overlap or conflict with the rule. At the time of publication, the Board has not undertaken efforts to resolve or minimize the impact of any duplication, overlap or conflict on regulated persons, including but not limited to seeking waivers or amendments of or exemptions from such other rules or legal requirements, or entering into a memorandum of understanding or other agreement regarding same.

8. Alternatives: As the provisions of this law were enacted as part of the SFY 2014-15 budget, the Board did not consider alternative proposals. However, the Board did request public comment on the proposed rule on its website since May 2014. Public comment is still being accepted.

9. Federal standards: Not applicable.

10. Compliance schedule: This provision of law was effective June 1, 2014. NYSBOE provided several webinars in May and provided guidance materials via our website to enable regulated persons to achieve compliance with the rule.

Regulatory Flexibility Analysis

1. Effect of rule: There is no impact on local governments due to this rule. This rule will have a minimal impact on small businesses. Should a small business engage in independent expenditures, they would already be required to register and report activity to the Board.

2. Compliance requirements: If a small business were to engage in independent expenditures, they would have to register with the NYSBOE as a political committee. In addition, they would have to maintain books of related financial activity and make required disclosures to the Board of such activity. This rule does not impact local government.

3. Professional services: A small business that engages in independent expenditures may acquire accounting services to maintain and report activity to comply with this rule.

4. Compliance costs: It is unclear as to the initial capital costs that will be incurred by a regulated business or industry to comply with the rule. A regulated business may hire a staff accountant or services to comply.

5. Economic and technological feasibility: Our assessment of the economic and technological feasibility of compliance with such rule by small businesses and local governments would be that a computer is necessary to make required disclosures.

6. Minimizing adverse impact: The rule was not designed to minimize any adverse economic impact the rule may have on small businesses. There is no impact on local governments.

7. Small business and local government participation: Although this is an emergency rule, the NYSBOE has solicited and will continue to receive and consider public comment. This would include comments that may suggest alternatives to minimize the impact on small businesses.

8. (IF APPLICABLE) For rules that either establish or modify a violation or penalties associated with a violation: The rule text does not include a cure period or other opportunity for ameliorative action, the successful completion of which will prevent the imposition of penalties on the party or parties subject to enforcement, as the underlying statute, Chapter 55 of the Laws of 2014, did not authorize such a cure period.

9. (IF APPLICABLE) Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: Not applicable.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: This rule has a statewide impact. Any entity which engages in independent expenditure activity, over a \$1,000 threshold, will have to register and report to the NYSBOE. This rule does not impact local government.

2. Reporting, recordkeeping and other compliance requirements; and professional services: Entities that engage in independent expenditures activity will have to open and maintain a bank account, maintain books for a period of five years, and make a variety of disclosure reports depending on their activity. Disclosure reports range from 24 hour disclosures, weekly disclosures, periodic and election cycle disclosure reports, as applicable. Accounting services may be needed to comply although many entities will absorb this function in house. A computer is needed to comply with disclosure requirements of this rule.

3. Costs: Undetermined.

4. Minimizing adverse impact: This rule was not designed to minimize any adverse impact on rural areas, however, only entities that engage in such activity are captured.

5. Rural area participation: NYSBOE has solicited and is accepting

public comment on for impacted entities to participate in the rule making process to minimize cost or complexity.

6. (IF APPLICABLE) Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: Not Applicable.

Job Impact Statement

1. Nature of impact: This rule should have a minimal impact on jobs as it amends existing disclosure requirements for independent expenditures by political committees. Prior to this rule, Committees have had to register and disclose independent expenditure activity with the Board.

2. Categories and numbers affected: This rule will impact Committees which engage in independent expenditure activity. It may create employment opportunities due to increased recording keeping and reporting requirements. Approximate numbers of employment opportunities have not been determined.

3. Regions of adverse impact: This rule has a statewide impact but would not have an adverse impact on jobs or employment opportunities.

4. Minimizing adverse impact: The Board has not taken any measures to minimize adverse impacts on existing jobs or to promote the development of new employment opportunities. The Board has not determined that this rule would have an adverse impact on jobs.

5. (IF APPLICABLE) Self-employment opportunities: Not applicable.

6. (IF APPLICABLE) Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: Not applicable.

Assessment of Public Comment

The agency received no public comment.

Department of Financial Services

EMERGENCY RULE MAKING

Unfair Claims Settlement Practices and Claim Cost Control Measures

I.D. No. DFS-33-15-00002-E

Filing No. 666

Filing Date: 2015-07-30

Effective Date: 2015-07-30

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

Action taken: Amendment to Part 216 (Regulation 64) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202 and 302; and Insurance Law, sections 301 and 2601

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

Specific reasons underlying the finding of necessity: Insurance Law § 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices and sets forth a list of acts that, if committed without just cause and performed with such frequency as to indicate a general business practice, will constitute unfair claims settlement practices. Insurance Regulation 64 sets forth the standards insurers are expected to observe to settle claims properly.

On October 26, 2012, in anticipation of extensive power outages, loss of life and property, and ongoing harm to public health and safety expected to result from then-Hurricane Sandy, Governor Andrew M. Cuomo issued Executive Order 47, declaring a State of Disaster Emergency for all 62 counties within New York State. As anticipated, Storm Sandy struck New York State on October 29, 2012, causing extensive power outages, loss of life and property, and ongoing harm to public health and safety. In addition, a nor'easter struck New York just a week later, adding to the damage and dislocation. Many people still had not had basic services such as electric power restored before the second storm hit.

Insurers insuring property in areas that were hit the hardest by the storms, including Long Island and New York City, have a number of claims left to settle. As a result, some homeowners and small business owners have not been able to start to repair or replace their damaged property, or in some cases, complete their repairs. Moreover, there are insureds who have had their claims denied by their insurers and whose only remaining option is to file a civil suit against their insurers. Lawsuits such as these can often take years to resolve, and homeowners and small businesses can not afford to wait for the resolution of their claims in the courts.

Fair and prompt settlement of claims is critical for homeowners, a number of whom have been displaced from their homes or are living in unsafe conditions, and for small businesses, a number of which have yet to return to full operation and to recover their losses caused by the storm.

Given the nature and extent of the damage, an alternative avenue to mediate the claims would help protect the public and ensure its safety and welfare.

For the reasons stated above, the promulgation of this regulation on an emergency basis is necessary for the public health, public safety, and general welfare.

Subject: Unfair Claims Settlement Practices and Claim Cost Control Measures.

Purpose: To create a mediation program to facilitate the negotiation of certain insurance claims arising between 10/26/12 - 11/15/12.

Text of emergency rule:

216.13 Mediation.

(a) *This section shall apply to any claim for loss or damage, other than claims made under flood policies issued under the national flood insurance program, occurring from October 26, 2012 through November 15, 2012, in the counties of Bronx, Kings, Nassau, New York, Orange, Queens, Richmond, Rockland, Suffolk or Westchester, including their adjacent waters, with respect to:*

(1) *loss of or damage to real property; or*

(2) *loss of or damage to personal property, other than damage to a motor vehicle.*

(b)(1) *Except as provided in paragraph (2) of this subdivision, an insurer shall send the notice required by paragraph (3) of this subdivision to a claimant, or the claimant's authorized representative:*

(i) *at the time the insurer denies a claim in whole or in part;*

(ii) *within 10 business days of the date that the insurer receives notification from a claimant that the claimant disputes a settlement offer made by the insurer, provided that the difference between the positions of the insurer and claimant is \$1,000 or more; or*

(iii) *within two business days when the insurer has not offered to settle within 45 days after it has received a properly executed proof of loss and all items, statements and forms that the insurer had requested from the claimant.*

(2) *If, prior to the effective date of this section: the insurer denied a claim in whole or in part; or a claimant disputed a settlement offer, or more than 45 days elapsed after the insurer received a properly executed proof of loss and all items, statements and forms that the insurer had requested from the claimant, and in either case the claim still remains unresolved as of the effective date of this section, then the insurer shall provide the notice required by paragraph (3) of this subdivision within ten business days from the effective date of this section.*

(3) *The notice specified in paragraphs (1) and (2) of this subdivision shall inform the claimant of the claimant's right to request mediation and shall provide instructions on how the claimant may request mediation, including the name, address, phone number, and fax number of an organization designated by the superintendent to provide a mediator to mediate claims pursuant to this section. The notice shall also provide the insurer's address and phone number for requesting additional information.*

(c) *If the claimant submits a request for mediation to the insurer, the insurer shall forward the request to the designated organization within three business days of receiving the request.*

(d) *The insurer shall pay the designated organization's fee for the mediation to the designated organization within five days of the insurer receiving a bill from the designated organization.*

(e)(1) *The mediation shall be conducted in accordance with procedures established by the designated organization and approved by the superintendent.*

(2) *A mediation may be conducted by face-to-face meeting of the parties, videoconference, or telephone conference, as determined by the designated organization in consultation with the parties.*

(3) *A mediation may address any disputed issues for a claim to which this section applies, except that a mediation shall not address and the insurer shall not be required to attend a mediation for:*

(i) *a dispute in property valuation that has been submitted to an appraisal process or a claim that is the subject of a civil action filed by the insured against the insurer, unless the insurer and the insured agree otherwise;*

(ii) *any claim that the insurer has reason to believe is a fraudulent transaction or for which the insurer has knowledge that a fraudulent insurance transaction has taken place; or*

(iii) *any type of dispute that the designated organization has excepted from its mediation process in accordance with the organization's procedures approved by the superintendent.*

(f)(1) *The insurer must participate in good faith in all mediations scheduled by the designated organization, which shall at a minimum include compliance with paragraphs (2), (3), and (4) of this subdivision.*

(2) The insurer shall send a representative to the mediation who is knowledgeable with respect to the particular claim; and who has authority to make a binding claims decision on behalf of the insurer and to issue payment on behalf of the insurer. The insurer's representative must bring a copy of the policy and the entire claims file, including all relevant documentation and correspondence with the claimant.

(3) An insurer's representatives shall not continuously disrupt the process, become unduly argumentative or adversarial or otherwise inhibit the negotiations.

(4) An insurer that does not alter its original decision on the claim is not, on that basis alone, failing to act in good faith if it provides a reasonable explanation for its action.

(g) An insured's right to request mediation pursuant to this section shall not affect any other right the insured may have to redress the dispute, including remedies specified in the insurance policy, such as an insured's right to request an appraisal, the right to litigate the dispute in the courts if no agreement is reached, or any right provided by law.

(h)(1) No organization shall be designated by the superintendent unless it agrees that:

(i) the superintendent shall oversee the operational procedures of the designated organization with respect to administration of the mediation program, and shall have access to all systems, databases, and records related to the mediation program; and

(ii) the organization shall make reports to the superintendent in whatever form and as often as the superintendent prescribes.

(2) No organization shall be designated unless its procedures, approved by the superintendent, require that:

(i) the parties agree in writing prior to the mediation that statements made during the mediation are confidential and will not be admitted into evidence in any civil litigation concerning the claim, except with respect to any proceeding or investigation of insurance fraud;

(ii) a settlement agreement reached in a mediation shall be transcribed into a written agreement, on a form approved by the superintendent, that is signed by a representative of the insurer with the authority to do so and by the claimant; and

(iii) a settlement agreement prepared during a mediation shall include a provision affording the claimant a right to rescind the agreement within three business days from the date of the settlement, provided that the insured has not cashed or deposited any check or draft disbursed to the claimant for the disputed matters as a result of the agreement reached in the mediation.

(3) No organization shall be designated unless its procedures, approved by the superintendent, provide that:

(i) the mediator may terminate a mediation session if the mediator determines that either the insurer's representative or the claimant is not participating in the mediation in good faith, or if even after good faith efforts, a settlement can not be reached;

(ii) the designated organization may schedule additional mediation sessions if it believes the sessions may result in a settlement;

(iii) the designated organization may require the insurer to send a different representative to a rescheduled mediation session if the representative has not participated in good faith, the fee for which shall be paid by the insurer; and

(iv) the designated organization may reschedule a mediation session if the mediator determines that the claimant is not participating in good faith, but only if the claimant pays the organization's fee for the mediation.

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 October 27, 2015.

Text of rule and any required statements and analyses may be obtained from: Brenda Gibbs, NYS Department of Financial Services, One Commerce Plaza, Albany, NY 12257, (518) 408-3451, email: brenda.gibbs@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: Sections 202 and 302 of the Financial Services Law and Sections 301 and 2601 of the Insurance Law. Financial Services Law § 202 grants the Superintendent of Financial Services ("Superintendent") the rights, powers, and duties in connection with financial services and protection in this state, expressed or reasonably implied by the Financial Services Law or any other applicable law of this state. Insurance Law § 301 and Financial Services Law § 302 authorize the Superintendent to prescribe regulations interpreting the provisions of the Insurance Law and to effectuate any power granted to the Superintendent in the Insurance Law. Insurance Law § 2601 prohibits an insurer doing business in New York State from engaging in unfair claims settlement practices, sets forth certain acts that, if committed without just cause and performed with such frequency as to indicate a general business practice, constitute unfair

claims settlement practices, and imposes penalties if an insurer engages in these acts. Such practices include "not attempting in good faith to effectuate prompt, fair and equitable settlements of claims submitted in which liability has become reasonably clear" and "compelling policyholders to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them."

2. Legislative objectives: As noted in the Department's statement in support for the bill that added the predecessor section to § 2601, Section 40-d, to the Insurance Law in 1970 (Chapter 296 of the Laws of 1970), an insurance company's obligation to deal fairly with claimants and policyholders in the settlement of claims – indeed, its simple obligation to pay claims at all – was solely a matter of private contract law. That left the Department unable to aid consumers and relegated them solely to the courts. There was a wide variety in insurers' claims practices. Insurance Law § 2601 reflects the Legislature's concerns with insurance claims practices of insurers. In enacting that section, the Legislature authorized the Superintendent to monitor and regulate insurance claims practices.

3. Needs and benefits: On October 26, 2012, in anticipation of extensive power outages, loss of life and property, and ongoing harm to public health and safety expected to result from then-Hurricane Sandy, Governor Andrew M. Cuomo issued Executive Order 47, declaring a State of Disaster Emergency for all 62 counties within New York State. As anticipated, Storm Sandy struck New York State on October 29, 2012, causing extensive power outages, loss of life and property, and ongoing harm to public health and safety. In addition, a nor'easter struck New York just a week later, adding to the damage and dislocation. Many people still had not had basic services such as electric power restored before the second storm hit.

Insurers insuring property in areas that were hit the hardest by the storms, including Long Island and New York City, have a number of claims left to settle. As a result, a number of homeowners and small business owners have not been able to start to repair or replace their damaged property, or in some cases, complete their repairs. Many small businesses have suffered losses of income that threaten their survival. Fair and prompt settlement of claims is critical for homeowners, many of whom who have been displaced from their homes or who are living in unsafe conditions, and for small businesses, to enable them to return to full operation and to recover their losses caused by the storm. Furthermore, many small businesses provide essential services to and a significant source of employment in the communities in which they are located.

