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 Corrections and Community Supervision

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Rochester Correctional Facility

I.D. No. CCS-08-15-00002-P

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

Proposed Action: This is a consensus rulemaking to amend section 100.92(a) of Title 7 NYCRR.

Statutory authority: Correction Law, section 70

Subject: Rochester Correctional Facility.

Purpose: To correct the address for Rochester Correctional Facility.

Text of proposed rule: Amend section 100.92 of 7 NYCRR, as follows:

(a) There shall be in the department a facility to be known as the Rochester Correctional Facility, which shall be located at Rochester, in Monroe County, New York, and which shall consist of the land and buildings at *470 Ford Street* [55 Greig Street], formerly occupied by a Division for Youth center.

(b) Rochester Correctional Facility shall be a correctional facility for males of the age of 16 years or older.

(c) Rochester Correctional Facility shall be classified as a minimum security correctional facility, to be used for the following functions:

(1) residential treatment facility; and

(2) work release facility.

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

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

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

Consensus Rule Making Determination

The Department of Correctional and Community Supervision (DOCCS) has determined that no person is likely to object to the proposed action. The amendment of this section corrects the address of Rochester Correctional Facility. The street where the original front entrance to the facility was located has been closed. A new front entrance has been located on an adjacent street and a new address was assigned. See SAPA Section 102(11)(a).

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

Job Impact Statement

A job impact statement is not submitted because this proposed rulemaking will merely correct the address for Rochester Correctional Facility. This has no adverse impact on jobs or employment opportunities. Additionally, there is no adverse impact on jobs or employment.

Education Department

EMERGENCY
RULE MAKING

New York State Common Core Learning Standards (CCLS) in Mathematics

I.D. No. EDU-48-14-00007-E
Filing No. 101
Filing Date: 2015-02-10
Effective Date: 2015-02-14

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

Action taken: Amendment of section 100.5(g)(1)(ii)(*a*) of Title 8 NYCRR.

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

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

Specific reasons underlying the finding of necessity: The proposed amendment is necessary to implement Regents policy to provide additional flexibility in the transition to the Common Core Regents Examination in Algebra I by allowing, at the local school district's discretion, an additional opportunity for certain specified students to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (Common Core) at the June 2015 test administration, and meet the mathematics requirement for graduation by passing either examination.

The proposed amendment was adopted by emergency action at the November 17-18, 2014 Regents meeting, effective November 18, 2014. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on December 3, 2014.

Subsequently, the proposed amendment was revised to clarify, consis-

tent with the intent of the Regents, to provide this additional flexibility only for students who began Algebra I (Common Core) instruction prior to the current school year, so as to provide the same flexibility for students enrolled in four-semester "stretch" courses as had previously been available to students enrolled in two-semester courses or three-semester "stretch" courses. The proposed amendment, as so revised, was adopted as an emergency action at the December 14-15, 2014 Regents meeting, effective December 16, 2014.

The proposed amendment has now been adopted as a permanent rule at the February 9-10, 2015 Regents meeting. Pursuant to SAPA § 203(1), the earliest effective date of the permanent rule is February 25, 2015, the date a Notice of Adoption will be published in the State Register. However, the December emergency rule will expire on February 13, 2015, 60 days after its filing with the Department of State on December 16, 2014. Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed amendment adopted by emergency action at the November 2014 Regents meeting, revised and readopted by emergency action at the December 2014 Regents meeting, and adopted as a permanent rule at the February 2015 Regents meeting, remains continuously in effect until the effective date of its permanent adoption.

Subject: New York State Common Core Learning Standards (CCLS) in mathematics.

Purpose: To provide additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination.

Text of emergency rule: Clause (a) of subparagraph (ii) of paragraph (1) of subdivision (g) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective February 14, 2015, as follows:

(a) Students who first begin instruction in a commencement level mathematics course aligned to the Common Core Learning Standards in September 2013 and thereafter shall meet the mathematics requirement for graduation in clause (a)(5)(i)(b) of this section by passing a commencement level Regents examination in mathematics that measures the Common Core Learning Standards, or an approved alternative pursuant to section 100.2(f) of this Part; provided that:

(1)*(i)* for the June 2014, August 2014 and January 2015 administrations only, students receiving algebra I (common core) instruction may, at the discretion of the applicable school district, take the Regents examination in integrated algebra in addition to the Regents examination in algebra I (common core), and may meet the mathematics requirement for graduation in clause (a)(5)(i)(b) of this section by passing either examination; and

(ii) for the June 2015 administration only, students receiving algebra I (common core) instruction that began prior to September 2014 may, at the discretion of the applicable school district, take the Regents examination in integrated algebra in addition to the Regents examination in algebra I (common core) and may meet the mathematics requirement for graduation in clause (a)(5)(i)(b) of this section by passing either examination; and

(2) . . .

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-48-14-00007-EP, Issue of December 3, 2014. The emergency rule will expire April 10, 2015.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

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

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

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

The proposed amendment provides additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination.

The last administrations of the current Regents Examinations in Integrated Algebra, Geometry and Algebra 2/Trigonometry will be in January 2015, January 2016, and January 2017, respectively. The transition plan for the new Regents Exams in Math (Common Core) includes the following:

- Students who first begin instruction in a commencement level mathematics course aligned to the CCLS in September 2013 and thereafter shall meet the mathematics requirement for graduation by passing a commencement level Regents Examination in mathematics that measures the CCLS, or an approved alternative.
- Students who first began or will complete an Integrated Algebra, Geometry, or Algebra 2/Trigonometry course prior to September 2013 shall meet the mathematics requirements for graduation by passing the corresponding Regents Examinations aligned to the Mathematics Core Curriculum (Revised 2005), while those examinations are still being offered. For the June 2014, August 2014 and January 2015 administrations only, students receiving Algebra I (Common Core) instruction may, at local discretion, take the Regents Examination in Integrated Algebra (2005 Revised) in addition to the Regents Examination in Algebra I (Common Core) and may meet the Mathematics graduation requirement by passing either exam.

The proposed amendment would extend to the June 2015 test administration, the option of taking the Regents Examination in Integrated Algebra (2005 Revised) in addition to the Regents Examination in Algebra I (Common Core) and meeting the Mathematics graduation requirement by passing either exam.

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties: none.

(d) Costs to regulating agency for implementation and continued administration of this rule: none.

The proposed amendment does not impose any direct costs to the State, school districts, charter schools or the State Education Department. The proposed amendment provides additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination. It is anticipated that any indirect costs associated with these requirements will be minimal and capable of being absorbed using existing school resources.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon local governments. The proposed amend-

ment would extend to the June 2015 test administration, the option of taking the Regents Examination in Integrated Algebra (2005 Revised) in addition to the Regents Examination in Algebra I (Common Core) and meeting the Mathematics graduation requirement by passing either exam. Whether or not to offer such option is within the discretion of each school district.

6. PAPERWORK:

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

7. DUPLICATION:

The proposed amendment does not duplicate existing State or federal requirements.

8. ALTERNATIVES:

There are no significant alternatives to the proposed amendment and none were considered.

9. FEDERAL STANDARDS:

There are no related federal standards in this area.

10. COMPLIANCE SCHEDULE:

The proposed amendment is necessary to implement requirements for transitioning to Common Core mathematics examinations, and does not impose any additional compliance requirements or costs on school districts or charter schools. It is anticipated regulated parties will be able to achieve compliance with the rule by its effective date. The proposed amendment would extend to the June 2015 test administration, the option of taking the Regents Examination in Integrated Algebra (2005 Revised) in addition to the Regents Examination in Algebra I (Common Core) and meeting the Mathematics graduation requirement by passing either exam. Whether or not to offer such option is within the discretion of each school district.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment provides additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination.

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

Local Government:

1. EFFECT OF RULE:

The proposed amendment applies to each of the 695 public school districts in the State, and to charter schools that are authorized to issue Regents diplomas with respect to State assessments and high school graduation and diploma requirements. At present, there are 34 charter schools authorized to issue Regents diplomas.

2. COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements on school districts or charter schools. The proposed amendment would extend to the June 2015 test administration, the option of taking the Regents Examination in Integrated Algebra (2005 Revised) in addition to the Regents Examination in Algebra I (Common Core) and meeting the Mathematics graduation requirement by passing either exam. Whether or not to offer such option is within the discretion of each school district or eligible charter school.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed amendment does not impose any direct costs to school districts or charter schools. The proposed amendment provides additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination. It is anticipated that any indirect costs associated with these requirements will be minimal and capable of being absorbed using existing school resources.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed amendment does not impose any new technological requirements on school districts or charter schools. Economic feasibility is addressed in the Costs section above.

6. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not directly impose any additional compliance requirements or costs to school districts and charter schools. The proposed amendment is necessary to implement Regents policy to provide additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing school resources.

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy to provide additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination.

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment applies to each of the 695 public school districts in the State, including those located in the 44 rural counties with less than 200,000 inhabitants and the 71 towns in urban counties with a population density of 150 per square mile or less. The proposed amendment also applies to charter schools in such areas, to the extent they offer instruction in the high school grades and issue Regents diplomas. At present, there is one charter school located in a rural area that is authorized to issue Regents diplomas.

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

The proposed amendment does not impose any additional compliance requirements on school districts or charter schools located in rural areas. The proposed amendment would extend to the June 2015 test administration, the option of taking the Regents Examination in Integrated Algebra (2005 Revised) in addition to the Regents Examination in Algebra I (Common Core) and meeting the Mathematics graduation requirement by passing either exam. Whether or not to offer such option is within the discretion of each school district or charter school.

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

3. COMPLIANCE COSTS:

The proposed amendment does not impose any direct costs to school districts or charter schools located in rural areas. The proposed amendment provides additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination. It is anticipated that any indirect costs associated with these requirements will be minimal and capable of being absorbed using existing school resources.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not directly impose any additional compliance requirements or costs to school districts and charter schools located in rural areas. The proposed amendment is necessary to implement Regents policy to provide additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common

core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination.

Because the Regents policy upon which the proposed amendment is based applies to all school districts in the State and to charter schools authorized to issue Regents diplomas, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt school districts or charter schools from coverage by the proposed amendment. The proposed amendment does not directly impose any additional compliance requirements or costs on school districts or charter schools. It is anticipated that any indirect costs associated with the proposed amendment will be minimal and capable of being absorbed using existing school resources.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy to provide additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination.

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

Job Impact Statement

The proposed amendment provides additional flexibility in the transition to the Common Core-aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination.

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

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on December 3, 2014, the State Education Department received the following comments:

1. COMMENT:

The proposed rule appears to suggest that 9th and 10th graders will have the opportunity to take the Integrated Algebra Regents in June 2015 because both started high school with Algebra I Common Core Math. Can 11th and 12th graders who have not passed the Integrated Algebra Regents exam sit for these Regents also, even though they did not start with Algebra I Common Core Math?

DEPARTMENT RESPONSE:

All students who began their first commencement-level course of study in algebra (2005 standard) prior to September 2013 and who have completed that course of study, albeit successfully or not, are eligible to participate in the June 2015 Regents Examination in Integrated Algebra.

EMERGENCY RULE MAKING

Epinephrine Auto-Injectors

I.D. No. EDU-01-15-00011-E

Filing No. 103

Filing Date: 2015-02-10

Effective Date: 2015-02-27

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

Action taken: Addition of section 136.6 to Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2), 921(1) and (2); L. 2014, ch. 424

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

Specific reasons underlying the finding of necessity: The proposed rule is necessary to implement Chapter 424 of the Laws of 2014, which adds a new section 921 of the Education Law, effective February 27, 2015, to allow school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in the State to provide and maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. Section 921 also provides that school districts, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state or any person employed by any such entity may administer epinephrine auto-injectors in the event of an emergency pursuant to the requirements of section three-thousand-c of the Public Health Law.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the March 16-17, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the March meeting, would be April 1, 2015, the date a Notice of Adoption would be published in the State Register. However, the provisions of Chapter 424 become effective on February 27, 2015 and section 3 of the statute directs the Commissioner to promulgate necessary regulations for the timely implementation of the statute on its effective date.

Therefore, emergency action is necessary at the February 2015 Regents meeting for the preservation of the general welfare in order to immediately establish standards for the provision, maintenance and administration of epinephrine auto-injectors pursuant to Education Law section 921, as added by Chapter 424 of the Laws of 2014, and thus ensure the timely implementation of the statute on its effective date.

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

Subject: Epinephrine auto-injectors.

Purpose: Prescribe standards for provision, maintenance, and administration of epinephrine auto-injectors in the event of an emergency.

Text of emergency rule: Section 136.6 of the Regulations of the Commissioner of Education is added, effective February 27, 2015, as follows:

§ 136.6 Authorized Use of Epinephrine Auto-Injector

(a) Definitions. As used in this section:

(1) Epinephrine auto-injector means an automated injection delivery device, approved by the United States Food and Drug Administration, for injecting a measured dose of the drug epinephrine.

(2) Trained school personnel means any person employed by a school district, board of cooperative educational services, county vocational education and extension board, charter school or non-public elementary and secondary school, including but not limited to, health professionals who have successfully completed a training course in the use of epinephrine auto-injector devices approved by the Department of Health pursuant to Public Health Law section 3000-c.

(3) Collaborative agreement means a written agreement with an emergency health care provider pursuant to Public Health Law section 3000-c that incorporates written practice protocols, and policies and procedures that shall ensure compliance with the provisions of Public Health Law section 3000-c.

(4) Emergency health care provider means: (i) a physician with knowledge and experience in the delivery of emergency care; or (ii) a hospital licensed under Article 28 of the Public Health Law that provides emergency care.

(5) Regional Council means a regional emergency medical services council established pursuant to Public Health Law section 3003.

(6) Instructional school facility means a building or other facility maintained by a school district, board of cooperative educational services, a county vocational education and extension board, charter school, or non-public elementary and secondary school where instruction is provided to students pursuant to its curriculum.

(b) Each school district, board of cooperative educational services, county vocational education and extension board, charter school, and

non-public elementary and secondary school may provide and maintain on-site in each instructional school facility epinephrine auto-injectors for use during emergencies in accordance with Public Health Law section 3000-c. Each such facility shall have sufficient epinephrine auto-injectors available to ensure ready and appropriate access for use during emergencies to any student or staff having symptoms of anaphylaxis whether or not there is a previous history of severe allergic reaction. In determining the quantity and placement of epinephrine auto-injectors in collaboration with the emergency health care provider, consideration shall be given to:

(1) the number of students, staff and other individuals that are customarily or reasonably anticipated to be within such facility; and

(2) the physical layout of the facility, including but not limited to:

(i) location of stairways and elevators;

(ii) number of floors in the facility;

(iii) location of classrooms and other areas of the facility where large congregations of individuals may occur; and

(iv) any other unique design features of the facility.

(c) The school district, board of cooperative educational services, county vocational education and extension board, charter school, or non-public elementary and secondary school shall file a copy of the collaborative agreement with the appropriate Regional Council. Trained school personnel shall not administer an epinephrine auto-injector in accordance with Public Health Law 3000-c prior to the filing of the collaborative agreement with the Regional Council.

(d) In the event of an emergency, trained school personnel may administer an epinephrine auto-injector to any student or school personnel having symptoms of anaphylaxis in an instructional school facility, whether or not there is a previous history of severe allergic reaction pursuant to Public Health Law section 3000-c.

(e) Every use of an epinephrine auto-injector device pursuant to this section and Public Health Law section 3000-c shall immediately be reported to the emergency health care provider.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-01-15-00011-P, Issue of January 7, 2015. The emergency rule will expire May 10, 2015.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Education Law section 305(1) and (2) provide the Commissioner, as chief executive officer of the State's education system, with general supervision over all schools and institutions subject to the Education Law, or any statute relating to education, and responsibility for executing all educational policies of the Regents.

Chapter 424 of the Laws of 2014 added a new section 921 of the Education Law, effective February 27, 2015, to allow school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in the State to provide and maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. Section 921 also provides that school districts, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state or any person employed by any such entity may administer epinephrine auto-injectors in the event of an emergency pursuant to the requirements of section three-thousand-c of the Public Health Law.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is necessary to implement Education Law section 921, as added by Chapter 242 of the Laws of 2014, by prescribing standards for the provision, maintenance, and administration of epinephrine auto-injectors in the event of an emergency.

3. NEEDS AND BENEFITS:

Chapter 424 of the Laws of 2014 added a new section 921 of the Education Law, effective February 27, 2015, to allow school districts, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state to provide and maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. The proposed rule prescribes standards for the maintenance and use of epinephrine auto-injectors pursuant to Education Law section 921, so as to ensure their ready and appropriate use in the emergency event of a student or staff having anaphylactic symptoms on site at an instructional school facility.

4. COSTS:

(a) Costs to State government: The proposed rule will not impose any additional costs on State government, including the State Education Department.

(b) Costs to local governments and private regulated parties: The amendment will not impose any additional costs on local governments or private regulated parties. Chapter 424 of the Laws of 2014 Chapter 424 of the Laws of 2014 added a new section 921 of the Education Law, effective February 27, 2015, to allow school districts, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in the State to provide and maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. The proposed rule is necessary to implement this statute, and merely provides definitions and otherwise clarifies the circumstances regarding the emergency use of epinephrine auto-injectors. The proposed rule does not impose any additional costs on these entities beyond those imposed by the statute. Consistent with the statute, school districts, BOCES, county vocational education and extension boards, charter schools, and non-public schools may, but are not required to, provide and maintain epinephrine auto-injectors.

5. LOCAL GOVERNMENT MANDATES:

The proposed rule does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES. It merely provides definitions and otherwise clarifies the circumstances regarding the use of epinephrine auto-injectors on-site in an instructional school facility in an emergency situation pursuant to Education Law section 921, as added by Chapter 424 of the Laws of 2014. The proposed rule restates the statutory authority which allows school districts, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state to maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. Consistent with the statute, school districts, BOCES, county vocational education and extension boards, charter schools, and non-public schools may, but are not required to, provide and maintain epinephrine auto-injectors.

In determining the quantity and placement of epinephrine auto-injectors in collaboration with the emergency health care provider, consideration shall be given to:

(1) the number of students, staff and other individuals that are customarily or reasonably anticipated to be within such facility; and

(2) the physical layout of the facility, including but not limited to:

(i) location of stairways and elevators;

(ii) number of floors in the facility;

(iii) location of classrooms and other areas of the facility where large congregations of individuals may occur; and

(iv) any other unique design features of the facility.

6. PAPERWORK:

Pursuant to the requirements of Public Health Law section 3000-c, any emergency administration of an epinephrine auto-injector must be reported to the physician or hospital representative listed in the collaborative agreement. The school district, BOCES, county vocational education and extension board, charter school, or non-public elementary and secondary school shall file a copy of the collaborative agreement with the appropriate Regional Council.

7. DUPLICATION:

The amendment does not duplicate any existing State or Federal requirements, and is necessary to implement Education Law section 921, as added by Chapter 424 of the Laws of 2014.

8. ALTERNATIVES:

The proposed rule is necessary to implement Education Law 921, as added by Chapter 424 of the Laws of 2014. There were no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no applicable Federal standards.

10. COMPLIANCE SCHEDULE:

It is anticipated that regulated parties can achieve compliance with the proposed rule by its effective date. The proposed rule merely provides definitions and otherwise clarifies the circumstances regarding the use of epinephrine auto-injectors on-site in an instructional school facility in an emergency situation pursuant to Education Law section 921, as added by Chapter 424 of the Laws of 2014. Consistent with the statute, school districts, BOCES, county vocational education and extension boards, charter schools, and non-public schools may, but are not required to, provide and maintain epinephrine auto-injectors.

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed rule applies to school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, and non-public elementary and secondary schools, and relates to the availability and use of epinephrine auto-injectors in the event of an anaphylactic emergency. The proposed rule does not impose any economic impact, or other compliance requirements on small businesses. Because it is evident from the nature of the proposed rule that it does not affect small businesses, no further measures were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

(b) Local governments:

The proposed rule applies to school districts, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools, and relates to the availability and use of epinephrine auto-injectors in the event of an anaphylactic emergency.

1. EFFECT OF RULE:

The rule applies to school personnel in each of the 695 school districts, 37 BOCES, 248 charter schools, and one existing county vocational education and extension board in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed rule does not impose any additional compliance requirements upon local governments. It merely provides definitions and otherwise clarifies the circumstances regarding the use of epinephrine auto-injectors on-site in an instructional school facility in an emergency situation pursuant to Education Law section 921, as added by Chapter 424 of the Laws of 2014. The proposed rule restates the statutory authority which allows school districts, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state to maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. Consistent with the statute, school districts, BOCES, county vocational education and extension boards, charter schools, and non-public schools may, but are not required to, provide and maintain epinephrine auto-injectors.

In determining the quantity and placement of epinephrine auto-injectors in collaboration with the emergency health care provider, consideration shall be given to:

(1) the number of students, staff and other individuals that are customarily or reasonably anticipated to be within such facility; and

(2) the physical layout of the facility, including but not limited to:

(i) location of stairways and elevators;

(ii) number of floors in the facility;

(iii) location of classrooms and other areas of the facility where large congregations of individuals may occur; and

(iv) any other unique design features of the facility.

