RULE MAKING ACTIVITIES

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

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

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

Office of Alcoholism and Substance Abuse Services

EMERGENCY RULE MAKING

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

I.D. No. ASA-26-15-00009-E
Filing No. 519
Filing Date: 2015-06-12
Effective Date: 2015-06-12

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 9, 2015.

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

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

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

2. Legislative Objectives:

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

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

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

3. Needs and Benefits:

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

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

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

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

4. Costs:

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

5. Paperwork:

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

6. Local Government Mandates:

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

7. Duplications:

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

8. Alternatives:

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

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

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

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

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

3. Professional Services:

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

4. Compliance Costs:

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impact:

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

7. Small Business and Local Government Participation:

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

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

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

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

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

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

The Rule sets forth criteria for incident reporting to the Justice Center, investigations, corrective action and penalties for programs and individuals who are not compliant with these, or other applicable, regulations. The proposed regulation requires criminal history information reviews of any employee, contractor, or volunteer in treatment facilities certified by the Office who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities. OASAS has evaluated this proposal considering its impact on existing jobs or the development of new employment opportunities for New York residents. It is anticipated that the proposed regulation will not have an adverse impact on existing employees in the field of substance use disorder treatment, nor affect any reduction or increase in the number of positions available in the future. OASAS providers are already required to report incidents, but the role of a new oversight agency will help to consolidate and streamline that process.

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

Assessment of Public Comment

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

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

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

I.D. No. ASA-26-15-00006-EP

Filing No. 516

Filing Date: 2015-06-12

Effective Date: 2015-06-12

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

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

Statutory authority: Mental Hygiene Law, sections 19.09(b), 19.20, 19.20-a, 19.40 and 32.02; Executive Law, section 296(15) and (16); Cor-

rections Law, art. 23-A; Civil Service Law, section 50; Protection of People with Special Needs Act (L. 2012, ch. 501)

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

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

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

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

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

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

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

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

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

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

Amendments include:

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

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

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

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

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

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

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

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

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

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

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

§ 810.14 adds requirement that staff credentials and employee or contractor compliance with the criminal history information review requirements are part of the inspection and review process for re-certification.

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

§ 810.18 removes provisions for waiver; adds severability language.

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

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 9, 2015.

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

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

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

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

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

2. Legislative Objectives:

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

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

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

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

3. Needs and Benefits:

OASAS is proposing to adopt the following regulation because The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires that criminal history information reviews be conducted on each prospective treatment provider, operator, employee, contractor, or volunteer of treatment facilities certified by the NYS Office of Alcoholism and Substance Abuse Services ("OASAS" or "Office") who will have the potential for, or may be permitted, regular and substantial unsupervised or unrestricted physical contact with the clients in such treatment facilities and any individual seeking to be credentialed by the Office.

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

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

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

4. Costs:

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

5. Paperwork:

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

6. Local Government Mandates:

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

7. Duplications:

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

8. Alternatives:

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

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

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

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

3. Professional Services:

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

4. Compliance Costs:

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impact:

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

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

OASAS services are provided in every county in New York State. 44 counties have a population less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tomp-

kins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 9 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga and Orange.

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

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

The proposed regulation has been presented to, and approved by, the OASAS Advisory Council and to the Behavioral Health Services Advisory Council consisting of providers and other stakeholders from a range of corporate types and municipalities. It is not anticipated that this regulation will have an adverse impact on existing jobs or the development of new employment opportunities for New York residents. It is anticipated that the proposed regulation will not have an adverse impact on existing employees in the field of fingerprinting or history review. The proposed regulations should not impact the number of criminal history information reviews requested via federal and state existing database. The Office is unable to determine what affect the proposed regulation may have on the employment of independent fingerprinting services or Office employees in the future.

The proposed regulation does not have an adverse impact on jobs or employment opportunities anywhere in the State, therefore, no region is disproportionately affected by the proposed regulation. This regulation will not require additional professional staff in existing certified providers; although entities will be required to maintain some records related to staff background, these should be minimal because much of the record exchange will be accomplished electronically.

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

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Criminal History Information Reviews

I.D. No. ASA-26-15-00007-EP
Filing No. 517
Filing Date: 2015-06-12
Effective Date: 2015-06-12

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

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

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

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

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

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

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

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

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

Subject: Criminal History Information Reviews.

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

Substance of emergency/proposed rule (Full text is posted at the following State website:www.oasas.ny.gov/regs/index.cfm): The Proposed Rule would ADD a new Part 805 titled "Criminal History Information Reviews." The new Part incorporates into regulation requirements of sections 19.20 and 19.20-a of the mental hygiene law added by the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) which outlines the process for the Office to conduct such reviews of prospective custodians and applicants for certification or credentialing.

Amendments include:

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

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

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

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

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

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

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

§ 805.8 sets forth standards for documentation and confidentiality.

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

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

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

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 9, 2015.

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

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

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

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

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

2. Legislative Objectives:

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

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

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

3. Needs and Benefits:

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

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

4. Costs:

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

5. Paperwork:

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

6. Local Government Mandates:

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

7. Duplications:

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

8. Alternatives:

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

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

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

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

3. Professional Services:

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

4. Compliance Costs:

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

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impact:

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

7. Small Business and Local Government Participation:

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

8. Not Applicable:

(establish or modify a violation or penalties associated with a violation)

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

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

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

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

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

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

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

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Patient Rights

I.D. No. ASA-26-15-00008-EP

Filing No. 518

Filing Date: 2015-06-12

Effective Date: 2015-06-12

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

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

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

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

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

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

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

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals receiving services within the OASAS treatment system. If OASAS did not promulgate regulations on an emergency basis, the processes for OASAS, its providers and service recipients

would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from requirements differing for other agencies covered by the Justice Center.

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

Subject: Patient Rights.

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

Substance of emergency/proposed rule (Full text is posted at the following State website:http://www.oasas.ny.gov/regs/index): The Proposed Rule would Repeal the current Part 815 and Replace it with a new Part 815. The new Part incorporates amendments related to rights and obligations of patients in OASAS certified programs consistent with statutory requirements, definitions and procedures of the Justice Center, pursuant to the Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012).

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

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

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

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

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

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

§ 815.10 amends provisions related to patient screenings; requires body cavity search to be reported to the Justice Center as a "significant incident."

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

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 9, 2015.

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

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

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

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

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

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

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

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

2. Legislative Objectives:

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

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

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

3. Needs and Benefits:

This regulation governs the rights and responsibilities of patients in OASAS certified treatment programs. The regulation incorporates provisions of Chapter 501 of the Laws of 2012 to the extent they relate to patients' rights to report allegations of abuse and neglect or other significant incidents to the Vulnerable Persons Hotline. The requirement for staff, operators, volunteers and contractors, if appropriate, to have completed criminal history information reviews is incorporated as a right of patients to receive treatment in an environment that is therapeutic and free from concerns about harm from staff.

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

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

4. Costs:

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

5. Paperwork:

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

6. Local Government Mandates:

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

7. Duplications:

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

8. Alternatives:

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

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

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

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

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

3. Professional Services:

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

4. Compliance Costs:

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

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impact:

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

7. Small Business and Local Government Participation:

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

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

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

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

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

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

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Credentialing of Addictions Professionals

I.D. No. ASA-26-15-00010-EP

Filing No. 520

Filing Date: 2015-06-12

Effective Date: 2015-06-12

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

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

Statutory authority: Mental Hygiene Law, sections 19.09(b), 19.20,

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

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

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

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

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

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

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

Subject: Credentialing of Addictions Professionals.

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

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

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

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

§ 853.3 adds new definition of ''Criminal history information" and "custodian" as defined in Chapter 501/2012. Also adds a new definition of "intimate relationship" as a relationship between persons who are not related by consanguinity or affinity regardless of whether such persons have lived together at any time and includes factors to be considered in determining the nature of that relationship.

§ 853.4 clarifies the functions of the Credentialing Board consistent with statutory authority.

§ 853.5 adds requirements for criminal history information reviews of all applicants for new, renewal or reinstated certified alcoholism and substance abuse counselor ("CASAC") credentials; adds requirement for compliance by CASACs with a Code of Conduct for "custodians" in all OASAS service providers; "grandfathers" currently credentialed persons until application for renewal or reinstatement, application for a position or a new position in an Office certified service provider. Also requires an applicant to notify the Office of any disciplinary action taken against the applicant as holder of any other license or certification issued by New York state or any other federal or state authority.

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

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

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

§ 853.9 adds requirements for criminal history information reviews of all applicants for new, renewal or reinstated credentialed problem gambling counselor ("CPGC") credentials; adds requirement for compliance by CPGCs with a Code of Conduct for "custodians" in all OASAS service providers.

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

§ 853.17 adds requirements for periodic updates of criminal history information reviews of all persons holding a credential issued by the Office and notice to the Office of any change of address for purposes of due process notifications.

§ 853.18 adds requirements for criminal history information reviews of all applicants for new, renewal or reinstated credentials issued by the Office, clarifies the role of the Credentialing Board regarding renewals and reinstatement requests.

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

§ 853.20 adds non-compliance with the Justice Center Code of Conduct, entering into an intimate relationship with a client, and failure to notify the Office of any action taken against any other license to the standards for misconduct.

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

§ 853.23 adds reference to the Justice Center Code of Conduct in relation to complaints filed against credentialed persons and clarifies notice provisions for due process.

§ 853.24 adds two remedial actions: Dismissal with Guidance: written notice of dismissal of a complaint not deemed misconduct, but sufficiently suspect to warrant a notice of caution and counseling; and Deferred Dismissal.

§ 853.27 clarifies notice provisions for due process.

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

A copy of the full text of the regulatory proposal is available on the OASAS website at:

http://www.oasas.ny.gov/regs/index.cfm

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire September 9, 2015.

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

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

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

Regulatory Impact Statement

Statutory Authority:

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

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

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

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

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

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

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

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

2. Legislative Objectives:

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

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

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

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

The proposed Rule adds additional provisions regarding notice and due process for administrative hearings; adds a new form of misconduct ("sexual misconduct") consistent with case law; adds remedial actions and penalties available to the Office for credential oversight; clarifies the role of the Credentials Board consistent with statutory authority; and provides a shortened means to upgrade a prevention credential.

3. Needs and Benefits:

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

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

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

4. Costs:

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

5. Paperwork:

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

6. Local Government Mandates:

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

7. Duplication:

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

8. Alternatives:

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

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

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

Regulatory Flexibility Analysis

1. Effect of the Rule:

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

2. Compliance Requirements:

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

3. Professional Services:

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

4. Compliance Costs:

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

5. Economic and Technological Feasibility:

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

6. Minimizing Adverse Impact:

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

7. Small Business and Local Government Participation:

The proposed rule is posted on the agency website; agency review pro-

cess involves input from trade organizations representing providers in both public and private sectors, of all sizes and in diverse geographic locations. The Office has prepared webinars and guidance documents for applicant use and for training agency administration.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural Area participation:

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

Job Impact Statement

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

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

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

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

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

Office of Children and Family Services

EMERGENCY RULE MAKING

Durable and Consistent Safeguards for Vulnerable Persons

I.D. No. CFS-26-15-00005-E
Filing No. 515
Filing Date: 2015-06-12
Effective Date: 2015-06-12

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

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

Statutory authority: Social Services Law, sections 20(3)(d) and 34(3)(f); Executive Law, section 501(5); L. 2012, ch. 501; L. 1997, ch. 436

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

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

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

Effective June 30, 2013 reports of suspected child abuse or neglect in a residential program are no longer under the jurisdiction of the Statewide Central Register of Child Abuse and Maltreatment (SCR). Any concerns regarding abuse or neglect of a child in a residential care program must be reported to the Vulnerable Persons Central Register (VPCR). The VPCR will also register reports of suspected abuse or neglect of persons residing in Family Type Homes for Adults (FTHA). Reports registered by the VPCR will be forwarded to Justice Center investigative staff or to investigative staff at the State Agency that licenses, certifies or operates the facility or provider agency. Regulations are required to provide direction to facilities, provider agencies, employees, local government staff and the public. It is imperative that rules be in place for the proper implementation of the Justice Center legislation.

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

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

Subject: Durable and consistent safeguards for vulnerable persons.

Purpose: To create an immediate set of durable and consistent safeguards for vulnerable persons.

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

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

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

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

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

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

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

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

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires September 9, 2015.

Text of rule and any required statements and analyses may be obtained from: Public Information Office, New York State Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144, (518) 473-7793, email: info@ocfs.ny.gov

Regulatory Impact Statement

1. Statutory authority:

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

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

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

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

2. Legislative objectives:

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

3. Needs and benefits:

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

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

4. Costs:

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

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

5. Local government mandates:

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

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

6. Paperwork:

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

7. Duplication:

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

8. Alternatives:

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

9. Federal standards:

The regulatory amendments do not conflict with any federal standards.

10. Compliance schedule:

The regulations will be effective on June 12, 2015 to ensure compliance with Chapter 501 of the Laws of 2012.

Regulatory Flexibility Analysis

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

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

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

Prior to Chapter 501 of the Laws of 2012, authorized agencies, facilities and mandated reporters employed by the same were required reporters of suspected child abuse or maltreatment to the New York Statewide Central Register of Child Abuse and Maltreatment. Pursuant to the statutory requirements of Social Services Law Sections 490 and 491, those mandated reporters are now required to report all reportable incidents, which will include but not be limited to those things previously falling

within the definitions of abuse and neglect of a child in residential care, to the Vulnerable Persons Central Register. Authorized Agencies and facilities will be required to maintain the same level of practice as it relates to recordkeeping, and prevention and remediation plans. Authorized agencies and facilities will be required to comply with investigations and information requests as required by the Justice Center for the Protection of People with Special Needs, as defined in Article 20 of the Executive Law.