Moreover, there are many insureds who have had their claims denied by their insurers and whose only remaining option is to file a civil suit against their insurers. Lawsuits such as these can often take years to resolve, and homeowners and small businesses can not afford to wait for the resolution of their claims in the courts.

Therefore, this rule creates a mediation program to facilitate the negotiation of certain insurance claims arising in the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange, the areas that suffered the greatest storm damage, between October 26, 2012 and November 15, 2012. An insured may request mediation for a claim for loss or damage to personal or real property (1) that the insurer has denied, (2) for which the insured disputes the insurer's settlement offer if the difference between what the insured seeks and the insurer offers is more than \$1,000, or (3) that has not been settled within 45 days after the insurer received all the information the insurer needs to decide the claim. The amendment does not provide for mediation of claims for damage to motor vehicles.

Participation in the mediation program by insureds is voluntary. Participation by insurers in the mediation program is mandatory, except that an insurer is not required to participate in a mediation for any claim involving a dispute in property valuation that has been submitted to an appraisal process or that has become the subject of civil litigation, unless the insurer and insured agree otherwise. An insurer also is not required to mediate any claim for which the insurer has reason to believe or knowledge that a fraudulent insurance transaction has taken place.

4. Costs: This rule does not impose compliance costs on state or local governments. The rule may increase costs for insurers, because they will need to pay the costs of mediation and provide representatives to send to the mediations. However, by providing an alternative to litigation, the insurers should also realize savings from mediations that result in settlements because the cost to mediate a claim is significantly less than the cost to defend against civil litigation brought by insureds. The actual cost effect of the rule is difficult to quantify because it is dependent upon unknown variables such as how many claims will be subject to litigation, how many insureds will select the mediation option, and how many claims that are mediated will be successfully resolved without the insured resorting to litigation. Nothing in this rule requires insurers to reach a settlement in the course of a mediation.

5. Local government mandates: This rule does not impose any requirement upon a city, town, village, school district, or fire district.

- 6. Paperwork: This rule does not impose any additional paperwork.
- 7. Duplication: This rule will not duplicate any existing state or federal rule.
- 8. Alternatives: The Department considered making this rule applicable to the entire state. However, since the major concerns appeared to be localized, the applicability of the amendment is limited to those counties most impacted by the storm. In addition, the Department could have made the rule apply to all claims, even those that had been settled before the effective date of the rule. However, after meeting with industry trade groups and hearing their concerns, the Department modified the rule to make clear that, for claims that had already been made as of the rule's effective date, only those that were denied or unresolved as of the rule's effective date are covered by the rule. The Department also changed the rule so that it applies only to disputes where the parties's positions are \$1,000 or more apart.
- 9. Federal standards: There are no minimum standards of the federal government for the same or similar subject areas. The rule is consistent with federal standards or requirements. The regulation does not apply to claims made under policies issued under the national flood insurance program.
- 10. Compliance schedule: Insurers will be required to comply with this rule upon the Superintendent's filing the rule with the Secretary of State.

Regulatory Flexibility Analysis

1. Small businesses: The Department of Financial Services ("Department") finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at insurers authorized to do business in New York State, none of which fall within the definition of a "small business" as found in State Administrative Procedure Act § 102(8). The Department has monitored annual statements and reports on examination of authorized insurers subject to this rule, and believes that none of the insurers falls within the definition of "small business" because no insurer is both independently owned and has fewer than 100 employees.

2. Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at authorized insurers, which are not local governments.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: "Rural areas," as used in State Administrative Procedure Act ("SAPA") § 102(10), means counties within the state having less than 200,000 population, and the municipalities, individuals, institutions, communities, programs and such other entities or resources as are found therein. In counties of 200,000 or greater population, "rural areas" means towns with population densities of 150 persons or less per square mile, and the villages, individuals, institutions, communities, programs and such other entities or resources as are found therein. While insurers affected by this rule may be headquartered in rural areas, the rule itself only applies within the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange. None of these counties is a rural area, and the Department of Financial Services ("Department") does not believe that there are any towns within any of those counties that would be considered to be rural areas within the SAPA definition.

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule would not impose any additional reporting or recordkeeping requirements. However, the rule would impose other compliance requirements on insurers that may be headquartered in rural areas by requiring insurers to participate in mediation sessions when an insured with a claim subject to the rule requests mediation of his or her claim.

It is unlikely that professional services would be needed in rural areas to comply with this rule.

3. Costs: The rule may result in additional costs to insurers headquartered in rural areas, because they will need to pay the costs of mediation and provide representatives to send to the mediations. However, by providing an alternative to litigation, the insurers may also realize savings from mediations that result in settlements because the cost to mediate a claim is significantly less than the cost to defend against civil litigation brought by insureds. The actual cost effect of the rule is difficult to quantify because it is dependent upon unknown variables such as how many claims will be subject to litigation, how many insureds will select the mediation option, and how many claims that are mediated will be successfully resolved without the insured resorting to litigation. Nothing in this rule requires insurers to reach a settlement in the course of a mediation.

4. Minimizing adverse impact: The Department considered the approaches suggested in SAPA § 202-bb(2) for minimizing adverse economic impacts. Because the public health, safety, or general welfare has been endangered, establishment of differing compliance or reporting

requirements or timetables based upon whether or not the damage occurred in a rural area is not appropriate. However, the rule applies only in the counties of New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange, the areas that suffered the greatest storm damage, and thus the impact of the rule on rural areas is minimized, since none of those counties are rural areas.

5. Rural area participation: Public and private interests in rural areas have had a continual opportunity to participate in the rule making process since the first publication of the emergency measure in the State Register on March 13, 2013, which was published again in the State Register on May 20, 2015. The emergency measure also has been posted on the Department's website continually since March 13, 2013.

Job Impact Statement

The Department of Financial Services does not believe that this rule will have any adverse impact on jobs or employment opportunities, including self-employment opportunities. This rule provides insureds with open or denied claims for loss or damage to personal and real property, except damage to automobiles, arising in New York, Bronx, Kings, Richmond, Queens, Nassau, Suffolk, Westchester, Rockland, and Orange counties between October 26, 2012 and November 15, 2012, with an option to participate in a mediation program to facilitate the negotiation of their claims with their insurers.

New York State Gaming Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Numbers and Win-4 Lottery Wagers

I.D. No. SGC-33-15-00013-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 5009.2 and 5010.2 of Title 9 NYCRR.

Statutory authority: Tax Law, sections 1601, 1604 and 1612(a)(4); Racing, Pari-Mutuel Wagering and Breeding Law, sections 103(2), 104(1) and (19)

Subject: Numbers and Win-4 lottery wagers.

Purpose: To allow the Commission to introduce a new type of lottery wager to raise revenue for education.

Text of proposed rule: Pursuant to the authority granted by Tax Law Sections 1601, 1604 and 1612(a)(4) and Racing, Pari-Mutuel Wagering and Breeding Law Sections 103(2) and 104(1,19), the New York State Gaming Commission hereby proposes this amendment of subdivision (b) of Section 5009.2 and subdivision (b) of Section 5010.2 of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to read as follows:

PART 5009
New York's Numbers
* * *

§ 5009.2. Game Description.

New York's Numbers game shall determine winners from tickets by matching a permutation or segment of a three-digit number from 000 to and including 999, randomly drawn at a regularly scheduled daily drawing or by succeeding in a game feature as set forth in subdivisions (h) and (i) of this section. Correctly matching the three-digit number or designated permutation thereof shall entitle the ticket holder to one of those prizes as described below:

(a) New York Numbers game bets may be purchased for a minimum of 50 cents and in multiples thereof to a maximum of \$5.

(b) The following types of bets [are] may be made available for purchase:

(1) Straight. A three-digit number designed to match in exact order the three-digit winning number drawn for a given day.

(2) Six-way box. A three-digit number in which all three digits are unique (for example, "123"), designed to match in any order the three-digit winning number drawn for a given day.

(3) Three-way box. A three-digit number in which two of the digits

are the same (for example, “122”), designed to match in any order the three-digit winning number drawn for a given day.

(4) Front pair. A two-digit number designed to match in exact order the first and second digits of the three-digit winning number drawn for a given day.

(5) Back pair. A two-digit number designed to match in exact order the second and third digits of the three-digit winning number drawn for a given day.

(6) Straight/six-way box. A three-digit number in which all three digits are unique (for example, “123”), that generates one straight bet and one six-way box bet. Straight/six-way box bets are limited to 50 cents for each bet type for a ticket price of \$1.

(7) Straight/three-way box. A three-digit number in which two of the digits are the same (for example, “122”), that generates one straight bet and one three-way box bet. Straight/three-way box bets are limited to 50 cents for each bet type for a ticket price of \$1.

(8) Combination six-way. A three-digit number in which all three digits are unique (for example, “123”), that generates six straight bets. The minimum cost [for which] of a combination six-way wager is \$3 (6 bets x 50 cents minimum bet).

(9) Combination three-way. A three-digit number in which two of the digits are the same (for example, “122”), that generates three straight bets. The minimum cost [for which] of a combination three-way wager is \$1.50 (3 bets [X] x 50 cents minimum bet).

(10) Close Enough. A three-digit number, of which each digit must match or be one number greater or less than the corresponding digit of the three-digit number selected in a drawing. For purposes of this wager, one number greater than nine is defined as zero and one number less than zero is defined as nine. A detailed description of the odds, prize structure, wager price, play instructions and any further information in regard to this wager shall be communicated to the public and set forth on the website for the New York Lottery in advance of offering this wager. Such detailed description shall be consistent with the game rules otherwise set forth in this Part in regard to other wagers and features of the New York's Numbers game.

(c) Prize structure and odds for the Numbers game.

Bet type	Odds	For each \$.50 bet	For each \$1 bet	Comment
Straight	1:1,000	\$250	\$500	
Box six-way	1:167	\$40	\$80	
Box three-way	1:333	\$80	\$160	
Front pair	1:100	\$25	\$50	
Back pair	1:100	\$25	\$50	
Straight/box six-way	1:167	\$290 \$440	n/a n/a	If straight hits If box only
Straight/box three-way	1:[133] 333	\$330 \$80	n/a n/a	If straight hits If box only
Combination six-way	1:167	\$250	\$500	
Combination three-way	1:333	\$250	\$500	
Close Enough (straight match)	1:1,000	\$125	\$250	
Close Enough (1 digit, 1 off)	1:167	\$12	\$24	
Close Enough (2 digits, 1 off)	1:83	\$2	\$4	
Close Enough (3 digits, 1 off)	1:125	\$4	\$8	
Close Enough (overall; any prize)	1:37			

* * *

(h) *Lucky Sum*. Lucky Sum is a feature of New York's Numbers game. Lucky Sum shall determine winners from bet tickets by correctly matching the sum of the player's number selection against the sum of the winning numbers drawn by the commission for that drawing.

* * *

(2) Lucky Sum wagers shall not be placed with pairs or *Close Enough* wagers.

* * *

(i) A New York's Numbers type of bet or game feature may be added at the discretion of the commission, so long as such game feature is an alternative or additional method for playing the game within the same basic game design and a detailed description of the odds, prize structure, wager price, play instructions and any further information in regard to how a player may use such feature, if offered, shall be communicated to the public and set forth on the website for the New York Lottery in advance of offering such feature.

* * *

PART 5010

Win-4

* * *

§ 5010.2. Game description.

The Win-4 game shall determine winners from tickets matching a permutation of a four-digit number from 0000 to and including 9999 randomly drawn at a regularly scheduled drawing conducted by the Lottery as described in section 5010.4 of this Part drawing or by succeeding in a game feature as set forth in subdivisions (g) and (h) of this section. Correctly matching the winning four-digit number drawn, or a designated permutation thereof shall entitle the ticket holder to one of the prizes described in subdivision (c) of this section.

(a) Win-4 bets may be purchased for a minimum of 50 cents and in multiples of 50 cents thereof to a maximum of \$5.

(b) The following types of bets [will] may be used in the determination of winners for the specified draw day indicated on the bet ticket[.]:

(1) Straight. A four-digit number (for example, “1234”) designed to match in exact sequence the [4-digit] four-digit winning number drawn.

(2) Twenty-four-way box. A four-digit number in which all four digits are unique (for example, “1234”) designed to match in any order the winning four-digit number drawn for a given day.

(3) Twelve-way box. A four-digit number in which two of the digits are the same (for example, “1233”) designed to match in any order the winning four-digit number drawn for a given day.

(4) Six-way box. A four-digit number in which there are two pairs of identical numbers (for example, “1122”) designed to match in any order the winning four-digit number drawn for a given day.

(5) Four-way box. A four-digit number in which three of the digits are the same (for example, “1112”) designed to match in any order the winning four-digit number drawn for a given day.

(6) *Front pair*. A two-digit number chosen to match in exact order the first and second digits of the four-digit winning number selected in a drawing.

(7) *Back pair*. A two-digit number chosen to match in exact order the third and fourth digits of the four-digit winning number selected in a drawing.

[(6)] (8) Straight/twenty-four-way box. A four-digit number in which all four digits are unique (for example, “1234”) that generates one straight bet and one box bet on a single ticket. Straight/box bets are limited to 50 cents for each bet type for a ticket price of \$1.

[(7)] (9) Straight/twelve-way box. A four-digit number in which two of the digits are the same (for example, “1233”) that generates one straight bet and one box bet on a single ticket. Straight/box bets are limited to 50 cents for each bet type for a ticket price of \$1.

[(8)] (10) Straight/six-way box. A four-digit number in which there are two pairs of identical digits (for example, “1122”) that generates one straight bet and one box bet on a single ticket. Straight/box bets are limited to 50 cents for each bet type for a ticket price of \$1.

[(9)] (11) Straight/four-way box. A four-digit number in which three of the digits are the same (for example, “1112”) that generates one straight bet and one box bet on a single ticket. Straight/box bets are limited to 50 cents for each bet type for a ticket price of \$1.

[(10)] (12) Twenty-four-way combination. A four-digit number in which all four digits are unique (for example, “1234”) that generates 24 straight bets on a single ticket. The minimum cost [for which] of a 24-way combination wager is \$12 (24 bets x \$.50 minimum bet).

[(11)] (13) Twelve-way combination. A four-digit number in which two of the digits are the same (for example, "1233") that generates 12 straight bets on a single ticket. The minimum cost [for which] of a 12-way combination wager is \$6 (12 bets x \$.50 minimum bet).

[(12)] (14) Six-way combination. A four-digit number in which there are two pairs of identical digits (for example, "1122") that generates six straight bets on a single ticket. The minimum cost [for which] of a six-way combination wager is \$3 (6 bets x \$.50 minimum bet).

[(13)] (15) Four-way combination. A four-digit number in which three of the digits are the same (for example, "1112") that generates four straight bets on a single ticket. The minimum cost [for which] of a four-way combination wager is \$2 (4 bets x \$.50 minimum bet).

(16) Close Enough. A four-digit number, of which each digit must match or be one number greater or less than the corresponding digit of the four-digit number selected in a drawing. For purposes of this wager, one number greater than nine is defined as zero and one number less than zero is defined as nine. A detailed description of the odds, prize structure, wager price, play instructions and any further information in regard to this wager shall be communicated to the public and set forth on the website for the New York Lottery in advance of offering this wager. Such detailed description shall be consistent with the game rules otherwise set forth in this Part in regard to other wagers and features of the Win-4 game.