Pursuant to the requirements of Public Health Law section 3000-c, any emergency administration of an epinephrine auto-injector must be reported to the physician or hospital representative listed in the collaborative agreement. The school district, BOCES, county vocational education and extension board, charter school, or non-public elementary and secondary school shall file a copy of the collaborative agreement with the appropriate Regional Council.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

The proposed rule does not impose any additional compliance costs on local governments. Chapter 424 of the Laws of 2014 Chapter 424 of the Laws of 2014 added a new section 921 of the Education Law, effective February 27, 2015, to allow school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state to provide and maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. The proposed rule is necessary to implement this statute, and merely provides definitions and otherwise clarifies the circumstances regarding the emergency use of epinephrine auto-injectors. The proposed rule does not impose any additional costs on these entities beyond those imposed by the statute. Consistent with the statute, school districts, BOCES, county vocational education and extension boards, charter schools, and non-public school may, but are not required to, provide and maintain epinephrine auto-injectors.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule does not impose any additional costs or technological requirements on local governments.

6. MINIMIZING ADVERSE IMPACT:

The proposed rule does not impose any additional compliance requirements or costs on local government. Chapter 424 of the Laws of 2014 Chapter 424 of the Laws of 2014 added a new section 921 of the Education Law, effective February 27, 2015, to allow school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state to provide and maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. The proposed rule is necessary to implement this statute, and merely provides definitions and otherwise clarifies the circumstances regarding the emergency use of epinephrine auto-injectors. The proposed rule does not impose any additional compliance requirements or costs on these entities beyond those imposed by the statute. Consistent with the statute, school districts, BOCES, county vocational education and extension boards, charter schools, and non-public schools may, but are not required to, provide and maintain epinephrine auto-injectors.

7. LOCAL GOVERNMENT PARTICIPATION:

Comments on the proposed rule were solicited from school districts through the offices of the district superintendents of each supervisory district in the State, from the chief school officers of the five big city school districts and from charter schools.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement the statutory requirements of Chapter 424 of the Laws of 2014, and, therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to school districts, boards of cooperative educational services (BOCES), county vocational education and extension boards, charter schools, and non-public elementary and secondary schools, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The proposed rule does not impose any additional reporting, recordkeeping or other compliance requirements. It merely provides definitions and otherwise clarifies the circumstances regarding the use of epinephrine auto-injectors on-site in an instructional school facility in an emergency situation pursuant to Education Law section 921, as added by Chapter 424 of the Laws of 2014. The proposed rule restates the statutory authority which allows school districts, BOCES, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state to maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. Consistent with the statute, school districts, BOCES, county vocational education and extension

boards, charter schools, and non-public schools may, but are not required to, provide and maintain epinephrine auto-injectors.

In determining the quantity and placement of epinephrine auto-injectors in collaboration with the emergency health care provider, consideration shall be given to:

(1) the number of students, staff and other individuals that are customarily or reasonably anticipated to be within such facility; and

(2) the physical layout of the facility, including but not limited to:

(i) location of stairways and elevators;

(ii) number of floors in the facility;

(iii) location of classrooms and other areas of the facility where large congregations of individuals may occur; and

(iv) any other unique design features of the facility.

Pursuant to the requirements of Public Health Law section 3000-c, any emergency administration of an epinephrine auto-injector must be reported to the physician or hospital representative listed in the collaborative agreement. The school district, BOCES, county vocational education and extension board, charter school, or non-public elementary and secondary school shall file a copy of the collaborative agreement with the appropriate Regional Council.

The proposed rule does not require any additional professional services upon entities in rural areas.

3. COSTS:

The proposed rule does not impose any additional compliance costs on local governments. Chapter 424 of the Laws of 2014 Chapter 424 of the Laws of 2014 added a new section 921 of the Education Law, effective February 27, 2015, to allow school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state to provide and maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. The proposed rule is necessary to implement this statute, and merely provides definitions and otherwise clarifies the circumstances regarding the emergency use of epinephrine auto-injectors. The proposed rule does not impose any additional costs on these entities beyond those imposed by the statute. Consistent with the statute, school districts, BOCES, county vocational education and extension boards, charter schools, and non-public school may, but are not required to, provide and maintain epinephrine auto-injectors.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement Chapter 424 of the Laws of 2014. The statutory requirements do not make exceptions for entities located in rural areas. Because the statutory requirements upon which the proposed rule is based applies throughout the State, it is not possible to establish differing compliance or reporting requirements or timetables or to exempt entities in rural areas from the provisions of the proposed rule. The State Education Department does not believe that making a change for school personnel who live or work in rural areas is warranted because uniform standards are necessary across the State to ensure the health and safety of student and school personnel.

5. RURAL AREA PARTICIPATION:

The State Education Department has sent the proposed rule to the Rural Advisory Committee, which has members who live or work in rural areas across the State.

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed rule is necessary to implement the statutory requirements of Chapter 424 of the Laws of 2014, and, therefore, the substantive provisions of the proposed rule cannot be repealed or modified unless there is a further statutory change. Accordingly, there is no need for a shorter review period. The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10 of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed rule is necessary to implement Education Law section 921, as added by Chapter 424 of the Laws of 2014, which allows school districts, boards of cooperative educational services, county vocational education and extension boards, charter schools, and non-public elementary and secondary schools in this state to provide and maintain on-site in each instructional school facility epinephrine auto-injectors in quantities and types deemed by the Commissioner, in consultation with the Commissioner of Health, to be adequate to ensure ready and appropriate access for use during emergencies to any student or staff having anaphylactic symptoms whether or not there is a previous history of severe allergic reaction. The proposed rule is necessary to implement this statute, and merely provides definitions and otherwise clarifies the circumstances regarding the maintenance and emergency use of epinephrine auto-injectors. Because it is evident from the nature of the proposed rule that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Appeals Process on Regents Exams Passing Score for English Language Learners (ELLs)

I.D. No. EDU-08-15-00006-EP

Filing No. 104

Filing Date: 2015-02-10

Effective Date: 2015-02-10

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

Proposed Action: Amendment of section 100.5(d)(7) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 208(not subdivided), 209(not subdivided), 215(not subdivided), 305(1), (2), 308(not subdivided), 309(not subdivided), 2117(1), 3204(2), (2-a), (3) and (6)

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

Specific reasons underlying the finding of necessity: The proposed amendment would extend the English Language Learner (ELL) specific pathway to graduate with a Local Diploma via appeal to ELLs who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter, and clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal.

Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the May 18-19, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the May meeting, would be June 3, 2015, the date a Notice of Adoption would be published in the State Register. However, in order to provide for implementation in the 2014-2015 school year, school districts and affected students need to know now that (i) ELLs otherwise eligible to graduate in January 2015, and (ii) ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal are eligible for the ELL specific pathway to graduation.

Emergency action is therefore necessary for the preservation of the general welfare to immediately extend and clarify availability of the ELL specific pathway to graduation to these two categories of students, so that school districts and such students are given sufficient notice to prepare for and timely implement this graduation pathway for all eligible students in the 2014-2015 school year.

It is anticipated that the emergency rule will be presented to the Board of Regents for adoption as a permanent rule at the May 18-19, 2015 Regents meeting, which is the first scheduled meeting after expiration of the 45-day public comment period mandated by the State Administrative Procedure Act for proposed rulemakings.

Subject: Appeals process on Regents exams passing score for English Language Learners (ELLs).

Purpose: To extend ability to graduate with a Local Diploma via appeal process to qualifying English Language Learner (ELL) students who satisfy all other graduation requirements (including those who satisfy such requirements via available alternative pathways) in January 2015 or thereafter.

Text of emergency/proposed rule: Paragraph (7) of subdivision (d) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective February 10, 2015, as follows:

(7) Appeals process on Regents examinations passing score to meet Regents diploma requirements.

(i) School districts shall provide unlimited opportunities for all students to retake required Regents examinations to improve their scores.

(a) . . .

(b) A student who first enters school in the United States (the 50 States and the District of Columbia) in grade nine, ten, eleven or twelve [in September 2010 or thereafter] *and is otherwise eligible to graduate in January 2015 or thereafter*, is identified as an English Language Leaner pursuant to Part 154 of this Title, and fails, after at least two attempts, to attain a score of 65 or above on the required Regents examination in English language arts for graduation shall be given an opportunity to appeal such score in accordance with the provisions of this paragraph, provided that no such student may appeal his or her score on more than two of the five required Regents examinations and provided further that the student:

(1) has scored between 55 and 61 on the required Regents examination in English language arts under appeal;

(2) provides evidence that he or she has received academic intervention services by the school in English language arts;

(3) has an attendance rate of at least 95 percent for the school year during which the student last took the required Regents examination in English language arts;

(4) has attained a course average in English language arts that meets or exceeds the required passing grade by the school and is recorded on the student's official transcript with grades achieved by the student in each quarter of the school year; and

(5) is recommended for an exemption to the passing score on the required Regents examination in English language arts by his or her teacher or department chairperson in English language arts.

[(c)] *(ii)* An appeal may be initiated by the student, the student's parent or guardian, or the student's teacher, and shall be submitted in a form prescribed by the commissioner to the student's school principal.

[(d)] *(iii)* The school principal shall chair a standing committee comprised of three teachers (not to include the student's teacher in the subject area of the Regents examination under appeal) and two school administrators (one of whom shall be the school principal). The standing committee shall review an appeal within 10 school days of its receipt and make a recommendation to the school superintendent or, in the City School District of the City of New York, to the chancellor of the city school district or his/her designee, to accept or deny the appeal. The standing committee may interview the teacher or department chairperson who recommended the appeal, and may also interview the student making the appeal to determine that he or she has demonstrated the knowledge and skills required under the State learning standards in the subject area in question.

[(e)] *(iv)* The school superintendent or, in the City School District of the City of New York, the chancellor of the city school district or his/her designee, shall make a final determination to accept or deny the appeal. The school superintendent or chancellor or chancellor's designee may interview the student making the appeal to determine that the student has demonstrated the knowledge and skills required under the State learning standards in the subject area in question.

[(f)] *(v)* Diplomas.

[(1)] *(a)* A student whose appeal is accepted for one required Regents examination pursuant to clause (a) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the four remaining required Regents examinations *(or satisfied the corresponding graduation requirement via an alternative assessment pursuant to section 100.2(f)(1) of this Part or a pathway assessment pursuant to section 100.5(a)(5)(i)(f) of this Part)*, shall earn a Regents diploma.

[(2)] *(b)* A student whose appeal is accepted for two required Regents examinations pursuant to clause (a) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the three remaining required Regent examinations *(or satisfied the corresponding graduation requirement via an alternative assessment pursuant to section 100.2(f)(1) of this Part or a pathway assessment pursuant to section 100.5(a)(5)(i)(f) of this Part)*, shall earn a local diploma.

[(3)] *(c)* A student whose appeal is accepted for the required Regents examination in English language arts pursuant to clause (b) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the four remaining required Regents examinations *(or satisfied the corresponding graduation requirement via an alternative assessment pursuant to section 100.2(f)(1) of this Part or a pathway assessment pursuant to section 100.5(a)(5)(i)(f) of this Part)*, shall earn a local diploma.

[(4)] *(d)* A student whose appeal is accepted for the required Regents examination in English language arts pursuant to clause (b) of subparagraph (i) of this paragraph and for one other required Regents examination pursuant to clause (a) of subparagraph (i) of this paragraph, and who has attained a passing score of 65 or above on each of the three remaining required Regents examinations *(or satisfied the corresponding graduation requirement via an alternative assessment pursuant to section 100.2(f)(1) of this Part or a pathway assessment pursuant to section 100.5(a)(5)(i)(f) of this Part)*, shall earn a local diploma.

[(g)] *(vi)* Each school shall keep a record of all appeals received and granted and report this information to the State Education Department on a form prescribed by the commissioner. All school records relating to appeals of scores on required Regents examinations shall be made available for inspection by the State Education Department.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire May 10, 2015.

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

Data, views or arguments may be submitted to: Cosimo Tangorra, Jr. Deputy Commissioner, State Education Department, Office of P-12 Education, State Education Building, 2M West, 89 Washington Ave., Albany, NY 12234, (518) 474-5520, email: NYSEDP12@mail.nysed.gov

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

Regulatory Impact Statement

STATUTORY AUTHORITY:

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

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

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

Education Law section 209 authorizes the Regents to establish secondary school examinations in studies furnishing a suitable standard of graduation and of admission to colleges; to confer certificates or diplomas on students who satisfactorily pass such examinations; and requires the admission to these examinations of any person who shall conform to the rules and pay the fees prescribed by the Regents.

Education Law section 215 authorizes the Regents and the Commissioner to require school districts to prepare and submit reports containing such information as they may prescribe.

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

Education Law section 2117(1) empowers the Regents and the Commissioner to require school districts to submit any information they deem appropriate.

Education Law section 3204(2) and (2-a) provide for instructional programs for pupils with limited English proficiency (LEP) to be conducted in accordance with regulations of the Commissioner. Education Law section 3204(3) authorizes the Commissioner to establish standards for the instruction of LEP children, and section 3204(6) requires the Commissioner to establish standards by regulation.

LEGISLATIVE OBJECTIVES:

The proposed amendment is consistent with the above statutory authority and is necessary to implement Regents policy relating to criteria for bilingual education and English as a New Language programs for students who are English Language Learners, including determining graduation requirements, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

NEEDS AND BENEFITS:

Over the past 10 years, New York State English Language Learner (ELL) student enrollment has increased by 20%. According to the U.S. Department of Education, ELL student enrollment has increased by 18% nationally. Currently in New York State, over 230,000 ELLs make up 8.9% of the total student population. Their linguistic diversity makes up over 140 languages spoken in New York State; 61.5% for whom Spanish is the home language. In addition, 41.2% were born in another country.

Extensive discussion with stakeholders suggests that late arriving ELLs who are able to pass other required Regents examinations with a score of 65 and who obtain a score of at least 55 on the Regents examination in English can benefit from the opportunity to obtain postsecondary education

or enter a career in the same manner as other students who may earn a diploma through the appeal process. Therefore, at their January 2015 meeting, the Board of Regents amended Commissioner's Regulation section 100.5(d)(7) to adopt this pathway for ELLs to graduate with a Local Diploma pursuant to an appeal process if they score between 55-61 on the Regents Exam in English and meet all other conditions for appeal of a Regents score (State Register, January 28, 2015, EDU-44-14-00026-A).

At its January 2015 meeting, the Board of Regents also adopted amendments to Commissioner's Regulations sections 100.2 and 100.5 to establish a 4+1 pathway to graduation for all students (State Register, January 28, 2015, EDU-44-14-00025-P). The 4+1 pathway option applies beginning with students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma in June 2015 and thereafter. The amendment creates graduation pathways assessments in the Humanities, STEM, Biliteracy (languages other than English [LOTE]), CTE and the Arts.

Public comment in response to the January 2015 amendments to section 100.5(d)(7) recommended making this option for graduation also available to ELLs who are in their 6th year of high school. These ELLs are currently excluded from this option because they entered high school prior to the 2010-11 school year. Public comment also highlighted the need to clarify that the appeal option under section 100.5(d)(7) is available to ELLs who satisfy graduation assessment requirements through the 4+1 pathway option in sections 100.2 and 100.5 or via another alternative pathway. After considering these policy concerns, the Department agrees that 6th year ELLs, as well as ELLs who satisfy graduation requirements via the 4+1 pathway options or via another alternative pathway, would benefit from the ability to utilize this graduation option.

COSTS:

(a) Costs to State government: none.

(b) Costs to local government: The proposed amendment will not impose any significant costs on local governments. An appeals process and criteria are already in place in section 100.5(d)(7) for students who score 65+ on three Regents exams and score 62-64 on two Regents exams, and the proposed amendment merely extends the ability to graduate with a Local Diploma via the appeal process to English Language Learners (ELLs) who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter (i.e. the proposed amendment would include additional students who entered grade 9 prior to the 2010-11 school year but who are not currently covered under the existing regulation); and to clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal.

Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals. Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. In the long term, the proposed amendment is expected to be a cost saving measure in that it will boost the graduation rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

(c) Costs to private regulated parties: none.

(d) Costs to regulating agency for implementation and continued administration of this rule: none.

LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any additional program, service, duty or responsibility upon school districts. An appeals process and criteria are already in place for students who score 65+ on three Regents exams and score 62-64 on two Regents exams, and the proposed amendment merely extends the ability to graduate with a Local Diploma via the appeal process to English Language Learners (ELLs) who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter (i.e. the proposed amendment would include additional students who entered grade 9 prior to the 2010-11 school year but who are not currently covered under the existing regulation); and to clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal. Appeals by ELLs under the proposed amendment would be reviewed by the same committee that reviews all other appeals of Regents examination scores. ELL students would remain eligible for the current appeals process as well.

PAPERWORK:

The proposed amendment will not require any additional paperwork beyond what is necessary to process a limited number of additional appeals for a local diploma from qualifying late entry ELLs who score a 55-61 on the Regents examination in English after two tries who meet other conditions for appeal. Appeals by ELLs under the proposed amendment would be subject to the existing requirement in section 100.5(d)(7) that each school keep a record of all appeals received and granted and report this information to Department on a form prescribed by the Commissioner. All school records relating to appeals of scores shall be made available for inspection by the Department.

DUPLICATION:

The proposed amendment does not duplicate existing State or Federal requirements.

ALTERNATIVES:

There were no significant alternatives and none were considered.

FEDERAL STANDARDS:

The proposed amendment is necessary to ensure compliance with Education Law sections 3204 and 4403, Title I and III of the ESEA, Title IV of the Civil Rights Act of 1964, and the EEOA. These laws require states and school districts to provide ELL students with appropriate services to overcome language barriers. In addition, federal jurisprudence in landmark cases such as Castañeda v. Pickard established standards to ensure compliance with EEOA. For example, the Castañeda standard mandates that programs for language-minority students must be (1) based on a sound educational theory, (2) implemented effectively with sufficient resources and personnel, and (3) evaluated to determine whether they are effective in helping students overcome language barriers.

COMPLIANCE SCHEDULE:

It is anticipated that school districts and BOCES will be able to achieve compliance with the proposed amendment by its effective date. An appeals process and criteria are already in place for students who score 65+ on three Regents exams and score 62-64 on two Regents exams, and the proposed amendment merely extends the ability to graduate with a Local Diploma via the appeal process to English Language Learners (ELLs) who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter (i.e. the proposed amendment would include additional students who entered grade 9 prior to the 2010-11 school year but who are not currently covered under the existing regulation); and to clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal. Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals.

Regulatory Flexibility Analysis

Small Businesses:

The proposed amendment relates to State learning standards, State assessments and graduation and diploma requirements, and is necessary to implement policy adopted by the Regents relating to criteria for bilingual education and English as a New Language programs for students who are English Language Learners, including determining graduation requirements, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA). The proposed amendment does not impose any adverse economic impact, reporting, record keeping or other compliance requirements on small businesses. Because it is evident from the nature of the proposed amendment that it does not affect small businesses, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses is not required and one has not been prepared.

Local Governments:

EFFECT OF RULE:

The proposed amendment applies to each of the 689 public school districts and 37 boards of cooperative educational services (BOCES) in the State.

COMPLIANCE REQUIREMENTS:

The proposed amendment does not impose any additional compliance requirements on local governments. An appeals process and criteria are already in place for students who score 65+ on three Regents exams and score 62-64 on two Regents exams, and the proposed amendment merely extends the ability to graduate with a Local Diploma via the appeal process to English Language Learners (ELLs) who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter (i.e. the proposed amendment would include additional students who entered grade 9 prior to the 2010-11 school year but who are not currently covered under the existing regulation); and to clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal. Appeals by ELLs under the proposed amendment would be reviewed by the same committee that reviews all other appeals of Regents examination scores. ELL students would remain eligible for the current appeals process as well.

The proposed amendment will not require any additional paperwork beyond what is necessary to process a limited number of additional appeals for a local diploma from qualifying late entry ELLs who score a 55-61 on

the Regents examination in English after two tries who meet other conditions for appeal. Appeals by ELLs under the proposed amendment would be subject to the existing requirement in section 100.5(d)(7) that each school keep a record of all appeals received and granted and report this information to Department on a form prescribed by the Commissioner. All school records relating to appeals of scores shall be made available for inspection by the Department.

PROFESSIONAL SERVICES:

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

COMPLIANCE COSTS:

The proposed amendment will not impose any significant costs on school districts or BOCES. An appeals process and criteria are already in place in section 100.5(d)(7) for students who score 65+ on three Regents exams and score 62-64 on two Regents exams, and the proposed amendment merely extends the ability to graduate with a Local Diploma via the appeal process to English Language Learners (ELLs) who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter (i.e. the proposed amendment would include additional students who entered grade 9 prior to the 2010-11 school year but who are not currently covered under the existing regulation); and to clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal.

Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals. Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. In the long term, the proposed amendment is expected to be a cost saving measure in that it will boost the graduation rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

ECONOMIC AND TECHNOLOGICAL FEASIBILTY:

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

MINIMIZE ADVERSE IMPACT:

The proposed amendment implements policy adopted by the Board of Regents relating to ELL equal access to education, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act, Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

The proposed amendment does not impose any additional compliance requirements or significant costs upon school districts. An appeals process and criteria are already in place in section 100.5(d)(7) for students who score 65+ on three Regents exams and score 62-64 on two Regents exams, and the proposed amendment merely extends the ability to graduate with a Local Diploma via the appeal process to English Language Learners (ELLs) who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter (i.e. the proposed amendment would include additional students who entered grade 9 prior to the 2010-11 school year but who are not currently covered under the existing regulation); and to clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal.

Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals. Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. In the long term, the proposed amendment is expected to be a cost saving measure in that it will boost the graduation rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

Federal civil rights and education laws, as well as federal court jurisprudence, require that ELL students must be provided with equal access to all school programs and services offered to non-ELL students. Education Law section 3204 and Part 154 of the Regulations of the Commissioner (CR Part 154) contain standards for educational services provided to ELLs in New York State in order to meet these federal obligations.

Over the past 10 years, New York State ELL student enrollment has increased by 20%. Currently in New York State, over 230,000 ELLs make up 8.9%% of the total student population. While former ELLs generally achieve graduation rates equal to or above that of all non-ELLs, the graduation rate of current ELLs lagged well below that of non-ELLs. In June 2013, only 31.4% of ELLs graduated, compared to 74.9% of all students. Many of these ELLs were students who entered school in the United States for the first time on or after grade nine.

Extensive discussion with stakeholders suggests that late arriving ELLs who are able to pass other required Regents examinations with a score of 65 and who obtain a score of at least 55 on the Regents examination in English can benefit from the opportunity to obtain postsecondary education or enter a career in the same manner as other students who may earn a diploma through the appeal process. Therefore, at their January 2015 meeting, the Board of Regents amended Commissioner's Regulation section 100.5(d)(7) to adopt this pathway for ELLs to graduate with a Local Diploma pursuant to an appeal process if they score between 55-61 on the Regents Exam in English and meet all other conditions for appeal of a Regents score (State Register, January 28, 2015, EDU-44-14-00026-A).

At its January 2015 meeting, the Board of Regents also adopted amendments to Commissioner's Regulations sections 100.2 and 100.5 to establish a 4+1 pathway to graduation for all students (State Register, January 28, 2015, EDU-44-14-00025-P). The 4+1 pathway option applies beginning with students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma in June 2015 and thereafter. The amendment creates graduation pathways assessments in the Humanities, STEM, Biliteracy (languages other than English [LOTE]), CTE and the Arts.

Public comment in response to the January 2015 amendments to section 100.5(d)(7) recommended making this option for graduation also available to ELLs who are in their 6th year of high school. These ELLs are currently excluded from this option because they entered high school prior to the 2010-11 school year. Public comment also highlighted the need to clarify that the appeal option under section 100.5(d)(7) is available to ELLs who satisfy graduation assessment requirements through the 4+1 pathway option in sections 100.2 and 100.5 or via another available alternative pathway. After considering these policy concerns, the Department agrees that 6th year ELLs, as well as ELLs who satisfy graduation requirements via the 4+1 pathway options or via another available alternative pathway, would benefit from the ability to utilize this graduation option. The proposed amendment will expand access to the Local Diploma to this precise group of ELLs who are in a position to benefit from the opportunity to obtain postsecondary education or enter a career with a high school diploma. Because ELLs by definition are not yet fluent in English, this alternate pathway to graduation facilitates equal access to the Local Diploma. The proposed amendment minimizes the adverse impact of denying ELLs who satisfy all other conditions for appeal the ability to attain a high school diploma on account of their lack of fluency in English.

LOCAL GOVERNMENT PARTICIPATION:

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

INITIAL REVIEW OF RULE (SAPA § 207):

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy relating to improving graduation outcomes for students who are English Language Learners. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

The proposed amendment does not impose any additional reporting, recordkeeping or other compliance requirements on school districts and BOCES located in rural areas. An appeals process and criteria are already in place for students who score 65+ on three Regents exams and score 62-64 on two Regents exams, and the proposed amendment merely extends the ability to graduate with a Local Diploma via the appeal process to English Language Learners (ELLs) who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter (i.e. the proposed amendment would include additional students who entered grade 9 prior to the 2010-11 school year but who are not currently covered under the existing regulation); and to clarify that this appeal pro-

cess applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal. Appeals by ELLs under the proposed amendment would be reviewed by the same committee that reviews all other appeals of Regents examination scores. ELL students would remain eligible for the current appeals process as well.

The proposed amendment will not require any additional paperwork beyond what is necessary to process a limited number of additional appeals for a local diploma from qualifying late entry ELLs who score a 55-61 on the Regents examination in English after two tries who meet other conditions for appeal. Appeals by ELLs under the proposed amendment would be subject to the existing requirement in section 100.5(d)(7) that each school keep a record of all appeals received and granted and report this information to Department on a form prescribed by the Commissioner. All school records relating to appeals of scores shall be made available for inspection by the Department.

3. COMPLIANCE COSTS:

The proposed amendment will not impose any significant costs on school districts or BOCES located in rural areas. An appeals process and criteria are already in place in section 100.5(d)(7) for students who score 65+ on three Regents exams and score 62-64 on two Regents exams, and the proposed amendment merely extends the ability to graduate with a Local Diploma via the appeal process to English Language Learners (ELLs) who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter (i.e. the proposed amendment would include additional students who entered grade 9 prior to the 2010-11 school year but who are not currently covered under the existing regulation); and to clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal.

Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals. Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. In the long term, the proposed amendment is expected to be a cost saving measure in that it will boost the graduation rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment implements policy adopted by the Board of Regents relating to ELL equal access to education, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act, Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA).

The proposed amendment does not impose any additional compliance requirements or significant costs upon school districts or BOCES located in rural areas. An appeals process and criteria are already in place in section 100.5(d)(7) for students who score 65+ on three Regents exams and score 62-64 on two Regents exams, and the proposed amendment merely extends the ability to graduate with a Local Diploma via the appeal process to English Language Learners (ELLs) who meet all other conditions for appeal and are otherwise eligible to graduate in January 2015 and thereafter (i.e. the proposed amendment would include additional students who entered grade 9 prior to the 2010-11 school year but who are not currently covered under the existing regulation); and to clarify that this appeal process applies to ELLs who meet one or more graduation assessment requirements via an available alternative pathway and meet all other conditions for appeal.

Newly qualifying students would merely go through this existing appeals process, and the same personnel who review appeals under the current system would review the additional appeals. Any costs associated with the processing of these additional appeals are expected to be minimal and capable of being absorbed by using existing district staff and resources. In the long term, the proposed amendment is expected to be a cost saving measure in that it will boost the graduation rate, allowing more ELLs to access higher education or enter the workforce with a high school diploma. Both of these outcomes will in turn stimulate workforce productivity and economic performance in local communities.

Federal civil rights and education laws, as well as federal court jurisprudence, require that ELL students must be provided with equal access to all school programs and services offered to non-ELL students. Education Law section 3204 and Part 154 of the Regulations of the Commissioner (CR Part 154) contain standards for educational services provided to ELLs in New York State in order to meet these federal obligations.

Over the past 10 years, New York State ELL student enrollment has increased by 20%. Currently in New York State, over 230,000 ELLs make up 8.9%% of the total student population. While former ELLs generally achieve graduation rates equal to or above that of all non-ELLs, the graduation rate of current ELLs lagged well below that of non-ELLs. In June 2013, only 31.4% of ELLs graduated, compared to 74.9% of all students. Many of these ELLs were students who entered school in the United States for the first time on or after grade nine.

Extensive discussion with stakeholders suggests that late arriving ELLs who are able to pass other required Regents examinations with a score of 65 and who obtain a score of at least 55 on the Regents examination in English can benefit from the opportunity to obtain postsecondary education or enter a career in the same manner as other students who may earn a diploma through the appeal process. Therefore, at their January 2015 meeting, the Board of Regents amended Commissioner's Regulation section 100.5(d)(7) to adopt this pathway for ELLs to graduate with a Local Diploma pursuant to an appeal process if they score between 55-61 on the Regents Exam in English and meet all other conditions for appeal of a Regents score (State Register, January 28, 2015, EDU-44-14-00026-A).

At its January 2015 meeting, the Board of Regents also adopted amendments to Commissioner's Regulations sections 100.2 and 100.5 to establish a 4+1 pathway to graduation for all students (State Register, January 28, 2015, EDU-44-14-00025-P). The 4+1 pathway option applies beginning with students who first enter grade nine in September 2011 and thereafter or who are otherwise eligible to receive a high school diploma in June 2015 and thereafter. The amendment creates graduation pathways assessments in the Humanities, STEM, Biliteracy (languages other than English [LOTE]), CTE and the Arts.

Public comment in response to the January 2015 amendments to section 100.5(d)(7) recommended making this option for graduation also available to ELLs who are in their 6th year of high school. These ELLs are currently excluded from this option because they entered high school prior to the 2010-11 school year. Public comment also highlighted the need to clarify that the appeal option under section 100.5(d)(7) is available to ELLs who satisfy graduation assessment requirements through the 4+1 pathway option in sections 100.2 and 100.5 and via other approved alternative assessments. After considering these policy concerns, the Department agrees that 6th year ELLs, as well as ELLs who satisfy graduation requirements via the 4+1 pathway options and via other approved alternative assessments, would benefit from the ability to utilize this graduation option.

The proposed amendment relates to State learning standards, State assessments and graduation and diploma requirements, and is necessary to implement policy adopted by the Regents relating to criteria for bilingual education and English as a New Language programs for students who are English Language Learners, including determining graduation requirements, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA). Because this policy is applicable throughout the State, it was not possible to provide for a lesser standard or an exemption for school districts and BOCES in rural areas.

5. RURAL AREA PARTICIPATION:

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

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

Pursuant to State Administrative Procedure Act section 207(1)(b), the State Education Department proposes that the initial review of this rule shall occur in the fifth calendar year after the year in which the rule is adopted, instead of in the third calendar year. The justification for a five year review period is that the proposed amendment is necessary to implement long-range Regents policy relating to improving graduation outcomes for students who are English Language Learners. Accordingly, there is no need for a shorter review period.

The Department invites public comment on the proposed five year review period for this rule. Comments should be sent to the agency contact listed in item 10. of the Notice of Proposed Rule Making published herewith, and must be received within 45 days of the State Register publication date of the Notice.

Job Impact Statement

The proposed amendment relates to an additional graduation pathway for qualifying students who are English Language Learners (ELLs), to allow such students to graduate with a Local Diploma via an appeals process.

The proposed amendment relates to State learning standards, State assessments and graduation and diploma requirements, and is necessary to implement policy adopted by the Regents relating to criteria for bilingual education and English as a New Language programs for students who are English Language Learners, including determining graduation requirements, in order to ensure compliance with Education Law sections 3204 and 4403, and Title I and III of the Elementary and Secondary Education Act (ESEA), Title IV of the Civil Rights Act of 1964, Equal Educational Opportunities Act of 1974 (EEOA). The proposed amendment will not have a substantial adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendment that it

will have no impact, or a positive impact, on jobs or employment opportunities, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Teacher Certification

I.D. No. EDU-08-15-00007-EP
Filing No. 105
Filing Date: 2015-02-10
Effective Date: 2015-02-10

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

Proposed Action: Amendment of section 80-1.6(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 305(1), (2), 3001(2), 3004(1) and 3006(1)

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

Specific reasons underlying the finding of necessity: At the November and December 2009 Board of Regents meetings, the Board approved a number of initiatives for the purpose of transforming teaching and learning and school leadership in New York State. The Board of Regents discussion included the development of new examinations, including revision of the current Content Specialty Tests (CSTs).

The CST's are currently being revised. The first group of revised CST's became operational in September 2014. However, the results/scores on the revised CST's will not be released to teacher candidates until the standard setting process is complete.

Since the CST results have not being released to candidates, there are certificate holders that may lose their certification as of January 31, 2015 if their certificates are not extended by the Department. This will result in some teachers being terminated from employment as they will no longer hold a valid certificate.

In an effort to resolve this issue, the proposed amendment provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the exam results to be released by the Department without penalizing teacher.

Since the Board of Regents meets at fixed intervals, the earliest the proposed rule can be presented for regular (non-emergency) adoption, after expiration of the required 45-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the April 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the April meeting, would be April 29, 2015, the date a Notice of Adoption would be published in the State Register. However, the Department's records reveal that some certificate holders may lose their certification if their certificates are not extended, through no fault of their own because they have not received their result/score on the content specialty examinations.

Therefore, emergency action is necessary at the February 2015 Regents meeting for the preservation of the general welfare in order to ensure that teachers who have met all other requirements for their next teaching certificate, except they have not received a score on their revised content specialty examination, receive a time extension on their expired certificate to ensure that they do not lose their certification.

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

Subject: Teacher certification.

Purpose: To provide for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the revised Content Specialty Test (CST) results to be released by the Department without penalizing the certificate holder.

Text of emergency/proposed rule: Subdivision (c) of section 80-1.6 of the Regulations of the Commissioner of Education is amended, effective February 10, 2015, to read as follows:

(c) [The] *Except as otherwise provided in this subdivision,* the commissioner may extend the time validity of an expired provisional, excluding an expired provisional certificate in the classroom teaching service or an expired provisional certificate in the title of school administrator and supervisor, initial or transitional certificate beyond the two-year extension provided for in subdivision (a) of this section, for a period not to exceed one additional year, if in the six-months preceding the end of the two-year extension, the candidate is faced with extreme hardship or other circumstances beyond the control of the individual and is unable to complete the requirements for the professional certificate in a timely manner. *The commissioner may further extend the time validity of an expired initial or transitional certificate for an additional period of not to exceed one additional year; and may extend the validity of a conditional initial certificate for a period of up to one year if a candidate took one of the revised content specialty examinations administered on or after September 2014, and is required for his/her certificate title and he/she did not receive his/her score on such examination from the department on such examination within a timeframe prescribed by the commissioner and he/she has met all the other certification requirements for the next certificate (i.e., the initial or professional certificate, as applicable).*

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire May 10, 2015.

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

Data, views or arguments may be submitted to: Peg Rivers, State Education Department, Office of Higher Education, Room 979 EBA, 89 Washington Ave., Albany, NY 12234, (518) 486-3633, email: regcomments@nysed.gov

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

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

Section 207 of the Education Law grants general rule-making authority to the Board of Regents to carry into effect the laws and policies of the State relating to education.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to be the chief executive officer of the state system of education and of the Board of Regents and authorizes the Commissioner to enforce laws relating to the educational system and to execute educational policies determined by the Regents. Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools subject to the Education Law.

Subdivision (2) of section 3001 of the Education Law establishes certification by the State Education Department as a qualification to teach in the public schools of New York State.

Subdivision (1) of section 3004 of the Education Law authorizes the Commissioner of Education to prescribe, subject to the approval of the Regents, regulations governing the examination and certification of teachers employed in all public schools in the State.

Paragraph (b) of subdivision (1) of section 3006 of the Education Law provides that the Commissioner of Education may issue such teacher certificates as the Regents Rules prescribe.

2. LEGISLATIVE OBJECTIVES:

Consistent with the above statutory authority, the proposed amendment provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the Content Specialty Tests (CSTs) results to be released by the Department without penalizing the certificate holders.

3. NEEDS AND BENEFITS:

At the November and December 2009 Board of Regents meetings, the Board approved a number of initiatives for the purpose of transforming teaching and learning and school leadership in New York State. The Board of Regents discussion included the development of new examinations, including revision of the current Content Specialty Tests (CSTs).

The CSTs are currently being revised. The first group of revised CSTs became operational in September 2014. However, the results/scores on the revised CSTs will not be released to teacher candidates until the standard setting process is complete.

Since the CSTs results have not being released to candidates, there are certificate holders that may lose their certification as of January 31, 2015 if their certificates are not extended by the Department. This could result in some teachers being terminated from employment as they will no longer hold a valid certificate.

The proposed amendment is necessary to ensure that teachers who have taken one of the revised CST administered on or after September 2014 that is required for their certificate title but have not received a score from

the Department on their revised CST, receive a time extension of up to one year on their expired certificate to ensure that they do not lose their certification and/or employment.

4. COSTS:

(a) Cost to State government: none.

(b) Cost to local government: none.

(c) Cost to private regulated parties: none.

(d) Costs to the State Education Department, as regulatory agency: none.

The proposed amendment does not impose any costs, but merely provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the CSTs results to be released by the Department without penalizing the certificate holders.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any mandatory program, service, duty, or responsibility upon local government, including school districts or BOCES, but merely provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the CSTs results to be released by the Department without penalizing the certificate holders.

6. PAPERWORK:

The proposed amendment will not increase reporting or recordkeeping requirements, but merely provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the CSTs results to be released by the Department without penalizing the certificate holders.

7. DUPLICATION:

The amendment does not duplicate other existing State or Federal requirements.

8. ALTERNATIVES:

There are no significant alternatives and none were considered.

9. FEDERAL STANDARDS:

There are no Federal standards that deal with the subject matter of this amendment.

10. COMPLIANCE SCHEDULE:

Regulated parties must comply with the proposed amendment on its effective date. Because of the nature of the proposed amendment, no additional period of time is necessary to enable regulated parties to comply. The proposed amendment does not impose any costs or compliance requirements, but merely provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the CSTs results to be released by the Department without penalizing the certificate holders.

Regulatory Flexibility Analysis

The proposed amendment relates to teacher certification, and provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate in order to provide time for the revised Content Specialty Tests (CSTs) results to be released by the Department without penalizing the certificate holder.

The CST's are currently being revised. The first group of revised CST's became operational in September 2014. However, the results/scores on the revised CST's will not be released to teacher candidates until the standard setting process is complete.

Since the CST results have not being released to candidates, there are certificate holders that could lose their certification as of January 31, 2015 if their certificates are not extended by the Department. This will result in some teachers being terminated from employment as they will no longer hold a valid certificate.

In an effort to resolve this issue, the proposed amendment provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the exam results to be released by the Department without penalizing the certificate holder.

The proposed amendment does not impose any reporting, recordkeeping or other compliance requirements, and will not have an adverse economic impact, on small businesses or local governments. Because it is evident from the nature of the amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and one were taken. Accordingly, a regulatory flexibility analysis for small businesses and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment relates to teacher certification and applies to holders of an initial certificate, transitional certificate and/or a conditional initial certificate, including those located in the 44 rural counties with fewer than 200,000 inhabitants and the 71 towns and urban counties with a population density of 150 square miles or less.

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

The proposed amendment does not impose any compliance requirements, but merely provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the Content Specialty Tests (CSTs) results to be released by the Department without penalizing the certificate holders.

The CST's are currently being revised. The first group of revised CST's became operational in September 2014. However, the results/scores on the revised CST's will not be released to teacher candidates until the standard setting process is complete.

Since the CST results have not being released to candidates, there are certificate holders that could lose their certification as of January 31, 2015 if their certificates are not extended by the Department. This will result in some teachers being terminated from employment as they will no longer hold a valid certificate.

The proposed amendment is necessary to ensure that teachers who have taken one of the revised CST administered on or after September 2014 that is required for their certificate title but have not received a score from the Department on their revised CST, receive a time extension of up to one year on their expired certificate to ensure that they do not lose their certification and/or employment.

The proposed amendment does not require any professional services to comply.

3. COSTS:

The proposed amendment does not impose any costs on entities in rural areas, but merely provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the CSTs results to be released by the Department without penalizing the certificate holders.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment does not impose any additional compliance requirements or costs on entities in rural areas, but merely provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the CSTs results to be released by the Department without penalizing the certificate holders. The proposed amendment is necessary to ensure that teachers who have taken one of the revised CST administered on or after September 2014 that is required for their certificate title but have not received a score from the Department on their revised CST, receive a time extension of up to one year on their expired certificate to ensure that they do not lose their certification and/or employment. The State Education Department does not believe any changes for certificate holders who live or work in rural areas is warranted because uniform standards for certification are necessary across the State.

5. RURAL AREA PARTICIPATION:

The State Education Department has sent the proposed amendment to the Rural Advisory Committee, which has members who live or work in rural areas across the State.

Job Impact Statement

The proposed amendment relates to teacher certification, and provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate in order to provide time for the revised Content Specialty Tests (CSTs) results to be released by the Department without penalizing the certificate holder.

The CST's are currently being revised. The first group of revised CST's became operational in September 2014. However, the results/scores on the revised CST's will not be released to teacher candidates until the standard setting process is complete.

Since the CST results have not being released to candidates, there are certificate holders that could lose their certification as of January 31, 2015 if their certificates are not extended by the Department. This will result in some teachers being terminated from employment as they will no longer hold a valid certificate.

In an effort to resolve this issue, the proposed amendment provides for a time extension of up to one-year for an expired initial certificate, transitional certificate and/or a conditional initial certificate to provide time for the exam results to be released by the Department without penalizing the certificate holder.

Because it is evident from the nature of the proposed amendment that it will have no impact on the number of jobs or employment opportunities in New York State, no further steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

NOTICE OF ADOPTION

New York State Common Core Learning Standards (CCLS) in Mathematics

I.D. No. EDU-48-14-00007-A
Filing No. 100
Filing Date: 2015-02-10
Effective Date: 2015-02-25

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

Action taken: Amendment of section 100.5(g)(1)(ii)(*a*) of Title 8 NYCRR.