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

3. Costs:

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

4. Economic and technological feasibility:

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

5. Minimizing adverse impact:

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

6. Small business and local government participation:

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

Rural Area Flexibility Analysis

1. Types and estimated number of rural areas:

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

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

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

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

3. Costs:

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

4. Minimizing adverse impact:

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

5. Rural area participation:

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

Job Impact Statement

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

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-14-00005-A
Filing No. 498
Filing Date: 2015-06-10
Effective Date: 2015-07-01

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

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

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the November 5, 2014 issue of the Register, I.D. No. CVS-44-14-00005-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-14-00006-A
Filing No. 499
Filing Date: 2015-06-10
Effective Date: 2015-07-01

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text or summary was published in the November 5, 2014 issue of the Register, I.D. No. CVS-44-14-00006-P.

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

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

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-14-00007-A
Filing No. 495
Filing Date: 2015-06-10
Effective Date: 2015-07-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the November 5, 2014 issue of the Register, I.D. No. CVS-44-14-00007-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-14-00008-A
Filing No. 501
Filing Date: 2015-06-10
Effective Date: 2015-07-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the November 5, 2014 issue of the Register, I.D. No. CVS-44-14-00008-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-14-00009-A
Filing No. 502
Filing Date: 2015-06-10
Effective Date: 2015-07-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the November 5, 2014 issue of the Register, I.D. No. CVS-44-14-00009-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-14-00010-A
Filing No. 500
Filing Date: 2015-06-10
Effective Date: 2015-07-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the November 5, 2014 issue of the Register, I.D. No. CVS-44-14-00010-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-14-00011-A
Filing No. 492
Filing Date: 2015-06-10
Effective Date: 2015-07-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the November 5, 2014 issue of the Register, I.D. No. CVS-44-14-00011-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: jennifer.paul@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-14-00012-A
Filing No. 493
Filing Date: 2015-06-10
Effective Date: 2015-07-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete a heading and positions from the exempt class.
Text or summary was published in the November 5, 2014 issue of the Register, I.D. No. CVS-44-14-00012-P.
Final rule as compared with last published rule: No changes.

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-14-00013-A
Filing No. 504
Filing Date: 2015-06-10
Effective Date: 2015-07-01

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the November 5, 2014 issue of the Register, I.D. No. CVS-44-14-00013-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-14-00014-A
Filing No. 496
Filing Date: 2015-06-10
Effective Date: 2015-07-01

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text or summary was published in the November 5, 2014 issue of the Register, I.D. No. CVS-44-14-00014-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-14-00015-A
Filing No. 503
Filing Date: 2015-06-10
Effective Date: 2015-07-01

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the non-competitive class.

Text or summary was published in the November 5, 2014 issue of the Register, I.D. No. CVS-44-14-00015-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-14-00017-A
Filing No. 497
Filing Date: 2015-06-10
Effective Date: 2015-07-01

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the non-competitive class.

Text or summary was published in the November 5, 2014 issue of the Register, I.D. No. CVS-44-14-00017-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-44-14-00018-A
Filing No. 494
Filing Date: 2015-06-10
Effective Date: 2015-07-01

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

Action taken: Amendment of Appendix 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To delete positions from and classify positions in the non-competitive class.

Text or summary was published in the November 5, 2014 issue of the Register, I.D. No. CVS-44-14-00018-P.

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

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

Assessment of Public Comment
The agency received no public comment.

Education Department

EMERGENCY RULE MAKING

Student Enrollment

I.D. No. EDU-52-14-00014-E
Filing No. 514
Filing Date: 2015-06-12
Effective Date: 2015-06-13

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

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

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

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

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

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

The proposed amendment was adopted as an emergency action at the December 15-16, 2014 Regents meeting, effective December 16, 2014. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on December 31, 2014.

The proposed amendment was readopted as an emergency action at the February 2015 Regents meeting to ensure that the rule remains continuously in effect until it can be presented for adoption and take effect as a permanent rule.

The proposed amendment was subsequently revised in response to public comment. At the April 2015 Regents meeting, the February emergency rule was repealed and the revised proposed amendment was adopted as an emergency action, effective April 14, 2015. A Notice of Emergency Adoption and Revised Rule Making was published in the State Register on April 29, 2015.

It is anticipated that the revised proposed amendment will be presented for permanent adoption at the June 15-16, 2015 Regents meeting, after publication of a Notice of Revised Rule Making in the State Register and expiration of the 30-day public comment period for revised rule makings prescribed by the State Administrative Procedure Act. However, the April emergency rule will expire on June 12, 2015. A lapse in the rule's effective date could disrupt enrollment of students, particularly unaccompanied minors and other undocumented youths, in potential violation of federal and State laws regarding access to a free public education system.

Emergency action is therefore necessary for the preservation of the general welfare to ensure that the proposed rule adopted by emergency action at the April 2015 Regents meeting remains continuously in effect until the effective date of its permanent adoption.

It is anticipated that the revised rule will be presented to the Board of Regents for adoption as a permanent rule at the June 15-16, 2015 Regents meeting, which is the first scheduled meeting after expiration of the 30-day public comment period mandated by the State Administrative Procedure Act section 202(4-a) for revised proposed rulemakings.

Subject: Student enrollment.

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

Substance of emergency rule: The proposed amendment of section 100.2(y) was adopted as an emergency action, effective June 13, 2015, at the May 18-19, 2015 Regents meeting. The following is a summary of the emergency rule.

Paragraph (1) of section 100.2(y) sets forth the purposes of the regulation to establish requirements for determinations by a board of education or its designee of student residency and age, for purposes of eligibility to attend the public schools in the school district without the payment of tuition pursuant to Education Law section 3202, in order to ensure that all eligible students are admitted to such schools without undue delay; provided that nothing in this subdivision shall be construed to change or shift the burden of proof of the parent(s), the person(s) in parental relation or the child, as appropriate, to establish residency through physical presence as an inhabitant of the school district and intent to reside in the district.

Paragraph (2) of section 100.2(y) provides that each school district shall make publicly available its enrollment forms, procedures, instructions and requirements for determinations of student residency and age in accordance with this subdivision. Such publicly available information shall include a non-exhaustive list of the forms of documentation that may be submitted to the district by parents, persons in parental relation or children, as appropriate, in accordance with the provisions of this subdivision. Such list shall include but not be limited to all examples of documentation listed in this subdivision. No later than January 31, 2015, such information shall be included in the school district's existing enrollment/registration materials and shall be provided to all parents, persons in parental relation or children, as appropriate, who request enrollment in the district, and shall be posted on the district's website, if one exists. As soon as practicable but no later than July 1, 2015, the school district shall update such information and the district's existing enrollment/registration materials as necessary to come into compliance with the provisions of this subdivision; and provide such updated information and materials to all parents, persons in parental relation or children, as appropriate, who request enrollment in the district; and post such updated information and materials on the district's website, if one exists.

Paragraph (3) of section 100.2(y) provides that when a child's parent(s), the person(s) in parental relation to the child or the child, as appropriate, requests enrollment of the child in the school district, such child shall be enrolled and shall begin attendance on the next school day, or as soon as practicable, provided that nothing herein shall require the district to enroll such child if a determination of non-residency is made, in accordance with this subdivision, on the date of such request for enrollment. As soon as practicable but no later than three business days after such initial enrollment, the parent(s), the person(s) in parental relation to the child or the child, as appropriate, shall submit documentation and/or information in support of the child's residency in the district and the board of education or its designee shall review all such documentation and/or information and make a residency determination in accordance with subparagraphs (i) and (ii) of paragraph (3); provided that if such documentation and/or information is submitted on the third business day after initial enrollment, the board of education or its designee in its discretion may make the residency determination no later than the fourth business day after initial enrollment. Subparagraph (i) of paragraph (3) sets forth requirements for documentation regarding enrollment and/or residency, including non-exclusive lists of documentation to establish that a child resides with the parents or persons in parental relation and to establish physical presence in the school district, and a non-exclusive list of documentation to establish. The subparagraph also provides that a school district shall not request as a condition of enrollment, a social security number or card or any information that would tend to reveal the immigration status of a child, or the child's parent or person in parental relation.

Subparagraph (ii) of paragraph (3) sets forth requirements for documentation of age, including a non-exclusive list of documents that may be considered.

Subparagraph (ii) of paragraph (3) provides that school districts are required to comply with Public Health Law § 2164(7) and all other applicable provisions of the Public Health Law and its implementing regulations, including orders issued by a state or local health department pursuant to such laws or regulations, that impact a student's admission to or attendance in school. Nothing in section 100.2(y) shall be construed to:

(1) require the immediate attendance of an enrolled student lawfully excluded from school temporarily pursuant to Education Law § 906 because of a communicable or infectious disease that imposes a significant risk of infection of others, or an enrolled student whose parent(s) or person(s) in parental relation have not submitted proof of immunization within the periods prescribed in Public Health Law § 2164(7)(a);

(2) require the immediate attendance of an enrolled student who is suspended from instruction for disciplinary reasons pursuant to Education Law § 3214;

(3) interfere with the recordkeeping and reporting requirements

imposed on school districts participating in the federal Student and Exchange Visitor Program (SEVP) in grades 9-12 pursuant to applicable federal laws and regulations concerning nonimmigrant alien students who identify themselves as having or seeking nonimmigrant student visa status (F-1 or M-1), and nothing herein shall be construed to conflict with such requirements or to relieve such nonimmigrant alien students who have or seek an F-1 or M-1 visa from fulfilling their obligations under federal law and regulations related to enrolling in grades 9-12 in SEVP schools.

Paragraph (4) of section 100.2(y) provides that at any time during the school year and notwithstanding any prior determination to the contrary at the time of the child's initial enrollment or re-entry into the public schools of the district, the board of education or its designee may determine, in accordance with paragraph (6) of section 100.2(y), that a child is not a district resident entitled to attend the schools of the district.

Paragraph (5) of section 100.2(y) provides that determinations regarding whether a child is entitled to attend a district's schools as a homeless child or youth must be made in accordance with subdivision (x) of this section.

Paragraph (6) of section 100.2(y) is amended to provide that when the board of education or its designee determines that a child is not entitled to attend the schools of such district because such child is not a resident of such district, such board or its designee shall, within two business days, provide written notice of its determination to the child's parent, to the person in parental relation to the child, or to the child, as appropriate. Such written notice shall state:

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

(2) the specific basis for the determination that the child is not a resident of the school district, including but not limited to a description of the documentary or other evidence upon which such determination is based;

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

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

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. EDU-52-14-00014-EP, Issue of December 31, 2014. The emergency rule will expire August 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

STATUTORY AUTHORITY:

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

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

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

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

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

LEGISLATIVE OBJECTIVES:

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

NEEDS AND BENEFITS:

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

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

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

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

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

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

(1) Clear and uniform requirements, which comply with federal and State laws and SED guidance on enrollment of students, particularly for unaccompanied minors and undocumented youths;

(2) Prohibited enrollment application policies which are unlawful and/or have had a disparate impact on unaccompanied minors and undocumented youths;

(3) Flexible enrollment requirements, which allow districts to accept additional forms of proof beyond the highly restrictive forms listed in the enrollment instructions/materials of school districts under review to date; and

(4) Ensure there is clear guidance to parents and guardians, and that enrollment instructions are provided publicly, in both paper and electronic forms.

COSTS:

Costs to State: none.

Costs to local governments: none.

Costs to private regulated parties: none.

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

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

LOCAL GOVERNMENT MANDATES:

Each school district shall make publicly available its enrollment forms, procedures, instructions and requirements for determinations of student residency and age, including a non-exhaustive list of the forms of documentation that may be submitted to the district, as specified in the regulation. By no later than January 31, 2015, such information shall be included in the district's existing enrollment/registration materials and be provided to all parents/persons in parental relation or children, as appropriate, who request enrollment in the district, and be posted on the district's website, if one exists. As soon as practicable but no later than July 1, 2015, school districts shall update their publicly available information on enrollment and residency procedures and enrollment/registration materials as necessary to come into compliance with section 100.2(y), as revised; and provide such updated information and materials to all parents, persons in parental relation or children, as appropriate, who request enrollment in the district; and post such updated information and materials on the district's website, if one exists.

When a child's parent(s)/person(s) in parental relation or the child, as appropriate, requests enrollment of the child in the school district, such child shall be enrolled and begin attendance on the next school day, or as soon as practicable, provided that nothing in section 100.2(y) shall require the school district to enroll such child if a determination of non-residency is made, in accordance with this subdivision, on the date of such request for enrollment. As soon as practicable but no later than three business days after initial enrollment, the parent(s), the person(s) in parental relation to the child or the child, as appropriate, shall submit documentation and/or information in support of the child's residency in the district and the board of education or its designee shall review all documentation and/or information and make a residency determination in accordance with the regulation. At any time during the school year, the board of education or its designee may determine, in accordance with the regulation, that a child is not a district resident entitled to attend the schools of the district. Determinations regarding whether a child is entitled to attend a district's schools as a homeless child or youth must be made in accordance with section 100.2(x) of the Commissioner's Regulations.

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

PAPERWORK:

The regulation provides that the district may require parents/persons in parental relation or the child, as appropriate, to submit documentation/information as evidence of their physical presence in the school district, as specified in the regulation, including:

(1) a copy of a residential lease or proof of ownership of a house or condominium, such as a deed or mortgage statement;

(2) a statement by a third-party landlord, owner or tenant from whom the parent(s) or person(s) in parental relation leases or with whom they share property within the district, which may be either sworn or unsworn;

(3) such other statement by a third party relating to the parent(s)' or person(s) in parental relation's physical presence in the district; and/or

(4) other forms of documentation and/or information establishing physical presence in the district, which may include but not be limited to those listed in section 100.2(y)(3)(i)(d).