(c) Prize structure and game odds for Win-4.

Bet Type and Prize Payouts Per Amount Bet

Bet Type	50 cents	\$1	\$2	\$3	\$4	\$5
Straight	\$2,500	\$5,000	\$10,000	\$15,000	\$20,000	\$25,000
Box(24)	\$100	\$200	\$400	\$600	\$800	\$1,000
Box(12)	\$200	\$400	\$800	\$1,200	\$1,600	\$2,000
Box(6)	\$400	\$800	\$1,600	\$2,400	\$3,200	\$4,000
Box(4)	\$600	\$1,200	\$2,400	\$3,600	\$4,800	\$6,000
Front Pair	\$25	\$50				
Back Pair	\$25	\$50				
Straight/Box (24)	\$2,600 \$100	If Straight hits If Box only				
Straight/Box (12)	\$2,700 \$100	If Straight hits If Box only				
Straight/Box (6)	\$2,900 \$400	If Straight hits If Box only				
Straight/Box (4)	\$3,100 \$600	If Straight hits If Box only				
Combination (all types)	\$2,500	\$5,000	\$10,000	\$15,000	\$20,000	\$25,000
Close Enough (straight match)	\$1,250	\$2,500				
Close Enough (1 digit, 1 off)	\$62	\$124				
Close Enough (2 digits, 1 off)	\$12	\$24				

Close Enough (3 digits, 1 off)	\$7	\$14
Close Enough (4 digits, 1 off)	\$16	\$32
Game odds:		
Bet type	Odds	
Straight	1:10,000	
Box(24)	1:417	
Box(12)	1:833	
Box(6)	1:1,667	
Box(4)	1:2,500	
Front Pair	1:100	
Back Pair	1:100	
Straight/Box (24)	1:417	
Straight/Box (12)	1:833	
Straight/Box (6)	1:1,667	
Straight/Box (4)	1:2,500	
Combination (24)	1:417	
Combination (12)	1:833	
Combination (6)	1:1,667	
Combination (4)	1:2,500	
Close Enough (straight match)	1:10,000	
Close Enough (1 digit, 1 off)	1:1,250	
Close Enough (2 digits, 1 off)	1:417	
Close Enough (3 digits, 1 off)	1:313	
Close Enough (4 digits, 1 off)	1:625	
Close Enough (overall; any prize)	1:123	

* * *

(g) *Lucky Sum*. Lucky Sum is a feature of the Win-4 game. Lucky Sum shall determine winners from bet tickets by correctly matching the sum of the player's number selection against the sum of the winning numbers drawn by the Lottery for that drawing.

(1) Lucky Sum wagers shall not be placed with pairs or *Close Enough* wagers.

* * *

(h) *A Win-4 type of bet or game feature may be added at the discretion of the commission, so long as such game feature is an alternative or additional method for playing the game within the same basic game design and a detailed description of the odds, prize structure, wager price, play instructions and any further information in regard to how a player may use such feature, if offered, shall be communicated to the public and set forth on the website for the New York Lottery in advance of offering such feature.*

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

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

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

Regulatory Impact Statement

1. **Statutory Authority:** The New York State Gaming Commission ("Commission") is authorized to promulgate this rule by Tax Law Sections 1601, 1604 and 1612(a)(4) and by Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") Sections 103(2) and 104(1, 19). Tax Law Section 1601 describes the purpose of the New York State Lottery for Education Law (Tax Law Article 34) as being to establish a lottery operated by the State, the net proceeds of which are applied exclusively to aid to education. Tax Law Section 1604 authorizes the promulgation of rules governing the establishment and operation of such lottery. Tax Law Section 1612(a)(4) describes the distribution of revenues for the NEW YORK'S NUMBERS and WIN-4 games.

Racing Law Section 103(2) provides that the Commission is responsible to operate and administer the state lottery for education, as prescribed by Article 34 of the Tax Law. Racing Law Section 104(1) provides the Commission with general jurisdiction over all gaming activities within the State and over any person, corporation or association engaged in such activities. Section 104(19) of such law authorizes the Commission to promulgate any rules it deems necessary to carry out its responsibilities.

2. **Legislative Objectives:** To allow the Commission to introduce a new wager type for NEW YORK'S NUMBERS and WIN-4 lottery games that will raise revenue for education.

3. **Needs and Benefits:** This rulemaking would permit the Commission to offer the Close Enough wager type in connection with the Lottery Division's popular NEW YORK'S NUMBERS and WIN-4 games. This new wager type would allow a player to collect a prize if each of the player's selections either matches or is one number greater or less than the corresponding digit of the winning combination selected in a particular NEW YORK'S NUMBERS or WIN-4 drawing.

The NEW YORK'S NUMBERS and WIN-4 draw games typically account for approximately 23 percent of traditional lottery sales, which amounted to approximately \$1.7 billion during the previous two fiscal years. The NEW YORK'S NUMBERS and WIN-4 games continue to provide significant revenue for education in New York State even though few changes or improvements have been necessary to stimulate player interest in NEW YORK'S NUMBERS and WIN-4 since the games were introduced in the early 1980s (e.g., twice-daily drawings began in 2001, additional wager types were introduced in 2007). The Commission seeks to make these games appealing to new players by introducing the Close Enough wager type, which is designed for players who prefer a bet type in which more winning number combinations may entitle the player to a prize even though the prize amounts that can be won may be smaller than prize amounts available for existing wager types. The Commission intends to introduce this feature after reprogramming of Lottery systems is completed and tested.

The proposed rule amends 9 NYCRR Section 5009.2 of the Commission's regulations, which describes the NEW YORK'S NUMBERS game and identifies available wager types that can be purchased. A description of the Close Enough wager type for the NEW YORK'S NUMBERS game is added to the existing regulation, as well as the odds of winning each Close Enough prize level and the amount of the prize won at each prize level for \$1 and \$.50 Close Enough wagers in the NEW YORK'S NUMBERS game.

As provided in the rule, a player who purchases a Close Enough ticket in the NEW YORK'S NUMBERS game can win a prize under the following circumstances:

(i) each of the player's selections matches the corresponding digits drawn (Example: player selects 147, drawing result is 147);

(ii) two of the player's selections match the corresponding digits drawn and the player's remaining selection is one number greater or less than the corresponding digit drawn (Example: player selects 147, drawing result is 146; 148; 137; 157; 047 or 247);

(iii) one of the player's selections matches the corresponding digit drawn and the player's remaining selections are one number greater or less than the corresponding digits drawn (Example: player selects 147; drawing result is 136; 138; 156; 158; 046, 048, 246, 248, 037, 057, 237 or 247); and

(iv) all three of the player's selections are one number greater or less than the corresponding digits drawn. (Example: player selects 147, drawing result is 036, 038, 056, 058, 236, 238, 256 and 258).

For purposes of this wager, one number greater than nine is defined as zero and one number less than zero is defined as nine.

In addition, the opening paragraph of 9 NYCRR Section 5009.2 is clarified to describe accurately that winners can be determined by matching numbers or by succeeding in other game features. Section 5009.2(b) is amended to make optional the offering of each of the various types of wagers. Sections 5009.2(b)(8) and (9) are amended to make stylistic changes consistent with other portions of the rule. Section 5009.2(h)(2) is amended to provide that the Lucky Sum feature cannot be played with the Close Enough wager. Section 5009.2(i) would grant flexibility to develop additional wager types or features for this game, so long as information about odds, prize structure and play instructions are communicated to the public and set forth on the New York Lottery's website.

The proposed rule amends 9 NYCRR Section 5010.2 of the Commission's regulations, which describes the WIN-4 game and identifies available wager types that can be purchased. A description of the Close Enough wager type for the WIN-4 game is added to the existing regulation, as well as the odds of winning each Close Enough prize level and the amount of the prize won at each prize level for \$1 and \$.50 Close Enough wagers in the WIN-4 game.

As provided in the rule, a player who purchases a Close Enough ticket in the WIN-4 game can win a prize under the following circumstances:

(i) each of the player's selections matches the corresponding digits drawn (Example: player selects 1467, drawing result is 1467);

(ii) three of the player's selections match the corresponding digits drawn and the player's remaining selection is one number greater or less than the corresponding digit drawn (Example: player selects 1467, drawing result is 1466, 1468, 1457, 1477, 1367, 1467, 0467 and 2467);

(iii) two of the player's selections match the corresponding digits drawn and the player's other selections are one number greater or less than the corresponding digits drawn (Example: player selects 1467, drawing result is 1456, 1458, 1476, 1478, 1366, 1368, 1556, 1568, 1357, 1377, 1557, 1577, 0457, 0477, 2457, 2477, 0466, 0468, 2466, 2468, 0367, 0567, 2367 and 2567);

(iv) one of the player's selections matches the corresponding digit drawn and the player's remaining selections are one number greater or less than the corresponding digits drawn (Example: player selects 1467; drawing result is 1356, 1358, 1376, 1378, 1556, 1558, 1576, 1578, 0456, 0458, 0476, 0478, 2456, 2458, 2476, 2478, 0366, 0368, 0566, 0568, 2366, 2368, 2566, 2568, 0357, 0377, 0557, 0577, 2357, 2377, 2557 and 2577); and

(v) all four of the player's selections are one number greater or less than the corresponding digits drawn. (Example: player selects 1467, drawing result is 0356, 0358, 0376, 0578, 0556, 0558, 0576, 0578, 2356, 2358, 2376, 2578, 2556, 2558, 2576 and 2578).

For purposes of this wager, one number greater than nine is defined as zero and one number less than zero is defined as nine.

In addition, the opening paragraph of 9 NYCRR Section 5010.2 is clarified to describe accurately that winners can be determined by matching numbers or by succeeding in other game features. Section 5010.2(b) is amended to make optional the offering of each of the various types of wagers. Sections 5010.2(b), 5010.2(b)(1), (11), (12) and (13) and 5010.2(g) are amended to make stylistic changes consistent with other portions of the rule. New paragraphs (6) and (7) are added to Section 5010.2(b) to describe existing Front pair and Back pair wagers, and subsequent paragraphs within such subdivision are renumbered accordingly. Game odds are added for Front pair and Back pair wagers. Section 5010.2(g)(1) is amended to provide that the Lucky Sum feature cannot be played with the Close Enough wager. Section 5010.2(h) would grant flexibility to develop additional wager types or features for this game, so long as information about odds, prize structure and play instructions are communicated to the public and set forth on the New York Lottery's website.

The prize structures for the NEW YORK'S NUMBERS and WIN-4 Close Enough game features are consistent with Tax Law Section 1612(a)(4), which describes the distribution of revenues for the NEW YORK'S NUMBERS and WIN-4 games.

The Commission anticipates that the Close Enough wager type will increase ticket sales in the NEW YORK'S NUMBERS and WIN-4 games due to favorable feedback from players and retailers surveyed as well as the positive performance of similar wager types in other jurisdictions, including Missouri, North Carolina, Michigan and Florida. The Commission expects that introduction of the new wager type will increase ticket sales for NEW YORK'S NUMBERS by 1.5 percent and Win-4 by 2.5 percent, which would earn an additional \$6 million for aid to education in the current fiscal year and an additional \$12 million for Fiscal Year 2016-17.

4. Costs:
 a. Costs to regulated parties for the implementation and continuing compliance with the rule: There are no costs to stakeholders. Existing lottery agents will be able to sell these tickets the same as they do other lottery games.

b. Costs to the agency, the State, and local governments for the implementation and continuation of the rule: No additional operating costs are anticipated. The Commission can administer this game using existing resources.

c. Sources of cost evaluations: The foregoing cost evaluations are based on the Commission's experience operating State Lottery games for more than 40 years.

5. Local Government Mandates: The proposed amendment does not impose any new programs, services, duties or responsibilities upon any country, city, town, village school district, fire district or other special district.

6. Paperwork: There are no changes in paperwork requirements. Lottery agents will be able to report the sales of this game using the same electronic reporting system.

7. Duplication: There are no relevant State programs or regulations that duplicate, overlap or conflict with the proposed amendment.

8. Alternatives: The alternative to amending these regulations is to continue offering the games presently offered. This alternative was rejected because offering new games and introducing game features to existing games are proven to generate greater revenue for education by attracting the interest of players and providing them with another game choice.

9. Federal Standards: The proposed amendment does not exceed any minimum standards imposed by the federal government.

10. Compliance Schedule: The Commission believes that regulated persons will be able to achieve compliance with the rule upon its adoption.
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 rule making because it will have no adverse effect on small businesses, local governments, rural areas, or jobs.

The rule making allows the Commission to offer customers a new play option, the Close Enough wager type for the New York's Numbers and Win-4 lottery games. This addition will impose no significant technological changes. No local government activity is involved. Lottery sales agents offer new or different lottery games only in order to increase sales. Customers are not required to play. There will be no new reporting, record keeping or other compliance requirements on small businesses or local governments or rural areas. The new lottery game wager type will not adversely affect employment opportunities or jobs.

Based on the foregoing, no regulatory flexibility analysis for small businesses and local governments, rural area flexibility analysis, or a job impact statement is required for this proposed rule making.

Office for People with Developmental Disabilities

EMERGENCY RULE MAKING

Day and Residential Habilitation Changes

I.D. No. PDD-33-15-00004-E

Filing No. 671

Filing Date: 2015-08-04

Effective Date: 2015-10-01

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

Action taken: Amendment of Subparts 635-9 and 635-10; and Part 671 of Title 14 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The emergency adoption of amendments that eliminate individual day habilitation and supplemental individual day habilitation and add allowable services under residential habilitation is necessary to protect the health, safety, and welfare of individuals receiving services in the OPWDD system.

OPWDD has been involved in ongoing discussions with the Centers for Medicare and Medicaid Services (CMS) to align the structure of its Home and Community Based Services (HCBS) waiver service delivery and funding systems with CMS expectations. The amendments in the emergency regulations were developed as a result of these discussions, and are necessary to bring OPWDD's HCBS waiver services into full compliance with federal HCBS waiver funding requirements, by October 1, 2015, in order to fulfill OPWDD's commitment to CMS.

Given the timeframe of the negotiations with CMS, and the requirement that the changes required as a result of these negotiations be fully implemented by October 1, 2015, the rules are being proposed as emergency regulations in order to realize the required effective date of October 1, 2015. Failure to achieve the October 1, 2015 effective date will result in loss of federal funding that is needed to provide and fund services for individuals with developmental disabilities. Consequently, without the emergency amendments, federal funding for reimbursement to providers would not be available thereby jeopardizing the health, safety, and welfare of individuals receiving services.

Subject: Day and Residential Habilitation Changes.

Purpose: To discontinue Individual Day Habilitation and add allowable services under Residential Habilitation.