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

Subject: New York State Common Core Learning Standards (CCLS) in mathematics.

Purpose: To provide additional flexibility in the transition to the Common Core-Aligned Regents Examination in Algebra I by allowing, at the discretion of the local school district, students receiving Algebra I (common core) instruction to take the Regents Examination in Integrated Algebra in addition to the Regents examination in Algebra I (common core) at the June 2015 test administration, and meet the requirement for graduation by passing either examination.

Text or summary was published in the December 3, 2014 issue of the Register, I.D. No. EDU-48-14-00007-EP.

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

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

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is the 4th or 5th year after the year in which this rule is being adopted. This review period, justification for proposing same, and invitation for public comment thereon, were contained in a RFA, RAFA or JIS.

An assessment of public comment on the 4 or 5-year initial review period is not attached because no comments were received on the issue.

Assessment of Public Comment

Since publication of a Notice of Emergency Adoption and Proposed Rule Making in the State Register on December 3, 2014, the State Education Department received the following comments:

1. COMMENT:

The proposed rule appears to suggest that 9th and 10th graders will have the opportunity to take the Integrated Algebra Regents in June 2015 because both started high school with Algebra I Common Core Math. Can 11th and 12th graders who have not passed the Integrated Algebra Regents exam sit for these Regents also, even though they did not start with Algebra I Common Core Math?

DEPARTMENT RESPONSE:

All students who began their first commencement-level course of study in algebra (2005 standard) prior to September 2013 and who have completed that course of study, albeit successfully or not, are eligible to participate in the June 2015 Regents Examination in Integrated Algebra.

NOTICE OF ADOPTION

Professional Development Requirements for Teachers, Level III Teaching Assistants and Administrators

I.D. No. EDU-48-14-00009-A
Filing No. 102
Filing Date: 2015-02-10
Effective Date: 2015-02-25

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

Action taken: Amendment of sections 80-3.6, 100.2 and 154-2.3 of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 215(not subdivided), 305(1), (2), 2117(1), 3001(2), 3003(1), 3004(1), 3006(1)(b) and 3009(1)

Subject: Professional development requirements for teachers, level III teaching assistants and administrators.

Purpose: To establish professional development requirements for teachers, holders of a level III teaching assistant certificate, and administrators, in language acquisition that specifically addresses the needs of students who are English Language Learners (ELLs) and integrating language and content instruction for such ELL students.

Text or summary was published in the December 3, 2014 issue of the Register, I.D. No. EDU-48-14-00009-P.

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

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

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

COMMENT: One comment expressed concern about certificate holders who are not employed by a public school in New York State. The commenter indicated that while it is easy for teachers in public schools to meet the professional development requirements, private schools and out of state schools are not subject to these requirements. The commenter has asked that we revisit the requirements for certificate holders working in private or an out of state school and either modify or eliminate the requirements for those teachers.

RESPONSE: Section 80-3.6(b)(2) of the Commissioner's regulations already provides for a 10% adjustment of the professional development requirement per year for a certificate holder that is not regularly employed in a public school in New York. This adjustment will also apply to the minimum professional development requirements in language acquisition for English language learners, as added under the proposed amendment. In an effort to ensure the quality of teaching and learning by ensuring that teachers participate in professional development in order to remain current with their profession, the Department does not believe any further changes are needed.

Department of Financial Services

EMERGENCY RULE MAKING

Unfair Claims Settlement Practices and Claim Cost Control Measures

I.D. No. DFS-08-15-00001-E
Filing No. 97
Filing Date: 2015-02-04
Effective Date: 2015-02-04

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

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

Statutory authority: Financial Services Law, sections 202 and 302; 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 May 4, 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 headquar-

tered 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 November 26, 2014. 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.

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Regulation of the Conduct of Virtual Currency Businesses

I.D. No. DFS-29-14-00015-RP

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

Proposed Action: Addition of Part 200 to Title 23 NYCRR.

Statutory authority: Financial Services Law, sections 102, 104, 201, 206, 301, 302, 309 and 408

Subject: Regulation of the conduct of virtual currency businesses.

Purpose: To regulate virtual currency businesses to ensure the protection of New York consumers and to ensure the safety and soundness of providers of virtual currency products and services. The Department of Financial Services proposes this regulation as a complement to its Order of March 11, 2014, which provides for the regulation, pursuant to the Banking Law, of exchanges that exercise fiduciary powers.

Substance of revised rule: The following is a summary of the proposed regulation:

Section 200.1, "Introduction," sets forth the statutory authority for the rule.

Section 200.2, "Definitions," defines terms used throughout the proposed regulation. Most significantly this Section defines "virtual currency" and "virtual currency business activity" and specifies conduct that is not covered by the proposed regulation.

Section 200.3, "License," prohibits any Person from engaging in virtual currency business activity without a license.

Section 200.4, "Application," sets forth the information to be included in a prospective licensee's application and provides for the granting of a conditional license, in certain circumstances.

Section 200.5, "Application fees," requires applicants to pay an application fee of $5000.00 to the Department of Financial Services (the "Department") and provides that licensees may need to pay fees for the processing of additional applications related to the license.

Section 200.6, "Action by superintendent," provides for the superintendent to approve or deny an application and, if approved, to suspend or revoke a license on specified grounds after a hearing.

Section 200.7, "Compliance," requires licensees to comply with all applicable federal and state law, designate a compliance officer, and maintain and enforce various written compliance policies.

Section 200.8, "Capital requirements," requires that licensees maintain minimum amounts of capital as determined by the superintendent based on a number of factors.

Section 200.9, "Custody and protection of customer assets," requires licensees to establish a bond or trust account for the benefit of their customers, requires licensees to hold virtual currency in the same type and amount as any virtual currency owed by the licensee, and prohibits licensees from encumbering customer assets.

Section 200.10, "Material change to business," requires licensees to seek prior approval by written application to introduce a new, or materially change an existing, product or service.

Section 200.11, "Change of control; mergers and acquisitions," requires licensees to seek prior approval by written application before executing a change of control or merger or acquisition.

Section 200.12, "Books and records," requires licensees to maintain certain records pertaining to each transaction and make such records available to the Department upon request.

Section 200.13, "Examinations," requires licensees to permit the superintendent to examine the licensee, including the licensee's books and records, at least once every two years and to make special investigations as deemed necessary by the superintendent.

Section 200.14, "Reports and financial disclosures," requires licensees to file quarterly financial statements and audited annual financial statements, to make special reports upon request, and to notify the Department upon discovery of any breach of law or upon a proposed change to the methodology used to calculate the value of virtual currency in fiat currency.

Section 200.15, "Anti-money laundering program," requires licensees to establish and implement an anti-money laundering program, which includes customer identification and transaction monitoring, to maintain records, and to make reports as required by applicable federal anti-money laundering law.

Section 200.16, "Cyber security program," requires licensees to design a cyber security program and written policy, designate a chief information security officer, make reports, and conduct audits.

Section 200.17, "Business continuity and disaster recovery," requires licensees to establish and maintain a written business continuity and disaster recovery plan to address disruptions to normal business operations.

Section 200.18, "Advertising and marketing," requires licensees to display a legend regarding its licensure by the Department, maintain all advertising and marketing materials, comply with all applicable federal and state disclosure requirements, and not make any false or misleading representations or omissions.

Section 200.19, "Consumer protection," requires licensees to disclose material risks and terms and conditions to customers and to establish an anti-fraud policy.

Section 200.20, "Complaints," requires licensees to disclose the licensee's and the Department's contact information and other information pertaining to the resolution of complaints.

Section 200.21, "Transitional period," requires Persons already engaged in virtual currency business activity to apply for a license with the Department within 45 days of the effective date of the regulation.

Section 200.22, "Severability," states that in the event a specific provision of the regulation is adjudged invalid, such judgment will not impair the validity of the remainder of the regulation.

Revised rule compared with proposed rule: Substantive revisions were made in sections 200.2, 200.3, 200.4, 200.5, 200.6, 200.8, 200.9, 200.10, 200.11, 200.12, 200.13, 200.14, 200.15, 200.16, 200.18, 200.19, 200.21 and 200.22.

Text of revised proposed rule and any required statements and analyses may be obtained from Office of General Counsel - Dana V. Syracuse, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 709-1663, email: VCRegComments@dfs.ny.gov

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

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

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

A Revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement is not required because the revisions to the proposed regulation do not change the conclusions set forth in the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

The New York State Department of Financial Services (the "Department") received over 3000 comments on proposed rule 23 NYCRR 200

from virtual currency businesses, other financial services businesses, merchants, retailers, researchers, academics, policy centers, governmental agencies, and private individuals. Many commenters addressed more than one provision of the proposed regulation, and several requested specific changes. Every comment has been processed and considered by the Department, as reflected in the full text of the Assessment of Public Comment, which is available at www.dfs.ny.gov. This summary is intended to provide an overview of the categories of comments received by the Department and the changes the Department has made to the proposed regulation in response to those comments.

Many comments requested clarification over who is, and is not, required to obtain a virtual currency license. Several of those commenters requested that the Department specify that certain activities, such as software development, non-financial uses of virtual currency technology, and investment in virtual currency, and certain programs, such as gift cards and customer loyalty programs, are exempt from the regulation. The Department has revised the definitions of virtual currency and virtual currency business activity accordingly to exclude certain activities and programs. In particular, the Department has clarified that virtual currency business activity does not include transactions that are undertaken for non-financial purposes and that do not involve the transfer of more than a nominal amount of virtual currency, and that virtual currency does not include digital units used in gift cards. The Department has also revised the regulation to clarify that the development and dissemination of software in and of itself does not constitute virtual currency business activity. (Section 200.2)

The Department also received many comments requesting an on-ramp or more flexible set of licensing requirements for small and start-up businesses. The Department has addressed those comments by providing that the superintendent may grant a conditional license to conduct virtual currency business activity. The Department set forth in the revised proposed regulation a list of factors that the superintendent may consider in determining whether to issue or renew a conditional license. (Section 200.4)

Commenters also requested that the Department set forth the fee that applicants will be required to pay for a virtual currency license. The revised proposed regulation sets the fee at $5000.00. (Section 200.5)

Another large source of comment related to the capital requirements set forth in the proposed regulation. The Department considered those comments and revised the requirements to allow licensees to hold capital in the form of cash, virtual currency, and high quality, highly liquid, investment-grade assets in a proportion that is acceptable to the superintendent. (Section 200.8)

Some commenters expressed concern that requiring the superintendent's approval prior to permitting changes in control could limit start-up firms' ability to attract investors and raise capital. To address that concern, the Department revised the regulation to provide licensees with the ability to apply for a determination that a given party will not be considered a control party by the Department, based on several factors relating to the party's ability to manage or exercise control over the licensee. (Section 200.11)

Several commenters also requested that the Department reduce the burden associated with the proposed regulation's recordkeeping requirements. In response, the Department revised the proposed regulation to reduce the recordkeeping requirement from ten years to seven years (Section 200.12) and require that licensees maintain, only to the extent practicable, specific identifying information regarding parties to the transaction that are not customers or accountholders of the licensee. (Sections 200.12 and 200.15)

The Department also received comments requesting that the regulations include more detail in certain areas, including the addition of specific formulas for setting capital requirements and further technical specifications with respect to cyber security. The Department has considered those comments but has concluded that the factors and principles set forth in the proposed regulation provide the appropriate level of specificity.

While a number of commenters expressed support for the proposed regulation, others rejected the regulation in its entirety, stating that virtual currency should be regulated under existing money transmission law or not at all. The Department has extensively considered the need to regulate virtual currency business activity and the appropriate way to do so, and it has concluded that a new regulation under the Financial Services Law is necessary to protect New York consumers and users of virtual currency-related services.

Similarly, some commenters called for the Department to heighten the proposed regulations and add to it new requirements, while others contested the need for regulatory requirements relating to money laundering, cyber security, and recordkeeping, among other specific provisions. The Department has considered both sets of comments and has determined that the proposed regulation adequately addresses the risks associated with virtual currency business activity.

Department of Health

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Opioid Overdose Programs

I.D. No. HLT-08-15-00005-EP
Filing No. 99
Filing Date: 2015-02-06
Effective Date: 2015-02-06

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

Proposed Action: Amendment of section 80.138 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 3309

Finding of necessity for emergency rule: Preservation of public health.

Specific reasons underlying the finding of necessity: The regulatory revisions are necessary for emergency implementation to safeguard the lives and well-being of New Yorkers who are otherwise at increasing risk for opioid-associated harm including death.

In New York State substantial mortality is associated with opioids. In 2012, there were 875 deaths where the toxicology reports indicated opioid analgesics. In addition, 478 overdose deaths occurred that year associated with heroin and 150 deaths for which the toxicology report indicated an unspecified opioid. The heroin-related deaths for 2012 represent an almost-threefold increase from two years earlier. Although there are not yet consolidated reports for more recent years, there is reason to believe, based on information shared by local jurisdictions as well as from legislative hearings, that this trend has not only continued, but has grown at an alarming rate.

Similarly, costly hospitalizations in which opioids have been identified among the diagnostic codes have risen substantially. In 2012, there were more than 75,000 hospital discharges in which opioids were identified. This is an increase of approximately 4,000 from four years earlier. Although a broad range of opioid-related diagnoses is represented in these figures, they indicate the growing problem associated with this class of drugs.

There is a broad-based interest in—and commitment to—resolving New York State's opioid crisis. Part of that response includes providing law enforcement and firefighting personnel with the training and the naloxone necessary to save lives when they are the first to arrive on the scene of a suspected overdose. The Division of Criminal Justice Services, working with the Department of Health, Albany Medical Center, the Harm Reduction Coalition, local health departments and other community partners has initiated training of law enforcement officers, with a goal of 5,000 trained in the first year. There have been immediate benefits from these trainings, including overdose reversals successfully carried out within hours of a training. This initiative is currently severely hampered in its implementation by a requirement that each officer have his or her own rescue kit and that the officer cannot share it with colleagues. The revised regulation will address that. The revised regulation allowing for non-patient specific prescriptions of naloxone—something now authorized under the law—will eliminate the de facto requirement that prescribers be physically present every time that naloxone is furnished or dispensed. This will provide immediate relief not only in training public safety personnel, but also for more community-oriented programs, in which prescriber availability is extremely limited.

Subject: Opioid Overdose Programs.

Purpose: Modification of the rule consistent with new statutory language and with the emergency nature of opioid overdose response.

Substance of emergency/proposed rule (Full text is posted at the following State website:www.health.ny.gov): The regulatory changes accomplish the following:

- authorize clinical directors and affiliated prescribers to prescribe an opioid antagonist to trained overdose responders, and for those prescriptions to be either patient-specific or non-patient-specific;
- require clinical directors to designate those individuals by name or by description who will be furnishing or dispensing naloxone pursuant to a non-patient specific prescription;
- allow for trained overdose responders to have shared access to, and use of, an opioid antagonist so long as the following conditions are met:

they are trained in accordance with the regulations; they have a common organizational or workforce bond; and there are policies and procedures in place within that organization or workforce that ensure orderly, controlled access to an opioid antagonist by an identifiable pool of trained overdose responders;

- expand the organizations which may have regulated opioid overdose prevention programs to include the following: public safety agencies, state agencies and pharmacies;
- add a reporting requirement, so that the department will know on a quarterly basis how many overdose responders each program trains as well as how many doses of naloxone each program furnishes;
- require public safety and firefighting personnel to have their overdose reversals reported directly to the department by their agencies;
- require the maintenance and provision of masks or other similar barriers only for those programs which incorporate rescue breathing in their curriculum;
- acknowledge the curriculum approved by the Division of Criminal Justice Services as acceptable for trained overdose responders who are public safety personnel, and acknowledge that a comparable curriculum approved by the Department of Health may be used for firefighters;
- require that registered programs maintain and furnish instructional material to participants, including how to recognize symptoms of an opioid overdose; the steps to be taken in responding to an opioid overdose; and how to access the Office of Alcoholism and Substance Abuse Services (OASAS) through both a toll-free number and its website;
- require that documentation be furnished at the time naloxone is dispensed pursuant to a non-patient specific prescription that indicates the following: that naloxone has been furnished pursuant to a non-patient specific prescription; the name of the prescriber; the opioid antagonist being prescribed; the date of the furnishing or dispensing; and the name of the person receiving the opioid antagonist; and
- acknowledge that prescribers unaffiliated with registered programs may issue patient-specific prescriptions for an opioid antagonist to individuals in their care at risk of an opioid overdose.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire May 6, 2015.

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

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

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

Regulatory Impact Statement

Statutory Authority:

Chapter 413 of the Laws of 2005, effective April 1, 2006, added Section 3309 of the Public Health Law to provide for opioid overdose prevention programs in New York State (NYS). Pursuant to PHL Section 3309(1), as amended by Chapters 34 and 42 of the Laws of 2014, the Commissioner of Health is authorized to establish standards for approval of opioid overdose prevention programs.

Legislative Objectives:

This legislation was enacted in order to reduce the incidence of fatal opioid overdoses by making possible the timely, appropriate and safe administration of life-saving medication on an emergency basis to individuals who experience opioid drug overdoses. To achieve this objective, the revised regulations address the issuance of non-patient specific prescriptions for an opioid antagonist, something that is permitted for the first time under the 2014 revisions to PHL Section 3309. The regulations also authorize a practice implicit in the statute: the shared access to—and use of—an opioid antagonist by trained overdose responders. To further address the law's objective of reducing the incidence of fatal overdoses, the regulations support a broader range of qualified organizations in becoming registered opioid overdose prevention programs by including public safety agencies, state agencies and pharmacies as eligible organizations. The law and the regulations also mandate that the furnishing or dispensing of naloxone be accompanied by information on recognizing the symptoms of an opioid overdose, on what steps to take in the course of an overdose, on how to access the HOPE Line maintained by the Office of Alcoholism and Substance Abuse Services (OASAS); and on how to access the OASAS website.

Needs and Benefits:

Overdose is a preventable cause of death in the majority of cases involving opioids. Opioids include heroin as well as prescribed analgesics such as morphine, codeine, methadone, oxycodone (Oxycontin, Percodan, Percocet) and hydrocodone (Vicodin). In an opioid overdose, the user becomes sedated and gradually loses the urge to breathe, leading to death from respiratory depression. Naloxone is an opioid receptor antagonist that can be used to reverse an opioid overdose, generally within 1-2 minutes of administration. An untreated opioid overdose may result in death over the course of 1-3 hours. Approximately half of all injection drug users (IDUs) experience at least one nonfatal overdose during their lifetime.

According to the Centers for Disease Control and Prevention (CDC) drug overdose deaths are now the leading cause of accidental death in the United States for people aged 25-64, Of the 22,134 deaths relating to prescription drug overdose nationally in 2010, 16,651 (75%) involved opioid analgesics (also called opioid pain relievers or prescription painkillers). In 2011, drug misuse and abuse caused about 2.5 million emergency department (ED) visits. Of these, more than 1.4 million ED visits were related to pharmaceuticals.

In New York State, substantial mortality is associated with opioids. In 2012, there were 875 deaths where the toxicology reports indicated opioid analgesics. In addition, 478 overdose deaths occurred that year associated with heroin and 150 deaths for which the toxicology report indicated an unspecified opioid.

In 2013, there were 115,000 admissions to OASAS-certified treatment programs where heroin or other opioids was the primary, secondary, or tertiary substance of abuse. This was an increase of 23% from 88,000 such admissions in 2004.

Most overdoses are not instantaneous and the majority of them are witnessed by others. Therefore, many overdose fatalities are preventable. Prevention measures include education on risk factors (such as polydrug use and recent abstinence), recognition of the overdose and an appropriate response. Response includes contacting emergency medical services (EMS) and providing resuscitation while awaiting the arrival of EMS. Resuscitation may also include the administration of naloxone which immediately reverses the effects of an opioid overdose. Naloxone is an opioid antagonist with no abuse potential and no effect on a recipient who has not taken opioids. Provision of naloxone has been recommended for many years and is being offered in a variety of settings in a growing number of jurisdictions throughout the United States. Complications of naloxone in the medical setting are rare.

Opioid overdose prevention programs, including those regulated by the current regulation, have proven effective in preventing unnecessary deaths. As of June 30, 2014, more than 140 programs have registered as Overdose Prevention Providers and more than 75,000 naloxone kits have been distributed by NYSDOH. As of that same date, there were 918 reports of overdose reversals with the naloxone kits. Seventy-one percent of the people who received naloxone because of a drug overdose were between the ages of 18-45; the vast majority had injected heroin; and frequently opioids were used in combination with alcohol and other drugs. The largest number of reversals have been reported from New York (Manhattan) (208, 22.7%), Erie (175, 19.1%) and Bronx (157, 17.1%) counties.

The amendment to the rule achieves the following: 1) health care providers are authorized to issue patient specific and non-patient specific prescriptions for naloxone; 2) in instances when regulated programs will be using non-patient specific prescriptions for naloxone, the clinical director must delegate those individuals who will be carrying out the dispensing; 3) shared access to—and use of—naloxone among trained overdose responders is now permitted so long as: a) these responders are trained in accordance with the regulations; b) there is a common organizational or workforce bond among them; and c) there are policies and procedures in place within that organization or workforce that ensure orderly, controlled access to an opioid antagonist by an identifiable pool of trained overdose responders; 4) provider eligibility has been expanded to include public safety agencies, state government agencies and pharmacies; 5) registered programs will now be required to report on a quarterly basis the number of doses provided to trained overdose responders and the number of responders trained; and 6) all naloxone distribution is to be accompanied by information on how to recognize an opioid overdose, how to respond to an opioid overdose; and how to access OASAS, both through its HOPE Line as well as through its website.