A district may not require submission of a judicial custody order or an order of guardianship as a condition of enrollment.

DUPLICATION:

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

ALTERNATIVES:

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

FEDERAL STANDARDS:

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

COMPLIANCE REQUIREMENTS:

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

Regulatory Flexibility Analysis

Small Businesses:

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

Local Governments:

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

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

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

When a child's parent(s)/person(s) in parental relation or the child, as appropriate, requests enrollment of the child in the school district, such child shall be enrolled and begin attendance on the next school day, or as soon as practicable, provided that nothing in section 100.2(y) shall require the school district to enroll such child if a determination of non-residency is made, in accordance with this subdivision, on the date of such request for enrollment. As soon as practicable but no later than three business days after initial enrollment, the parent(s), the person(s) in parental relation to the child or the child, as appropriate, shall submit documentation and/or information in support of the child's residency in the district and the board of education or its designee shall review all documentation and/or information and make a residency determination in accordance with the regulation. At any time during the school year, the board of education or its designee may determine, in accordance with the regulation, that a child is not a district resident entitled to attend the schools of the district. Determinations regarding whether a child is entitled to attend a district's schools as a homeless child or youth must be made in accordance with section 100.2(x) of the Commissioner's Regulations.

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

The regulation provides that the district may require parents/persons in parental relation or the child, as appropriate, to submit documentation/information as evidence of their physical presence in the school district, as specified in the regulation, including:

(1) a copy of a residential lease or proof of ownership of a house or condominium, such as a deed or mortgage statement;

(2) a statement by a third-party landlord, owner or tenant from whom the parent(s) or person(s) in parental relation leases or with whom they share property within the district, which may be either sworn or unsworn;

(3) such other statement by a third party relating to the parent(s)' or person(s) in parental relation's physical presence in the district; and/or

(4) other forms of documentation and/or information establishing physical presence in the district, which may include but not be limited to those listed in section 100.2(y)(3)(i)(d).

A district may not require submission of a judicial custody order or an order of guardianship as a condition of enrollment.

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZE ADVERSE IMPACT:

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

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

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

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

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

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

When a child's parent(s)/person(s) in parental relation or the child, as appropriate, requests enrollment of the child in the school district, such child shall be enrolled and begin attendance on the next school day, or as soon as practicable, provided that nothing in section 100.2(y) shall require the school district to enroll such child if a determination of non-residency is made, in accordance with this subdivision, on the date of such request for enrollment. As soon as practicable but no later than three business days after initial enrollment, the parent(s), the person(s) in parental relation to the child or the child, as appropriate, shall submit documentation and/or information in support of the child's residency in the district and the board of education or its designee shall review all documentation and/or information and make a residency determination in accordance with the regulation. At any time during the school year, the board of education or its designee may determine, in accordance with the regulation, that a child is not a district resident entitled to attend the schools of the district. Determinations regarding whether a child is entitled to attend a district's schools as a homeless child or youth must be made in accordance with section 100.2(x) of the Commissioner's Regulations.

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

The regulation provides that the district may require parents/persons in parental relation or the child, as appropriate, to submit documentation/information as evidence of their physical presence in the school district, as specified in the regulation, including:

(1) a copy of a residential lease or proof of ownership of a house or condominium, such as a deed or mortgage statement;

(2) a statement by a third-party landlord, owner or tenant from whom the parent(s) or person(s) in parental relation leases or with whom they share property within the district, which may be either sworn or unsworn;

(3) such other statement by a third party relating to the parent(s)' or person(s) in parental relation's physical presence in the district; and/or

(4) other forms of documentation and/or information establishing physical presence in the district, which may include but not be limited to those listed in section 100.2(y)(3)(i)(d).

A district may not require submission of a judicial custody order or an order of guardianship as a condition of enrollment.

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

3. COMPLIANCE COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

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

5. RURAL AREA PARTICIPATION:

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

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

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

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

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

Assessment of Public Comment
The agency received no public comment.

EMERGENCY RULE MAKING

Pathways to Graduation and Regents Diploma Advanced Designation

I.D. No. EDU-13-15-00022-E
Filing No. 522
Filing Date: 2015-06-15
Effective Date: 2015-06-15

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 of Title 8 NYCRR.

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

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

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

The proposed amendment was adopted as an emergency action at the March 16-17, 2015 Regents meeting, effective March 17, 2015. A Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on April 1, 2015. Because the Board of Regents meets at scheduled intervals, the earliest the proposed amendment could be presented for regular (non-emergency) adoption, after publication in the State Register and expiration of the 45-day public comment period provided for in State Administrative Procedure Act (SAPA) section 202(1) and (5), is the June 15-16, 2015 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed amendment, if adopted at the June meeting, would be July 1, 2015, the date a Notice of Adoption would be published in the State Register. However, the March emergency rule will expire on June 14, 2015, 90 days from its filing with the Department of State on March 17, 2014. A lapse in the rule's effective date could disrupt the ability of students to earn a Regents Diploma with advanced designation through the mathematics or science pathway options and through the humanities pathway option, during the 2014-2015 school year.

Emergency action to adopt the proposed rule is necessary for the preservation of the general welfare to ensure that the emergency rule adopted at the March 2015 Regents meeting remains continuously in effect until the proposed rule can be presented for adoption and take effect as a permanent rule.

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

Subject: Pathways to Graduation and Regents Diploma Advanced Designation.

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

Text of emergency rule: 1. Clause (f) of subparagraph (i) of paragraph (5) of subdivision (a) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective June 15, 2015, as follows:

(f) Requirements for pathway assessments:

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

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

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

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

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

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

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

2. Subparagraph (v) of paragraph (7) of subdivision (b) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective June 15, 2015, as follows:

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

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

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

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

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

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

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

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

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

(ii) Integrated Algebra, Geometry and Mathematics B; or

(iii) Integrated Algebra, Geometry and Algebra 2/Trigonometry]

(a) Mathematics A or Integrated Algebra or Algebra I (common core); and

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

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

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

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

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

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

(c) …

3. Paragraph (2) of subdivision (g) of section 100.5 of the Regulations of the Commissioner of Education is amended, effective June 15, 2015, as follows:

(2) Earning a Regents diploma with advanced designation. Notwithstanding the provisions of this section, to earn a Regents diploma with an advanced designation a student must complete, in addition to the require-

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

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

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

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

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

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

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

[(a)] *(1)* mathematics A or integrated algebra or algebra I (common core); and

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

[(c)] *(3)* mathematics B or algebra 2/trigonometry or algebra II (common core)*; and*

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

This notice is intended to serve 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-13-15-00022-EP, Issue of April 1, 2015. The emergency rule will expire August 13, 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 State Education Department (SED), with the Board of Regents at its head and the Commissioner of Education as the chief administrative officer, and charges SED with the general management and supervision of public schools and the educational work of the State.

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

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

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

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

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

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

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

2. LEGISLATIVE OBJECTIVES:

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

3. NEEDS AND BENEFITS:

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

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

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

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

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

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

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

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

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

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

4. COSTS:

(a) Costs to State government: none.

(b) Costs to local government: none.

(c) Costs to private regulated parties: none.

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

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

5. LOCAL GOVERNMENT MANDATES:

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

6. PAPERWORK:

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

7. DUPLICATION:

The amendment does not duplicate existing State or federal requirements.

8. ALTERNATIVES:

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

9. FEDERAL STANDARDS:

There are no related federal standards.

10. COMPLIANCE SCHEDULE:

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

Regulatory Flexibility Analysis

Small Businesses:

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

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

Local Governments:

1. EFFECT OF RULE:

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

2. COMPLIANCE REQUIREMENTS:

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

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

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

3. PROFESSIONAL SERVICES:

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

4. COMPLIANCE COSTS:

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

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

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

6. MINIMIZING ADVERSE IMPACT:

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

7. LOCAL GOVERNMENT PARTICIPATION:

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

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

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

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

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

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

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

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

Currently, students who wish to earn a Regents diploma with advanced designation must meet the Regents diploma requirements (5 assessments) and pass 2 additional mathematics Regents exams and 1 additional science Regents exam for a total of 8 exams. In light of the new pathways options, students who elect to meet the Regents diploma requirements using a mathematics pathway, would not be able to meet the advanced diploma requirements because the Department does not offer enough mathematics

Regents exams for 2 additional tests to be completed. The proposed amendment would allow students to meet the additional mathematics assessment requirements with both Regents examinations in math, and/or an examination in a different course selected from the list of department approved alternatives in math. The proposed amendment would also clarify the requirements for students electing to meet the diploma requirements with a science pathway. They also would have to pass a total of 8 examinations, and if electing a science pathway, would have to pass a total of 3 science assessments rather than the previously required 2 science assessments.

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

3. COMPLIANCE COSTS:

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

4. MINIMIZING ADVERSE IMPACT:

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

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

5. RURAL AREA PARTICIPATION:

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

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

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

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

Job Impact Statement

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

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

NOTICE OF ADOPTION

Student Enrollment

I.D. No. EDU-52-14-00014-A
Filing No. 528
Filing Date: 2015-06-16
Effective Date: 2015-07-01

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

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

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

Subject: Student enrollment.

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

Text or summary was published in the December 31, 2014 issue of the Register, I.D. No. EDU-52-14-00014-P.

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

Revised rule making(s) were previously published in the State Register on April 29, 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

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 Notice of Emergency Adoption and Revised Rule Making in State Register on April 29, 2015, the State Education Department (SED) received comments summarized as follows:

1. COMMENT:

The regulation creates additional costs for school districts and is not in the best interests of students. If SED fears districts will delay residency determinations, it can maintain the three business day rule but permit determinations to occur prior to enrollment.

DEPARTMENT RESPONSE:

The three business day period is meant to be the maximum period within which a school district must make the residency determination, and does not preclude a school district from making an earlier determination if practicable. While SED acknowledges there may be instances where non-resident children are enrolled for a short time, resulting in associated costs to school districts, it believes costs will be minimized by the above clarifications, and that the public interest in ensuring that children who are eligible to attend the public schools in the school district without the payment of tuition pursuant to Education Law § 3202 are admitted to school without undue delay, outweighs such associated costs. SED acknowledges there may be instances where non-resident children are briefly enrolled and then removed, however such instances will be minimized by the above clarifications, and the public interest in ensuring that eligible children are admitted to school without undue delay outweighs such potential negative effects.

2. COMMENT:

The regulation is not authorized under State law and is not required by federal law, regulation or administrative guidance.

DEPARTMENT RESPONSE:

SED disagrees and believes the regulation is necessary to codify applicable federal and State laws, and existing SED guidance, in order to ensure unaccompanied minors/undocumented youths are provided their constitutional right to a free public education. SED believes the regulation strikes an appropriate balance between ensuring that eligible students are admitted to school without undue delay by requiring immediate enroll-

ment of a student upon request, and minimizing the negative effects on school districts of enrolling ineligible students by providing a three to four day period to resolve residency determinations.

3. COMMENT:

There are more appropriate alternatives:

(a) Consistent with federal guidance, amend § 100.2(y) to specifically prohibit school districts from requesting types of proof of residency that would unlawfully bar or discourage a student who is undocumented or whose parents are undocumented from enrolling in or attending school, with express reference to relevant federal and state guidance, fact sheets, and other related materials.

DEPARTMENT RESPONSE:

The purpose of the regulation is not limited to only undocumented students, but is broader in scope and effect, in that it establishes requirements for determinations by a board of education of student residency and age, for purposes of eligibility to attend the public schools in the school district without the payment of tuition pursuant to Education Law section 3202, in order to ensure that all eligible students are admitted to such schools without undue delay. SED believes the proposed amendment is sufficient to protect the rights of undocumented students. If necessary, SED may consider issuing further guidance on matters affecting undocumented students.

(b) Absent evidence of State-wide systemic violations of applicable law, address individual non-compliance issues on a case-by-case basis, based on findings by audits conducted by SED or the Attorney General.

DEPARTMENT RESPONSE:

SED believes the regulation is the best means to ensure that all students who are eligible to attend the public schools in the school district without the payment of tuition pursuant to Education Law § 3202 are admitted to such schools without undue delay.

(c) Allow school districts to make residency determinations prior to enrolling a student but within a specified timeframe – such as three business days from a request for enrollment and submission of requisite documentation, and require that any local parental appeal from an initial residency determination be decided on an expedited basis and provide for an expedited appeal to the Commissioner from a final school district determination.

DEPARTMENT RESPONSE:

The three business day period is meant to be the maximum within which a school district must make the residency determination, and does not preclude a district from making an earlier determination if practicable.

4. COMMENT:

School districts should be required to translate any enrollment-related documents that are made publicly available pursuant to the proposed regulation and documents submitted by the child or parent/person in parental relation, and any foreign medical and academic records. At minimum, the regulation should specify that school districts must comply with federal and state civil rights laws concerning language access for limited English proficient families.

DEPARTMENT RESPONSE:

School districts must comply with existing federal and state civil rights laws concerning language access for English Language Learners (ELLs) and limited English proficient parents/persons in parental relation and this compliance is necessitated by the laws themselves. It is therefore unnecessary to repeat such requirement in the Commissioner's regulations and it is more appropriate, if necessary, to address such compliance in SED guidance.

5. COMMENT:

After initial enrollment, school districts should be given a minimum of 15 days to conduct their review, to afford parents and districts more time to collect and submit the requested documents and translate and review the documents provided.