Text of emergency rule: • Existing subparagraph 635-9.1(a)(1)(xxii) is amended as follows:

(xxii) Supervised community residences (CRs) and supervised individualized residential alternatives (IRAs) [facilities shall assume] are responsible for the cost of [services which]:

(a) services that are necessary to meet the needs of [consumers] individuals while in the residence; [and]

(b) services that, prior to August 1, 2004, could have been met by home health aide or personal care services separately billed to Medicaid[.]; and

(c) services specified in subparagraph 635-10.4(b)(1)(xvi) of this Part and paragraph 671.5(a)(7) of this Title that, prior to October 1, 2015, may have been separately billed to Medicaid.

• A new subparagraph 635-9.1(a)(1)(xxiii) is added as follows:

(xxiii) Supportive CRs and supportive IRAs are responsible for the cost of services that, prior to October 1, 2015, could have been met by a home health aide or personal care services separately billed to Medicaid, as specified in subparagraph 635-10.4(b)(1)(xvii) of this Part and paragraph 671.5(a)(8) of this Title.

• Existing paragraph 635-9.1(a)(3) is amended as follows:

(3) Family care.

(i) The sponsoring agency (see glossary) [shall assume] is responsible for the cost of:

(a) Any item or service for which the sponsoring agency has been paid or will be reimbursed from local, State, or Federal funds. This includes services that, prior to October 1, 2015, could have been met by a home health aide or personal care services separately billed to Medicaid, as specified in subparagraph 635-10.4(b)(1)(xvii) of this Part.

Note: Existing clauses (b)-(k) of this subparagraph and subparagraph (ii) of this paragraph are unchanged.

• Existing subparagraph 635-10.4(b)(1)(xv) is amended as follows:

(xv) Residential habilitation services in a supervised IRA [shall] include [services which]:

(a) services that are necessary to meet the needs of [consumers] individuals while in the residence; [and]

(b) services that, prior to August 1, 2004, could have been met by home health aide or personal care services separately billed to Medicaid[.];

(c) services that, prior to October 1, 2015, could have been met by home health aide or personal care services separately billed to Medicaid, with those services provided in the community on weekday evenings or anytime on the weekend, unless the weekday evening or weekend services are established to support the individual in an integrated job site; and

(d) services specified in subparagraph (xvi) of this paragraph that, prior to October 1, 2015, may have been separately billed to Medicaid.

- A new subparagraph 635-10.4(b)(1)(xvi) is added as follows:
 - (xvi) *Effective October 1, 2015, residential habilitation services in a supervised IRA include the following clinical services delivered to an individual that are directly related to the individual's residential habilitation plan:*
 - (a) *nutrition services that consist of meal planning and monitoring, assessment of dietary needs and weight changes, development of specialized diets, diet education, and food safety and sanitation training;*
 - (b) *psychological services delivered by a licensed psychologist, licensed clinical social worker, or behavioral intervention specialist that consist of:*
 - (1) *behavioral assessment and intervention planning, delivery and review or monitoring of behavioral interventions, and behavioral support services provided pursuant to section 633.16 of this Title; and*
 - (2) *psychotherapy services; and*
 - (c) *nursing services that consist of:*
 - (1) *training and supervision of direct support staff who perform health-related and delegated nursing tasks that include, but are not limited to, observation for illness and injury, medication administration, tube feeding, and colostomy care;*
 - (2) *development and monitoring of written plans of nursing services that identify interventions direct support staff carry out to address individuals' health care needs;*
 - (3) *availability of nursing supervision, by a Registered Nurse, on site or by telephone, at all times to respond to direct support staff in order to address individuals' ongoing and immediate health care needs;*
 - (4) *coordination of individuals' health care services, including, but not limited to, arranging for needed medical appointments and diagnostic testing, interfacing on behalf of individuals with community-based healthcare providers, and ensuring that treatments are carried out in accordance with physicians' orders; and*
 - (5) *provision of direct nursing care that cannot be delegated to direct support staff and that is available within the staffing plan at the residence and/or is not available through other sources.*
- A new subparagraph 635-10.4(b)(1)(xvii) is added as follows:
 - (xvii) *Residential habilitation services for an individual who resides in a supportive IRA or Family Care Home include services that, prior to October 1, 2015, could have been met by a home health aide or personal care services separately billed to Medicaid; either*
 - (a) *at the residence at any time; or*
 - (b) *in the community on weekday evenings or anytime on the weekend, unless the weekday evening or weekend services are established to support the individual in an integrated job site.*
- Existing paragraph 635-10.5(c)(2) is amended as follows:
 - (2) *Day habilitation services shall be reimbursed as either individual day habilitation, supplemental individual day habilitation, group day habilitation or supplemental group day habilitation. Effective October 1, 2015, individual day habilitation services and supplemental individual day habilitation services are no longer available. Subdivisions (i) and (ii) of this paragraph are retained for such services that were delivered prior to October 1, 2015.*
- Note: Existing subparagraphs (i)-(iv) of this paragraph are unchanged.
- Existing subparagraph 635-10.5(c)(4)(iv) is amended as follows:
 - (iv) *For individual day habilitation and supplemental individual day habilitation services provided prior to October 1, 2015, total annual reimbursable costs derived through the application of the above methodology shall be trended in accordance with subdivision (i) of this section and divided by the total annual projected hours of utilization.*
- Existing paragraph 635-10.5(c)(5) is amended as follows:
 - (5) *The unit of service for individual day habilitation and supplemental individual day habilitation services provided prior to October 1, 2015, shall be one hour equaling 60 minutes and is reimbursed in 15-minute increments. When there is a break in the service delivery during a single day, for billing purposes, the provider may combine the duration of each non-continuous period of service provision (or "session") that is provided during the day, when at least one service/staff action delivered in accordance with the individual's day habilitation plan is documented for each session.*
- Note: Existing subparagraphs (i) – (v) of this paragraph are unchanged.
- Existing subparagraph 635-10.5(c)(6)(iii) is amended as follows:
 - (iii) *Supplemental group day habilitation services may not be billed to Medicaid for:*
 - (a) *[consumers] individuals who live in residential settings with 24-hour staffing; for example, supervised individualized residential alternatives (IRAs) and supervised community residences (CRs)[.]; and*
 - (b) *effective October 1, 2015, individuals who live in supportive IRAs, supportive CRs, and Family Care Homes.*
- Existing paragraph 671.5(a)(6) is amended as follows:
 - (6) *The provider of community residential habilitation services in a supervised community residence [shall be] is responsible for the cost of [services which]:*
 - (i) *services that are necessary to meet the needs of [consumers] individuals while in residence; [and]*
 - (ii) *[which] services that, prior to August 1, 2004, could have been met by home health aide or personal care services separately billed to Medicaid[.];*
 - (iii) *services that, prior to October 1, 2015, could have been met by home health aide or personal care services separately billed to Medicaid, with those services provided in the community on weekday evenings or anytime on the weekend, unless the weekday evening or weekend services are established to support the individual in an integrated job site; and*
 - (iv) *services specified in paragraph 671.5(a)(7) of this Part that, prior to October 1, 2015, may have been separately billed to Medicaid.*

- A new paragraph 671.5(a)(7) is added as follows:
 - (7) *Effective October 1, 2015, residential habilitation services in a supervised CR include the following clinical services delivered to an individual that are directly related to the individual's residential habilitation plan:*
 - (i) *nutrition services that consist of meal planning and monitoring, assessment of dietary needs and weight changes, development of specialized diets, diet education, and food safety and sanitation training;*
 - (ii) *psychological services delivered by a licensed psychologist, licensed clinical social worker, or behavioral intervention specialist that consist of:*
 - (a) *behavioral assessment and intervention planning, delivery and review or monitoring of behavioral interventions, and behavioral support services provided pursuant to section 633.16 of this Title; and*
 - (b) *psychotherapy services; and*
 - (iii) *nursing services that consist of:*
 - (a) *training and supervision of direct support staff who perform health-related and delegated nursing tasks that include, but are not limited to, observation for illness and injury, medication administration, tube feeding, and colostomy care;*
 - (b) *development and monitoring of written plans of nursing services that identify interventions direct support staff carry out to address individuals' health care needs;*
 - (c) *availability of nursing supervision, by a Registered Nurse, on site or by telephone, at all times to respond to direct support staff in order to address individuals' ongoing and immediate health care needs;*
 - (d) *coordination of individuals' health care services, including, but not limited to, arranging for needed medical appointments and diagnostic testing, interfacing on behalf of individuals with community-based healthcare providers, and ensuring that treatments are carried out in accordance with physicians' orders; and*
 - (e) *provision of direct nursing care that cannot be delegated to direct support staff and that is available within the staffing plan at the residence and/or is not available through other sources.*
 - A new paragraph 671.5(a)(8) is added as follows:
 - (8) *The provider of community residential habilitation services in a supportive CR is responsible for the cost of services that, prior to October 1, 2015, could have been met by a home health aide or personal care services separately billed to Medicaid; either*
 - (a) *at the residence at any time; or*
 - (b) *in the community on weekday evenings or anytime on the weekend, unless the weekday evening or weekend services are established to support the individual in an integrated job site.*
- This notice is intended** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires November 1, 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 herein will have no effect on the environment, and an E.I.S. is not needed.
- Regulatory Impact Statement**
1. Statutory Authority:
- a. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs, supports, and services in the areas of care, treatment, habilitation, rehabilitation, and other education and training of persons with developmental disabilities, as stated in the New York State (NYS) Mental Hygiene Law Section 13.07.
 - b. OPWDD has the authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the NYS Mental Hygiene Law Section 13.09(b).
 - c. OPWDD has the statutory authority to adopt regulations concerning the operation of programs and the provision of services, as stated in the NYS Mental Hygiene Law Section 16.00.

2. Legislative Objectives: The emergency amendments further the legislative objectives embodied in sections 13.07, 13.09(b), and 16.00 of the Mental Hygiene Law. The emergency amendments make changes to day and residential habilitation services provided under the Home and Community Based Services (HCBS) Medicaid Waiver program to eliminate individual day habilitation and supplemental individual day habilitation and to add allowable services under residential habilitation.

3. Needs and Benefits: In effort to streamline and align HCBS Waiver services in OPWDD's system with HCBS Medicaid Waiver program funding requirements and to honor commitments made to the Centers for Medicare and Medicaid Services (CMS), OPWDD is making the following changes to its day and residential habilitation services effective October 1, 2015: 1) discontinue individual day habilitation (IDH) and supplemental individual day habilitation (SIDH), 2) prohibit separate billing for personal care for individuals in supportive IRAs, CRs and family care homes, 3) prohibit providers of day habilitation services from billing Medicaid for supplemental group day habilitation for individuals in supportive CRs, supportive IRAs and family care homes and 4) prohibit separate billing for certain types of clinical services for individuals in supervised CRs and supervised IRAs.

The emergency regulations streamline services by discontinuing IDH and SIDH, which are essentially duplicative of community habilitation (CH) and group day habilitation. IDH and SIDH services are provided by one staff person to no more than one individual for the duration of the service. IDH services are delivered on weekdays with a service start time prior to 3:00 p.m. SIDH services are delivered on weekday evenings with a start time at 3:00 p.m. or later and at any time on weekends. The recent expansion of community habilitation (CH) services allows individuals residing in certified settings to use CH services in lieu of part or all of their day services. CH can be provided by one staff person to one individual or to groups of up to four individuals. Group day habilitation services are provided on weekdays with a service start time prior to 3:00 p.m. Group day habilitation services are generally provided to two or more individuals, although one-to-one services may also be provided. The scope of services and activities allowable under IDH is no different from those allowed under CH and group day habilitation.

The changes to the residential habilitation service allow for comprehensive service provision to individuals living in residences certified by OPWDD. Because the provision of direct care services is already identified as part of residential habilitation in regulations (14 NYCRR 635-10.4(b)(1)(ix)), personal care services delivered in the supportive IRA, supportive CR, or Family Care Home are duplicative. Consequently, the provision and funding of personal care services, including those provided outside of the residence, except for personal care services that assist the individual with obtaining integrated employment, will be the responsibility of the residential provider and funded under residential habilitation.

The emergency amendments also include a new requirement on the use of personal care services for individuals who reside in supervised IRAs and CRs that is consistent with the amendments on the use of those services in supportive IRAs and CRs; this requirement was previously implemented for individuals residing in supervised IRAs and CRs in accordance with OPWDD policy since 2004.

The emergency regulations restrict day habilitation providers from billing Medicaid for supplemental group day habilitation for individuals living in supportive IRA, supportive CR, or Family Care Home.

In the case of individuals living in supervised IRAs or CRs who need certain nutrition, psychological, and nursing services, the amendments make these services part of the residential habilitation for which the provider is responsible.

Consequently, the provision and funding of supplemental group day habilitation, and certain nutrition and psychological services will be the responsibility of the residential provider and funded under residential habilitation. The amendments also include provisions that clarify nursing services and supervision provided as a part of residential habilitation that were previously implemented for individuals residing in supervised IRAs and CRs in accordance with OPWDD policies and procedures.

These changes are consistent with the vision that the CMS has for residential habilitation service provision. OPWDD shares the CMS view that residential habilitation should fully meet the care needs of individuals living in the residence, including all habilitative, recreational, and community integration needs of individuals during weekday evenings and weekends. OPWDD also believes that supervised residences should meet clinical service needs that are directly related to the individual's residential habilitation plan.

OPWDD filed these regulations as proposed regulations with a permanent adoption date of November 1, 2015; however, an emergency adoption is necessary in order to achieve the October 1, 2015 effective date mandated by CMS.

4. Costs:

a. Costs to the Agency and to the State and its local governments: The

amendments that discontinue IDH and SIDH services may result in costs to the State in its role paying for Medicaid. OPWDD is unable to quantify potential costs to the State because OPWDD is unable to anticipate which respective service(s) each individual will choose. In lieu of IDH and SIDH, the State will reimburse providers for either CH services, group day habilitation services, or a combination of both. Costs may be higher or lower depending on the service option chosen.

The amendments requiring that personal care services and certain clinical services be provided under residential habilitation will be cost neutral for the State, because the Department of Health will adjust residential habilitation rates to account for the costs that the residential habilitation providers may incur in providing these services. Therefore, the regulations simply change the funding stream that the State accesses to reimburse the services, from the State plan Medicaid program to the HCBS Medicaid Waiver program.

Similarly, the Department of Health will adjust rates accordingly to account for the residential provider being responsible for supplemental group day habilitation. There will be no costs to the State as a result of the regulations concerning supplemental group day habilitation. The regulations simply change the allocation of HCBS Medicaid Waiver funding for the service from the day service provider to the residential provider.

OPWDD as a provider of services may incur costs as a result of the discontinuance of IDH and SIDH. Such costs cannot be quantified because, as stated earlier, OPWDD is unable to anticipate which respective service(s) each individual will choose in lieu of IDH and/or SIDH. Costs may be higher or lower depending on the service option chosen.

The amendments requiring that personal care services and certain clinical services be provided under residential habilitation will be cost neutral to OPWDD as a provider. As stated earlier, the Department of Health will adjust rates, and the regulation simply changes the funding stream that the State accesses to reimburse OPWDD, from the Medicaid program to the HCBS Medicaid Waiver program.