These changes under the proposed regulations will result in improved distribution of naloxone in the community and result in reduced incidence of fatal opioid overdoses. The reporting requirement will give the state an improved understanding of the impact of this program. Expanded access to naloxone does not lead to increased drug use. Naloxone is not addictive and does not cause a "high." It has no potential for abuse, nor does it have a street value associated with diversion.

Costs:

There are no new mandates. This regulation continues to allow, not require, creation of opioid overdose prevention programs. Costs for the implementation and ongoing operations of regulated programs to those parties that elect to establish them will continue to be minimal. As was past practice, no registration fee is being collected. A one-time application process remains in effect in order for an opioid overdose prevention program to receive a certificate of approval. Existing staff can serve as the

regulated program's Program Director. Internal operational policies and procedures, as well as the training of staff, remain as requirements. Reporting requirements are minimal and consistent with Public Health Law.

The state has appropriated and is making funding available for the following activities. The NYSDOH estimates that approximately 48,000 individuals will become trained overdose responders between April 1, 2014 and March 31, 2015 at an estimated annual cost of $3,000,000 for the kits. Training costs will be covered with existing resources within the Department of Health budget. The amount for subsequent years will decrease considerably, in part because of the accrued benefit of train-the-trainer sessions. The estimated annual cost in the years subsequent to the 2014-2015 State Fiscal Year is likely to range between $1,000,000 and $2,000,000. All of these costs are borne with State funding. There is no local funding used for this initiative.

Local Government Mandates:

For purposes of implementing amendments to Section 3309 of the Public Health Law, local government agencies will be made aware of the option to voluntarily offer opioid overdose prevention programs, though in no case is participation in this program mandated. Local EMS will continue to receive information concerning opioid overdose prevention.

Paperwork:

The NYSDOH anticipates a continued simple and streamlined process for eligible organizations to obtain a certificate of approval to establish an opioid overdose prevention program. The record keeping and reporting requirements imposed on the programs are minimal. Only those providers voluntarily participating will be required to provide information to the department.

Duplication:

The proposed amendments to the regulation do not duplicate any existing state or federal law or regulation regarding opioid overdose prevention.

Alternatives:

The proposed amendments to the regulation do not exceed the specific requirements of the legislation. Because offering an opioid overdose prevention program is voluntary, the regulation was designed to encourage eligible individuals and organizations to provide opioid overdose prevention services allowed under law and regulation. The approval process continues to be simple; and the reporting and financial impact of establishing a voluntary opioid overdose prevention program remains minimal. Any other alternatives would require a more complex and more costly approach for both the NYSDOH and volunteer operators of opioid overdose prevention programs.

Federal Standards:

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

Compliance Schedule:

Each individual or organization that chooses to establish an opioid overdose prevention program must submit an initial application to the department. Information on approved programs is then used to develop a listing of opioid overdose prevention programs, which is shared with the public. Applications for approval to establish opioid overdose prevention programs will continue to be accepted on an ongoing basis, with review and renewal happening at two-year intervals.

Regulatory Flexibility Analysis

Effect of Rule:

The proposed rule will have minimal impact on small businesses and local governments. The principal goal of the regulatory changes is to ensure improved access to naloxone in the community by allowing non-patient specific prescriptions of naloxone and shared access to—and use of—naloxone by trained overdose responders under specified conditions. The proposed rule also allows for the following additional eligible providers to maintain regulated overdose programs: public safety agencies, state agencies and pharmacies. None of those entities would be required to maintain an overdose prevention program; rather they may voluntarily choose to have such a program. The minimal impact on small businesses and local governments is underscored by the modest nature of opioid overdose prevention programs; no fee is required for approval, ongoing technical assistance is provided at no cost by the Department of Health to these programs, and recordkeeping and reporting are minimal.

Compliance Requirements:

Under the proposed rule, eligible providers that elect to establish opioid overdose prevention programs will continue to report overdose reversal on forms provided by the NYSDOH. There is an additional requirement mandating that the regulated programs report to the department on a quarterly basis the number of doses of naloxone provided to trained overdose responders as well as the number of responders trained. Record keeping mandated of programs is minimal.

Offering of opioid overdose prevention programs remains entirely voluntary.

Professional Services:

No additional professional services will be required since providers and others will be able to utilize existing staff or can utilize the services of others with whom they have a relationship.

Compliance Costs:

There are no additional costs associated with non-patient specific prescriptions for naloxone nor for the shared access to—and use of—naloxone. In fact, the shared access to naloxone may reduce the burden on organizations whose staff are being trained in opioid overdose.

The additional organizations under the revised regulations that are eligible to operate opioid overdose prevention programs and that seek NYSDOH approval to establish these programs will be provided with application guidelines and technical assistance. The additional organizations are public safety agencies, state agencies and pharmacies. Reporting requirements pertaining to opioid overdose prevention programs will be minimal for those providers that voluntarily elect to establish such opioid overdose prevention programs. The estimated cost of reporting is, at most, $150 per year.

Economic and Technological Feasibility:

Most health care practitioners and organizations that are, or would be, eligible to offer opioid overdose prevention programs have the capacity and expertise to carry out the necessary activities. Small businesses that opt to voluntarily offer opioid overdose prevention programs will be provided with necessary forms and instructions to comply with the approval process and reporting requirements. In large part, these forms and instructions are developed with specific input from regulated parties and NYSDOH resources are being made available to provide instructions and technical assistance.

Minimizing Adverse Impact:

There are no alternatives to the proposed recordkeeping and reporting requirements. NYSDOH has a responsibility to ensure that approved opioid overdose prevention programs conduct activities in a manner that maximizes the impact of this program. It also has a responsibility to collect information consistent with the reports to the Governor and the Legislature that are mandated in Section 3309(5) of the Public Health Law.

Small Business and Local Government Participation:

Small businesses (including small business hospitals, clinics, health care practitioners, drug treatment programs, individual practitioners, and community-based organizations) as well as local health departments had an opportunity to review and comment on the original regulations as well as on subsequent proposed changes. A similar opportunity is being provided with respect to the changes in the regulations now being proposed, particularly with non-patient specific prescriptions for naloxone and shared access to—and use of—naloxone by trained overdose responders. The department has already begun to have conversations with public safety agencies and some registered programs regarding these issues. There will also be discussions with pharmacies and state agencies that are now eligible to maintain registered programs.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

Rural areas are defined as counties with a population less than 200,000 and, for counties with a population greater than 200,000, include towns with population densities of 150 persons or less per square mile. There are 43 counties in NYS with a population less than 200,000. Eleven counties have certain townships with population densities of 150 persons or less per square mile. The proposed rule will have minimal impact on practitioners, organizations, local governments and pharmacies in these rural areas.

The additional organizations under the revised regulations that are eligible to operate opioid overdose prevention programs are public safety agencies, state government and pharmacies. In rural areas, those entities most likely to be represented among new registrants are public safety agencies and pharmacies. Registration as an opioid overdose prevention program is entirely voluntary. Potential providers are most likely to be located in urban or suburban, not rural, areas.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

Under the proposed regulations, reporting, record keeping and other compliance requirements applicable to providers that seek department approval to offer opioid overdose prevention programs are minimal. There is a new reporting requirement that registered programs on a quarterly basis inform the department of the number of doses of naloxone provided to trained overdose responders as well as the number of responders trained. These data are essential for the department to be compliant with mandated reports to the Governor and the Legislature.

Costs:

The department, either directly or under contract, will provide technical and other assistance to organizations and practitioners implementing opioid overdose prevention programs.

Minimizing Adverse Impact:

The program is designed to minimize impact on those who will participate in the following ways: participation is voluntary; the registration pro-

cess is simple; no fees are charged; and record-keeping and reporting requirements are minimal.

Rural Area Participation:

The department has actively sought to engender increased opportunities for opioid overdose prevention, including in rural parts of the state. That has entailed one-on-one dialog with—and technical assistance provided to—eligible providers in the state's rural counties. That focus will not change with the amended regulation; however there will be increased opportunities for implementation of the regulated programs in rural areas because new classes of organizations will be eligible: public safety agencies, state agencies and pharmacies.

The mechanisms for engaging rural participation include outreach by department staff, as well as from local health departments and from staff from the Office of Alcoholism and Substance Abuse Services, the Division of Criminal Justice Services, the Harm Reduction Coalition, Albany Medical College and other community partners.

The NYSDOH, since the implementation of the current regulations, has considered input on how they could be improved. The most significant changes in the proposed regulation—including non-patient specific prescriptions; shared access to, and use of, naloxone by trained overdose responders; and expanded eligibility were the product of this input.

Job Impact Statement

A Job Impact Statement is not required. The proposed rule will not have a substantial adverse impact on jobs and employment opportunities based upon its nature, purpose and subject matter.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Supplementary Reports of Certain Congenital Anomalies for Epidemiological Surveillance; Filing

I.D. No. HLT-08-15-00003-P

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

Proposed Action: Amendment of sections 22.3 and 22.9 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 206(1)(d), 225(5)(t) and 2733

Subject: Supplementary Reports of Certain Congenital Anomalies for Epidemiological Surveillance; Filing.

Purpose: To increase maximum age of reporting certain birth defects to the Congenital Malformations Registry.

Text of proposed rule: Pursuant to the authority vested in the Public Health and Health Planning Council by sections 206(1)(d), 225(5)(t), and 2733 of the Public Health Law, sections 22.3 and 22.9 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

§ 22.3 - Supplementary reports of certain congenital anomalies for epidemiological surveillance; filing.

(a) Every physician*, nurse practitioner authorized to diagnose congenital anomalies, physician assistant authorized to diagnose congenital anomalies,* and hospital *as defined in Article 28 of the Public Health Law,* [in attendance on an individual diagnosed within two years of birth] *providing health care to a pregnant woman or a child under two years of age, who diagnoses an embryo, fetus or child* as having one or more of the congenital anomalies listed in *Table 1 of* this section shall file a supplementary report with the State Commissioner of Health within 10 days of diagnosis thereof.

(b) Every physician, nurse practitioner authorized to diagnose congenital anomalies, physician assistant authorized to diagnose congenital anomalies, and hospital as defined in Article 28 of the Public Health Law, providing health care to a pregnant woman or a child under ten years of age, who diagnoses an embryo, fetus or child as having one or more of the congenital anomalies listed in Table 2 of this section shall file a supplementary report with the State Commissioner of Health within 10 days of diagnosis thereof.

(c) Every clinical laboratory that conducts diagnostic testing on New York State residents to detect or confirm the diagnosis of genetic or chromosomal anomalies listed in Tables 1 and 2 shall, upon detecting or confirming such a genetic anomaly, file a supplementary report with the State Commissioner of Health within 30 days of detection or confirmation.

(d) Such report shall be on such forms*, which may include electronic forms,* as may be prescribed by the commissioner to facilitate epidemiological investigation and surveillance.

[Anencephalus and similar anomalies
Spina bifida
Congenital anomalies of the nervous system
Congenital anomalies of the eye
Congenital anomalies of ear, face, neck
Congenital anomalies of heart
Congenital anomalies of circulatory system
Congenital anomalies of respiratory system
Cleft palate and cleft lip
Congenital anomalies of upper alimentary tract
Congenital anomalies of digestive system
Congenital anomalies of urinary system
Congenital anomalies of genital organs
Congenital anomalies of limbs
Congenital musculoskeletal deformities
Other congenital musculoskeletal anomalies
Congenital anomalies of the integument
Congenital anomalies of the spleen
Congenital anomalies of the adrenal gland
Congenital anomalies of other endocrine glands
Multiple congenital anomalies
anomaly, multiple NOS
deformity, multiple NOS]

TABLE 1 – CONGENITAL ANOMOLIES AND GENETIC DISEASES FOR WHICH REPORTING IS REQUIRED TO AGE 2

Malignant neoplasm of kidney
Malignant neoplasm of eye
Malignant neoplasm of brain
Malignant neoplasm of other endocrine systems
Congenital leukemia
Hemangioma
Lymphangioma
Neurofibromatosis
Teratoma
Congenital hypothyroidism
Disorders of thyroid, congenital and hereditary
Diabetes Mellitus, neonatal
Disorders of the pituitary gland, congenital and hereditary
Adrenogenital syndrome
Testicular dysfunction, congenital and hereditary
Dwarfism
Other congenital endocrine disorders
Metabolic and Immunity Disorders, congenital and hereditary
Hereditary Hemolytic anemias
Aplasic anemias, congenital and hereditary
Coagulation defects, congenital and hereditary
Primary thrombocytopenia, congenital and hereditary
Diseases of white cells, congenital and hereditary
Methemoglobinemia, congenital and hereditary
Hereditary diseases of the central nervous system
Extrapyramidal disease and abnormal movement disorders, congenital and hereditary
Spinocerebellar Disease, congenital and hereditary
Anterior horn cell disease, congenital and hereditary
Infantile cerebral palsy
Infantile spasms
Cerebral cysts, congenital
Multiple cranial nerve palsies, congenital
Hereditary peripheral neuropathy
Hereditary muscular dystrophies and other myopathies
Hereditary optic atrophy
Duane's syndrome
Endocardial fibroelastosis
Wolf-Parkinson-White syndrome
Major anomalies of jaw size
Inguinal hernia
Femoral hernia
Nephrotic syndrome, congenital
Nephrogenic diabetes insipidus, congenital
Dyschromia, congenital
Anencephalus and similar anomalies
Spina bifida
Congenital anomalies of the nervous system
Congenital anomalies of the eye
Congenital anomalies of ear, face, neck
Congenital anomalies of heart
Congenital anomalies of circulatory system

Congenital anomalies of respiratory system
Cleft palate and cleft lip
Congenital anomalies of upper alimentary tract
Congenital anomalies of digestive system
Congenital anomalies of urinary system
Congenital anomalies of genital organs
Congenital anomalies of limbs
Congenital musculoskeletal deformities
Other congenital musculoskeletal anomalies
Congenital anomalies of the integument
Congenital anomalies of the spleen
Congenital anomalies of the adrenal gland
Congenital anomalies of other endocrine glands
Multiple congenital anomalies
Anomaly, multiple, Not Otherwise Specified
Deformity, multiple, Not Otherwise Specified
Genetic anomalies
Chromosomal anomalies
Fetal Alcohol Syndrome
Situs Inversus
Conjoined twins
Hamartoses
Congenital malformation syndromes affecting multiple systems
Noxious influences affecting the fetus via placenta
Amniotic band syndrome
Infections specific to the perinatal period
Hemolytic disease due to RH isoimmunization
Neonatal hepatitis

TABLE 2 – CONGENITAL ANOMOLIES AND GENETIC DISEASES FOR WHICH REPORTING IS REQUIRED TO AGE 10

Hereditary muscular dystrophies and other myopathies
Congenital anomalies of heart
Genetic anomalies
Chromosomal anomalies
Fetal Alcohol Syndrome

§ 22.9 – Reports: place of filing

All reports required by *Section 22.3 of* this Part shall be filed with the Director of the Bureau of Environmental [Epidemiology] and Occupational *Epidemiology, Center for Environmental* Health, [Division of Epidemiology,] New York State Department of Health, Empire State Plaza, *Corning* Tower [Building], Albany, NY 12237.

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

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

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

Summary of Regulatory Impact Statement

Statutory Authority:

Section 206(1)(d) of the Public Health Law (PHL) authorizes the Commissioner to investigate the causes of diseases, epidemics, and the sources of mortality in New York State. PHL § 225(5)(t) provides that the State Sanitary Code may facilitate epidemiological research into the prevention of environmentally related diseases and require reporting of such diseases by physicians, medical facilities and clinical laboratories. PHL § 2733 requires that birth defects and genetic diseases be reported by physicians, hospitals, and persons in attendance at birth in a manner prescribed by the Commissioner. Information collected pursuant to such reports shall be kept confidential pursuant the Personal Privacy Protection Act.

Legislative Objectives:

PHL § 206(1)(d) established the Commissioner's broad authority to investigate the causes of disease in New York State. As reflected in the Declaration of Policy, the Legislature enacted PHL § 2733 and related statutes to ensure that the Department maintains a central and comprehensive responsibility for developing and administering the State's policy with respect to scientific investigations and research concerning the causes, prevention, treatment and cure of birth defects and genetic and allied diseases. Finally, in enacting PHL § 225(5)(t), the Legislature directed that the State Sanitary Code contain regulations that facilitate epidemiological research into the prevention of environmental diseases, by pathological conditions of the body or mind resulting from contact with toxins, mutagens or teratogens and by requiring the reporting of such diseases or suspected cases of such diseases to the Department.

To these ends, the Department maintains the Congenital Malformation Registry (CMR) and has issued regulations requiring the reporting of structural, functional or biochemical abnormalities determined genetically or induced during gestation, and which are not due to birthing events.

Needs and Benefits:

The Department's proposal seeks to extend the case capture periods for certain diseases. Currently, health regulations require physicians and hospitals to report congenital malformations that are diagnosed within two years of a child's birth, yet many congenital malformations are not diagnosed until after age two. By extending the capture period for certain diseases listed below, the Department's proposal will enhance its epidemiologic surveillance and advance its understanding of birth defects and their environmental causes.

Fetal alcohol syndrome (FAS) is a serious but preventable congenital malformation that results from heavy maternal intake of alcohol during pregnancy. FAS is not uncommon, with national estimates of 5–20 cases per 10,000 live births. The annual prevalence of FAS reported by the CMR is about 10-fold less than national estimates. Studies indicate that FAS is more easily diagnosed from ages two to ten years.

Hereditary muscular dystrophies and other myopathies are a family of diseases that cause progressive and steady muscle weakness and wasting. The most common muscular dystrophy is Duchenne MD, followed by Becker MD. A recent US study indicated the prevalence of boys age 5 to 24 with Duchenne and Becker MD was 1.3 to 1.8 per 10,000 males. However, the CMR indicated an annual birth prevalence of only 0.08 per 10,000 live births. One study reported a mean age of diagnosis of 5 years for boys with Duchenne MD.

Congenital heart defects (CHDs) are the most common organ system malformations, and they remain the leading cause of infant deaths from birth defects. Approximately 1 out of every 115 to 150 babies is born with a heart defect. Minor defects are often not detected until later in life and can have serious consequences. One study indicates that 3% of children with CHDs are diagnosed from ages three to ten years old.

Genetic and Chromosomal Anomalies. The CMR was established prior to the sequencing of the human genome and the associated advances in the scientific community's understanding of the role genetics plays in causing birth defects. Because the field of genetics and birth defects is so new, there is little or no documentation about diagnostic timing for many of these syndromes. However, genetic and chromosomal anomalies are often not recognized until after two years of age, because it can require several years to observe a child prior to diagnosis.

The Department's proposal would also require reporting of birth defects diagnosed or identified during pregnancy. This reporting requirement is important due to the increase in routine prenatal screening. For many diseases, the CMR data suggests a prevalence rate in New York that is far below the expected range.

The proposed amendment also allows reporting by qualified health care professionals other than physicians—specifically, nurse practitioners and physician assistants. Over the past several years, a growing number of national, state and specialty-specific studies indicate that the physician workforce in the United States is facing current and future shortages. Moreover, the shortage of family physicians will be most acute in rural and underserved populations. These trends highlight the need to allow reporting by nurse practitioners and physician assistants. Indeed, anecdotal reports indicate that nurse practitioners and physician assistants are already filling this role because of the burden on physicians.

The regulation would also clarify the requirement that clinical laboratories performing diagnostic testing for birth defects must report to the CMR. This requirement is not new. In 1978, Commissioner Whalen issued a blanket order directing that all laboratories report congenital malformations to the Department pursuant to PHL § 2733. However, many clinical laboratories are not aware of the reporting requirement.

Finally, the Department's proposal adds granularity to the list of reportable diseases. Many diseases currently reported fall under broad categories, thereby limiting the Department's ability to receive information concerning the individual diseases within the category. For example, congenital leukemia and lymphangiomas are both currently reported under the broad classification of "congenital anomalies of the circulatory system." The Department's proposal lists these and other defects as separate reportable conditions.

Costs:

Costs to Regulated Parties:

The Department anticipates that, for the entire State, the regulatory changes will require annual reporting of an approximate additional 900 live born children by physicians, nurse practitioners, physician assistants and hospitals (FAS: 100-200 cases; muscular dystrophy: 100 cases; cardiac heart defects in children past age two: 200 cases; genetic or chromosomal anomalies: 400 cases).

Approximately 160 New York hospitals and their associated physicians, nurse practitioners and physician assistants will be affected by this change. The Department anticipates that the costs to these parties will be minimal, primarily because the number of additional birth defects to be

reported annually through hospitals (five to six cases per year, on average) will be small, relative to the number or reports already being submitted. Hospitals already report cases to the CMR electronically. The additional hospital staff time to enter six to seven additional cases per year may require 20-30 minutes annually. Alternatively, a hospital can incorporate the additional diagnoses into a monthly batch file. Hospitals are already familiar with the process of modifying batch files.