DEPARTMENT RESPONSE:

SED believes the regulation strikes an appropriate balance between ensuring eligible students are admitted to school without undue delay by requiring immediate enrollment of a student upon request, and minimizing the negative effects on school districts of enrolling ineligible students by providing a three to four day period to resolve residency determinations. Nothing in the regulations precludes a parent/person in parental relation or child, from submitting additional information relating to the child's residency as such information becomes available. In addition, the regulation specifies that "[a]t any time during the school year, the board of education or its designee may determine... that a child is not a district resident entitled to attend the schools of the district."

6. COMMENT:

Provide more options for supporting documents that may be used to establish residency in the school district.

DEPARTMENT RESPONSE:

The supporting documents which may be use to establish residency include, but are not limited to, the list of documents specifically identified in proposed 8 NYCRR § § 100.2(y)(2)(i)(b) and 100.2(y)(2)(i)(d). Therefore, parents and persons in parental relation may submit documents such as those identified in this comment to establish residency, and the district must make a determination as to such documents' sufficiency to establish residency in the school district. If a need is shown, SED may consider issuing guidance.

7. COMMENT:

In instances where undocumented and unaccompanied youth will not have access to the documents listed in § 100.2(y)(2)(ii), an affidavit of age, provided by an individual present at the time of a child's birth, baptism, or other religious ceremonies akin to a baptism, should be considered as proof of a student's age. We urge SED to work with the Legislature to amend Education Law § 3218 to allow for the use of such affidavits for purposes of establishing the age of a student, and recommend the regulations allow for submission of an uncertified copy of the child's birth certificate as sufficient proof of age for the reasons stated above.

DEPARTMENT RESPONSE:

Education Law § 3218 governs what forms of evidence may be used to determine a child's age, and any amendments to this statute must be enacted by the Legislature. SED will take into advisement the recommendation to amend Education Law § 3218 to expand allowable documents to establish a student's age.

8. COMMENT:

Modify § 100.2(y)(5) to clarify enrollment determinations regarding whether a child is considered homeless must be made in accordance with § 100.2(x) and to make clear that students in temporary housing are never required to submit proof of residency and that unaccompanied homeless youth are never required to submit proof of parental relation.

DEPARTMENT RESPONSE:

Section 100.2(y)(5) clarifies that determinations regarding whether a child is entitled to attend a district's schools as a homeless child or youth must be made in accordance with § 100.2(x). SED may consider issuing guidance.

9. COMMENT:

Revise requirement in § 100.2(y)(2)(i)(c) that a "person in parental relation" must demonstrate "total and permanent custody and control" over an enrolling child, to shift the focus from whether the adult caretaker of an unaccompanied immigrant child has "total and permanent custody and control" of the child to whether the caretaker's home is the child's permanent residence and whether the caretaker has "primary responsibility with respect to the child's support and wellbeing."

DEPARTMENT RESPONSE:

The requirement in § 100.2(y)(2)(i)(c) that a "person in parental relation" must demonstrate "total and permanent custody and control" over an enrolling child is consistent with SED's longstanding interpretation of Education Law § 3202(4)(a), which obligates a school district to provide tuition-free education to children of eligible school age who reside within the school district. The Commissioner has long held that the presumption that a child resides with his or her parents or legal guardians can be rebutted upon a determination that there has been a total and permanent transfer of custody and control to someone residing in the district (Appeal of D.P., 54 Ed Dept Rep, Decision No. 16.673; Appeal of Polynice, 48 Ed Dept Rep 490, Decision No. 15,927; Appeal of Wilkerson, 32 Ed Dept Rep 58, Decision No. 12,757). SED's interpretation of Education Law § 3202(4)(a) was accepted and applied by the Court of Appeals in Catlin v. Sobol, 77 NY2d 552, where the Court noted: "[t]he general rules under section 3202 are that a school district is bound to furnish tuition-free education only for children whose parents or legal guardians reside within the district [citation omitted]; that where the parents or guardians reside outside the district the child presumably resides outside the district also and is not entitled to free education; and that this presumption may be overcome by showing that the parents or guardians have given up parental control and that the child's permanent domicile - i.e. the child's "actual and only residence" – is within the district [citations omitted]." Subsequently, the Court of Appeals in Longwood Central School Dist.v. Springs Union Free School Dist., 1 NY3d 385 once again ruled that residency under Education Law § 3202(4)(a) means permanent domicile, holding that "We … conclude that the term "residence" in Education Law § 3202(4)(a) requires an intent to remain in a place permanently." Id. at 38. Therefore, both the Commissioner and the Court of Appeals have interpreted the relevant statute as requiring a determination of permanent domicile, with the presumption that the student permanently resides with their parents. The interpretation proposed by the commenters, that a temporary change in custody and control, rather than a permanent change of custody and control, should be sufficient to establish residency for school purposes, would be inconsistent with the longstanding interpretation of Education Law § 3202(4)(a) both by the Commissioner and by the courts.

To the extent the comment can be read to recommend that the Department create a different standard (i.e., whether the caretaker has "primary

responsibility with respect to the child's support and wellbeing") to apply in residency determinations involving unaccompanied immigrant children, applying such standard would necessitate identifying children as unaccompanied immigrant children, including undocumented youth. Under established law, the undocumented or non-citizen status of a student (or his or her parent or guardian) is irrelevant to such student's entitlement to an elementary and secondary public education and school districts are generally prohibited from inquiring about such status, and school districts are generally prohibited from inquiring about the immigrant status of students.

Accordingly, residency determinations must be made in accordance with a uniform standard, applicable to all children in the State regardless of their immigrant status. The Department believes that the present "total and permanent custody and control" standard is necessary to fulfill the Legislative intent of Education Law § 3202(4)(a), as it has been interpreted both administratively and judicially for many years, and that at this juncture a change in the standard for determining residency to eliminate the element of permanency can only be accomplished through legislation.

NOTICE OF ADOPTION

Pathways to Graduation and Regents Diploma Advanced Designation

I.D. No. EDU-13-15-00022-A
Filing No. 527
Filing Date: 2015-06-16
Effective Date: 2015-07-01

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

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

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

Subject: Pathways to Graduation and Regents Diploma Advanced Designation.

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

Text or summary was published in the April 1, 2015 issue of the Register, I.D. No. EDU-13-15-00022-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@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

The agency received no public comment.

NOTICE OF ADOPTION

Pupils with Limited English Proficiency

I.D. No. EDU-14-15-00004-A
Filing No. 529
Filing Date: 2015-06-16
Effective Date: 2015-07-01

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

Action taken: Amendment of section 154-2.3(h) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 208(not subdivided), 215(not subdivided), 305(1), (2), 2117(1), 2854(1)(b), 3204(2), (2-a), (3) and (6)

Subject: Pupils with Limited English Proficiency.

Purpose: Technical amendments relating to Units of Study and Provision of Credits For English As A New Language and Native Language Arts.

Text or summary was published in the April 8, 2015 issue of the Register, I.D. No. EDU-14-15-00004-P.

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

Text of rule and any required statements and analyses may be obtained from: 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

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Doctor of Occupational Therapy (O.T.D.) Degree

I.D. No. EDU-26-15-00012-P

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

Proposed Action: Amendment of sections 3.47(d)(2) and 3.50(b)(37) of Title 8 NYCRR.

Statutory authority: Education Law, sections 207(not subdivided), 210(not subdivided), 214(not subdivided), 215(not subdivided), 218(1), 224(4), 305(1) and (2)

Subject: Doctor of Occupational Therapy (O.T.D.) degree.

Purpose: To authorize the conferral in New York State of the degree of Doctor of Occupational Therapy (O.T.D.).

Text of proposed rule: 1. Paragraph (2) of subdivision (d) of section 3.47 of the Rules of the Board of Regents is amended, effective October 7, 2015, as follows:

(2) Professional degrees. Graduate professional degree programs must be comprised of advanced studies in professional or vocational fields. While they may have strong theoretical underpinnings, they must have as their primary purpose knowledge for application in professional practice. Master's degree programs of this type are primarily terminal in nature. They may serve as preparation for advanced studies at the doctoral level, but they shall not be designed primarily for this purpose. The doctorate in such studies is likewise practical, insofar as it prepares the student to train or supervise others in the field, to discover new knowledge that has practical application in the field, or to prepare the student for a life of practice in the student's particular profession. Only the following degrees may be conferred upon the completion of a professionally oriented graduate program:

Bachelor of Divinity (B.D.)
Bachelor of Laws (LL.B.)
--------Engineer (-- -- E.)
Master of Architecture (M.Arch.)
Master of Arts in Teaching (M.A.T.)
Master of Business Administration (M.B.A.)
Master of Comparative Jurisprudence (M.C.J.)
Master of Comparative Law (M.C.L.)
Master of Divinity (M.Div.)
Master of Education (Ed.M. or M.Ed.)
Master of Engineering (M.E.)
Master of Fine Arts (M.F.A.)
Master of Food Science (M.F.S.)
Master of Forestry (M.F.)
Master of Health Administration (M.H.A.)
Master of Hebrew Literature (M.H.L.)
Master of Industrial and Labor Relations (M.I.L.R.)
Master of Industrial Design (M.I.D.)
Master of International Affairs (M.I.A.)
Master of Landscape Architecture (M.L.A.)
Master of Laws (LL.M.)
Master of Library Science (M.L.S.)
Master of Management in Hospitality (M.M.H.)
Master of Music (Mus.M.)

Master of Nutritional Science (M.N.S.)
Master of Physical Therapy (M.P.T.)
Master of Professional Studies (M.P.S.)
Master of Public Administration (M.P.A.)
Master of Public Health (M.P.H.)
Master of Regional Planning (M.R.P.)
Master of Religious Education (M.R.E.)
Master of Sacred Music (S.M.M.)
Master of Sacred Theology (S.T.M.)
Master of Science for Teachers (M.S.T.)
Master of Science in Education (M.S. in Ed.)
Master of Science in Pharmacy (M.S. in Pharm.)
Master of Social Science (M.S.Sc.)
Master of Social Work (M.S.W.)
Master of Studies in Law (M.S.L.)
Master of Theology (Th.M.)
Master of Urban Planning (M.U.P.)
Doctor of Acupuncture and Oriental Medicine (D.A.O.M)
Doctor of Arts (D.A.)
Doctor of Audiology (Au.D.)
Doctor of Chiropractic (D.C.)
Doctor of Dental Surgery (D.D.S.)
Doctor of Education (Ed.D.)
Doctor of Engineering (D.Eng.)
Doctor of Engineering Science (Eng.Sc.D.)
Doctor of Hebrew Literature (D.H.L.)
Doctor of Juridical Science (S.J.D.)
Doctor of Law (J.D.)
Doctor of Library Science (L.S.D.)
Doctor of Medical Science (Med. Sc.D.)
Doctor of Medicine (M.D.)
Doctor of Ministry (D.Min.)
Doctor of Musical Arts (D.M.A.)
Doctor of Nursing Practice (D.N.P.)
Doctor of Nursing Science (D.N.S.)
Doctor of Occupational Therapy (O.T.D.)
Doctor of Optometry (O.D.)
Doctor of Osteopathic Medicine (D.O.)
Doctor of Pharmacy (Pharm.D.)
Doctor of Podiatric Medicine (D.P.M.)
Doctor of Physical Therapy (D.P.T.)
Doctor of Professional Studies (D.P.S.)
Doctor of Psychology (Psy.D.)
Doctor of Public Administration (D.P.A.)
Doctor of Public Health (D.P.H.)
Doctor of Religious Education (D.R.E.)
Doctor of Sacred Music (S.M.D.)
Doctor of Science in Veterinary Medicine (D.Sc. in V.M.)
Doctor of Social Science (D.S.Sc.)
Doctor of Social Welfare (D.S.W.)
Doctor of the Science of Law (J.S.D.)
Doctor of Theology (Th.D.)
Doctor of Veterinary Medicine (D.V.M.)

2. Paragraph (37) of subdivision (b) of section 3.50 of the Rules of the Board of Regents is added, effective October 7, 2015, as follows:

(37) Occupational Therapy:
Doctor of Occupational Therapy (O.T.D.)

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

Data, views or arguments may be submitted to: Office of the Professions, Office of the Deputy Commissioner, State Education Department, State Education Building 2M, 89 Washington Ave., Albany, NY 12234, (518) 486-1765, email: opdepcom@nysed.gov

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY:

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

Section 210 of the Education Law grants to the Board of Regents the authority to register domestic and foreign institutions in terms of New York standards.

Section 214 of the Education Law provides that the institutions of The University of the State of New York shall include all secondary and higher educational institutions which are or may be incorporated in the state, and grants authority to the Board of Regents to exclude from such membership any institution failing to comply with law or with any rule of the university.

Section 215 of the Education Law grants authority to the Board of Regents, Commissioner of Education, or their representatives, to visit and inspect any institution in The University of the State of New York or under the educational supervision of the state, and to require reports and information as prescribed. For refusal or continued neglect to make a required report, or for violation of any law or any rule of the university, the Board of Regents may suspend the charter, rights and privileges of such institution.

Subdivision (1) of section 218 of the Education Law prohibits an institution from conferring any degree not specifically authorized by its charter.

Subdivision (4) of section 224 of the Education Law provides that no diploma or degree shall be conferred in this State except by a regularly organized institution of learning meeting all requirements of the law and of The University of the State of New York, and prohibits an individual from appending to his or her name any letters in the same form registered by the Board of Regents as signifying a degree unless that person has received such degree.

Subdivision (1) of section 305 of the Education Law empowers the Commissioner of Education to enforce all laws relating to the educational system of the State and execute all educational policies determined by the Board of Regents.

Subdivision (2) of section 305 of the Education Law authorizes the Commissioner of Education to have general supervision over all schools and institutions subject to the Education Law.