Regarding the requirement prohibiting day habilitation providers from billing supplemental group day habilitation to Medicaid for individuals who reside in supportive IRAs and CRs, the amendments will not result in any cost to OPWDD as a provider of services. Through adjustments to the residential rates, the HCBS Medicaid Waiver program will reimburse OPWDD. The regulations simply change the allocation of HCBS Medicaid Waiver funding from the day service to the residential service.

Even if the emergency amendments lead to an increase in Medicaid expenditures in a particular county, these amendments will not have any fiscal impact on local governments, as the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

b. Costs to private regulated parties: Providers may incur costs as a result of the discontinuance of IDH and SIDH. Such costs cannot be quantified because, as stated earlier, OPWDD is unable to anticipate which respective service(s) each individual will choose in lieu of IDH and/or SIDH. Costs may be higher or lower depending on the service option chosen.

The amendments requiring that personal care services and certain clinical services be provided under residential habilitation will be cost neutral for providers. There may be additional costs to employ or contract for nutritionists, psychologists and/or nurses; however, as stated earlier, the Department of Health will adjust residential rates accordingly.

Regarding the requirement prohibiting day habilitation providers from billing supplemental group day habilitation to Medicaid, the amendments will not result in any costs to providers. The Department of Health will adjust the residential rates accordingly.

5. Local Government Mandates: There are no new requirements imposed by the rule on any county, city, town, village; or school, fire, or other special district.

6. Paperwork: The emergency amendments will result in no additional paperwork for residential providers. Residential habilitation providers already document residential habilitation services, and the changes in service delivery required by these amendments will be integrated into the existing service documentation.

7. Duplication: The emergency amendments do not duplicate any existing State or Federal requirements that are applicable to these services.

8. Alternatives: OPWDD did not consider any other alternatives to the emergency regulations since such changes were necessary to streamline and align HCBS Waiver services in OPWDD's system with HCBS Medicaid Waiver program funding requirements and to fulfill commitments to CMS.

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

10. Compliance Schedule: OPWDD has filed these regulations as proposed regulations with a planned permanent adoption date of November

1, 2015; however, emergency adoption is necessary in order to achieve the October 1, 2015 effective date mandated by CMS.

OPWDD notified providers of the proposed amendments more than three months in advance of their effective date. (With the exception of the effective date, the emergency regulations are identical to the proposed regulations.) OPWDD plans to issue additional guidance on the regulations before the effective date of the emergency regulations.

Regulatory Flexibility Analysis

1. Effect of Rule: 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 296 providers of residential, day habilitation services, and Article 16 clinics that may be affected by these regulations. OPWDD is unable to estimate the portion of these agencies that may be considered to be small businesses.

The emergency amendments have been reviewed by OPWDD in light of their impact on small businesses. The amendments make changes to day and residential habilitation services provided under the Home and Community Based Services (HCBS) Medicaid Waiver program to eliminate individual day habilitation (IDH) and supplemental individual day habilitation (SIDH) and to add allowable services under residential habilitation.

2. Compliance Requirements: The emergency amendments will impose additional compliance requirements on residential providers. Residential providers will be responsible for delivering new allowable services under residential habilitation. Providers of supportive individualized residential alternatives (IRAs), supportive community residences (CRs), and Family Care homes will be responsible for the provision of personal care services. Providers of supervised IRAs and supervised CRs will be responsible for nutrition, psychological, and nursing services specified in the regulations.

The amendments will have no effect on local governments.

3. Professional Services: There may be additional professional services required as a result of these amendments. Residential habilitation providers may have to employ or contract for nutritionists, psychologists and/or nurses.

4. Compliance Costs: There will be additional costs related to compliance requirements specified above and to employ or contract for nutritionists, psychologists, and/or nurses; however, the Department of Health will adjust the residential rates accordingly.

Providers may incur costs as a result of the discontinuance of IDH and SIDH. Such costs cannot be quantified because OPWDD is unable to anticipate which respective service(s) each individual will choose in lieu of IDH and/or SIDH. Costs may be higher or lower depending on the service option chosen.

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

6. Minimizing Adverse Impact: The purpose of these emergency amendments is to eliminate IDH and SIDH and to add allowable services under residential habilitation. Providers may incur costs as a result of the discontinuance of IDH and SIDH. Such costs cannot be quantified because, as stated earlier, OPWDD is unable to anticipate which respective service(s) each individual will choose in lieu of IDH and/or SIDH. Costs may be higher or lower depending on the service option chosen. Changes to residential habilitation services imposed by these amendments will be cost neutral for providers because DOH will adjust the residential rates accordingly.

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 (SAPA). However, since the amendments are needed to streamline and align HCBS Waiver services in OPWDD's system with HCBS Medicaid Waiver program funding requirements and to honor commitments made to the Centers for Medicare and Medicaid Services (CMS), OPWDD did not establish different compliance, reporting requirements or timetables on small business providers or local governments or exempt small business providers or local governments from these requirements and timetables.

7. Small Business and Local Government Participation: Providers, including providers that have fewer than 100 employees, were notified of the changes to day habilitations services on March 15, 2015 and of the changes to residential habilitation services on April 30, 2015. Further, OPWDD discussed the changes in services with providers in three separate WebEx sessions held on May 13, and May 26, 2015.

OPWDD filed these regulations as proposed regulations with a planned permanent adoption date of November 1, 2015; however, emergency adoption is necessary in order to achieve the October 1, 2015 effective date mandated by CMS.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: OPWDD services are provided in every county in New York State. 44 counties have a popula-

tion 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, 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.

The emergency amendments have been reviewed by OPWDD in light of their impact on entities in rural areas. The amendments make changes to day and residential habilitation services provided under the Home and Community Based Services (HCBS) Medicaid Waiver program to eliminate individual day habilitation (IDH) and supplemental individual day habilitation (SIDH) and to add allowable services under residential habilitation.

2. Compliance requirements: The emergency amendments will impose additional compliance requirements on residential providers. Residential providers will be responsible for delivering new allowable services under residential habilitation. Providers of supportive individualized residential alternatives (IRAs), supportive community residences (CRs), and Family Care homes will be responsible for the provision of personal care services. Providers of supervised IRAs and supervised CRs will be responsible for the provision of nutrition, psychological, and nursing services specified in the regulations.

The amendments will have no effect on local governments.

3. Professional services: There may be additional professional services required as a result of these amendments. Residential habilitation providers may have to employ or contract for nutritionists, psychologists and/or nurses.

4. Costs: There will be additional costs related to compliance requirements specified above, and to employ or contract for nutritionists, psychologists and/or nurses; however, the Department of Health (DOH) will adjust the residential rates accordingly.

Providers may incur costs as a result of the discontinuance of IDH and SIDH. Such costs cannot be quantified because OPWDD is unable to anticipate which respective service(s) each individual will choose in lieu of IDH and/or SIDH. Costs may be higher or lower depending on the service option chosen.

5. Minimizing adverse impact: The purpose of these emergency amendments is to eliminate IDH and SIDH and to add allowable services under residential habilitation. Providers may incur costs as a result of the discontinuance of IDH and SIDH. Such costs cannot be quantified because, as stated earlier, OPWDD is unable to anticipate which respective service(s) each individual will choose in lieu of IDH and/or SIDH. Costs may be higher or lower depending on the service option chosen. Changes to residential habilitation services imposed by these amendments will be cost neutral for providers because DOH will adjust the residential rates accordingly.

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 (SAPA). However, since the amendments are needed to streamline and align HCBS Waiver services in OPWDD's system with HCBS Medicaid Waiver program funding requirements and to honor commitments made to the Centers for Medicare and Medicaid Services (CMS), OPWDD did not establish different compliance, reporting requirements or timetables on small business providers or local governments or exempt small business providers or local governments from these requirements and timetables.

6. Rural area participation: Providers, including providers in rural areas, were notified of the changes to day habilitations services on March 15, 2015 and of the changes to residential habilitation services on April 30, 2015. Further, OPWDD discussed the changes in services with providers in three separate WebEx sessions held on May 13, and May 26, 2015.

OPWDD filed these regulations as proposed regulations with a planned permanent adoption date of November 1, 2015; however, emergency adoption is necessary in order to achieve the October 1, 2015 effective date mandated by CMS.

Job Impact Statement

OPWDD is not submitting a Job Impact Statement for this emergency rulemaking because this rulemaking will not have a substantial adverse impact on jobs or employment opportunities.

The emergency amendments make changes to day and residential habilitation services provided under the Home and Community Based Services (HCBS) Medicaid Waiver program to eliminate individual day habilitation (IDH) and supplemental individual day habilitation (SIDH) and to add allowable services under residential habilitation. There will be no decrease to the number of jobs because the staff delivering habilitation, personal care, nutrition, psychological, and nursing services will still be

needed, but will work for the residential provider if the residential provider decides to directly deliver these services or the staff will continue to work for the current employer if the residential provider decides to contract for these services.

Consequently, these amendments will not have a substantial adverse impact on jobs or employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Day and Residential Habilitation Changes

I.D. No. PDD-33-15-00005-P

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

Proposed Action: Amendment of Subparts 635-9, 635-10 and Part 671 of Title 14 NYCRR.

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

Subject: Day and Residential Habilitation Changes.

Purpose: To discontinue individual day habilitation and add allowable services under residential habilitation.

Text of proposed rule: Existing subparagraph 635-9.1(a)(1)(xxii) is amended as follows:

(xxii) Supervised community residences (CRs) and supervised individualized residential alternatives (IRAs) [facilities shall assume] are responsible for the cost of [services which]:

(a) services that are necessary to meet the needs of [consumers] individuals while in the residence; [and]

(b) services that, prior to August 1, 2004, could have been met by home health aide or personal care services separately billed to Medicaid[.]; and

(c) services specified in subparagraph 635-10.4(b)(1)(xvi) of this Part and paragraph 671.5(a)(7) of this Title that, prior to the effective date of these regulations, may have been separately billed to Medicaid.

A new subparagraph 635-9.1(a)(1)(xxiii) is added as follows:

(xxiii) Supportive CRs and supportive IRAs are responsible for the cost of services that, prior to [the effective date of these regulations], could have been met by a home health aide or personal care services separately billed to Medicaid, as specified in subparagraph 635-10.4(b)(1)(xvii) of this Part and paragraph 671.5(a)(8) of this Title.

Existing paragraph 635-9.1(a)(3) is amended as follows:

(3) Family care.

(i) The sponsoring agency (see glossary) [shall assume] is responsible for the cost of:

(a) Any item or service for which the sponsoring agency has been paid or will be reimbursed from local, State, or Federal funds. This includes services that, prior to the effective date of these regulations, could have been met by a home health aide or personal care services separately billed to Medicaid, as specified in subparagraph 635-10.4(b)(1)(xvii) of this Part.

Note: Existing clauses (b) – (k) of this subparagraph and subparagraph (ii) of this paragraph are unchanged.

Existing subparagraph 635-10.4(b)(1)(xv) is amended as follows:

(xv) Residential habilitation services in a supervised IRA [shall] include [services which]:

(a) services that are necessary to meet the needs of [consumers] individuals while in the residence; [and]

(b) services that, prior to August 1, 2004, could have been met by home health aide or personal care services separately billed to Medicaid[.];

(c) services that, prior to the effective date of these regulations, could have been met by home health aide or personal care services separately billed to Medicaid, with those services provided in the community on weekday evenings or anytime on the weekend, unless the weekday evening or weekend services are established to support the individual in an integrated job site; and

(d) services specified in subparagraph (xvi) of this paragraph that, prior to the effective date of these regulations, may have been separately billed to Medicaid.

A new subparagraph 635-10.4(b)(1)(xvi) is added as follows:

(xvi) Effective on the effective date of these regulations, residential habilitation services in a supervised IRA include the following clinical services delivered to an individual that are directly related to the individual's residential habilitation plan:

(a) nutrition services that consist of meal planning and monitoring, assessment of dietary needs and weight changes, development of specialized diets, diet education, and food safety and sanitation training;

(b) psychological services delivered by a licensed psychologist, licensed clinical social worker, or behavioral intervention specialist that consist of:

(1) behavioral assessment and intervention planning, delivery and review or monitoring of behavioral interventions, and behavioral support services provided pursuant to section 633.16 of this Title; and

(2) psychotherapy services; and

(c) nursing services that consist of:

(1) training and supervision of direct support staff who perform health-related and delegated nursing tasks that include, but are not limited to, observation for illness and injury, medication administration, tube feeding, and colostomy care;

(2) development and monitoring of written plans of nursing services that identify interventions direct support staff carry out to address individuals' health care needs;

(3) availability of nursing supervision, by a Registered Nurse, on site or by telephone, at all times to respond to direct support staff in order to address individuals' ongoing and immediate health care needs;

(4) coordination of individuals' health care services, including, but not limited to, arranging for needed medical appointments and diagnostic testing, interfacing on behalf of individuals with community-based healthcare providers, and ensuring that treatments are carried out in accordance with physicians' orders; and

(5) provision of direct nursing care that cannot be delegated to direct support staff and that is available within the staffing plan at the residence and/or is not available through other sources.

A new subparagraph 635-10.4(b)(1)(xvii) is added as follows:

(xvii) Residential habilitation services for an individual who resides in a supportive IRA or Family Care Home include services that, prior to the effective date of these regulations, could have been met by a home health aide or personal care services separately billed to Medicaid; either

(a) at the residence at any time; or

(b) in the community on weekday evenings or anytime on the weekend, unless the weekday evening or weekend services are established to support the individual in an integrated job site.

Existing paragraph 635-10.5(c)(2) is amended as follows:

(2) Day habilitation services shall be reimbursed as either individual day habilitation, supplemental individual day habilitation, group day habilitation or supplemental group day habilitation. Effective on the effective date of these regulations, individual day habilitation services and supplemental individual day habilitation services are no longer available. Subdivisions (i) and (ii) of this paragraph are retained for such services that were delivered prior to the effective date of these regulations.

Note: Existing subparagraphs (i) – (iv) of this paragraph are unchanged.

Existing subparagraph 635-10.5(c)(4)(iv) is amended as follows:

(iv) For individual day habilitation and supplemental individual day habilitation services provided prior to the effective date of these regulations, total annual reimbursable costs derived through the application of the above methodology shall be trended in accordance with subdivision (i) of this section and divided by the total annual projected hours of utilization.

Existing paragraph 635-10.5(c)(5) is amended as follows:

(5) The unit of service for individual day habilitation and supplemental individual day habilitation services provided prior to the effective date of these regulations, shall be one hour equaling 60 minutes and is reimbursed in 15-minute increments. When there is a break in the service delivery during a single day, for billing purposes, the provider may combine the duration of each non-continuous period of service provision (or "session") that is provided during the day, when at least one service/staff action delivered in accordance with the individual's day habilitation plan is documented for each session.

Note: Existing subparagraphs (i) – (v) of this paragraph are unchanged.

Existing subparagraph 635-10.5(c)(6)(iii) is amended as follows:

(iii) Supplemental group day habilitation services may not be billed to Medicaid for;

(a) [consumers] individuals who live in residential settings with 24-hour staffing; for example, supervised individualized residential alternatives (IRAs) and supervised community residences (CRs)[.]; and

(b) effective on the effective date of these regulations, individuals who live in supportive IRAs, supportive CRs, and Family Care Homes.