Reporting by smaller, community-based health care facilities and individual providers will result in some costs primarily because, while physicians have always been required to report congenital anomalies, this requirement has not been enforced for providers who are not associated with New York hospitals. The Department has minimized the administrative costs associated with the reporting requirement by integrating the reporting process with technologies that healthcare providers already utilize. Healthcare providers currently rely on the Department's Health Commerce System (HCS) for communication and reporting to the Department. Within the HCS, the Department is implementing a comprehensive web-based reporting system known as the Child Health Information Integration (CHI2) project to be used as the central website to report and track newborn screening, immunizations, lead and newborn hearing screening. Reporting of birth defects will become a component of the CHI2 system in order to reduce the reporting burden of community-based healthcare facilities and providers.

Providers will be required to spend 3-5 minutes entering case information for each child or fetus diagnosed with a birth defect that is newly reportable under the updated CMR regulations. Statistically, this should involve very few cases for such providers. Because most providers already use and have free access to the online electronic reporting system, the proposed regulation will not impose any additional equipment or technology costs. The only costs will be in the amount of time required to use the CHI2 to report additional birth defects, which is expected to be negligible. The Department will assist any providers that currently do not have access to the web based reporting system.

With regards to extending the CMR reporting requirements to nurse practitioners and physician assistants, the Department does not expect that regulated parties will incur any associated direct costs. Rather, the Department expects that this change will relieve physicians and hospitals from being the only classes of healthcare providers authorized to submit a report when a child is diagnosed with a congenital malformation.

For clinical laboratories, the Department anticipates the regulatory change will require annual reporting of approximately 6,600 additional genetic or chromosomal anomalies recognized during pregnancy, and approximately 400 reports related to children diagnosed between the ages of 2 and 10 years old, for a total of 7,000 additional reports annually. The Department anticipates the ongoing costs to the roughly 50 clinical cytogenetic laboratories providing diagnostic testing for genetic and chromosomal anomalies to be minimal because these laboratories will report using the Electronic Clinical Laboratory Reporting System (ECLRS) as many already do. The Department estimates that the additional number of reports that these labs will make to ECLRS will cost approximately $1,400. Clinical laboratories may experience a one-time expense related to modifying the laboratory's software to identify the additional cases that must be reported, which the Department estimates will require a maximum of 16 hours of work by a computer specialist at an estimated rate of pay of $100/hour.

Costs to the Regulatory Agency:

The Department has been using a web-based electronic reporting system in place since 2006. Currently, the CMR receives and processes about 12,000 reports annually. Thus, annual cost to DOH to receive and process the additional 1,000-1,200 cases will be minimal.

Costs to the State Government:

There will be no costs to state government. For the last ten years, reporting to the CMR has been conducted electronically. Currently, the Department uses the Health Commerce System to receive CMR reports. Reporters upload cases individually or in batch reports. The electronic reporting system already includes automated processes to match and combine reports for the same child, to ensure de-duplication of data reported from multiple reporters. Additional data quality control processes are built into the system.

Costs to Local Government:

Hospitals owned by local governments would be affected but, as discussed above, the costs will be minimal because the additional reporting requirement is relatively small.

Local Government Mandates:

There are no mandates on local governments, other than the additional reporting requirements that would apply to hospitals owned by a local government.

Paperwork:

This change will generate very little physical paperwork because reporting will be performed electronically as is described under "Costs to Regulated Parties."

Duplication:

This change does not involve any duplication in laws. In terms of duplication of effort, the reporting software will prevent the repeated reporting of the same birth defect for a particular child.

Alternatives:

If no changes are made to this regulation, the Department will continue to collect incomplete reporting for birth defects, and prevalence estimates will remain inaccurate. This will impede the Department's ability to detect and quantify environmental exposures that negatively impact the health of embryos and fetuses in New York State.

Concerning FAS, in particular, failure to change the reporting requirement will hamper prevention efforts and may cost New York more in the long-term. One study placed the nationwide annual cost of treating birth defects associated with FAS at $1.6 billion. Another study used a societal perspective and generated nationwide cost estimates of $9.69 billion. These costs included estimates of the value of productivity lost as a result of cognitive disabilities, as well as the cost of treatment and residential care. In addition to improving outcomes for affected children, early diagnosis and appropriate interventions are likely to generate significant costs savings over time.

Federal Standards:

There are no federal mandates for state-level reporting of birth defects. However, several of the 36 state birth defect surveillance programs require reporting of these birth defects past the age of 2 years, including Hawaii, Texas, Washington State and Colorado. At least eleven states receive reports of birth defects that occur during pregnancy.

Compliance Schedule:

Regulations will take effect immediately upon filing. The Department will continue its efforts to make reporting easier and more efficient, while simultaneously conducting outreach to understand and address any concerns that may arise.

Regulatory Flexibility Analysis

Effect of Rule:

This amended rule will have limited impact on small businesses providing health care because many of these businesses are affiliated with a general hospital. These small businesses include community-based healthcare providers (pediatricians, family practitioners and maternal-fetal medicine specialists) and some laboratories with small offices.

The amended rule will have a small impact on those healthcare facilities that are owned by local governments and that also diagnose congenital anomalies and genetic diseases. These healthcare facilities will be required to make additional reports to the CMR based on the updated list of reportable congenital anomalies and genetic diseases. Although the Department does not maintain a listing of local government-owned facilities that would be required to report, the Greater NY Hospital Association estimated that the number is relatively few. Further, the Department reasonably expects the burden on such facilities to be small—only 3-5 minutes per additional case. The number of cases will vary depending on the size of the facility, but the Department estimates that such facilities will report an average of 5-6 newly reportable cases per year, per facility.

Compliance Requirements:

Because healthcare providers and facilities are transitioning to electronic record-keeping systems, reporting and record keeping are expected to be simple and require very little time. The Department publishes a CMR guide to assist hospitals with reporting. A guide will also be developed for other healthcare providers as well as clinical laboratories.

Professional Services:

No additional professional services are required under the amended rule.

Compliance Costs:

Staff working in small community-based healthcare providers and small clinical laboratories will need to learn how to report with the updated CMR requirements.

Economic and Technological Feasibility:

The amended rule is economically and technologically feasible because local governments and small businesses that are affected will continue submitting reports using their free access to the Department's electronic reporting system.

Minimizing Adverse Impact:

By offering free access to the electronic reporting system, the Department has minimized the costs and impact on local governments and small businesses operating in New York State.

Small Business and Local Government Participation:

The Department has reached out to the healthcare community to gather feedback on the proposed amended rule. Those contacted include: NYS American Academy of Pediatrics, NYS Academy of Family Physicians, Nurse Practitioner Association of NYS, NYS Nurses Association, NYS Society of Physician Assistants, NY Health Information Management Association, Greater NY Hospital Association, Healthcare Association of NYS, NYS March of Dimes, NYS Clinical Geneticists, Genetic Counsel-

ors, Neurologists, Neuromuscular Specialists, and Pediatric Cardiologists. Additionally, the Department contacted other NYS agencies and programs which provide services to children affected by these birth defects, specifically fetal alcohol syndrome.

The Department received comments from two organizations that represent health care providers. The President of the New York State Society of Physician Assistants stated, "After soliciting input from our leadership, we wholeheartedly support this suggested regulatory change." No concern was expressed about costs. Greater New York Hospital Association (GNYHA), representing nearly 150 voluntary, not-for-profit, and public hospitals expressed concern that "raising the maximum reporting age to 10 … could potentially create an administrative burden for health care providers … already contending with a wide range of such requirements." GNYHA strongly recommended that the DOH work closely with providers to develop and implement a reporting system that places the least possible amount of administrative burden on those impacted by this potential regulatory change.

The Department also received positive support for these regulatory changes from non-profit organizations and other State agencies, including the NYS Council on Children and Families, the NYS Office of Alcoholism and Substance Abuse Services, the NY State Education Department's Office of Special Education, and the Long Island Council on Alcoholism and Drug Dependence. These organizations view the proposed regulatory change as positive steps for meeting the needs of children and families affected by these devastating birth defects.

The Department asked several maternal-fetal medicine practices for input concerning the proposed changes and received replies from three practices (Hudson Valley Perinatal Consulting, Harrison, NY; University GYN/OB, Inc, at Women and Children's Hospital of Buffalo, Buffalo, NY; and Fetal Testing Unit of Mercy Hospital Buffalo South, Buffalo, NY). As for access to the Department's web based reporting system, one had access, one did not, and the third was uncertain. All three expressed concerns about time required to report and assurances of patient confidentiality.

Public Health Law § 206(1)(j) ensures that diagnoses reported to the Congenital Malformations Registry shall be kept confidential and shall be used solely for the purposes of the Department's scientific research. The statute further provides that such records are not admissible as evidence in a court of law. Regarding time to report, we expect that some of these practices may not actually have to report separately but that their associated institution or hospital will be able to assume that responsibility, thus reducing the anticipated burden.

The Department is committed to minimizing the administrative burden of these new reporting requirements. By using the CHI^2 system as a reporting tool, the administrative burden will not be significant.

The Department will continue to communicate with stakeholders throughout the regulatory process. Prior to adoption of the rule, all amendments will appear in the New York State Register for public comment.

Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

This regulation would apply statewide and affect the 44 counties that are considered rural.

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

This change involves a small increase in reporting using a system already being utilized by healthcare professionals to submit other reports. No additional requirement for professional services is required under the amended regulation.

Costs:

There is minimal cost to report. The costs are associated with staff time to report additional cases electronically. The number of additional cases to be reported is expected to be small relative to the number of cases already reported.

Minimizing Adverse Impact:

Any adverse impact will be minimized by using the Department's preexisting Health Commerce System for electronic reporting. The impact will be further reduced when the Department implements the CHI^2 reporting system.

Rural Area Participation:

Regulated parties in rural areas have been contacted through the Department's reaching out to statewide associations of healthcare professionals, such as the NYS American Academy of Pediatrics, NYS Academy of Family Physicians, Nurse Practitioner Association of NYS, NYS Nurses Association, NYS Society of Physician Assistants, NY Health Information Management Association, Healthcare Association of NYS, NYS March of Dimes, and NYS Clinical Geneticists.

Job Impact Statement

Nature of Impact:

There will be minimal impact, because health care facilities are currently required to report other conditions to the Department of Health. The Department does not expect there to be a positive or negative impact on jobs or employment opportunities.

Categories and Numbers Affected:

The Department anticipates no negative impact on jobs or employment opportunities as a result of the amended rule.

Regions of Adverse Impact:

The Department anticipates no negative impact on jobs or employment opportunities in any particular region of the state.

Minimizing Adverse Impact:

Not applicable.

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Immediate Needs for Personal Care Services

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

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

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

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

Subject: Immediate Needs for Personal Care Services.

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

Text of revised rule: Pursuant to the authority vested in the Commissioner of Health by Social Services Law Sections 363-a(2) and 365-a(2)(e) and Public Health Law Section 201(1)(v), a new subdivision (f) is added to Section 360-3.7, subparagraph (b)(5)(iv) of Section 505.14 is repealed, and a new subparagraph (b)(5)(iv) of Section 505.14 is added to Title 18 (Social Services) of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), to read as follows, effective upon publication of a Notice of Adoption in the State Register:

Subdivision (f) is added to Section 360-3.7 to read as follows:

(f) Presumptive eligibility for immediate temporary personal care services. An individual applying for Medical Assistance ("Medicaid") will be presumed eligible for immediate temporary personal care services as provided in this subdivision.

(1) For purposes of this subdivision, "immediate temporary personal care services" means the number of hours of personal care services that the Medicaid applicant's physician has recommended in the physician's order required by subparagraph (2)(ii) of this subdivision.

(2) A Medicaid applicant who seeks immediate temporary personal care services must submit the following to the social services district:

(i) A Medicaid application and the DOH-4495A ("Access NY Supplement A") or any successor to such supplement; and

(ii) A physician's order for personal care services that:

(a) meets the requirements of subparagraph (b)(3)(i) of Section 505.14 of this Title, except that the physician's order must recommend the number of hours of personal care services to be authorized as immediate temporary personal care services;

(b) documents whether the Medicaid applicant needs assistance in the home with toileting, transferring from bed to chair or wheelchair, turning or positioning in bed, walking, or feeding; and

(c) documents whether the Medicaid applicant has a stable medical condition, as defined in subdivision (a) of Section 505.14 of this Title, and can be cared for safely at home.

(3) A Medicaid applicant is presumptively eligible for immediate temporary personal care services when:

(i) The social services district determines, based only on the Medicaid application and the DOH-4495A ("Access NY Supplement A"), that the Medicaid applicant appears to be financially and otherwise eligible for Medicaid;

(ii) The social services district determines that the physician's order documents that the Medicaid applicant needs assistance in the home with toileting, transferring from bed to chair or wheelchair, turning or positioning in bed, walking, or feeding and that the Medicaid applicant has a stable medical condition and can be cared for safely at home;

(iii) The physician's order recommends the number of hours of personal care services to be authorized as immediate temporary personal care services; and

(iv) The Medicaid applicant is in receipt of Protective Services for Adults ("PSA") or has been referred to PSA and the social services district's PSA staff have determined that a PSA investigation and assessment are necessary.

(4) As expeditiously as possible, but no later than five business days after receipt of the Medicaid application, the DOH-4495A ("Access NY Supplement A"), and the physician's order, the social services district must determine whether the Medicaid applicant is presumptively eligible for immediate temporary personal care services and notify the Medicaid applicant of the district's determination.

(5) The social services district must arrange for the provision of immediate temporary personal care services as expeditiously as possible to those Medicaid applicants who the district has determined to be presumptively eligible for such services.

(6) A Medicaid applicant who the social services district has determined to be presumptively eligible for immediate temporary personal care services is eligible to receive such services only for the duration of the Medicaid applicant's presumptive eligibility period.

(i) A Medicaid applicant's presumptive eligibility period begins when the social services district determines that the Medicaid applicant is presumptively eligible for immediate temporary personal care services and notifies the applicant of that determination.

(ii) A Medicaid applicant's presumptive eligibility period ends:

(a) With respect to a presumptively eligible Medicaid applicant who the social services district subsequently determines to be financially or otherwise ineligible for Medicaid, when the social services district notifies the applicant of that determination; or

(b) With respect to a presumptively eligible Medicaid applicant who the social services district subsequently determines to be financially and otherwise eligible for Medicaid, when the social services district determines, pursuant to the personal care services assessment process required by paragraph (b)(2) of Section 505.14 of this Title, whether the individual is eligible for personal care services and, if so, the level and amount of personal care services to be authorized and notifies the individual of that determination. For purposes of the personal care services assessment determination, the social services district may use the physician's order required by subparagraph (2)(ii) of this subdivision, but shall disregard the number of hours of personal care services that the physician recommended.

(7) (i) A Medicaid applicant who is determined to be presumptively eligible for immediate temporary personal care service and who is subsequently determined to be financially or otherwise ineligible for Medicaid may request a fair hearing to appeal the social services district's determination of Medicaid ineligibility; however, the individual's presumptive eligibility period is not extended by the fair hearing request and the individual is not entitled, after the end of the individual's presumptive eligibility period, to aid-continuing of immediate temporary personal care services.

(ii) A Medicaid applicant who is determined to be presumptively eligible for immediate temporary personal care services and who is subsequently determined to be financially and otherwise eligible for Medicaid and for whom the district has performed a personal care services assessment pursuant to paragraph (b)(2) of Section 505.14 of this Title, may request a fair hearing to appeal the social services district's determination whether the individual is eligible for personal care services and, if so, the level and amount of services to be authorized; however, the individual's presumptive eligibility period is not extended by the fair hearing request and the individual is not entitled, after the end of the individual's presumptive eligibility period, to aid-continuing of immediate temporary personal care services.

(8) If a Medicaid applicant is determined to be presumptively eligible for immediate temporary personal care services and is subsequently determined to be financially or otherwise ineligible for Medicaid, any sums expended for such services during the Medicaid applicant's presumptive eligibility period may be recovered from the individual. Any sums expended for such services that are unable to be recovered from the individual are a charge upon the social services district for which State reimbursement is not available.

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

(iv) A Medicaid recipient will be presumed eligible for immediate temporary personal care services as provided in this subparagraph.

(a) For purposes of this subparagraph, "immediate temporary personal care services" means the number of hours of personal care services that the recipient's physician has recommended in the physician's order required by clause (b) of this subparagraph.

(b) A Medicaid recipient who seeks immediate temporary personal care services must submit to the social services district a physician's order for personal care services that:

(1) meets the requirements of subparagraph (b)(3)(i) of this Section except that the physician's order must recommend the number of hours of personal care services to be authorized as immediate temporary personal care services;

(2) documents whether the recipient needs assistance in the home with toileting, transferring from bed to chair or wheelchair, turning or positioning in bed, walking, or feeding; and

(3) documents whether the recipient has a stable medical condition and can be cared for safely at home.

(c) A Medicaid recipient is presumptively eligible for immediate temporary personal care services when:

(1) The social services district determines that the physician's order documents that the recipient needs assistance in the home with toileting, transferring from bed to chair or wheelchair, turning or positioning in bed, walking, or feeding, and that the recipient has a stable medical condition and can be cared for safely at home;

(2) The physician's order recommends the number of hours of personal care services to be authorized as immediate temporary personal care services; and

(3) The recipient is in receipt of Protective Services for Adults ("PSA") or has been referred to PSA and the social services district's PSA staff have determined that a PSA investigation and assessment are necessary.

(d) As expeditiously as possible, but no later than three business days after receipt of the physician's order referenced in clause (b) of this subparagraph, the social services district must determine whether the Medicaid recipient is presumptively eligible for immediate temporary personal care services and notify the recipient of the district's determination.

(e) The social services district must arrange for the provision of immediate temporary personal care services as expeditiously as possible to those Medicaid recipients who the district has determined to be presumptively eligible for such services.

(f) As expeditiously as possible, but generally no later than thirty days after determining that a Medicaid recipient is presumptively eligible for immediate temporary personal care services, the social services district must determine, pursuant to the personal care services assessment process required by paragraph (2) of this subdivision, whether the presumptively eligible recipient is eligible for personal care services and, if so, the level and amount of services to be authorized, and notify the recipient of that determination. For purposes of the personal care services assessment determination, the district may use the physician's order required by clause (b) of this subparagraph but shall disregard the number of hours of personal care services that the physician recommended.

(g) A Medicaid recipient who the social services district has determined to be presumptively eligible for immediate temporary personal care services is eligible to receive such services only for the duration of the recipient's presumptive eligibility period.

(1) A Medicaid recipient's presumptive eligibility period begins when the social services district determines that the recipient is presumptively eligible for immediate temporary personal care services and notifies the recipient of that determination.

(2) A Medicaid recipient's presumptive eligibility period ends when the social services district determines, pursuant to the personal care services assessment process required by paragraph (2) of this subdivision, whether the recipient is eligible for personal care services and, if so, the level and amount of personal care services to be authorized, and notifies the recipient of that determination.

(h) A Medicaid recipient who the social services district has determined to be presumptively eligible for immediate temporary personal care services may request a fair hearing to appeal the social services district's determination whether the recipient is eligible for personal care services and, if so, the level and amount of services to be authorized; however, the recipient's presumptive eligibility period is not extended by the fair hearing request, and the recipient is not entitled, after the end of the recipient's presumptive eligibility period, to aid-continuing of immediate temporary personal care services.

Revised rule compared with proposed rule: Substantial revisions were made in sections 360-3.7(f) and 505.14(b)(5)iv.

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

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

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

Revised Regulatory Impact Statement

Statutory Authority:

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

Legislative Objectives:

In 1940, the Legislature adopted SSL § 133, which provided for

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

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

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

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

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

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

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

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

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

The Office of the New York State Attorney General has appealed Justice Madden's March 2014 Order, but that appeal does not stay her July 2010 Order. It is anticipated that oral argument will occur in March 2015.

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

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

Needs and Benefits:

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

The proposed regulations would:

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

Costs:

Costs to State Government:

The proposed regulations do not impose costs on State government.

Costs to Local Government:

Justice Madden's March 2014 Order imposes costs upon social services districts. The proposed regulations are consistent with that Order. The Department estimates that the annual costs to districts could be nearly $9 million and possibly as much as $18 million.

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

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

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

The revisions to the proposed regulations necessitate a revised fiscal estimate. The Department now estimates that the potential annual costs to social services districts could be nearly $9 million and possibly as much as $18 million.

This fiscal estimate assumes that "immediate temporary personal care services" in the form of continuous personal care services ("split-shift" services) would be authorized for 45 days for 456 presumptively eligible individuals subsequently determined to be ineligible for Medicaid.

Based on 2013 data available to the Department, approximately 30,000 individuals were receiving fee-for-service personal care services in 2013 and that, of this total, approximately 11.7 percent (or 3,510 individuals), first applied for personal care services in 2013. Data for 2013 also indicate that, on a Statewide basis, approximately 231,827 Medicaid applications for Case Type 20 Medicaid were denied. This denial rate represents approximately 26 percent of the total Medicaid applications filed in 2013 for Case Type 20 coverage. Were one to assume that each of the approximately 3,510 individuals who seeks personal care services is also an applicant for Medicaid itself, this would mean that approximately 913 individuals (or 26% of 3,510 Medicaid applicants) would subsequently be determined to be ineligible for Medicaid.