2. LEGISLATIVE OBJECTIVES:

The proposed amendment carries out the legislative intent of the aforementioned statutes that the Regents establish rules for carrying into effect the educational policies of the State by establishing a new degree title that may be conferred by authorized colleges and universities in New York State.

3. NEEDS AND BENEFITS:

The purpose of the proposed amendment is to authorize the conferral in New York State of the degree, Doctor of Occupational Therapy (O.T.D.). The proposed amendment arose from a request to confer this degree by one of the institutions of higher education in New York.

The O.T.D. degree is recognized by the Accreditation Council for Occupational Therapy Education (ACOTE) and is an authorized degree in 26 states, which include California, Connecticut, Florida, Georgia, Massachusetts, Pennsylvania, and Virginia. Adding this degree will benefit occupational therapy students and practitioners in New York by affording them the opportunity to earn a doctoral level degree. The O.T.D. degree in New York will expand practitioners' access to higher level research and lifelong learning, which ultimately translates to better client care in the profession. Because the O.T.D. degree is a new degree in New York, it is necessary to amend sections 3.47 and 3.50 of the Rules of the Board of Regents related to requirements for earned degrees and registered degrees. The State Board for Occupational Therapy supports the authorization of this new degree title.

4. COSTS:

The amendment simply adds a new degree option and imposes no costs on any parties.

(a) Costs to State government. These amendments will not impose any additional costs on State government.

(b) Costs to local government. None.

(c) Costs to private regulated parties. The proposed amendments will not impose any additional costs on private regulated parties.

(d) Costs to the regulatory agency. The proposed amendments will not impose additional costs on the State Education Department.

5. LOCAL GOVERNMENT MANDATES:

The proposed amendment does not impose any program, service, duty, or responsibility on local governments.

6. PAPERWORK:

There are no new forms, reporting requirements, or additional record-keeping associated with the proposed amendment.

7. DUPLICATION:

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

8. ALTERNATIVES:

The amendment arose from the request of a New York college to confer the O.T.D. degree. The proposed amendments are permissive in nature and only apply to colleges and universities that want to confer O.T.D. degree. Because of the permissive nature of the proposed amendments, no alternatives were considered.

9. FEDERAL STANDARDS:

No Federal standards apply to the subject matter of this rule making. The Federal government does not regulate the titles of degrees which may be conferred by postsecondary institutions in New York State.

10. COMPLIANCE SCHEDULE:

If adopted at the September 2015 Regents meeting, the proposed amendment will be effective on October 7, 2015.

Regulatory Flexibility Analysis

The proposed amendment authorizes the conferral of a new degree, Doctor of Occupational Therapy (O.T.D.). None of the institutions in New York State that may seek to confer this degree are small businesses.

The amendment will not affect small businesses or local governments in New York State. The measure will not impose any adverse economic impact, reporting, recordkeeping, or any other compliance requirements on small businesses or local governments. Because it is evident from the nature of the proposed amendment that it does not affect small businesses or local governments, no further steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis is not required, and one was not prepared.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed amendment will apply to colleges and universities authorized to award degrees in New York State, including such institutions located in the state's 44 rural counties with fewer than 200,000 inhabitants and 71 towns in urban counties with a population density of 150 per square mile or less. There are 271 degree-granting institutions in the State, including 64 campuses and community colleges in the State University of New York, 19 senior and community colleges of The City University of New York (CUNY), 148 independent colleges and universities, and 39 proprietary colleges. Excluding CUNY's 19 campuses leaves 252 degree-granting institutions, of which 62 (24.6 percent) are located in rural areas.

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

The proposed amendment authorizes the conferral in New York State of the degree, Doctor of Occupational Therapy (O.T.D.). These amendments will not impose any reporting, recordkeeping, or other compliance requirements on degree-granting institutions. No professional services will be needed to comply with the proposed amendments.

3. COSTS:

The proposed amendment will not impose any costs on degree-granting institutions, including those located in rural areas.

4. MINIMIZING ADVERSE IMPACT:

The proposed amendment offers authorized New York colleges and universities the opportunity to confer a new degree title. The proposed amendment relates solely to degree titles and abbreviations. Because of the permissive nature of the proposed amendment, different standards or an exemption for rural areas were not necessary. The proposed amendment will have no adverse impact on public or private parties in rural areas.

5. RURAL AREAS PARTICIPATION:

The State Board for Occupational Therapy, which includes representatives from rural areas of the State, supports the proposed amendment. In addition, all New York colleges and universities that offer registered programs in occupational therapy, including those located in rural areas of the State, were asked to comment on the proposed amendment.

Job Impact Statement

The proposed amendment authorizes the conferral of a new degree, Doctor of Occupational Therapy (O.T.D.). Because it is evident from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, no further steps were needed to ascertain these facts and none were taken. Accordingly, a job impact statement was not required, and one was not prepared.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Instruction in Cardiopulmonary Resuscitation (CPR) and Use of Automated External Defibrillators (AEDs)

I.D. No. EDU-26-15-00013-P

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

Proposed Action: Amendment of section 100.2(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 101(not subdivided), 207(not subdivided), 305(1), (2), (20), (52), 308(not subdivided), 804-c(2) and 804-d(not subdivided); L. 2014, ch. 417

Subject: Instruction in Cardiopulmonary Resuscitation (CPR) and Use of Automated External Defibrillators (AEDs).

Purpose: To require hands-only instruction in CPR and instruction in the use of AEDs in senior high schools.

Text of proposed rule: Paragraph (11) of subdivision (c) of section 100.2 is added, effective October 7, 2015, as follows:

(11) Students in senior high schools shall be provided instruction in hands-only cardiopulmonary resuscitation and the use of an automated external defibrillator.

(i) Standards for such instruction shall be based on a nationally recognized instructional program that utilizes the most current guidelines for cardiopulmonary resuscitation and emergency cardiovascular care issued by the American Heart Association or a substantially equivalent organization and be consistent with the requirements of the programs adopted by the American Heart Association or the American Red Cross, and shall incorporate instruction designed to:

(a) recognize the signs of a possible cardiac arrest and to call 911;

(b) provide an opportunity to demonstrate the psychomotor skills necessary to perform hands-only compression cardiopulmonary resuscitation; and

(c) provide awareness in the use of an automated external defibrillator.

(ii) Nothing in this paragraph shall prohibit a voluntary course of instruction in comprehensive cardiopulmonary resuscitation provided by a properly certified instructor in cardiopulmonary resuscitation which results in a certificate pursuant to the provisions of Education Law section 804-c. Students who receive such instruction in comprehensive cardiopulmonary resuscitation pursuant to the provisions of Education Law section 804-c shall be deemed to meet the requirements of this paragraph.

(iii) Nothing in this paragraph relating to required instruction in hands-only cardiopulmonary resuscitation and instruction in the use of an automated external defibrillator shall require a licensed teacher to possess certification for such instruction that does not result in certification in cardiopulmonary resuscitation or certification in the operation of an automated external defibrillator and in its instruction.

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

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

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

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.

Education Law § 804-c authorizes school districts to provide cardiopulmonary resuscitation (CPR) instruction as part of the health education curriculum at their own discretion. If a district chooses to include such instruction, in addition to the requirement that all teachers of health education are certified to teach health, persons providing CPR instruction must possess valid certification in the performance and teaching of CPR. School districts that choose to offer CPR instruction under § 804-c are required to provide necessary facilities, time, learning aids, and curricular resource materials to support such course study.

Education Law § 804-d provides that senior high schools in which CPR instruction is provided pursuant to Education Law § 804-c, must also include instruction regarding the correct use of Automated External Defibrillators (AEDs). Individuals providing instruction in the correct use of AEDs must possess valid certification by a nationally recognized organization or the State emergency medical services council offering certification in the operation of an AED and in its instruction.

Chapter 417 of the Laws of 2014 added Education Law § 305(52) to require the Commissioner to make a recommendation to the Board of Regents regarding a potential new mandate for required instruction in CPR and the use of AEDs in senior high schools. The law further requires the Commissioner to seek the recommendations of teachers, school administrators, educators, and others with educational expertise in such curriculum, as well as comments from parents, students, and other interested parties prior to making a recommendation to the Board of Regents.

2. LEGISLATIVE OBJECTIVES:

The proposed rule is consistent with the above statutory authority and is necessary to implement Education Law sections 305(52), as added by Chapter 417 of the Laws of 2014.

3. NEEDS AND BENEFITS:

Chapter 417 of the Laws of 2014 added Education Law § 305(52) to require the Commissioner to make a recommendation to the Board of Regents regarding a potential new mandate for required instruction in CPR and the use of AEDs in senior high schools. The law further requires the Commissioner to seek the recommendations of teachers, school administrators, educators, and others with educational expertise in such curriculum, as well as comments from parents, students, and other interested parties prior to making a recommendation to the Board of Regents.

The Department sought feedback from stakeholders regarding the impact of mandating such a course rather leaving the decision to provide CPR instruction to local school boards. The results from the survey were presented at the April 2015 meeting (http://www.regents.nysed.gov/common/regents/files/meetings/Apr%202015/415p12d9.pdf). The results of the survey indicated that although a majority of survey responders agreed to varying degrees that CPR/AED instruction is important, the field expressed concern that implementation of this mandate would present fiscal challenges to districts through the purchase of equipment, as well as the provision of professional development and classroom instruction.

In general, the Department continues to recommend that curriculum decisions, such as whether to offer CPR/AED instruction, be made at the local school district level rather than through a statewide mandate. Additionally, current New York State law allows for CPR/AED instruction in an educational setting and is encouraged by current New York State learning standards. (see Education Law § 804-c; Education Law § 804-d). However, recognizing that CPR/AED affects vital matters of life and death, the Department recommends an exception to this general policy and implement required instruction in hands-only CPR/AED for students in senior high schools.

The American Heart Association and the American Red Cross have established a program for instruction in CPR and awareness in the use of AEDs which can be delivered in one or two class periods. This program utilizes the most current guidelines for cardiopulmonary resuscitation and emergency cardiovascular care and. incorporates the use of hands-on compressions to support instruction. Additionally, unlike instruction provided pursuant to Education Law § 804-a, the instruction of hands-only CPR, does not require the instructor to be an authorized CPR/AED instructor because such hands-only instruction will not result in a course completion card. To meet this requirement, schools may choose from a variety of low cost and no-cost options which provide hands-only CPR instruction Therefore because hands-only CPR/AED instruction requires fewer resources than comprehensive CPR, limiting the mandate to hands-only CPR strives to mitigate the concerns expressed by survey responders while still providing students with access to potentially lifesaving instruction.

Pursuant to the provisions of Education Law § 804-c and 804-d, where approved by local school boards, school districts may continue to offer comprehensive CPR certification instruction at their discretion. However, in cases where districts do not offer such a course, all high school students will be required to receive instruction in hands-only CPR and the use of AEDs.

4. COSTS:

(a) Costs to State: The rule implements Education Law section 305(52), as added by Chapter 417 of the Laws of 2014 and does not impose any costs on State government, including the State Education Department, beyond those costs imposed by the statute.

(b) Costs to local governments: Chapter 417 of the Laws of 2014 added Education Law § 305(52) to require the Commissioner to make a recommendation to the Board of Regents regarding a potential new mandate for required instruction in CPR and the use of AEDs in senior high schools.

Following receipt of feedback received from stakeholders, the Department recommended to the Board of Regents that instruction in hands-only CPR for high school students would provide the necessary skills to deliver potentially lifesaving assistance, while minimizing the costs to local districts. The American Heart Association and the American Red Cross have established a program for instruction in hands-only CPR and awareness in the use of AEDs which can be delivered in one or two class periods. To meet this requirement, schools may choose from a variety of low cost and no-cost options which provide hands-only CPR instruction. Schools may choose to purchase a hands-only CPR kit at the cost of approximately $38.50 per kit. Each kit contains all materials necessary to provide instruction to students and allows students to practice hands-on compressions. Additionally, such kits may be shared among classes and school buildings, and do not represent a recurring cost.

In addition to the low-cost hands-only CPR kit, schools may seek to provide this instruction at no additional cost. According to the American Heart Association, individuals, including students, can achieve acceptable levels of proficiency in hands-only CPR in thirty minutes. Such instruction can be delivered using videos available at no-cost, and students can practice delivering compressions on existing school equipment. Additionally, schools may choose to partner with local emergency medical services or other providers to provide such instruction at no cost.

(c) Costs to private regulated parties: None.

(d) Cost to private, regulated parties: None.

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

5. LOCAL GOVERNMENT MANDATES:

In general, the Department continues to recommend that curriculum decisions, such as whether to offer CPR/AED instruction, be made at the local school district level rather than through a statewide mandate. Additionally, current New York State law allows for CPR/AED instruction in an educational setting and is encouraged by current New York State learning standards. (see Education Law § 804-c; Education Law § 804-d). However, recognizing that CPR/AED affects vital matters of life and death, the proposed rule will mandated instruction in hands-only CPRand instruction in the use of AEDs for students in senior high schools, but provides flexibility and discretion to school districts on how and when such instruction will be provided.

6. PAPERWORK:

The proposed rule does not require any additional paperwork, and is necessary to implement Education Law section 305(52) as added by Chapter 417 of the Laws of 2014.

7. DUPLICATION:

The proposed rule does not duplicate any existing State or Federal requirements, and is necessary to implement Education Law section 305(52) as added by Chapter 417 of the Laws of 2014.