Existing paragraph 671.5(a)(6) is amended as follows:

(6) The provider of community residential habilitation services in a supervised community residence [shall be] is responsible for the cost of [services which]:

(i) services that are necessary to meet the needs of [consumers] individuals while in residence; [and]

(ii) [which] services that, prior to August 1, 2004, could have been met by home health aide or personal care services separately billed to Medicaid[.];

(iii) services that, prior to the effective date of these regulations, could have been met by home health aide or personal care services separately billed to Medicaid, with those services provided in the community on weekday evenings or anytime on the weekend, unless the weekday evening or weekend services are established to support the individual in an integrated job site; and

(iv) services specified in paragraph 671.5(a)(7) of this Part that, prior to the effective date of these regulations, may have been separately billed to Medicaid.

A new paragraph 671.5(a)(7) is added as follows:

(7) Effective on the effective date of these regulations, residential habilitation services in a supervised CR include the following clinical services delivered to an individual that are directly related to the individual's residential habilitation plan:

(i) nutrition services that consist of meal planning and monitoring, assessment of dietary needs and weight changes, development of specialized diets, diet education, and food safety and sanitation training;

(ii) psychological services delivered by a licensed psychologist, licensed clinical social worker, or behavioral intervention specialist that consist of:

(a) behavioral assessment and intervention planning, delivery and review or monitoring of behavioral interventions, and behavioral support services provided pursuant to section 633.16 of this Title; and

(b) psychotherapy services; and

(iii) nursing services that consist of:

(a) training and supervision of direct support staff who perform health-related and delegated nursing tasks that include, but are not limited to, observation for illness and injury, medication administration, tube feeding, and colostomy care;

(b) development and monitoring of written plans of nursing services that identify interventions direct support staff carry out to address individuals' health care needs;

(c) availability of nursing supervision, by a Registered Nurse, on site or by telephone, at all times to respond to direct support staff in order to address individuals' ongoing and immediate health care needs;

(d) coordination of individuals' health care services, including, but not limited to, arranging for needed medical appointments and diagnostic testing, interfacing on behalf of individuals with community-based healthcare providers, and ensuring that treatments are carried out in accordance with physicians' orders; and

(e) provision of direct nursing care that cannot be delegated to direct support staff and that is available within the staffing plan at the residence and/or is not available through other sources.

A new paragraph 671.5(a)(8) is added as follows:

(8) The provider of community residential habilitation services in a supportive CR is responsible for the cost of services that, prior to the effective date of these regulations, could have been met by a home health aide or personal care services separately billed to Medicaid; either

(a) at the residence at any time; or

(b) in the community on weekday evenings or anytime on the weekend, unless the weekday evening or weekend services are established to support the individual in an integrated job site.

Text of proposed rule and any required statements and analyses may be obtained from: Regulatory Affairs Unit, Office for People With Developmental Disabilities (OPWDD), 44 Holland Avenue, 3rd floor, Albany, NY 12229, (518) 474-7700, email: RAU.Unit@opwdd.ny.gov

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

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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory Authority:

a. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs, supports, and services in the areas of care, treatment, habilitation, rehabilitation, and other education and training of persons with developmental disabilities, as stated in the New York State (NYS) Mental Hygiene Law Section 13.07.

b. OPWDD has the authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the NYS Mental Hygiene Law Section 13.09(b).

c. OPWDD has the statutory authority to adopt regulations concerning the operation of programs and the provision of services, as stated in the NYS Mental Hygiene Law Section 16.00.

2. Legislative Objectives: The proposed amendments further the legislative objectives embodied in sections 13.07, 13.09(b), and 16.00 of the Mental Hygiene Law. The proposed amendments make changes to day

and residential habilitation services provided under the Home and Community Based Services (HCBS) Medicaid Waiver program to eliminate individual day habilitation and supplemental individual day habilitation and to add allowable services under residential habilitation.

3. Needs and Benefits: In effort to streamline and align HCBS Waiver services in OPWDD's system with HCBS Medicaid Waiver program funding requirements and to honor commitments made to the Centers for Medicare and Medicaid Services (CMS), OPWDD is making the following changes to its day and residential habilitation services: 1) discontinue individual day habilitation (IDH) and supplemental individual day habilitation (SIDH), 2) prohibit separate billing for personal care for individuals in supportive IRAs, CRs and family care homes, 3) prohibit providers of day habilitation services from billing Medicaid for supplemental group day habilitation for individuals in supportive CRs, supportive IRAs and family care homes and 4) prohibit separate billing for certain types of clinical services for individuals in supervised CRs and supervised IRAs.

The proposed regulations streamline services by discontinuing IDH and SIDH, which are essentially duplicative of community habilitation (CH) and group day habilitation. IDH and SIDH services are provided by one staff person to no more than one individual for the duration of the service. IDH services are delivered on weekdays with a service start time prior to 3:00 p.m. SIDH services are delivered on weekday evenings with a start time at 3:00 p.m. or later and at any time on weekends. The recent expansion of community habilitation (CH) services allows individuals residing in certified settings to use CH services in lieu of part or all of their day services. CH can be provided by one staff person to one individual or to groups of up to four individuals. Group day habilitation services are provided on weekdays with a service start time prior to 3:00 p.m. Group day habilitation services are generally provided to two or more individuals, although one-to-one services may also be provided. The scope of services and activities allowable under IDH is no different from those allowed under CH and group day habilitation.

The changes to the residential habilitation service allow for comprehensive service provision to individuals living in residences certified by OPWDD. Because the provision of direct care services is already identified as part of residential habilitation in regulations (14 NYCRR 635-10.4(b)(1)(ix)), personal care services delivered in the supportive IRA, supportive CR, or Family Care Home are duplicative. Consequently, the provision and funding of personal care services, including those provided outside of the residence, except for personal care services that assist the individual with obtaining integrated employment, will be the responsibility of the residential provider and funded under residential habilitation.

The proposed amendments also include a new requirement on the use of personal care services for individuals who reside in supervised IRAs and CRs that is consistent with the proposed amendments on the use of those services in supportive IRAs and CRs; this requirement was previously implemented for individuals residing in supervised IRAs and CRs in accordance with OPWDD policy since 2004.

The proposed regulations restrict day habilitation providers from billing Medicaid for supplemental group day habilitation for individuals living in supportive IRA, supportive CR, or Family Care Home.

In the case of individuals living in supervised IRAs or CRs who need certain nutrition, psychological, and nursing services, the amendments make these services part of the residential habilitation for which the provider is responsible.

Consequently, the provision and funding of supplemental group day habilitation, and certain nutrition and psychological services will be the responsibility of the residential provider and funded under residential habilitation. The amendments also include provisions that clarify nursing services and supervision provided as a part of residential habilitation that were previously implemented for individuals residing in supervised IRAs and CRs in accordance with OPWDD policies and procedures.

These changes are consistent with the vision that the CMS has for residential habilitation service provision. OPWDD shares the CMS view that residential habilitation should fully meet the care needs of individuals living in the residence, including all habitative, recreational, and community integration needs of individuals during weekday evenings and weekends. OPWDD also believes that supervised residences should meet clinical service needs that are directly related to the individual's residential habilitation plan.

4. Costs:

a. Costs to the Agency and to the State and its local governments: The proposed amendments that discontinue IDH and SIDH services may result in costs to the State in its role paying for Medicaid. OPWDD is unable to quantify potential costs to the State because OPWDD is unable to anticipate which respective service(s) each individual will choose. In lieu of IDH and SIDH, the State will reimburse providers for either CH services, group day habilitation services, or a combination of both. Costs may be higher or lower depending on the service option chosen.

The proposed regulations requiring that personal care services and

certain clinical services be provided under residential habilitation will be cost neutral for the State, because the Department of Health will adjust residential habilitation rates to account for the costs that the residential habilitation providers may incur in providing these services. Therefore, the regulations simply change the funding stream that the State accesses to reimburse the services, from the State plan Medicaid program to the HCBS Medicaid Waiver program.

Similarly, the Department of Health will adjust rates accordingly to account for the residential provider being responsible for supplemental group day habilitation. There will be no costs to the State as a result of the regulations concerning supplemental group day habilitation. The regulations simply change the allocation of HCBS Medicaid Waiver funding for the service from the day service provider to the residential provider.

OPWDD as a provider of services may incur costs as a result of the discontinuance of IDH and SIDH. Such costs cannot be quantified because, as stated earlier, OPWDD is unable to anticipate which respective service(s) each individual will choose in lieu of IDH and/or SIDH. Costs may be higher or lower depending on the service option chosen.

The amendments requiring that personal care services and certain clinical services be provided under residential habilitation will be cost neutral to OPWDD as a provider. As stated earlier, the Department of Health will adjust rates, and the regulation simply changes the funding stream that the State accesses to reimburse OPWDD, from the Medicaid program to the HCBS Medicaid Waiver program.

Regarding the requirement prohibiting day habilitation providers from billing supplemental group day habilitation to Medicaid for individuals who reside in supportive IRAs and CRs, the amendments will not result in any cost to OPWDD as a provider of services. Through adjustments to the residential rates, the HCBS Medicaid Waiver program will reimburse OPWDD. The regulations simply change the allocation of HCBS Medicaid Waiver funding from the day service to the residential service.

Even if the proposed amendments lead to an increase in Medicaid expenditures in a particular county, these amendments will not have any fiscal impact on local governments, as the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

b. Costs to private regulated parties: Providers may incur costs as a result of the discontinuance of IDH and SIDH. Such costs cannot be quantified because, as stated earlier, OPWDD is unable to anticipate which respective service(s) each individual will choose in lieu of IDH and/or SIDH. Costs may be higher or lower depending on the service option chosen.

The amendments requiring that personal care services and certain clinical services be provided under residential habilitation will be cost neutral for providers. There may be additional costs to employ or contract for nutritionists, psychologists and/or nurses; however, as stated earlier, the Department of Health will adjust residential rates accordingly.

Regarding the requirement prohibiting day habilitation providers from billing supplemental group day habilitation to Medicaid, the amendments will not result in any costs to providers. The Department of Health will adjust the residential rates accordingly.

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 proposed amendments will result in no additional paperwork for residential providers. Residential habilitation providers already document residential habilitation services, and the changes in service delivery required by these amendments will be integrated into the existing service documentation.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to these services.

8. Alternatives: OPWDD did not consider any other alternatives to the proposed regulations since such changes were necessary to streamline and align HCBS Waiver services in OPWDD's system with HCBS Medicaid Waiver program funding requirements and to fulfill commitments to CMS.

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

10. Compliance Schedule: OPWDD plans to permanently adopt the proposed amendments effective November 1, 2015. Additionally, OPWDD plans to file identical regulations as an emergency rulemaking on October 1, 2015 in order to comply with its commitment to CMS to make these changes effective October 1, 2015. OPWDD has notified providers of these amendments more than three months in advance of their effective date. OPWDD plans to issue guidance on the regulations in the near future.

Regulatory Flexibility Analysis

1. Effect of Rule: OPWDD has determined, through a review of the certified cost reports, that most OPWDD-funded services are provided by non-profit agencies which employ more than 100 people overall. However,

some smaller agencies which employ fewer than 100 employees overall would be classified as small businesses. Currently, there are approximately 296 providers of residential, day habilitation services, and Article 16 clinics that may be affected by these regulations. OPWDD is unable to estimate the portion of these agencies that may be considered to be small businesses.

The proposed amendments have been reviewed by OPWDD in light of their impact on small businesses. The proposed amendments make changes to day and residential habilitation services provided under the Home and Community Based Services (HCBS) Medicaid Waiver program to eliminate individual day habilitation (IDH) and supplemental individual day habilitation (SIDH) and to add allowable services under residential habilitation.

2. Compliance Requirements: The proposed amendments will impose additional compliance requirements on residential providers. Residential providers will be responsible for delivering new allowable services under residential habilitation. Providers of supportive individualized residential alternatives (IRAs), supportive community residences (CRs), and Family Care homes will be responsible for the provision of personal care services. Providers of supervised IRAs and supervised CRs will be responsible for nutrition, psychological, and nursing services specified in the regulations.

The amendments will have no effect on local governments.

3. Professional Services: There may be additional professional services required as a result of these amendments. Residential habilitation providers may have to employ or contract for nutritionists, psychologists and/or nurses.

4. Compliance Costs: There will be additional costs related to compliance requirements specified above and to employ or contract for nutritionists, psychologists, and/or nurses; however, the Department of Health will adjust the residential rates accordingly.

Providers may incur costs as a result of the discontinuance of IDH and SIDH. Such costs cannot be quantified because OPWDD is unable to anticipate which respective service(s) each individual will choose in lieu of IDH and/or SIDH. Costs may be higher or lower depending on the service option chosen.

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

6. Minimizing Adverse Impact: The purpose of these proposed amendments is to eliminate IDH and SIDH and to add allowable services under residential habilitation. Providers may incur costs as a result of the discontinuance of IDH and SIDH. Such costs cannot be quantified because, as stated earlier, OPWDD is unable to anticipate which respective service(s) each individual will choose in lieu of IDH and/or SIDH. Costs may be higher or lower depending on the service option chosen. Changes to residential habilitation services imposed by these amendments will be cost neutral for providers because DOH will adjust the residential rates accordingly.

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 (SAPA). However, since the amendments are needed to streamline and align HCBS Waiver services in OPWDD's system with HCBS Medicaid Waiver program funding requirements and to honor commitments made to the Centers for Medicare and Medicaid Services (CMS), OPWDD did not establish different compliance, reporting requirements or timetables on small business providers or local governments or exempt small business providers or local governments from these requirements and timetables.

7. Small Business and Local Government Participation: Providers, including providers that have fewer than 100 employees, were notified of the changes to day habilitations services on March 15, 2015 and of the changes to residential habilitation services on April 30, 2015. Further, OPWDD discussed the changes in services with providers in three separate WebEx sessions held on May 13, and May 26, 2015. OPWDD informed all providers of the proposed amendments approximately three months in advance of their scheduled effective date.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: OPWDD services are provided in every county in New York State. 44 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, 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.

The proposed amendments have been reviewed by OPWDD in light of

their impact on entities in rural areas. The proposed amendments make changes to day and residential habilitation services provided under the Home and Community Based Services (HCBS) Medicaid Waiver program to eliminate individual day habilitation (IDH) and supplemental individual day habilitation (SIDH) and to add allowable services under residential habilitation.

2. Compliance requirements: The proposed amendments will impose additional compliance requirements on residential providers. Residential providers will be responsible for delivering new allowable services under residential habilitation. Providers of supportive individualized residential alternatives (IRAs), supportive community residences (CRs), and Family Care homes will be responsible for the provision of personal care services. Providers of supervised IRAs and supervised CRs will be responsible for the provision of nutrition, psychological, and nursing services specified in the regulations.

The amendments will have no effect on local governments.

3. Professional services: There may be additional professional services required as a result of these amendments. Residential habilitation providers may have to employ or contract for nutritionists, psychologists and/or nurses.

4. Costs: There will be additional costs related to compliance requirements specified above, and to employ or contract for nutritionists, psychologists and/or nurses; however, the Department of Health (DOH) will adjust the residential rates accordingly.