Of these 913 Medicaid ineligible individuals, it is uncertain how many would be eligible for Protective Services for Adults ("PSA") or how many would be referred to PSA and determined to need a PSA investigation and assessment. For purposes of this fiscal analysis, however, the assumption is that approximately 50 percent of these 913 Medicaid ineligible individuals, or 456 individuals, would be PSA eligible or be referred for a PSA investigation and assessment. This assumption is based on data from the New York State Office of Children and Family Services indicating that, for December 2014, approximately 50 percent of the approximately 7,651 active PSA cases in New York City, or 3,840 PSA cases, were Medicaid eligible. This presumes that the remaining 50 percent of PSA cases would be ineligible for Medicaid.

The fiscal estimate further assumes that each of these 456 individuals would be presumptively eligible for "immediate temporary personal care

services" at the continuous personal care services level (i.e. "split-shift" services). This fiscal estimate also assumes that each of these 456 individuals would receive "split-shift" services for approximately 45 days until they are determined ineligible for Medicaid. Under Department regulation 18 NYCRR § 360-2.4, social services districts must generally determine Medicaid eligibility within 45 days, with certain exceptions. If the applicant's Medicaid eligibility depends on disability status, the social services district is permitted as many as 90 days to determine Medicaid eligibility.

Continuous personal care services costs approximately $18 per hour, or $432 per day. The cost of continuous personal care services provided to 456 individuals for 45 days is nearly $9 million. ($432 x 45 days x 456 individuals). To the extent that social services districts are permitted 90 days to determine Medicaid eligibility based on disability, district costs could be nearly $18 million.

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

Costs to the Department of Health:

There will be no additional costs to the Department.

Local Government Mandates:

Consistent with Justice Madden's July 2010 and March 2014 Orders, the proposed regulations would impose new mandates on social services districts. The proposed regulations would require districts to determine whether immediate temporary personal care services should be authorized for Medicaid applicants. Moreover, the proposed regulations would also require that districts bear the cost of services provided to presumptively eligible individuals who are subsequently determined ineligible for Medicaid.

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

Paperwork:

The proposed regulations require districts to notify Medicaid applicants whether they have been determined to be presumptively eligible for immediate temporary personal care services.

Duplication:

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

Alternatives:

There are no alternatives to the proposed regulations. Justice Madden's July 2010 Order directed the Department to adopt regulations. The Department does not have a stay of that order.

Federal Standards:

The proposed regulations do not exceed any minimum federal standards.

Compliance Schedule:

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

Revised Regulatory Flexibility Analysis

Effect of Rule:

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

Compliance Requirements:

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

The proposed regulations would add new 18 NYCRR § 360-3.7(f), entitled "[p]resumptive eligibility for immediate temporary personal care services."

For purposes of this new subdivision, "immediate temporary personal care services" means the number of hours of services that the Medicaid applicant's physician has recommended in the physician's order.

Medicaid applicants would be presumptively eligible for immediate temporary personal care services when:

- The social services district determines, based only on the Medicaid application and the DOH-4495A ("Access NY Supplement A"), that the applicant appears to be financially and otherwise eligible for Medicaid;
- The applicant has provided a physician's order that meets the requirements of 18 NYCRR § 505.14(b)(3)(i), except that the order must recommend the number of hours of immediate temporary personal care services to be authorized, and that also documents that the applicant needs assistance with toileting, transferring, turning or positioning, walking, or feeding, has a stable medical condition, and can be cared for safely at home; and
- The applicant is in receipt of Protective Services for Adults ("PSA") or has been referred to PSA and the district's PSA staff have determined that a PSA investigation and assessment are necessary.

As expeditiously as possible, but no later than five business days after receipt of the Medicaid application, the DOH-4495A, and the physician's order, social services districts would be required to determine whether the Medicaid applicant is presumptively eligible for immediate temporary personal care services and notify the individual of the district's determination.

Social services districts would be required to arrange for the provision, as expeditiously as possible, of immediate temporary personal care services to presumptively eligible Medicaid applicants.

The proposed regulations would also amend the Department's personal care services regulations to provide for presumptive eligibility for immediate temporary personal care services for Medicaid recipients. The proposed regulations would repeal 18 NYCRR § 505.14(b)(5)(iv) and add a new Section 505.14(b)(5)(iv) that generally mirrors the presumptive eligibility process for Medicaid applicants who seek "immediate temporary personal care services."

Professional Services:

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

Compliance Costs:

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

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

The Department estimates that the potential annual costs to social services districts could be nearly $9 million and possibly as much as $18 million.

The estimated cost of $9 million assumes that "immediate temporary personal care services" in the form of continuous personal care services ("split-shift" services) would be authorized for up to 45 days for 456 presumptively eligible individuals who districts determine, on the 45th day after Medicaid application, are financially or otherwise ineligible for Medicaid. The estimated costs of up to $18 million assume that these services are authorized for up to 90 days for 456 presumptively eligible individuals who districts determine, after completion of a disability determination, to be financially or otherwise ineligible for Medicaid.

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

Economic and Technological Feasibility:

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

There are no technological requirements associated with the proposed regulations.

Minimizing Adverse Impact:

The proposed regulations were designed to minimize adverse effects on social services districts. As revised, the proposed regulations ease the burden on social services districts when determining whether Medicaid applicants are presumptively eligible for immediate temporary personal care services. Social services districts would authorize, for the duration of the Medicaid applicant's presumptive eligibility period, the personal care services ordered by the applicant's physician provided that the physician's order documents that the Medicaid applicant has a stable medical condition and can be cared for safely at home.

Small Business and Local Government Participation:

The Department shared the revised proposed regulations with social services district representatives who represent districts' interests through their positions with the New York Public Welfare Association and similar associations.

Revised Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

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

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

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

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

Albany	Erie	Oneida
Broome	Monroe	Onondaga
Dutchess	Niagara	Orange

Reporting, Recordkeeping and Other Compliance Requirements and Professional Services:

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

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

Rural, as well as urban, social services districts would be required to determine whether, based only on the Medicaid application and the DOH-4495A ("Supplement A"), Medicaid applicants appear to be financially and otherwise eligible for Medicaid. As expeditiously as possible, but no later than five business days after receipt of the Medicaid application, Supplement A and the physician's order, social services districts would be required to determine whether the Medicaid applicant is presumptively eligible for immediate temporary personal care services and notify the individual of the district's determination.

Social services districts would be required to arrange for the provision, as expeditiously as possible, of immediate temporary personal care services to presumptively eligible Medicaid applicants.

The proposed regulations would also amend the Department's personal care services regulations to provide for presumptive eligibility for immediate temporary personal care services. The proposed regulations would repeal 18 NYCRR § 505.14(b)(5)(iv) and add a new Section 505.14(b)(5)(iv) that generally mirrors the presumptively eligible process for Medicaid applicants who seem immediate temporary personal care services.

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

Costs:

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

The proposed regulations could impose annual compliance costs upon rural as well as urban social services districts. The Department estimates that the potential annual costs to social services districts could be nearly $9 million and possibly as much as $18 million.

Minimizing Adverse Impact:

The proposed regulations were designed to minimize any adverse economic effects on rural as well as urban social services districts. They provide that Medicaid applicants who seek "immediate temporary personal care services" must appear, based only on the Medicaid application and Supplement A, to be financially and otherwise eligible for Medicaid. In addition, the social services district would not be required to perform a comprehensive and expedited personal care services assessment to determine whether the applicant is presumptively eligible for immediate temporary personal care services. For the duration of the applicant's presumptive eligibility period, the district would authorize the number of hours recommended by the applicant's physician in the physician's order.

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

Rural Area Participation:

The Department shared the revised proposed regulations with social services district representatives who represent districts' interests through their positions with the New York Public Welfare Association and similar associations.

Revised Job Impact Statement

Changes made to the last published rule do not necessitate revision to the previously published JIS.

Assessment of Public Comment

The Department received a substantial number of detailed and significant public comments. The commentators included the following county social services districts: Albany, Chautauqua, Chemung, Erie, Greene, Lewis, Madison, Monroe, Nassau, Onondaga, Ontario, Orange, Rockland, St. Lawrence, Steuben and Westchester. The New York City Human Resources Administration also commented. Two associations that advocate on behalf of social services districts and counties commented: the New York Public Welfare Association and the New York State Association of Counties. Several organizations that advocate on behalf of Medicaid applicants and recipients commented. These entities were The Legal Aid Society, the New York Legal Assistance Group, the Empire Justice Center, the Coalition to Protect the Rights of New York's Dually Eligible and the Consumer Directed Personal Assistance Association of New York State. Aytan Bellin, Esq., also commented.

1. Comment: Nearly all commentators expressed a common global concern that the proposed regulations did not reflect the dramatic structural changes to the Medicaid program that the State has gradually implemented and which have occurred since the Court issued its 2010 Order. Some of these change were driven by the State's recent implementation of the Patient Protection and Affordable Care Act, under which the State, and not social services districts, determines the Medicaid eligibility of many, but not all, Medicaid applicants. Other changes were the result of Governor Cuomo's Medicaid Redesign Team ("MRT") initiatives. One such MRT initiative is gradually transferring from social services districts to private managed care entities the responsibility for authorizing personal care services for most, but not all, Medicaid recipients. Another MRT initiative is gradually transferring to the State the responsibility for administering the Medicaid program itself, which has long been a locally-administered and State-supervised program.

Response: The Department agrees with the commentators' observation that the "environment has changed" since the Court's 2010 Order was issued. Nonetheless, social services districts currently remain responsible for determining the Medicaid eligibility of many Medicaid applicants. The proposed regulations must thus set forth the process by which individuals who file Medicaid applications with social services districts may obtain immediate temporary personal care services. This is necessary to comply with the Court's 2010 Order.

2. Comment: The New York Legal Assistance Group ("NYLAG") advocated an alternative model for authorizing and delivering immediate temporary personal care services, and other advocacy groups endorsed this comment. Given that the personal care services authorization process has, for the most part, shifted from social services districts to managed long term care plans and managed care organizations, NYLAG proposed that, instead of "recreating the old assessment and delivery system solely for temporary personal care services. . . . . that the system developed for managed long term care assessment and delivery be used." This model would employ the Conflict-Free Evaluation and Enrollment Center ("CFEEC") that the Department implemented October 1, 2014, on a phased-in basis at the direction of the federal Centers for Medicare & Medicaid Services. The commentators suggested that, in New York City and other counties in which the CFEEC presently operates, the filing of a Medicaid application and a request for immediate temporary personal care services would trigger a referral by the social services district to the CFEEC, which would determine whether the applicant was eligible for personal care services and, if so, the CFEEC's nurse assessor would authorize a plan of care. In counties in which the CFEEC does not yet operate, but whose dually-eligible Medicaid recipients are subject to mandatory enrollment in a managed long term care ("MLTC") plan, the commentators suggested that a new presumptive eligibility code should be created that would allow MLTC plans to enroll Medicaid applicants before the social services district has determined their Medicaid eligibility and to immediately assess their need for personal care services. The commentator also suggested that, only in districts in which MLTC was not yet mandatory for dual-eligible recipients, or at the option of social services districts even in mandatory counties, the district would determine both Medicaid and home care eligibility and authorize immediate temporary personal care services.

Response: The commentator's suggestions are innovative and reflect considerable thought regarding this issue. The suggestions are nonetheless beyond the scope of the proposed regulations and beyond the Department's present ability to implement. The CFEEC is unable to conduct assessments for personal care services that result in the development of plans of care. It currently only evaluates whether an individual meets the threshold standard for enrollment in a MLTC plan; that is, whether the individual needs community-based long term care services for 120 days or more. Nor may MLTC plans currently enroll individuals who have not yet been determined eligible for Medicaid.

3. Comment: Several commentators noted that the proposed regulations must address individuals who apply for Medicaid to the NY State of Health, which is the State's health insurance marketplace, rather than to social services districts.

Response: The NY State of Health is unable to render presumptive eligibility determinations for Medicaid applicants seeking immediate temporary personal care services. Social services districts will render these presumptive eligibility determinations for all Medicaid applicants seeking this new service, and will employ the appropriate budgeting methodology, whether Modified Adjusted Gross Income (MAGI) or non-MAGI. No change to the proposed regulations is needed.

4. Comment: The Greene County Department of Social Services commented that it is a mandatory MLTC county, and its "front door is closed" to personal care services. It stated that "all referrals" for personal care services "go to Maximus" and asked whether the proposed regulations "were an exception to this policy."

Response: Yes. The proposed regulations create an exception to the overall trend since the Court issued its Order in 2010. Since that time, with limited exceptions for those who are exempt or excluded from enrollment, managed care organizations and MLTC plans have generally been responsible for authorizing personal care services for most Medicaid recipients with a need for such services. This process applies only to Medicaid recipients, however; that is, persons who have already been found eligible for Medicaid. The Court's 2010 Order requires that the Department develop and implement a process by which Medicaid applicants with an immediate need for personal care services may request and obtain such services. Managed care entities cannot address this need for Medicaid applicants. Social services districts remain responsible for determining Medicaid eligibility for most Medicaid applicants. Consequently, it is they who must be responsible for determining whether Medicaid applicants are also presumptively eligible for immediate temporary personal care services. This is necessary to comply with the Court's 2010 Order.

5. Comment: The Department received voluminous comments pertaining to the proposed provisions governing whether a Medicaid applicant is "presumptively eligible for immediate temporary personal care services." Many of these comments addressed the provision that the applicant must "reasonably appear," based on preliminary information, to be financially and otherwise eligible for Medicaid. The New York City Human Resources Administration, for example, commented that, in order for a local district "to even remotely assess" that an applicant "reasonably appears" to be eligible, it would "need a complete Medicaid application and Supplement A that identifies the person's assets and resources." The New York Legal Assistance Group, joined by other advocacy groups, urged that applicants "should be allowed to attest to their resources upon application for Medicaid."

Response: The Department has revised the proposed regulations in response to the comments. As revised, the proposed regulations provide that Medicaid applicants seeking presumptive eligibility for immediate temporary personal care services must submit a Medicaid application and the DOH-4495A (Access NY Supplement A) or any successor to such supplement. By signing these documents, the Medicaid applicant is certifying that the information contained in the documents is correct. When determining whether Medicaid applicants are presumptively eligible for immediate temporary personal care services, social services districts will be expected to use only the information set forth in the Medicaid application and Supplement A, as certified by the applicant, and prepare a budget accordingly. A final eligibility determination would require documentation.

6. Comment: Several commentators asked whether the proposed regulations would enable Medicaid applicants having income or resources in excess of eligibility levels (i.e. spenddown individuals) to be determined to be presumptively eligible for immediate temporary personal care services.

Response: Medicaid applicants who have excess income or resources are not excluded from presumptive eligibility for immediate temporary personal care services; however, no payment should be made for immediate temporary personal care services until these individuals incur bills sufficient to meet their spenddown amount. This is consistent with current requirements applicable to spenddown cases. No change in the proposed regulations is necessary to address this comment.

7. Comment: Many comments were received regarding the provisions of the proposed regulations governing the personal care services assessment and authorization process. In particular, the proposal that social services districts complete the assessment process and authorize services within five business days after receipt of the Medicaid application and the physician's order generated considerable comment. Districts commented that five business days were "an implausible timeline" for eligibility determinations, that being required to complete a social and nursing assessment and ensure that services are in place within five days would be a "particular challenge," and that it is becoming "more difficult to find a licensed home care services agency willing and/or able to begin services within a five day time frame."

Response: The Department has revised the proposed regulations in response to the comments. The revised proposed regulations delete the previous requirement that social services districts, within five business days of receipt of the Medicaid application and physician's order, conduct a complete personal care services assessment pursuant to 18 NYCRR § 505.14, determine whether the applicant is presumptively eligible, notify the applicant of the presumptive eligibility determination, and arrange for the provision of immediate temporary personal care services for those individuals who are determined to be presumptively eligible. Under the revised proposed regulations, social services districts would not be required to conduct an expedited personal care services assessment within five business days. Rather, for those Medicaid applicants whom the social services district determines to be presumptively eligible, the district would authorize, for the duration of the individual's presumptive eligibility period, the number of hours of personal care services that the individual's physician had recommended.

8. Comment: Several commentators remarked upon the role of the Protective Services for Adults ("PSA") program in relation to the proposed regulations. The New York City Human Resources Administration commented that the PSA program in NYC "utilizes the CASA/MLTC/MC program/plans to obtain long term care services for their clients" and by their inclusion in the PSA program, "these individuals are considered particularly vulnerable."

Response: The Department has revised the proposed regulations in response to the comments. As HRA recognized, individuals who receive Protective Services for Adults are considered to be particularly vulnerable. Whether due to physical or mental impairments, they are unable to meet their essential need for life's necessities, such as medical care, need protection from actual or threatened harm, and have no one available who is willing and able to assist them responsibly. Further, the Department's

personal care services regulations have long provided for close collaboration between staff responsible for PSA and staff responsible for personal care services to assure that personal care services may be provided as part of a PSA plan. Accordingly, the revised proposed regulations provide that presumptive eligibility for immediate temporary personal care services is to address the immediate needs for personal care services for those individuals who are in receipt of PSA or have been referred to PSA and for whom the district has determined that a PSA investigation and assessment are needed.

9. Comment: Social services districts objected to that provision of the proposed regulations that would hold social services districts fiscally responsible for the cost of immediate temporary personal care services that are authorized for Medicaid applicants who, although found presumptively eligible for immediate temporary personal care services, are subsequently determined to be ineligible for Medicaid.

Response: The Medicaid program lacks the authority to pay for immediate temporary personal care services provided to Medicaid applicants who are determined to be ineligible for Medicaid. No revisions have been made to the proposed regulations to address this comment.

Department of Motor Vehicles

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Electronic Insurance Identification Cards

I.D. No. MTV-08-15-00004-P

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

Proposed Action: Amendment of sections 32.3, 32.5, 32.10, 32.16 and 32.17 of Title 15 NYCRR.

Statutory authority: Vehicle and Traffic Law, sections 215(a), 311(10) and 312(4)

Subject: Electronic insurance identification cards.

Purpose: Authorize insurance companies to issue electronic insurance identification cards.

Substance of proposed rule (Full text is posted at the following State website:www.dmv.ny.gov): The amendments to Part 32 of the Commissioner's Regulations authorize the issuance of electronic insurance identification cards by insurance companies. The regulation also makes minor technical amendments, such as designating the former State Insurance Department as the New York State Department of Financial Services.

The regulation provides that:

Electronic insurance ID cards may be issued by an insurance company if the insurance company chooses to issue electronic insurance ID cards

Electronic insurance ID cards shall be acceptable as proof of insurance in the same manner as paper insurance ID cards

Electronic proof of insurance must be capable of being displayed on a portable electronic device, as defined in paragraph (a) of subdivision two of section 1225-d of the Vehicle and Traffic Law

Electronic insurance ID cards may not be issued: for temporary ID cards, entities that are self-insured or for fleet transactions, dealers or transporters, as set forth in section 32.13

Electronic insurance ID cards must meet the requirements set forth in Part 32 that are applicable to paper insurance ID cards, except as to those provisions which by their nature can have no application

An insurance company may not issue an electronic insurance ID card instead of a paper insurance ID card without the consent of the person or entity named on such insurance ID card

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

Data, views or arguments may be submitted to: Ida L. Traschen, Department of Motor Vehicles, 6 Empire State Plaza, Rm. 522A, Albany, NY 12228, (518) 474-0871, email: ida.traschen@dmv.ny.gov

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

Regulatory Impact Statement

1. Statutory authority: Vehicle and Traffic Law (VTL) § 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department. VTL § 311(10) authorizes insurance companies to issue insurance identification cards in a form as the Commissioner may prescribe or approve, which states that the company has issued an owner's policy of liability insurance or a financial security bond on the motor vehicle or vehicles designated on the card. VTL § 312(4) authorizes the Commissioner to promulgate reasonable regulations to provide effective administration and enforcement of the provisions of Article 6.

2. Legislative objectives: In order to register a motor vehicle in New York State, the Vehicle and Traffic Law requires the applicant to submit proof of insurance. Currently, the only acceptable proof of insurance is the paper insurance ID card. However, many insurance companies now offer an electronic insurance ID card, available in 30 states. Since the VTL authorizes the Commissioner to prescribe the form of the insurance ID card, the Commissioner has clear authority to permit the issuance of electronic insurance ID cards in this State. The electronic insurance ID cards will be displayed on the registrant's portable electronic device.

This proposal aligns with the legislative objective of requiring motor vehicle registrants to show proof of insurance by expanding the means of displaying such proof, either at a DMV office or to a law enforcement official.

3. Needs and benefits: This proposed regulation would allow insurance companies to issue electronic insurance ID cards. Currently, only paper ID cards are accepted in this State. This rulemaking is consistent with the transition to a paperless world.

Thirty states accept electronic insurance ID cards. The electronic insurance ID cards are displayed on the customer's portable electronic device. In lieu of having to maintain a paper ID card to show to a law enforcement official or a DMV representative, the customer will have such ID card stored on his or her electronic device, a true convenience for many customers. Insurance companies will benefit because it will increase customer satisfaction, reduce the use of paper, and lower costs associated with producing and mailing paper ID cards and replacing destroyed or lost cards.