8. ALTERNATIVES:

Chapter 417 of the Laws of 2014 added Education Law § 305(52) to require the Commissioner to make a recommendation to the Board of Regents regarding a potential new mandate for required instruction in CPR and the use of AEDs in senior high schools. The Department continues to recommend that curriculum decisions, such as whether to offer CPR/AED instruction, be made at the local school district level rather than through a statewide mandate. Additionally, current New York State law allows for CPR/AED instruction in an educational setting and is encouraged by current New York State learning standards. (see Education Law § 804-c; Education Law § 804-d). However, recognizing that CPR/AED affects vital matters of life and death, the proposed rule mandates required instruction in hands-only CPR and instruction in the use of AEDs for students in senior high schools, but provides flexibility and discretion to school districts on how and when such instruction will be provided.

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.

Regulatory Flexibility Analysis

(a) Small businesses:

The proposed rule is necessary to implement Education Law section 305(52), as added by Chapter 417 of the Laws of 2014, which requires the Commissioner to make a recommendation to the Board of Regents regarding a potential new mandate for required instruction in cardiopulmonary resuscitation (CPR) and the use of Automated External Defibrillators (AEDs) in senior high schools. Pursuant to the Commissioner's recommendation to the Board of Regents, the proposed rule would require students in senior high school be provided instruction in hands-only CPR and the use of AEDs. 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:

1. EFFECT OF RULE:

The rule applies to each of the 695 public school districts in the State.

2. COMPLIANCE REQUIREMENTS:

The proposed rule is necessary to implement Education Law section 305(52), as added by Chapter 417 of the Laws of 2014, which requires the Commissioner to make a recommendation to the Board of Regents regarding a potential new mandate for required instruction in cardiopulmonary resuscitation (CPR) and the use of Automated External Defibrillators (AEDs) in senior high schools. Pursuant to the Commissioner's recommendation to the Board of Regents, the proposed rule would require students in senior high school be provided instruction in hands-only CPR and the use of AEDs.

3. PROFESSIONAL SERVICES:

To meet the requirement that all high school students receive instruction in hands-only CPR and the use of AEDs, schools may choose from a

variety of low cost and no-cost options which provide hands-only CPR instruction. The American Heart Association and the American Red Cross have established a program for instruction in CPR and awareness in the use of AEDs which can be delivered in one or two class periods. This program utilizes the most current guidelines for cardiopulmonary resuscitation and emergency cardiovascular care and. incorporates the use of hands-on compressions to support instruction. Additionally, unlike instruction provided pursuant to Education Law § 804-a, the instruction of hands-only CPR, does not require the instructor to be an authorized CPR/AED instructor because such hands-only instruction will not result in a course completion card.

4. COMPLIANCE COSTS:

To meet the requirement that all high school students receive instruction in hands-only CPR and the use of AEDs, schools may choose from a variety of low cost and no-cost options which provide hands-only CPR instruction. Schools may choose to purchase a hands-only CPR kit at the cost of approximately $38.50 per kit. Each kit contains all materials necessary to provide instruction to students and allows students to practice hands-on compressions. Additionally, such kits may be shared among classes and school buildings, and do not represent a recurring cost.

In addition to the low-cost hands-only CPR kit, schools may seek to provide this instruction at no additional cost. According to the American Heart Association, individuals, including students, can achieve acceptable levels of proficiency in hands-only CPR in thirty minutes. Such instruction can be delivered using videos available at no-cost, and students can practice delivering compressions on existing school equipment. Additionally, schools may choose to partner with local emergency medical services or other providers to provide such instruction at no cost.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

The proposed rule does not impose any additional technological requirements on local governments. Economic feasibility is discussed above in the Compliance Costs section.

6. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement Education Law section 305(52), as added by Chapter 417 of the Laws of 2014, which requires the Commissioner to make a recommendation to the Board of Regents regarding a potential new mandate for required instruction in cardiopulmonary resuscitation (CPR) and the use of Automated External Defibrillators (AEDs) in senior high schools. Pursuant to the Commissioner's recommendation to the Board of Regents, the proposed rule would require students in senior high school be provided instruction in hands-only CPR and the use of AEDs.

In general, the Department continues to recommend that curriculum decisions, such as whether to offer CPR/AED instruction, be made at the local school district level rather than through a statewide mandate. Additionally, current New York State law allows for CPR/AED instruction in an educational setting and is encouraged by current New York State learning standards. (see Education Law § 804-c; Education Law § 804-d). However, recognizing that CPR/AED affects vital matters of life and death, the Department recommends an exception to this general policy and implement required instruction in hands-only CPR/AED for students in senior high schools.

The American Heart Association and the American Red Cross have established a program for instruction in CPR and awareness in the use of AEDs which can be delivered in one or two class periods. This program utilizes the most current guidelines for cardiopulmonary resuscitation and emergency cardiovascular care and. incorporates the use of hands-on compressions to support instruction. Additionally, unlike instruction provided pursuant to Education Law § 804-a, the instruction of hands-only CPR, does not require the instructor to be an authorized CPR/AED instructor because such hands-only instruction will not result in a course completion card. To meet this requirement, schools may choose from a variety of low cost and no-cost options which provide hands-only CPR instruction Therefore, because hands-only CPR/AED instruction requires fewer resources than comprehensive CPR, limiting the mandate to hands-only CPR strives to mitigate the concerns expressed by survey responders while still providing students with access to potentially lifesaving instruction.

Pursuant to the provisions of Education Law § 804-c and 804-d, where approved by local school boards, school districts may continue to offer comprehensive CPR certification instruction at their discretion. However, in cases where districts do not offer such a course, all high school students will be required to receive instruction in hands-only CPR and the use of AEDs.

7. LOCAL GOVERNMENT PARTICIPATION:

Chapter 417 of the Laws of 2014 added Education Law § 305(52) to require the Commissioner to make a recommendation to the Board of Regents regarding a potential new mandate for required instruction in CPR and the use of AEDs in senior high schools. The law further requires the Commissioner to seek the recommendations of teachers, school administrators, educators, and others with educational expertise in such curriculum, as well as comments from parents, students, and other interested parties prior to making a recommendation to the Board of Regents.

The Department sought feedback from stakeholders regarding the impact of mandating such a course rather leaving the decision to provide CPR instruction to local school boards. The results from the survey were presented at the April 2015 meeting (http://www.regents.nysed.gov/common/regents/files/meetings/Apr%202015/415p12d9.pdf). The results of the survey indicated that although a majority of survey responders agreed to varying degrees that CPR/AED instruction is important, the field expressed concern that implementation of this mandate would present fiscal challenges to districts through the purchase of equipment, as well as the provision of professional development and classroom instruction.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBER OF RURAL AREAS:

The proposed rule applies to each public school district in the State, 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 is necessary to implement Education Law section 305(52), as added by Chapter 417 of the Laws of 2014, which requires the Commissioner to make a recommendation to the Board of Regents regarding a potential new mandate for required instruction in cardiopulmonary resuscitation (CPR) and the use of Automated External Defibrillators (AEDs) in senior high schools. Pursuant to the Commissioner's recommendation to the Board of Regents, the proposed rule would require students in senior high school be provided instruction in hands-only CPR and the use of AEDs.

To meet the requirement that all high school students receive instruction in hands-only CPR and the use of AEDs, schools may choose from a variety of low cost and no-cost options which provide hands-only CPR instruction. The American Heart Association and the American Red Cross have established a program for instruction in CPR and awareness in the use of AEDs which can be delivered in one or two class periods. This program utilizes the most current guidelines for cardiopulmonary resuscitation and emergency cardiovascular care and. incorporates the use of hands-on compressions to support instruction. Additionally, unlike instruction provided pursuant to Education Law § 804-a, the instruction of hands-only CPR, does not require the instructor to be an authorized CPR/AED instructor because such hands-only instruction will not result in a course completion card.

3. COSTS:

To meet the requirement that all high school students receive instruction in hands-only CPR and the use of AEDs, schools may choose from a variety of low cost and no-cost options which provide hands-only CPR instruction. Schools may choose to purchase a hands-only CPR kit at the cost of approximately $38.50 per kit. Each kit contains all materials necessary to provide instruction to students and allows students to practice hands-on compressions. Additionally, such kits may be shared among classes and school buildings, and do not represent a recurring cost.

In addition to the low-cost hands-only CPR kit, schools may seek to provide this instruction at no additional cost. According to the American Heart Association, individuals, including students, can achieve acceptable levels of proficiency in hands-only CPR in thirty minutes. Such instruction can be delivered using videos available at no-cost, and students can practice delivering compressions on existing school equipment. Additionally, schools may choose to partner with local emergency medical services or other providers to provide such instruction at no cost.

4. MINIMIZING ADVERSE IMPACT:

The proposed rule is necessary to implement Education Law section 305(52), as added by Chapter 417 of the Laws of 2014, which requires the Commissioner to make a recommendation to the Board of Regents regarding a potential new mandate for required instruction in cardiopulmonary resuscitation (CPR) and the use of Automated External Defibrillators (AEDs) in senior high schools. Pursuant to the Commissioner's recommendation to the Board of Regents, the proposed rule would require students in senior high school be provided instruction in hands-only CPR and the use of AEDs.

In general, the Department continues to recommend that curriculum decisions, such as whether to offer CPR/AED instruction, be made at the local school district level rather than through a statewide mandate. Additionally, current New York State law allows for CPR/AED instruction in an educational setting and is encouraged by current New York State learning standards. (see Education Law § 804-c; Education Law § 804-d). However, recognizing that CPR/AED affects vital matters of life and death, the Department recommends an exception to this general policy and imple-

ment required instruction in hands-only CPR/AED for students in senior high schools.

The American Heart Association and the American Red Cross have established a program for instruction in CPR and awareness in the use of AEDs which can be delivered in one or two class periods. This program utilizes the most current guidelines for cardiopulmonary resuscitation and emergency cardiovascular care and. incorporates the use of hands-on compressions to support instruction. Additionally, unlike instruction provided pursuant to Education Law § 804-a, the instruction of hands-only CPR, does not require the instructor to be an authorized CPR/AED instructor because such hands-only instruction will not result in a course completion card. To meet this requirement, schools may choose from a variety of low cost and no-cost options which provide hands-only CPR instruction Therefore, because hands-only CPR/AED instruction requires fewer resources than comprehensive CPR, limiting the mandate to hands-only CPR strives to mitigate the concerns expressed by survey responders while still providing students with access to potentially lifesaving instruction.

Pursuant to the provisions of Education Law § 804-c and 804-d, where approved by local school boards, school districts may continue to offer comprehensive CPR certification instruction at their discretion. However, in cases where districts do not offer such a course, all high school students will be required to receive instruction in hands-only CPR and the use of AEDs.

Because the statutory requirements upon which the proposed rule is based apply 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:

Chapter 417 of the Laws of 2014 added Education Law § 305(52) to require the Commissioner to make a recommendation to the Board of Regents regarding a potential new mandate for required instruction in CPR and the use of AEDs in senior high schools. The law further requires the Commissioner to seek the recommendations of teachers, school administrators, educators, and others with educational expertise in such curriculum, as well as comments from parents, students, and other interested parties prior to making a recommendation to the Board of Regents.

The Department sought feedback from stakeholders regarding the impact of mandating such a course rather leaving the decision to provide CPR instruction to local school boards. The results from the survey were presented at the April 2015 meeting. (http://www.regents.nysed.gov/common/regents/files/meetings/Apr%202015/415p12d9.pdf). The results of the survey indicated that although a majority of survey responders agreed to varying degrees that CPR/AED instruction is important, the field expressed concern that implementation of this mandate would present fiscal challenges to districts through the purchase of equipment, as well as the provision of professional development and classroom instruction.

Job Impact Statement

The proposed rule is necessary to implement Education Law section 305(52), as added by Chapter 417 of the Laws of 2014, which requires the Commissioner to make a recommendation to the Board of Regents regarding a potential new mandate for required instruction in cardiopulmonary resuscitation (CPR) and the use of Automated External Defibrillators (AEDs) in senior high schools. Pursuant to the Commissioner's recommendation to the Board of Regents, the proposed rule would require students in senior high school be provided instruction in hands-only CPR and the use of AEDs. 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.

Department of Environmental Conservation

ERRATUM

A Notice of Proposed Rule Making, I.D. No. ENV-23-15-00008-P, pertaining to Environmental Remediation – Brownfield Cleanup Program, published in the June 10, 2015 issue of the State Register contained the incorrect street number for the public hearing address. Following is the correct address: New York City Department of Health, 125 Worth St., New York, NY.

EMERGENCY RULE MAKING

To Amend 6 NYCRR Parts 10 and 40 Pertaining to Commercial and Recreational Regulations for Striped Bass

I.D. No. ENV-13-15-00031-E
Filing No. 521
Filing Date: 2015-06-12
Effective Date: 2015-06-12

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

Action taken: Amendment of Parts 10 and 40 of Title 6 NYCRR.

Statutory authority: Environmental Conservation Law, sections 11-0303, 11-1521, 13-0339, 13-0347 and 13-0105

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

Specific reasons underlying the finding of necessity: A Notice of Emergency Adoption and Proposed Rulemaking was filed and in effect on March 17, 2015. The emergency rule will expire on June 14, 2015. This current Notice of Emergency Adoption must be filed with the Department of State by June 13, 2015 to ensure this emergency rule is in effect before the original emergency rule expires.

This rule making is necessary to ensure that required management measures to reduce the harvest of striped bass by at least 25% in 2015 remain in effect until the proposed rule is adopted. It is also to ensure New York remains in compliance with the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan (FMP) for Striped Bass. If New York State fails to maintain the management measures needed to meet the required reduction in harvest, the State may be found non-compliant with the FMP and risks a total closure of all of New York's striped bass fisheries by the Secretary of Commerce.

It is in the best interests of the general welfare of New York State's recreational and commercial fishing interests not to delay the implementation of these regulations.

Subject: To amend 6 NYCRR Parts 10 and 40 pertaining to commercial and recreational regulations for striped bass.