Providers may incur costs as a result of the discontinuance of IDH and SIDH. Such costs cannot be quantified because OPWDD is unable to anticipate which respective service(s) each individual will choose in lieu of IDH and/or SIDH. Costs may be higher or lower depending on the service option chosen.

5. Minimizing adverse impact: The purpose of these proposed amendments is to eliminate IDH and SIDH and to add allowable services under residential habilitation. Providers may incur costs as a result of the discontinuance of IDH and SIDH. Such costs cannot be quantified because, as stated earlier, OPWDD is unable to anticipate which respective service(s) each individual will choose in lieu of IDH and/or SIDH. Costs may be higher or lower depending on the service option chosen. Changes to residential habilitation services imposed by these amendments will be cost neutral for providers because DOH will adjust the residential rates accordingly.

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 (SAPA). However, since the amendments are needed to streamline and align HCBS Waiver services in OPWDD's system with HCBS Medicaid Waiver program funding requirements and to honor commitments made to the Centers for Medicare and Medicaid Services (CMS), OPWDD did not establish different compliance, reporting requirements or timetables on small business providers or local governments or exempt small business providers or local governments from these requirements and timetables.

6. Rural area participation: Providers, including providers in rural areas, were notified of the changes to day habilitations services on March 15, 2015 and of the changes to residential habilitation services on April 30, 2015. Further, OPWDD discussed the changes in services with providers in three separate WebEx sessions held on May 13, and May 26, 2015. OPWDD informed all providers of the proposed amendments approximately three months in advance of their scheduled effective date.

Job Impact Statement

OPWDD is not submitting a Job Impact Statement for this proposed rulemaking because this rulemaking will not have a substantial adverse impact on jobs or employment opportunities.

The proposed amendments make changes to day and residential habilitation services provided under the Home and Community Based Services (HCBS) Medicaid Waiver program to eliminate individual day habilitation (IDH) and supplemental individual day habilitation (SIDH) and to add allowable services under residential habilitation. There will be no decrease to the number of jobs because the staff delivering habilitation, personal care, nutrition, psychological, and nursing services will still be needed, but will work for the residential provider if the residential provider decides to directly deliver these services or the staff will continue to work for the current employer if the residential provider decides to contract for these services.

Consequently, these amendments will not have a substantial adverse impact on jobs or employment opportunities.

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Person-Centered Planning

I.D. No. PDD-33-15-00014-P

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

Proposed Action: Amendment of Parts 633, 635, 671 and 686; addition of Part 636 to Title 14 NYCRR.

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

Subject: Person-Centered Planning.

Purpose: To implement Federal requirements for a person-centered planning process and a person-centered plan.

Substance of proposed rule (Full text is posted at the following State website: www.opwdd.ny.gov):

The proposed regulations identify new requirements for a person-centered planning process and a person-centered plan in a new 14 NYCRR Part 636 and make corresponding changes to regulations in 14 NYCRR Parts 633, 635, 671, and 686.

OPWDD's proposed regulations to implement federal regulations in 42 CFR 441.301(c) that require a person-centered planning process and a person-centered service plan for each individual who receives Home and Community Based Services (HCBS) Medicaid waiver services. The regulations identify the elements that must be included in both the person-centered planning process and the plan. The regulations are applicable to OPWDD funded HCBS Waiver services and OPWDD funded service coordination. The regulations are also applicable to the service planning process for all HCBS waiver services funded by OPWDD.

The proposed regulations define the person-centered planning process as a process in which, to the maximum extent possible, an individual directs the planning of his or her services and makes informed choices about the services and supports that he or she receives. The planning process guides the delivery of services and supports to an individual in a way that leads to the individual's desired outcomes or results in areas of life that are most important to him or her (e.g., health, relationships, work, and home).

The proposed regulations specify that the person-centered planning process must involve parties chosen by the individual, often known as the individual's circle of support. The parties chosen by the individual participate in the process as needed, and as defined by the individual, except to the extent that decision-making authority is conferred on another by state law. Parties chosen by the individual assist the individual in decision-making by, among other things, explaining issues to be decided, answering the individual's questions, encouraging the individual to actively participate in decision-making and, where necessary, assisting the individual to communicate his or her preferences.

The proposed regulations specify that a person-centered planning process is a collaborative and recurring process between the individual and the service provider. The planning process is used at the time of initial plan development and during reviews of the plan. The planning process is required for developing the person-centered service plan, including the HCBS waiver service habilitation plan, with the individual and parties chosen by the individual.

The proposed regulations define the person-centered service plan as a plan that is created using the person-centered planning process. The person-centered service plan may also be known as the individualized service plan (ISP). The regulations specify what the plan must include.

The proposed regulations require that the service coordinator develop the person-centered service plan together with the individual, his or circle of support, and HCBS service providers. At a minimum, for the written plan to be understandable, it must be written in plain language and in a manner that is accessible to the individual, to the extent possible, and parties chosen by the individual. The plan must be finalized and agreed to with the individual's written informed consent and signed by the provider(s) responsible for implementing the plan. The service coordinator must distribute the plan to the individual and parties involved in its implementation. The regulations specify the timeframe requirements for review and revision of the plan, which are the same requirements found in existing regulations for review of the ISP.

The proposed regulations identify requirements for documentation of modifications of specific rights identified in the regulations. These documentation requirements are only applicable to HCBS Medicaid waiver services in settings certified by OPWDD. The regulations outline what must be documented when certain rights are modified and when rights modifications affect another individual receiving services who does not require the rights modification. The regulations specify that the service coordinator must ensure that the required documentation is in the person-centered service plan.

The proposed regulations identify requirements for notification of the individual's right to a person-centered planning process and a person-centered plan and of the right to object to services pursuant to OPWDD regulations in 14 NYCRR Section 633.12. Notification must be provided to the individual and a person upon whom decision-making authority is conferred by state law, if any. The regulations identify when to give notice for those individuals who do not have an ISP in place on November 1,

2015 and for those individuals who have an ISP in place on November 1, 2015.

The proposed regulations make amendments to existing regulations concerning requirements for service planning and rights of individuals receiving services. The regulations include cross-references to relevant material in existing regulations.

The definition of ISP is amended to require documentation concerning rights modifications that is required in the person-centered service plan. The regulations also make changes to the ISP definition so that it reads exactly the same wherever it is found in OPWDD regulations.

Text of proposed rule and any required statements and analyses may be obtained from: Regulatory Affairs Unit, Office for People With Developmental Disabilities (OPWDD), 44 Holland Avenue, 3rd floor, Albany, NY 12229, (518) 474-7700, email: RAU.Unit@opwdd.ny.gov

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

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

Additional matter required by statute: Pursuant to the requirements of the State Environmental Quality Review Act, OPWDD, as lead agency, has determined that the action described herein will have no effect on the environment, and an E.I.S. is not needed.

Regulatory Impact Statement

1. Statutory Authority:

a. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs, supports, and services in the areas of care, treatment, habilitation, rehabilitation, and other education and training of persons with developmental disabilities, as stated in the New York State (NYS) Mental Hygiene Law Section 13.07.

b. OPWDD has the authority to adopt rules and regulations necessary and proper to implement any matter under its jurisdiction as stated in the NYS Mental Hygiene Law Section 13.09(b).

c. OPWDD has the statutory authority to adopt regulations concerning the operation of programs and the provision of services, as stated in the NYS Mental Hygiene Law Section 16.00.

d. OPWDD has the statutory authority to promulgate rules and regulations that require the development and review of a person centered plan of care for each person enrolled in the Home and Community Based Services (HCBS) Waiver, as stated in the NYS Social Services Law Section 366(7-a).

2. Legislative Objectives: The proposed regulations further the legislative objectives embodied in sections 13.07, 13.09(b) and 16.00 of the Mental Hygiene Law, and section 366(7-a) of the Social Services Law. The regulations implement federal regulations that require a person-centered planning process and a person-centered service plan for individuals who receive Home and Community Based Services (HCBS) Medicaid Waiver services.

3. Needs and Benefits: The Centers for Medicare and Medicaid Services (CMS) promulgated regulations on March 17, 2014, requiring a person-centered service process and a person-centered service plan for individuals receiving HCBS Waiver services. OPWDD supports the recently promulgated federal regulations and is committed to implementing a person-centered service delivery system. The proposed regulations outline requirements applicable to OPWDD funded HCBS Waiver services and OPWDD funded service coordination that identify the elements that must be included in both the person-centered planning process and the plan.

The proposed regulations essentially duplicate the content of the federal regulations with the addition of other requirements important to achieving OPWDD's vision for a person-centered service delivery system. The additional requirements (1) describe how parties chosen by the individual may assist the individual with decision-making; (2) specify that the process begins at the time of initial plan development and during plan reviews; (3) indicate that the plan may also be known as the individualized service plan (ISP) and identify the timeframes for review of the plan, which are consistent with timeframes for review of the ISP; (4) identify documentation requirements concerning rights modifications that affect individuals; (5) identify requirements for notification of an individual's rights to a person-centered process and plan; and (6) amend the definition of ISP in existing OPWDD regulations to include documentation of modification of the rights specified in the regulations. OPWDD considers it necessary to tailor the person-centered process and plan defined by federal regulations to include these additional requirements in order to effectively implement the process and plan for individuals receiving services in its system.

OPWDD considers that an understanding of what is important to the individual and developing supports that are responsive in any environment are critical. Through a strong person-centered planning process and plan outlined in its regulations, OPWDD is working to create a system where individuals control and direct their own lives. The proposed regulations are a step toward recreating OPWDD's system of care to make the shift from the institutions of the past to the person-centered system of the future.

4. Costs:

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

There is no anticipated impact on Medicaid expenditures as a result of the proposed regulations as it is expected that any costs to providers will be absorbed by existing reimbursement received for services provided. Consequently, there will be no additional costs for the State in its role of paying for Medicaid costs.

These regulations will not have any fiscal impact on local governments, as the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

There will be costs for OPWDD as a provider of services to comply with new requirements concerning rights modifications. For example, the regulations impose a new requirement to review modification of certain rights not found in existing OPWDD regulations, such as the right to lock one's own living unit door. OPWDD's residences typically have locks on entrance doors for security purposes as any other home in the community would; however, OPWDD cannot determine how many of its residences also have locks on individual sleeping room doors. Consequently, OPWDD cannot quantify expenses related to the installation of locks on sleeping room doors. Additionally, there will be nominal costs to comply with requirements for notification of an individual's rights to a person-centered process and plan. All costs discussed in this section are necessary in order to comply with federal regulations promulgated on March 17, 2014.

Since the federal regulations were promulgated over a year ago, OPWDD has been working to conform its system to the federal requirements by making changes to service planning practices, and providing training and guidance to providers and service coordinators in its system. Even prior to the federal regulations, OPWDD incorporated concepts of person-centered planning into its guidance to providers. The proposed regulations put many existing system practices into regulation. Consequently, OPWDD as a provider is already in compliance with most of the requirements in the proposed regulations.

b. Costs to private regulated parties: There are no initial capital expenditures. As described above for OPWDD as a provider of services, there will be costs to comply with new requirements concerning rights modifications. For example, the regulations impose a new requirement to review modification of certain rights not found in existing OPWDD regulations, such as the right to lock one's own living unit door. Residential providers typically have locks on entrance doors for security purposes as any other home in the community would; however, OPWDD cannot determine how many residential providers also have locks on individual sleeping room doors. Consequently, OPWDD cannot quantify providers' expenses related to the installation of locks on sleeping room doors. Additionally, there will be nominal costs to comply with requirements for notification of an individual's rights to a person-centered process and plan. All costs discussed in this section are necessary in order to comply with federal regulations promulgated on March 17, 2014. However, since OPWDD has been working to conform its system to these requirements for over a year, OPWDD expects that providers are already in compliance with most of the requirements in the proposed regulations.

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: Providers will experience an increase in paperwork as a result of the proposed regulations. The regulations add documentation requirements concerning rights modifications; and requirements for notification of an individual's rights to a person-centered process and plan. These paperwork requirements are necessary to provide due process and other protections to individuals receiving services, and to comply with federal regulations.

7. Duplication: The proposed regulations duplicate federal requirements for a person-centered planning process and person-centered plan.

8. Alternatives: OPWDD initially considered applying documentation requirements related to rights modifications to HCBS Waiver services provided in settings that are not certified by OPWDD (e.g. an individual's private home); however, OPWDD ultimately decided to limit applicability of that section of the regulations to only HCBS Waiver services provided in settings certified by OPWDD. The federal HCBS settings requirements and associated guidance that require documentation of rights modifications only apply to modifications of rights in "provider controlled" settings. Further, guidance on the federal requirements clarifies that it should be presumed that private homes of individuals already meet the HCBS settings requirements. Lastly, clinical needs and supports for individuals receiving services in non-certified settings will be captured and addressed in the person-centered plan as required by the proposed regulations. Consequently, OPWDD considers that limiting applicability is the best approach.

9. Federal Standards: The proposed regulations exceed the minimum standards of the federal government by the addition of new requirements as stated in section three above.

10. Compliance Schedule: OPWDD is planning to adopt the proposed regulations effective November 1, 2015. OPWDD considers that providers are already in compliance or working to come into compliance with existing federal requirements duplicated in the proposed regulations. OPWDD has been providing trainings on person-centered planning since the federal regulations were promulgated on March 17, 2014. Further, OPWDD has been providing guidance on its person-centered planning webpage on its website. OPWDD plans to issue additional guidance specific to the proposed regulations in the near future. OPWDD has also notified all providers of the proposed regulations approximately three months in advance of their effective date so that they may contact OPWDD for technical assistance before these regulations go into effect.

Regulatory Flexibility Analysis

1. Effect of Rule: 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 agencies that may be considered small businesses.

The proposed regulations have been reviewed by OPWDD in light of their impact on small businesses. The proposed regulations implement federal requirements for a person-centered planning process and a person-centered service plan for individuals who receive Home and Community Based Services (HCBS) Waiver services.

2. Compliance Requirements: The federal person-centered planning regulations went into effect on March 17, 2014, and since this date, OPWDD has been working to conform its system to the federal requirements by making changes to service planning practices, and providing training and guidance to providers and service coordinators. Even prior to the federal regulations, OPWDD incorporated concepts of person-centered planning into its guidance to providers. The proposed regulations put many existing system practices into regulation. Consequently, OPWDD expects that providers are already in compliance with most of the requirements in the regulations.

In addition to duplicating many of the federal requirements in its regulations, OPWDD added requirements that entail additional compliance activities: documentation of rights modifications; and notification of an individual's rights to a person-centered process and plan. OPWDD considers these new compliance requirements necessary to provide due process and other protections to individuals receiving services in its system, and to comply with federal regulations.

The regulations will have no effect on local governments.