Finally, this rule makes three technical corrections to Part 32. First, it clarifies that the full DBA of an insured must be displayed on the insurance ID card. Second, in light of statutory amendments, the State Insurance Department is now referred to as the Department of Financial Services. Third, the references to staggered effective and expiration dates for for-hire insurance cards are deleted, because the Department currently now uses staggered dates for several classes of vehicles, which are too numerous and varied to clearly enumerate in a regulation.

4. Costs: (i) Cost to the regulated parties for the implementation of and continuing compliance with the rule: There would be no cost to customers who would display the electronic insurance ID card on his or her electronic device. Since the rule is voluntary, no insurer is required to issue electronic insurance ID cards. DMV canvassed several insurers about potential cost. Only one company offered a cost estimate, which is a one-time cost of $1,200.

(ii) Costs to the agency, the State and local governments for the implementation of, and continued administration of, the rule: The Department of Motor Vehicles is purchasing 100 2D barcode ID scanners which are suited to scanning electronic insurance ID cards. Upon testing some devices containing electronic insurance ID cards, DMV determined that the scanners currently used in most offices would not effectively scan the ID cards. Therefore, DMV is purchasing the 100 scanners at a cost of $27,300, which shall be paid from the Compulsory Insurance Fund, as authorized by section 317 of the Vehicle and Traffic Law. The new scanners will be distributed to county offices that perform DMV services, so that those counties will not have to invest any resources on the scanners.

(iii) The information, including the source of such information and the methodology upon which the cost analysis is based: The Department's Office of Operations and Office of Insurance Services, working with ITS determined that purchase of 100 new scanners is necessary so that all DMV offices can effectively scan the electronic ID cards. This conclusion is based upon testing by DMV and ITS staff of ID cards on electronic devices.

5. Local government mandates: This rule would impose no additional requirements on county offices, which offer DMV services, because they would only have to scan the electronic insurance ID displayed on the device, as they currently do with paper insurance ID cards. DMV is purchasing new scanning devices for the county offices, so that the counties will not incur new expenses.

6. Paperwork: There are no paperwork requirements.

7. Duplication: This proposal does not duplicate, overlap or conflict with any relevant rule or legal requirement of the State and federal governments.

8. Alternatives: The Department canvassed law enforcement officials to assess any concerns they might have about the proposed rule. The Division of State Police had no objection to the regulation. At the NYS As-

sociation of Chiefs of Police meeting in March 2014, a group of police chiefs did voice four concerns about the use of electronic insurance ID cards. First, they believe that viewing the portable electronic device will prolong the roadside stop, as the motorist logs in and downloads the electronic insurance ID card, thereby increasing the danger to the officer who is standing on the highway. Second, the device may be difficult to handle and/or the electronic insurance ID cards may be difficult to read, particularly at night or in inclement weather. Third, the officer who damages a device while viewing the card may face liability issues, including false claims that the device was damaged while in the officer's possession. Finally, a motorist may accuse the officer of viewing private information that is stored on the device.

As the result of these concerns, the Department conducted a nationwide survey, through the auspices of the American Association of Motor Vehicle Administrators (AAMVA), of those states that authorize the use of electronic insurance ID cards. The administrators and law enforcement officials in those states were asked to address the four concerns raised by the police chiefs. The Department received responses from 18 states that accept the use of electronic insurance ID cards. None of the administrators or law enforcement officials shared the concerns expressed by the police chiefs. In some states, the officers are trained to view only the electronic insurance ID card and no other information on the device. In other states, the motorist holds the device while the officer reads the information on the device. Three states have laws shielding the officers from liability if the device is damaged. In light of the comments submitted in response to AAMVA's survey, the Department believes that the police chiefs' concerns are not borne out by the experience in states that currently authorize the use of electronic insurance ID cards.

The Department also canvassed seven insurance companies and one insurance association, PCI Property Casualty Insurers (PCI), for their comments on the proposed regulation. All of the insurers and PCI fully support the regulation. Three changes were made pursuant to their suggestions. First, it is now clear that an insurer may issue an electronic insurance ID card; it is not mandatory. Second, language was added stating that an insurer that chooses to issue an electronic insurance ID card does not have to issue a card that is adaptable for all portable electronic devices. Third, it was clarified that the full DBA name must be displayed on the insurance ID card.

One insurer requested that the Department amend the regulation to allow persons insured through the Assigned Risk Plan to receive electronic insurance ID cards. The regulation as written does not bar persons insured through the Plan from receiving electronic insurance ID cards. The temporary FS-75 card that is issued when the person initially enrolls in the plan cannot be an electronic insurance ID card. However, once the individual is assigned to an insurer through the Plan, the permanent insurance ID card may be electronic.

PCI contacted the Independent Insurance Agents and Brokers Association of NY (IIABNY) to assess any negative impact on insurance agents and brokers. IIABNY indicated that they did not anticipate a major impact on agents and brokers as a result of this regulatory change because the electronic insurance ID card option applies only to permanent ID cards, and most of their agents only deal with the temporary cards.

A no action alternative was not considered, because the Department believes that this rule provides benefits to insurers conducting business in this State and their customers.

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

10. Compliance schedule: The Department anticipates that all affected parties will be able to achieve compliance with the rule upon adoption.

Regulatory Flexibility Analysis

1. Effect of rule: There are an estimated 9,000 insurance agents and brokers in New York State, of which 6,100 are small businesses. The proposed rule would not have an adverse impact on the agents and brokers because they primarily issue temporary insurance cards. This proposed rule excludes the issuance of a temporary electronic insurance ID card.

This proposed rule would not have an adverse effect on the county clerks who perform DMV services. Currently, the county clerks scan paper insurance ID cards to verify the validity of the insurance. The same scanning procedure would be used for electronic insurance ID cards.

2. Compliance requirements: The DMV will notify the county clerks that electronic insurance ID cards may be submitted as proof of insurance. DMV is purchasing new scanning devices for the county offices, so that the counties will not incur new expenses.

Insurance companies may voluntarily issue electronic insurance ID cards to their customers if such cards are in compliance with the provisions of Part 32.

3. Professional services: This regulation would not require local governments or small businesses to obtain professional services.

4. Compliance costs: There would be no compliance costs for local governments. DMV is purchasing new scanning devices for the county offices, so that the counties will not incur new expenses.

Since small businesses are not affected by the rule, there would be no costs.

5. Economic and technological feasibility: The proposed rule imposes no economic burden on local governments because DMV is purchasing new scanning devices for the county offices, so that the counties will not incur new expenses.

6. Minimizing adverse impact: This proposal has no adverse impact on local governments because DMV is purchasing new scanning devices for the county offices, so that the counties will not incur new expenses.

As noted below, the Department consulted with stakeholders in the insurance industry to minimize any adverse impact on such industry.

7. Small business and local government participation: PCI Property Casualty Insurers contacted the Independent Insurance Agents and Brokers Association of NY (IIABNY) to assess any negative impact on insurance agents and brokers. IIABNY indicated that they did not anticipate a major impact on agents and brokers as a result of this regulatory change, because the electronic insurance ID card option applies only to permanent ID cards, and most of their agents only deal with the temporary cards.

Rural Area Flexibility Analysis and Job Impact Statement

A rural area flexibility analysis and a job impact statement are not required for this rulemaking proposal because it will not adversely affect rural areas or jobs.

This proposal authorizes insurance companies to issue electronic insurance ID cards. Due to its narrow focus, this rule will not impose an adverse economic impact or reporting, record keeping, or other compliance requirements on rural or urban areas or on employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Granting in Part Petitions for Rehearing, Reconsideration and/or Clarification of the Commission's 2/25/14 Order

I.D. No. PSC-17-14-00005-A

Filing Date: 2015-02-06

Effective Date: 2015-02-06

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

Action taken: On 2/5/15, the PSC adopted an order addressing the petitions for rehearing, reconsideration and/or clarification of the Commission's February 25, 2014 Order Taking Actions to Improve the Residential and Small Non-Residential Retail Access Markets.

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

Subject: Granting in part petitions for rehearing, reconsideration and/or clarification of the Commission's 2/25/14 Order.

Purpose: To grant in part petitions for rehearing, reconsideration and/or clarification of the Commission's 2/25/14 Order.

Substance of final rule: The Commission, on February 5, 2015, adopted an order granting, in part, and denying, in part, petitions for rehearing, reconsideration and/or clarification of certain portions of the Commission's February 25, 2014 Order Taking Actions to Improve the Residential and Small Non-Residential Retail Access Markets, filed by the Retail Energy Supply Association, the National Energy Marketers Association, Constellation NewEnergy, Inc., and Great Eastern Energy, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-M-0476SA6)

NOTICE OF ADOPTION

Granting in Part Petitions for Rehearing, Reconsideration and/or Clarification of the Commission's 2/25/14 Order

I.D. No. PSC-17-14-00006-A
Filing Date: 2015-02-06
Effective Date: 2015-02-06

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

Action taken: On 2/5/15, the PSC adopted an order addressing the petitions for rehearing, reconsideration and/or clarification of the Commission's February 25, 2014 Order Taking Actions to Improve the Residential and Small Non-Residential Retail Access Markets.

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

Subject: Granting in part petitions for rehearing, reconsideration and/or clarification of the Commission's 2/25/14 Order.

Purpose: To grant in part petitions for rehearing, reconsideration and/or clarification of the Commission's 2/25/14 Order.

Substance of final rule: The Commission, on February 5, 2015, adopted an order granting, in part, and denying, in part, petitions for rehearing, reconsideration and/or clarification of certain portions of the Commission's February 25, 2014 Order Taking Actions to Improve the Residential and Small Non-Residential Retail Access Markets, filed by the Retail Energy Supply Association, and the National Energy Marketers Association, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-M-0476SA5)

NOTICE OF ADOPTION

New York State Reliability Council's Revisions to Its Rules and Measurements

I.D. No. PSC-26-14-00014-A
Filing Date: 2015-02-09
Effective Date: 2015-02-09

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

Action taken: On 2/5/15, the PSC adopted an order approving the modification of rules and measurements by the New York State Reliability Council.

Statutory authority: Public Service Law, sections 4(1), 5(2), 65(1), 66(1), (2), (4) and (5)

Subject: New York State Reliability Council's revisions to its rules and measurements.

Purpose: To adopt revisions to various rules and measurements of the New York State Reliability Council.

Substance of final rule: The Commission, on February 5, 2015, adopted the New York State Reliability Council's modified rules and measurements (Reliability Rules), as contained in Version 33 of its Reliability Rules, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(05-E-1180SA14)

NOTICE OF ADOPTION

To Deny a Petition for Rehearing, but Provide Clarification of the Order in Case 13-W-0295

I.D. No. PSC-32-14-00010-A
Filing Date: 2015-02-10
Effective Date: 2015-02-10

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

Action taken: On 2/5/15, the PSC denied a petition filed by the Municipal Consortium for rehearing, but provided clarification of the Commission's order issued in Case 13-W-0295 on June 26, 2014.

Statutory authority: Public Service Law, sections 4, 22 and 89-c

Subject: To deny a petition for rehearing, but provide clarification of the order in Case 13-W-0295.

Purpose: Denial of a petition for rehearing, but providing clarification of the order in Case 13-W-0295.

Substance of Final Rule: The Commission, on February 5, 2015, denied a petition for rehearing filed by the Municipal Consortium seeking modification or reversal of any aspect of the Commission's June 26, 2014 Order Establishing Rates for United Water New York Inc. To the extent that the petition for rehearing seeks clarification of certain aspects of this order, clarification is provided, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-W-0295SA3)

NOTICE OF ADOPTION

To Approve an Increase in Total Annual Revenues of $87,186 or 15.3%

I.D. No. PSC-35-14-00006-A
Filing Date: 2015-02-05
Effective Date: 2015-02-05

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

Action taken: On 2/5/15, the PSC adopted an order approving a minor rate filing by the Village of Castile, to increase its annual revenues.

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

Subject: To approve an increase in total annual revenues of $87,186 or 15.3%.

Purpose: Approval of the Village of Castile to increase total annual revenues by $87,186 or 15.3%.

Substance of final rule: The Commission, on February 5, 2015, adopted an order approving a minor rate filing by the Village of Castile, authorizing the tariff amendments to become effective with modification, and an increase in the total annual electric revenues by $87,186 or 15.3%, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-E-0358SA1)

NOTICE OF ADOPTION

Approving Con Ed's Report, with Modifications, on Storm Hardening & Resiliency Collaborative, Phase 2

I.D. No. PSC-38-14-00009-A
Filing Date: 2015-02-05
Effective Date: 2015-02-05

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

Action taken: On 2/5/15, the PSC adopted, with modifications, the Amended Storm Hardening and Resiliency Collaborative Phase Two Report filed by Consolidated Edison Company of New York, Inc.

Statutory authority: Public Service Law, sections 4(1), 5(1), 65(1), (14), 66(1), (1-a), (2), (4), (12), 79(1), 80(1), (2), (3), (4) and (10)

Subject: Approving Con Ed's report, with modifications, on Storm Hardening & Resiliency Collaborative, Phase 2.

Purpose: To approve Con Ed's report, with modifications, on Storm Hardening and Resiliency Collaborative, Phase 2.

Substance of final rule: The Commission, on February 5, 2015, adopted, with modifications, the Amended Storm Hardening and Resiliency Collaborative Phase Two Report (Phase Two Report) filed by Consolidated Edison Company of New York, Inc., subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(13-E-0030SA6)

NOTICE OF ADOPTION

Allowing Con Edison's Filing to Make Modifications to General Rule 17.5 to Become Effective

I.D. No. PSC-46-14-00007-A
Filing Date: 2015-02-06
Effective Date: 2015-02-06

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

Action taken: On 2/5/15, the PSC adopted an order allowing Consolidated Edison's revisions to PSC 10—Electricity to modify General Rule 17.5, to become effective.

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

Subject: Allowing Con Edison's filing to make modifications to General Rule 17.5 to become effective.

Purpose: To allow Con Edison's filing to modify General Rule 17.5 to become effective.

Substance of final rule: The Commission, on February 5, 2015, adopted an order allowing Consolidated Edison Company of New York, Inc.'s amendments to PSC 10—Electricity to modify General Rule 17.5, Request for Aggregated Company Records, to become effective, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-E-0481SA1)

NOTICE OF ADOPTION

Allow Con Edison's Filing to Modify General Information Section IV.3(c) to Become Effective

I.D. No. PSC-46-14-00010-A
Filing Date: 2015-02-06
Effective Date: 2015-02-06

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

Action taken: On 2/5/15, the PSC adopted an order allowing Consolidated Edison's revisions to PSC 9—Gas, to modify General Information Section IV.3(c) to become effective.

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

Subject: Allow Con Edison's filing to modify General Information Section IV.3(c) to become effective.

Purpose: To allow Con Edison's filing to modify General Information Section IV.3(c) to become effective.

Substance of final rule: The Commission, on February 5, 2015, adopted an order allowing Consolidated Edison Company of New York, Inc.'s amendments to PSC 9—Gas, to modify General Information Section IV.3(c) – Request for Aggregated Company Records, to become effective, subject to the terms and conditions set forth in this order.

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

Text of rule may be obtained from: Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(14-G-0482SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Approval of a Loan, an Ownership Transfer, and Continuation of Lightened Regulation

I.D. No. PSC-08-15-00008-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 a petition from CCI Roseton LLC seeking approval of a loan secured by its generating facility, review of an ownership transfer, and continuation of lightened regulation.

Statutory authority: Public Service Law, sections 2(12), (13), 5(1)(b), 69 and 70

Subject: Approval of a loan, an ownership transfer, and continuation of lightened regulation.

Purpose: Approval of a loan, an ownership transfer, and continuation of lightened regulation.

Substance of proposed rule: The Public Service Commission is considering a petition filed by CCI Roseton LLC (CCI) on January 22, 2015, requesting that it be authorized to enter into a loan agreement to borrow funds secured by the Roseton Generating Station, a 1,160 MW generation facility located in Newburgh, New York. CCI further seeks review of a transfer of ownership interests in the form of the insertion of an intermediate holding company into its ownership structure. Additionally, CCI seeks continuation of lightened regulation. 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-0041SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Approval of a Surcharge

I.D. No. PSC-08-15-00009-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 whether to approve, modify or reject a petition filed by Emerald Green Lake Louise Marie Water Company, Inc. for approval of a surcharge.

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

Subject: Approval of a surcharge.

Purpose: To allow or disallow Emerald Green Lake Louise Marie Water Company, Inc. for a surcharge.

Substance of proposed rule: The Emerald Green Lake Louise Marie Water Company, Inc. (EGLLWC) is owned by the Emerald Green Property Owners Association (POA). The POA also owns Lake Louise Marie, which is the sole source of supply for the water company. EGLLWC provides water to the residents of the Emerald Green development and to the nearby Lake Louise Marie development.

The POA is currently under order from the Department of Environmental Conservation (DEC) to perform approximately $1.3 million in repairs to the dam on Lake Louise Marie, which are required to ensure the safety of the structure. EGLLWC is requesting Commission authorization to implement a surcharge to collect the cost of the repairs from all customers in both developments.

The Commission is considering whether to approve, modify or reject a petition filed by EGLLWC for approval of the surcharge. The Commission may consider any 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-0037SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Request Pertaining to the Lawfulness of National Grid USA Continuing Its Summary Billing Program

I.D. No. PSC-08-15-00010-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 the request filed by URAC Rate Consultants that National Grid USA cease its allegedly unlawful summary billing program.

Statutory authority: Public Service Law, sections 30-53

Subject: Request pertaining to the lawfulness of National Grid USA continuing its summary billing program.

Purpose: To grant, deny, or modify URAC Rate Consultants' request that National Grid cease its summary billing program.

Substance of proposed rule: The Commission is considering whether to grant or deny a request from URAC Rate Consultants (URAC) that National Grid USA cease its summary billing program. URAC audits customer bills to identify discrepancies, if any, in the terms, conditions or rates related to a customer's service and its bills. URAC believes National Grid USA has violated 16 NYCRR § 13.11 in failing to provide to customers in hard copy bills all of the information required in 16 NYCRR § 13.11. The Commission shall consider all related matters contained in the filing.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: elaine.agresta@dps.ny.gov

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

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

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(15-G-0039SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Implementation of Community Net Metering

I.D. No. PSC-08-15-00011-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 the implementation of community net metering pursuant to a Notice Instituting Proceeding, Soliciting Comments and Providing for Stakeholder Meeting issued February 10, 2015 in Case 15-E-0082 and an attached Straw Proposal.

Statutory authority: Public Service Law, sections 5(1)(b), 64(1), (2), (3), 66(1), (2), (5), (12), 66-j and 66-l

Subject: Implementation of community net metering.

Purpose: To consider implementation of community net metering.

Substance of proposed rule: The Public Service Commission is considering the implementation of community net metering pursuant to a Notice Instituting Proceeding, Soliciting Comments and Providing for Stakeholder Meeting issued February 10, 2015 in Case 15-E-0082, and an attached Straw Proposal setting forth proposed policies, terms and conditions for a community net metering program. The Commission may adopt, reject or modify, in whole or in part, the relief proposed in the Notice 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-0082SP1)

Department of Taxation and Finance

NOTICE OF ADOPTION

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-48-14-00002-A
Filing No. 106
Filing Date: 2015-02-10
Effective Date: 2015-02-10

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

Action taken: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period January 1, 2015 through March 31, 2015.

Text or summary was published in the December 3, 2014 issue of the Register, I.D. No. TAF-48-14-00002-P.

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

Text of rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email: tax.regulations@tax.ny.gov

Assessment of Public Comment

An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Fuel Use Tax on Motor Fuel and Diesel Motor Fuel and the Art. 13-A Carrier Tax Jointly Administered Therewith

I.D. No. TAF-08-15-00012-P

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

Proposed Action: Amendment of section 492.1(b)(1) of Title 20 NYCRR.

Statutory authority: Tax Law, sections 171, subd. First, 301-h(c), 509(7), 523(b) and 528(a)

Subject: Fuel use tax on motor fuel and diesel motor fuel and the art. 13-A carrier tax jointly administered therewith.

Purpose: To set the sales tax component and the composite rate per gallon for the period April 1, 2015 through June 30, 2015.

Text of proposed rule: Section 1. Paragraph (1) of subdivision (b) of section 492.1 of such regulations is amended by adding a new subparagraph (lxxviii) to read as follows:

Motor Fuel			Diesel Motor Fuel		
Sales Tax Component	Composite Rate	Aggregate Rate	Sales Tax Component	Composite Rate	Aggregate Rate
(lxxvii) January-March 2015					
16.0	24.0	41.8	16.0	24.0	40.05
(lxxviii) April-June 2015					
15.0	*24.0*	*40.8*	*16.0*	*24.0*	*40.05*

Text of proposed rule and any required statements and analyses may be obtained from: Kathleen D. O'Connell, Tax Regulations Specialist, Department of Taxation and Finance, Office of Counsel, Building 9, W.A. Harriman Campus, Albany, NY 12227, (518) 530-4153, email:tax.regulations@tax.ny.gov

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

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

Regulatory Impact Statement, 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.