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

4. Compliance Costs: There will be costs related to the new compliance requirements specified above for providers and service coordinators. There will be costs to comply with new requirements concerning rights modifications. For example, the regulations impose a new requirement to review modification of certain rights not found in existing OPWDD regulations, such as the right to lock one's own living unit door. Residential providers typically have locks on entrance doors for security purposes as any other home in the community would; however, OPWDD cannot determine how many residential providers also have locks on individual sleeping room doors. Consequently, OPWDD cannot quantify providers' expenses related to the installation of locks on sleeping room doors. Additionally, there will also be nominal costs to comply with requirements for notification of an individual's rights to a person-centered process and plan. All costs discussed in this section are necessary in order to comply with federal regulations. However, since OPWDD has been working to conform its system to these requirements for over a year, OPWDD expects that providers are already in compliance with most of the requirements in the proposed regulations. OPWDD does not expect costs to vary for providers that are small businesses or for local governments of different types and sizes.

5. Economic and Technological Feasibility: The proposed regulations do not require any new technological processes of regulated parties.

6. Minimizing Adverse Impact: As stated above, the purpose of these proposed regulations is to implement federal regulations that require a person-centered planning process and a person-centered service plan for individuals who receive HCBS Waiver services. The regulations include new compliance activities that will result in costs to all providers, including small business providers, as outlined above.

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 (SAPA). However, since the documentation, quality standards and other compliance provisions in the regulations are needed to implement federal standards, assist individuals in directing their own lives, and provide protection to individuals, OPWDD did not establish different compliance, reporting requirements or timetables for small business providers or local governments, or exempt small business providers or local governments from these requirements and timetables.

7. Small Business and Local Government Participation: The proposed regulations were discussed with representatives of providers, including providers that have fewer than 100 employees, on May 18, 2015. OPWDD also discussed the regulations with providers, including small business providers, at various meetings on October 22 and 24 of 2014, and January 22, March 3, April 22, May 12, May 27 and June 25, 2015. OPWDD has been working to conform its system to these requirements since the federal regulations were promulgated on March 17, 2014. OPWDD has also informed all providers of the proposed regulations approximately three months in advance of their scheduled effective date.

Rural Area Flexibility Analysis

1. Types and Estimated Numbers of Rural Areas: OPWDD services are provided in every county in New York State. 44 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, 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.

The proposed regulations have been reviewed by OPWDD in light of their impact on entities in rural areas. The proposed regulations implement federal regulations that require a person-centered planning process and person-centered service plan for individuals who receive Home and Community Based Services (HCBS) Medicaid Waiver services.

2. Compliance Requirements: The federal person-centered planning regulations went into effect on March 17, 2014, and since this date, OPWDD has been working to conform its system to the federal requirements by making changes to service planning practices, and providing training and guidance to providers and service coordinators. Even prior to the federal regulations, OPWDD incorporated concepts of person-centered planning into its guidance to providers. The proposed regulations put many existing system practices into regulation. Consequently, OPWDD expects that providers are already in compliance with most of the requirements in the regulations.

In addition to duplicating many of the federal requirements in its regulations, OPWDD added requirements that entail additional compliance activities: documentation of rights modifications; and notification of an individual's rights to a person-centered process and plan. OPWDD considers these new compliance requirements necessary to provide due process and other protections to individuals receiving services in its system, and to comply with federal regulations.

The regulations will have no effect on local governments.

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

4. Costs: There will be costs related to the new compliance requirements specified above for providers and service coordinators. There will be costs to comply with new requirements concerning rights modifications. For example, the regulations impose a new requirement to review modification of certain rights not found in existing OPWDD regulations, such as the right to lock one's own living unit door. Residential providers typically have locks on entrance doors for security purposes as any other home in the community would; however, OPWDD cannot determine how many residential providers also have locks on individual sleeping room doors. Consequently, OPWDD cannot quantify providers' expenses related to the installation of locks on sleeping room doors. Additionally, there will also be nominal costs to comply with requirements for notification of an individual's rights to a person-centered process and plan. All costs discussed in this section are necessary in order to comply with federal regulations. However, since OPWDD has been working to conform its system to these requirements for over a year, OPWDD expects that providers are already in compliance with most of the requirements in the proposed regulations. OPWDD does not expect costs to vary for providers that are small businesses or for local governments of different types and sizes.

5. Minimizing Adverse Impact: As stated above, the purpose of these proposed regulations is to implement federal regulations that require a person-centered planning process and a person-centered service plan for individuals who receive HCBS Waiver services. The regulations include

new compliance activities that will result in costs to all providers, including providers in rural areas, as outlined above.

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 (SAPA). However, since the documentation, quality standards and other compliance provisions in the regulations are needed to implement federal standards, assist individuals in directing their own lives, and provide protection to individuals, OPWDD did not establish different compliance, reporting requirements or timetables for providers in rural areas or local governments, or exempt providers in rural areas or local governments from these requirements and timetables.

6. Rural Area Participation: Participation of public and private interests in rural areas: The proposed regulations were discussed with representatives of providers, including those that represent providers in rural areas, on May 18, and May 27, 2015. OPWDD also discussed the regulations with providers, including providers in rural areas, at various meetings on October 22 and 24 of 2014, and January 22, March 3, April 22, May 12, May 27 and June 25 of 2015. OPWDD has been working to conform its system to these requirements since the federal regulations were promulgated on March 17, 2014. OPWDD also informed all providers of the proposed regulations approximately three months in advance of their scheduled effective date.

Job Impact Statement

OPWDD is not submitting a Job Impact Statement for this proposed rulemaking because this rulemaking will not have a substantial adverse impact on jobs or employment opportunities.

The proposed regulations implement federal regulations that require a person-centered planning process and a person-centered service plan for individuals who receive Home and Community Based Services (HCBS) Waiver services. In addition to duplicating many of the federal requirements in its regulations, OPWDD added new requirements that may result in costs, including staffing costs, such as documentation requirements concerning rights modifications, and requirements for notification of an individual's rights to a person-centered process and plan. If additional staff are needed to comply with the proposed amendments, there could be a positive impact on jobs. However, OPWDD expects that costs will be absorbed by providers' reimbursement for services and that there will be no impact on jobs.

Consequently, these regulations will not have a substantial adverse impact on jobs or employment opportunities.

Public Service Commission

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Recovery of Costs Related to an RSSA

I.D. No. PSC-33-15-00006-P

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

Proposed Action: The Commission is considering a petition from RG&E and others seeking approval of recovery of costs related to a Reliability Support Services Agreement (RSSA) for services from R.E. Ginna Nuclear Power Plant, LLC.

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

Subject: Recovery of costs related to an RSSA.

Purpose: To recover costs related to an RSSA for services from R.E. Ginna Nuclear Power Plant, LLC.

Public hearing(s) will be held at: 10:00 a.m., October 7, 2015 and continuing daily as needed* at Department of Public Service, Three Empire State Plaza, 3rd Fl. Hearing Rm., Albany, NY.

*Hearing dates are subject to change. Notification of any subsequent scheduling changes will be posted on the DPS website (www.dps.ny.gov) under Case 14-E-0270.

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

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

Substance of proposed rule: The Public Service Commission is considering a petition filed by Rochester Gas & Electric Corporation (RG&E) on February 13, 2015, seeking acceptance of a Reliability Support Services Agreement (RSSA) entered into between RG&E and R.E. Ginna Nuclear Power Plant, LLC and approval of the recovery of costs related to the RSSA. The Commission may adopt, reject or modify, in whole or in part, the relief proposed or may adopt alternative relief.

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.

(14-E-0270SP3)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Approval of Revisions to Rule No. 35 Updating Wire Line and Wireless Pole Attachment Rates

I.D. No. PSC-33-15-00007-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, modify or reject, in whole or in part a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid to revise Rule No. 35 contained in P.S.C. No. 220 – Electricity.

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

Subject: Approval of revisions to Rule No. 35 updating wire line and wireless pole attachment rates.

Purpose: To approve the proposed revisions to Rule No. 35 updating wire line and wireless pole attachment rates.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by Niagara Mohawk Power Corporation d/b/a National Grid (NMPC) to update Rule No. 35 – Cable System Operator and Telecommunication Service Provider Wire Line Attachment Rates to Electric Distribution Poles including Wireless Attachment Rates contained in P.S.C. No. 220 – Electricity to reflect new pole attachment rates. NMPC proposes to update the annual pole attachment rate for cable system operators and telecommunication service providers for wire line attachments to \$14.04; the wireless attachment Rate A to \$71.74; and the wireless attachment Rate B to \$146.86. NMPC's proposed amendments have an effective date of November 23, 2015. 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-0444SP1)

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

Existing Ratemaking, Rate Design and Regulatory Practices Will be Revised with a Focus on Outcomes and Incentives

I.D. No. PSC-33-15-00008-P

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

Proposed Action: The Commission is considering making changes to its ratemaking and regulatory practices necessary to implement its efforts in Reforming the Energy Vision.

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

Subject: Existing ratemaking, rate design and regulatory practices will be revised with a focus on outcomes and incentives.

Purpose: To use the Commission's ratemaking authority to foster a DER-intensive system.

Substance of proposed rule: The Commission is considering whether to adopt, modify, or reject, in whole or in part, potential modifications to regulation of the electric industry as set forth in the "White Paper on Ratemaking and Utility Business Models" filed on July 28, 2015 by the New York State Department of Public Service Staff in the Reforming the Energy Vision proceeding, Case 14-M-0101. In particular, the Commission is considering those issues related to the regulatory changes and ratemaking issues necessary to encourage an efficient, reliable electric system heavily integrated with Distributed Energy Resources.

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.

(14-M-0101SP13)

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

Remote Net Metering of a Demonstration Community Net Metering Program

I.D. No. PSC-33-15-00009-P

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

Proposed Action: The Commission is considering a Petition filed on July 1, 2015 by Madison County Public Utility Service requesting an Order directing remote net metering of a demonstration community net metering program.

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

Subject: Remote net metering of a demonstration community net metering program.

Purpose: To consider approval of remote net metering of a demonstration community net metering program.

Substance of proposed rule: The Commission is considering a Petition filed on July 1, 2015 by Madison County Public Utility Service (MCPLUS) requesting an Order directing remote net metering of a demonstration community net metering program. The Petition requests that National Grid and New York State Electric and Gas Corporation be required to provide remote net metering to MCPLUS on electric power generated by a portfolio of program assets, including a Solar Community Net Metering Program sized up to ten megawatts, a wind farm sized at 34 megawatts, and potential additional biomass heating and micro-hydroelectric systems, along with potential community choice options. The Commission may

adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: 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-0449SP1)

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

Approval of New York American Water Company, Inc's. Use of Offsets

I.D. No. PSC-33-15-00010-P

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

Proposed Action: The Commission is considering whether to approve, reject, or modify a petition filed by New York American Water Company, Inc. to offset its annual Revenue and Property Tax Reconciliation (RAC/PTR) Mechanism.

Statutory authority: Public Service Law, sections 89-b and 89-c

Subject: Approval of New York American Water Company, Inc's. use of offsets.

Purpose: To approve New York American Water Company, Inc's. use of offsets.

Substance of proposed rule: The Public Service Commission is considering whether to approve, reject, or modify, in whole or in part, a petition by New York American Water Company, Inc. (f/k/a Long Island Water Corporation) (NYAW or the Company) seeking authorization to use money held as a regulatory liability to offset its annual Revenue and Property Tax Reconciliation (RAC/PRT) Mechanism. Under its current rate plan, the Company collects from rates money for New York State income tax. Because of a recent change in the tax law, NYAW believes it is exempted from the state income tax and has been recording the money collected from ratepayers as a regulatory liability on its books. NYAW requests permission to use this money to offset its RAC/PRT surcharge, reducing the surcharge ratepayers would pay by 45%. NYAW requests that, because the New York State Department of Taxation has not issued formal guidance on the tax law change, the Commission authorize the Company to collect any state income tax it might subsequently be assessed if its interpretation of the law proves incorrect. The Commission may consider 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-W-0437SP1)

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

Approval of New York American Water Company, Inc's. Use of Offsets and Deferral Treatment

I.D. No. PSC-33-15-00011-P

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

Proposed Action: The Commission is considering whether to approve, reject, or modify a petition filed by New York American Water Company, Inc. to offset and defer portions of its annual Revenue and Property Tax Reconciliation (RAC/PTR) Mechanism.

Statutory authority: Public Service Law, sections 89-c and 89-b

Subject: Approval of New York American Water Company, Inc's. use of offsets and deferral treatment.

Purpose: To approve New York American Water Company, Inc's. use of offsets and deferral treatment.

Substance of proposed rule: The Public Service Commission is considering whether to approve, reject, or modify, in whole or in part, a petition by New York American Water Company, Inc. (f/k/a Aquarion Water Company of Sea Cliff, Inc.) (NYAW or the Company) seeking authorization to use money held as a regulatory liability to offset and defer portions of its annual Revenue and Property Tax Reconciliation (RAC/PRT) Mechanism. The Commission shall also consider all other related matters. Under its current rate plan, the Company collects from rates money for New York State income tax. Because of a recent change in the tax law, NYAW believes it is exempted from the state income tax and has been recording the money collected from ratepayers as a regulatory liability on its books. NYAW requests permission to use this money to offset its RAC/PRT surcharge, reducing the surcharge ratepayers would pay. NYAW requests that, because the New York State Department of Taxation has not issued formal guidance on the tax law change, the Commission authorize the Company to collect any state income tax it might subsequently be assessed if its interpretation of the law proves incorrect. The Company also seeks authorization to defer collection of \$430,484 in property taxes to further reduce the surcharge for the current year. The Commission may consider 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, 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-W-0436SP1)

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

Remote Net Metering of a Community Solar Demonstration Project

I.D. No. PSC-33-15-00012-P

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

Proposed Action: The Commission is considering a Petition filed on July 2, 2015 by Sustainable Westchester, Inc. and Bedford 2020 requesting an Order directing remote net metering of a community solar Demonstration Project.

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

Subject: Remote net metering of a Community Solar Demonstration Project.

Purpose: To consider approval of remote net metering of a Community Solar Demonstration Project.

Substance of proposed rule: The Commission is considering a Petition filed on July 2, 2015 by Sustainable Westchester, Inc. and Bedford 2020 requesting an Order allowing remote net metering of a community solar demonstration project. The Petition requests that Consolidated Edison of New York, Inc. and New York State Electric and Gas Corporation be required to provide remote net metering to residential and small commercial customers in Westchester County on electric power generated by solar assets sized at ten megawatts, and to transfer net metering credits to corresponding satellite accounts. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: 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-0450SP1)

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Child Support

I.D. No. TDA-18-15-00002-A

Filing No. 672

Filing Date: 2015-08-04

Effective Date: 2015-08-19

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

Action taken: Amendment of section 347.24 of Title 18 NYCRR.

Statutory authority: 45 Code of Federal Regulations, section 303.11; Social Services Law, sections 20(3)(d), 34(3)(f) and 111-a

Subject: Child Support.

Purpose: To reflect the revised case closure criteria as set forth in the federal Department of Health and Human Services regulation.

Text or summary was published in the May 6, 2015 issue of the Register, I.D. No. TDA-18-15-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Richard P. Rhodes, Jr., New York State Office of Temporary and Disability Assistance, 40 North Pearl Street, 16-C, Albany, NY 12243-0001, (518) 486-7503, email: richard.rhodesjr@otda.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.