Purpose: Reduce fishing mortality of striped bass to promote stable fish populations, and to remain in compliance with the ASMFC FMP.

Text of emergency rule: Part 10 of 6 NYCRR is amended to read as follows:

Existing paragraph 10.1(b)(18) is amended to reads as follows:

(b) Table A. Sportfishing regulations

	Species	Open Season	Minimum length	Daily limit
(18)	Striped Bass (in the Hudson River and tributaries north of the George Washington Bridge and all inland waters)	[March 16] *April 1* through November 30	[18'' TL] *18" to 28" TL or > 40" TL* (total length see ECL § 13-0339[4])	1

Subparagraph 10.2(j)(2)(f) is amended to read as follows:

(2) Table D: Fishing regulations for Delaware River and its West Branch bordering Pennsylvania

	Species	Open Season	Minimum length	Daily limit
('f')	Striped bass	All year	28"	[2] *1*

Subdivision 40.1(f) is amended to read as follows:

Species	Open Season	Minimum Length	Possession Limit
Striped Bass (except the Hudson River north of the George Washington Bridge)	April 15 – Dec. 15	[Licensed Party/Charter Boat anglers] 28" TL [All other anglers 28" to 40" TL] [>40" TL(Total length)] *	[2] *1* [1] [1]

Species Red drum through Atlantic menhaden remain the same.

Paragraph 40.1(g)(4) is repealed.

Subdivision 40.1(i) is amended to read as follows:

Species	Open Season	Minimum Length	Trip Limit
Striped Bass (the area east of a line drawn due north from the mouth of Wading River Creek & east of a line at 73 degrees 46 minutes west longitude, which is near the terminus of East Rockaway Inlet.)	[Jul] *June* 1 - Dec 15#	Not less than [24] *28*" TL nor greater than [36] *38*" TL	See Subdivision (j) of this section

Species Red drum through Anadromous river herring remain the same.

Subparagraph 40.1(j)(8)(v) is amended to read as follows:

(v) Beginning in 2005, and continuing at five year intervals, each striped bass commercial harvesters permit holder in the full share category must file with the department a complete copy of his or her federal or state income tax records from one of the preceding three years. Such tax records must be filed before the June 1 deadline for receipt of applications. Such tax records must demonstrate that the permit holder has, as stated in subparagraph (ii) above, maintained the 50 percent earned income level in order to remain a participant in the full share category. Failure to file a timely and complete copy of federal or state income tax records which demonstrate that the permit holder has maintained the 50 percent earned income level will result in the permit holder being placed into the partial share category. Thereafter, the rules pertaining to partial share permit holders provided in subparagraph (iv) above apply. *This requirement shall be suspended in 2015, until either reinstituted upon notification by the department or replaced with an alternate system of determining shares and qualifications for shares.*

Paragraph 40.1(j)(9) is amended to read as follows:

(9) Applications for striped bass commercial harvesters permits will be accepted until close of business [June] *May* 1. Any application for a striped bass commercial harvesters permit received after close of business [June] *May* 1 will not be entertained by the department.

This notice is intended to serve 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. ENV-13-15-00031-EP, Issue of April 1, 2015. The emergency rule will expire August 10, 2015.

Text of rule and any required statements and analyses may be obtained from: Carol Hoffman, NYSDEC, Bureau of Marine Resources, 205 N Belle Mead Road - Suite 1, East Setauket, NY 11733, (631) 444-0476, email: carol.hoffman@dec.ny.gov

Additional matter required by statute: Pursuant to the State Environmental Quality Review act, a short EAF is on file with the department.

Regulatory Impact Statement

1. Statutory authority:

Environmental Conservation Law (ECL) section 13-0105 stipulates that the management of the state's anadromous species, such as striped bass, shall be consistent with interstate or state-federal fishery management plans (FMP). ECL sections 11-0303 and 13-0339 authorize DEC to establish by regulation measures for the management of striped bass, including size limits, catch and possession limits, open and closed seasons, closed areas, restrictions on the manner of taking and landing, and other management measures. ECL sections 11-1521 and 13-0347 establish additional provisions for striped bass management in the Hudson River and marine district, respectively.

Regulations adopted by DEC must be consistent with the requirements of applicable fishery management plans adopted by the Atlantic States Marine Fisheries Commission and with applicable provisions of FMPs adopted pursuant to the Atlantic Coastal Fishery Cooperative Management Act.

2. Legislative objectives:

It is the objective of the above-cited legislation that DEC manages marine fisheries in such a way as to protect this natural resource for its intrinsic value to the marine ecosystem and to optimize resource use for commercial and recreational harvesters while remaining compliant with marine fisheries conservation and management policies and interstate fishery management plans.

3. Needs and benefits:

This rule making is necessary for New York State to remain in compliance with fishery management plans adopted by the Atlantic States Marine Fisheries Commission (ASMFC). All ASMFC member states must comply with the provisions of FMPs and management measures adopted by ASMFC. These FMPs and management measures are designed to promote the long-term sustainability of managed marine species, preserve the States' marine resources, and protect the interests of both commercial and recreational fishermen. All member states must promulgate any regulations necessary to implement the provisions of the FMPs and remain compliant with the FMPs. New York State must amend 6 NYCRR Parts 10 and 40 to ensure that the State's regulations are consistent with recently adopted Addendum IV to Amendment 6 of the ASMFC Interstate Fishery Management Plan for Atlantic Striped Bass. Failure to adopt these regulations may result in New York State being found non-compliant with the recommendations of the FMP and subject to the imposition of a moratorium on the harvest of striped bass in New York State.

More than ninety (90) percent of boat operators who hold a party and charter license also held a striped bass party and charter permit. The striped bass party and charter permit allowed customers to harvest two striped bass, and required operators to maintain trip-level fishing records of catch and effort expended. The regular party and charter license also requires operators to maintain trip level fishing records of catch and effort expended. Repeal of the striped bass party and charter permit ensures all recreational fishers harvest only one striped bass, to remain in compliance with the ASMFC FMP.

The proposed rule suspends the commercial striped bass harvesters' tag allocation requalification process for 2015, pending an alternative system for determining shares and qualifications, in accordance with the recommendations of the Marine Resources Advisory Council (MRAC). MRAC has recommended procedures to make the commercial striped bass harvesters permits transferable. The transfer process is expected to be enacted in 2016, and the tag allocation process is likely to be replaced with an alternate system of determining allocations and harvester qualifications. Thus, the current 2015 tag allocation process is likely to be rendered obsolete in the near future.

The proposed rule will open the commercial striped bass season one month earlier and require commercial striped bass harvesters to renew their permits one month earlier. The earlier opening of the commercial striped bass harvest season may offset raising the new minimum size limit, and provide increased opportunities for fishers to harvest striped bass when they are in the bays. The commercial quota would remain as specified in the FMP.

4. Costs:

The proposed rule does not impose any costs to DEC, local municipalities, or the regulated public.

5. Local government mandates:

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

6. Paperwork:

None.

7. Duplication:

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

8. Alternatives:

No action alternative: Under this alternative, DEC does not adopt this Notice of Emergency Adoption and the current emergency adoption expires. If the emergency rule lapses, the previous striped bass fishing rules will be in effect. These rules do not provide the harvest reduction needed to meet the required 25% reduction in fishing mortality for striped

bass. If there is such a lapse in the implementation of the required management measures, it is not clear what action ASMFC would take given New York State's obligations to comply with the ASMFC FMP for Atlantic striped bass.

The 2015 recreational fishing seasons for striped bass opened April 1 (inland waters) and April 15 (marine waters) under the rules set by the emergency adoption. If DEC does not adopt this second emergency rule, and the original emergency rule expires, the size limits and possession limits for striped bass would revert to the older, previous limits. Recreational anglers would be required to observe the previous rules. Once DEC files a Notice of Adoption for these rules and the adopted rules are published and in effect, the striped bass fishing rules would switch back to the rule promulgated in the original emergency adoption.

Likewise, the commercial striped bass fishing season will open June 1 under the rules set by the emergency adoption. If DEC does not adopt this second emergency rule, and the original emergency rule expires, the commercial season for striped bass will close (until July 1, the previous opening date) and the slot limit would revert to the older, previous slot limit.

This second emergency adoption will maintain consistent rules and provide stable management of the recreational and commercial striped bass fisheries in New York. This emergency rule will allow DEC to provide reliable guidance to both recreational anglers and commercial fishermen who target striped bass. The no action alternative was rejected.

9. Federal standards:

The amendment to 6 NYCRR Parts 10 and 40 is in compliance with the recently adopted addendum to the ASMFC FMP for Atlantic striped bass.

10. Compliance schedule:

Regulated parties will be notified by mail, through appropriate news releases and via DEC's website of the changes to the regulations. The proposed regulations will take effect upon filing with the Department of State.

Regulatory Flexibility Analysis

1. Effect of rule:

The Atlantic State Marine Fisheries Commission (ASMFC) facilitates cooperative management of marine and diadromous fish species among the fifteen Atlantic Coast member states. The principal mechanism for implementation of cooperative management of migratory fish is the ASMFC's Interstate Fishery Management Plans (FMPs) for individual species or groups of fish. The FMPs are designed to promote the long-term health of these species, preserve resources, and protect the interests of both commercial and recreational fishers.

DEC is proposing amendments to 6 NYCRR in order to remain in compliance with Addendum IV to Amendment 6 of the Striped Bass FMP.

The amendment of 6 NYCRR Parts 10 and 40 revises the size and possession limits for the striped bass recreational fishery, in both the marine and coastal district, and inland waters, including the Hudson and Delaware Rivers and their tributaries; as well as new open season dates for the Hudson River and its tributaries. It will also implement new size limits and a new open season date for the marine commercial fishery, temporarily suspend the tag allocation requalification process for 2015, repeal the striped bass party and charter boat permit, and require commercial striped bass harvesters to renew their permits one month earlier.

Specifically, for the Delaware River, the proposal is for one fish, 28 inches or greater Total Length for recreational fisheries. For the Hudson River (north of the George Washington Bridge), the proposal is for one fish, either between 18 and 28 inches total length OR one "trophy" fish greater than 40 inches total length. Additionally, the start date of the open season will be approximately two weeks later, from the current March 16, to the proposed April 1 for the recreational fishery. For the Marine and Coastal Waters, (including Hudson River south of the George Washington Bridge), the proposal is for one fish, 28 inches or greater Total Length for all recreational fishers. The proposal also repeals the striped bass party and charter permit that allows customers to possess two striped bass. For-hire vessels will still need to have a regular party and charter license in order to be able to operate.

For the commercial fishery: the proposal is for a change in the current slot size limit of 24-36 inches Total Length to a proposed slot of 28-38 inches Total Length; as well as a proposal to suspend the commercial striped bass harvesters tag allocation requalification process for 2015, pending an alternative system for determining tag shares and qualifications. Also, this rule will open the commercial striped bass season one month earlier and require commercial striped bass harvesters to renew their permits one month earlier. This rule making may have an impact on the commercial and recreational fisheries, including private recreational fishers, and party and charter boat operators. It may also have an indirect effect on their supporting industries. These proposals are intended to reduce the catch for commercial and recreational fishers as required by ASMFC. In 2014, DEC issued 457 striped bass commercial harvesters permits, 490 party and charter boat licenses, and 444 striped bass party and charter boat permits, in the marine and coastal district. Three hundred sixty-seven (367) striped bass commercial harvesters received a full share individual quota allocation of striped bass tags; 90 received a part share allocation. In 2014, there were also 479 food fish and crustacea dealer and shipper licenses issued. There are approximately 515 bait licenses sold state-wide each year; an unknown number of these license holders sell bait used to harvest striped bass. The total number of bait and tackle shops in New York is also unknown. In addition, approximately 200 Hudson River marine permit gear licenses are sold annually; most of these permits are used for taking river herring to be used for striped bass bait.

The regulations do not apply directly to local governments, and will not have any direct effects on local governments.

2. Compliance requirements:

All commercial licensed fishers, as well as party and charter boat license holders, as part of their mandatory reports to DEC, are already required to maintain daily or trip level fishing records of catch and effort expended.

3. Professional services:

None.

4. Compliance costs:

This rule making will not impose any costs to DEC or local governments. There are no initial capital costs that will be incurred by a regulated business or industry to comply with the proposed rule. The proposal may reduce harvests for an unknown number of commercial and recreational fishers.

5. Economic and technological feasibility:

The proposed regulations do not require any expenditure on the part of affected businesses in order to comply with the changes. There is no additional technology required for small businesses, and this action does not apply to local governments.

6. Minimizing adverse impact:

The promulgation of this regulation is necessary for New York to remain in compliance with the FMP for striped bass. The regulations are intended to protect the striped bass resource and avoid the adverse impacts that would be associated with closure of the fishery due to non-compliance with the FMP. Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment, as well as wholesale and retail outlets and other support industries. These regulations are being adopted in order to stabilize the stocks spawning stock biomass and to allow for rebuilding to the target level.

7. Small business and local government participation:

New York hosted two ASMFC public hearings on Addendum IV to which recreational and commercial fishers were invited. There was no special effort to contact local governments because the proposed rule does not affect them.

8. For rules that either establish or modify a violation or penalties associated with a violation:

Pursuant to SAPA 202-b (1-a) (b), no such cure period is included in the rule because of the potential adverse impact on the resource. Cure periods for the illegal taking of fish or wildlife are neither desirable nor recommended. Immediate compliance is required to ensure the general welfare of the public and the resource is protected.

9. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

DEC will conduct an initial review of the proposed rule within three years, as required by SAPA section 207.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

There are no rural areas within the marine and coastal district. Secondly, the marine and coastal district striped bass fisheries directly affected by the proposed rule are not located adjacent to any rural areas of the State. Five Hudson River watershed (includes the Hudson Valley) counties fall into the rural area category: Columbia, Greene, Putnam, Rensselaer, and Ulster counties. Two Delaware River counties are also in the rural area category: Delaware and Sullivan counties. The proposed regulations will affect individuals who participate in the Atlantic striped bass fishery, and may also have an indirect effect on supporting industries.

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

There is no commercial fishing allowed for striped bass in rural inland waters of New York State. Party and charter boat businesses that target striped bass on the Hudson River are not required to submit fishing reports to DEC. This proposed rule will not impose any reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas.

3. Costs:

There will be no initial capital or annual costs to comply with the new regulations.

4. Minimizing adverse impact:

The promulgation of this regulation is necessary in order for DEC to comply with the Atlantic States Marine Fisheries Commission Addendum IV to Amendment 6 of the Atlantic Striped Bass Interstate Fishery

Management Plan. The regulations are intended to create a sustainable fishery in New York water and avoid the adverse economic and social impacts that would be associated with closure of the fishery. Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect for the fisheries in question, as well as wholesale and retail outlets and other support industries. These regulations are being adopted in order to provide the appropriate level of protection and allow for harvest consistent with the capacity of the resource to sustain such effort.

River herring are harvested in the Hudson River and its tributaries, and used for striped bass bait. Opening the Hudson River striped bass recreational season at a later date will likely not affect many commercial river herring fishers or bait shops. Harvest data reported to DEC show that less that 3% of the total harvest of river herring occurs before April 1st.

5. Rural area participation:

DEC staff met with the affected parties of inland waters at two public hearings, to inform them of the striped bass stock status and initiate discussions of potential fishing restrictions necessary to protect the stock and to maintain acceptable fishing mortality. DEC has also been advised by the Hudson River Estuary Management Advisory Committee to gain their input on the regulation change. Marine and Coastal District fishers were also informed of proposed changes at the November 18, 2014 and January 13, 2015 Marine Resources Advisory Council (MRAC) meetings. DEC has maintained a regular dialogue with fishermen by phone and e-mail regarding the issue. Moreover, DEC has and will continue to provide notice to affected fishers through mailings, newspapers and other media outlets, including those in rural counties and towns.

6. (IF APPLICABLE) Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462:

DEC will conduct an initial review of the proposed rule within three years, as required by SAPA section 207.

Job Impact Statement

1. Nature of impact: The promulgation of this regulation is necessary in order for DEC to comply with the Atlantic States Marine Fisheries Commission Addendum IV to Amendment 6 of the Atlantic Striped Bass Interstate Fishery Management Plan.

Amendments to 6 NYCRR Parts 10 and 40 will implement possession and size limits for the recreational striped bass fishery, in both the marine and coastal district, and inland waters, including the Hudson and Delaware Rivers and their tributaries, as well as new open season dates for the Hudson River and its tributaries. It will also implement new size limits for the commercial marine fishery, open the commercial season one month earlier; and require commercial striped bass harvesters to renew their permits one month earlier. The rule will also temporarily suspend the striped bass commercial harvester tag allocation requalification process for 2015.

Specifically, the proposed rule decreases the recreational striped bass daily possession limit from two fish to one fish for the Delaware River, including both its West Branch bordering Pennsylvania and East Branch in New York and changes the opening recreational striped bass season date for the Hudson River and tributaries north of the George Washington Bridge from March 16 to April 1. The rule changes the minimum length for recreational striped bass for the Hudson River and tributaries north of the George Washington Bridge, from 18 inches, to either one fish of 18 to 28 inch slot size, or one fish greater than 40 inches. It changes the marine recreational fishing regulations for striped bass from two fish with a minimum length of 28 inches for licensed party and charter boat fishers, and one fish of 28 to 40 inch slot size, plus one fish greater than 40 inches, for private fishers, to one fish, 28 inches or greater total length for all recreational anglers and repeals the marine and coastal district striped bass party and charter boat permit that allows customers to possess two striped bass. The proposed rule changes the minimum length for commercial striped bass from a 24 to 36 inch slot size, to a 28 to 38 inch slot size. In addition, the proposed rule will open the commercial striped bass season one month earlier and require commercial striped bass harvesters to renew their permits one month earlier. The rule will also temporarily suspend the 2015 tag allocation requalification process for striped bass commercial harvesters.

This rule making may have an impact on the commercial and recreational fisheries, including private recreational fishers, and party and charter boat operators. It may also have an indirect effect on their supporting industries. These proposals may reduce the catch for commercial and recreational fishers.

2. Categories and numbers affected: In 2014, DEC issued 457 striped bass commercial harvesters permits, 490 party and charter boat licenses, and 444 striped bass party and charter boat permits, in the marine and coastal district. 367 striped bass commercial harvesters received a full share individual quota allocation of striped bass tags; 90 received a partial share allocation. In 2014, there were also 479 food fish and crustacea dealer and shipper licenses issued. There are approximately 515 bait licenses sold state-wide each year; an unknown number of these license holders sell bait used to harvest striped bass. The total number of bait and tackle shops in New York is also unknown. In addition, approximately 200 Hudson River marine permit gear licenses are sold annually; most of these permits are used for taking river herring to be used for striped bass bait.

Recreational and commercial fishing is a major generator of revenue in New York. According to the National Marine Fisheries Service, the 2013 dockside value of the striped bass commercial fishery in New York was $3,393,905. In 2014, the National Marine Fisheries Service also reported 1,079,265 recreational angler trips targeting striped bass in New York. According to the US Fish and Wildlife Service, in 2011, there were 1.9 million recreational anglers in all waters of New York, generating an estimated 2 billion dollars in total expenditures.

3. Regions of adverse impact: The proposed rule will affect striped bass fishers in both marine and coastal district and inland waters, including the Hudson and Delaware Rivers and their tributaries.

4. Minimizing adverse impact: The promulgation of this regulation is necessary in order for DEC to comply with the ASMFC Addendum IV to Amendment 6 of the striped bass FMP. The regulations are intended to optimize resource use for commercial and recreational harvesters consistent with fisheries conservation and management policies and interstate fishery management plans. These regulations are being adopted to provide the appropriate level of protection and allow for harvest consistent with the capacity of the resource to sustain such effort.

If the ASMFC determines a state to be in non-compliance with a specific FMP, the state may be subject to a complete prohibition on all fishing for the associated species in the waters of that state until the state does come into compliance with the FMP. The proposed regulations are intended to avoid the adverse economic and social impacts that would be associated with closure of the fishery.

A moratorium on the harvest of striped bass would have a severe adverse impact on the commercial and recreational fisheries, as well as their supporting industries. Ultimately, the maintenance of long-term sustainable fisheries will have a positive effect on employment for the fisheries in question, as well as wholesale and retail outlets and other support industries.

River herring are used for striped bass bait. Opening the Hudson River striped bass recreational season at a later date will likely not affect many commercial river herring fishers or bait shops. Harvest data reported to DEC show that less that 3% of the total harvest of river herring occurs before April 1.

Commercial striped bass fishers must tag every fish they harvest. Each fisher is issued an individual quota of either a full share of tags or a partial share of tags, depending on the percentage of their earned income that comes from fishing. Full share quota fishers would have had to submit tax records to DEC in 2015, to verify that they still qualify to receive a full share of tags. Suspending the striped bass commercial harvesters requalification process for 2015 is not expected to have a large impact on commercial fishers. Those in the partial share category can still be upgraded to full share in 2015 by submitting their tax records to DEC. Those in the full share category will remain full share for 2015.

Opening the commercial fishing season date on June 1 instead of July 1 may help offset economic hardships imposed by raising the minimum size limit, and would allow fishers to harvest striped bass when they are inside marine and coastal district bays. The annual pound quota would remain as specified in the FMP.

For-hire vessels in the marine and coastal district are required to have a party and charter boat license. Those who fish for striped bass are additionally required to have a striped bass party and charter boat permit. More than 90 per cent of those who have a party and charter license also have a striped bass party and charter permit. The striped bass party and charter permit allows customers to harvest two striped bass. The current proposal allows all recreational fishers to only harvest one striped bass. If striped bass regulations are again changed in the future, all party and charter boast license holders will be able to harvest the same possession limit.

5. Self-employment opportunities: Most commercial fishers are self-employed. A few individuals may work with or for local bait supply shops or marinas. The party and charter boat businesses, the bait and tackle shops, and the marinas are mostly small businesses that are self-owned and operated. Some members of the recreational fishing industry are also self-employed.

6. Initial review of the rule, pursuant to SAPA § 207 as amended by L. 2012, ch. 462: DEC will conduct an initial review of the rule within three years, as required by SAPA section 207.

Assessment of Public Comment

Seventy-four (74) letters and e-mails were received by DEC during the public comment period regarding this rule making. Some correspondence had more than one comment.

Comment: Fifteen (15) people supported the proposed regulations; seven (7) others were thankful for regulatory information provided by DEC.

DEC response: DEC acknowledges receipt of these comments.

Comment: Ten (10) people commented that they would prefer to have party and charter boat passengers keep two fish per person, instead of one as proposed.

DEC Response: All Atlantic States Marine Fisheries Commission (ASMFC) member states, from Maine to New York; the Delaware River in Pennsylvania; the coastal portions of Maryland and Virginia; and all of North Carolina have enacted the same recreational striped bass regulation: one fish per person per day of at least 28 inches total length for the coastal recreational fishery, as specified in the ASMFC Interstate Fishery Management Plan (FMP). Consistent regulations for all member states increases the likelihood of reducing fishing pressure and maintaining striped bass populations at targeted levels, to ensure a sustainable fishery.

Comment: Fifteen (15) people expressed concern about the recreational and commercial striped bass fisheries in general. Of these, seven (7) people commented that they believed striped bass fishing should only be allowed recreationally, and that DEC should not allow any commercial harvest. Three (3) believed anglers should not be allowed to keep any fish, and that this should be a catch and release fishery. One person said there should be a total moratorium on any striped bass fishing. Another individual expressed concern regarding the commercial season opening one month early. One fish dealer expressed concern that he could no longer buy or sell striped bass that were caught from another state and were less than 28 inches long. One other individual expressed unspecified "concern" about the proposed regulations. Lastly, one person said that DEC does not know what it is doing.

DEC Response: Striped bass fishing in New York provides recreational and economic benefits to the state and its residents. ASMFC has determined that the striped bass population is declining, but currently is not at levels low enough to warrant a partial or complete fishing moratorium. Commercial harvest is strictly regulated by a pound quota. All commercial fishermen must tag and account for every fish they catch, and each fisherman is given a specific number of tags for the year. The fishery can close early if the quota is expected to be exceeded. In 2014, New York commercial striped bass permit holders caught approximately 523,000 pounds of striped bass. New York recreational anglers caught approximately 7.25 million pounds of striped bass, almost 14 times as much as commercial fishermen. The former legal size for New York commercial striped bass was 24 to 36 inches. The new 28 to 38 inch slot size for commercial striped bass does indicate that fish dealers can no longer buy or sell striped bass that are between 24 and 27 inches long, even if the fish were harvested in another state. However, this may be mitigated by the fact that they can now buy and sell striped bass caught from another state that are 37 to 38 inches long, particularly from Massachusetts.

Comment: Two (2) people suggested that New York should give out a specific number of tags to each recreational angler, in order for them to catch either any size striped bass or to catch a trophy-sized one.

DEC Response: New York does not have a recreational fishing license for striped bass. Instead, anglers must register in a no-cost saltwater fishing registry. There are approximately 200,000 - 300,000 anglers enrolled in the registry. This is probably a large underestimate of the number of striped bass anglers, because people fishing on party or charter boats in the marine district do not have to enroll in the registry. The ASMFC FMP calls for a 25% reduction in harvest from 2013 levels. In 2013, approximately 376,000 fish were caught recreationally in New York coastal waters. A 25% reduction in harvest would mean that New York fishers could catch 282,000 striped bass for the season, or approximately one fish per person for the entire season, instead of the proposed one fish per person each day. DEC is not currently set up to administer the suggested program.

Comment 5: One person commented that Delaware River regulations should be the same as those for the Hudson River.

DEC Response: ASMFC Interstate Fishery Management Plan (FMP) for striped bass specifies a recreational fishing regulation of one fish per person per day of at least 28 inches total length. States could propose different regulations, but must be able to show, through quantitative analysis, that the proposal achieves at least a 25% reduction in harvest. Because DEC lacks striped bass fishery data specifically from the Delaware River, the regulations have to be the specified one fish, 28 inches or greater total length for New York to be in compliance with the FMP.

Comment 6: DEC received forty-seven (47) comments regarding proposed Hudson River size limits. Four (4) people felt that the marine regulations and the Hudson River regulations should be the same. One of these people commented that the marine regulations should be the same as those proposed for the Hudson (one fish at 18 to 28 inch slot limit or a single fish greater than 40 inches). Three of those people commented that the Hudson regulations should be the same as those proposed for the marine district (one fish, 28 inches or greater total length).

Twenty (20) people commented that the slot size should be different from the one proposed, or that there should just be one specific minimum size. Almost all comments provided different suggested sizes. One person commented that the proposed slot was ineffective. Six (6) people specifically supported the proposed slot size. Fifteen (15) additional people did not want people to be able to catch the trophy sized fish (greater than 40 inches). One person said DEC should shut down tournaments, and increase public awareness on the striped bass decline. One person felt the regulations place a burden on the Hudson fishery.

DEC Response: The regulations were proposed to reduce the harvest of striped bass to promote the rebuilding of the striped bass populations along the Atlantic coast Five options were originally proposed for the Hudson River to achieve conservation equivalency to the default recreational fishing regulation in the ASMFC FMP. The options were reviewed and approved by the ASMFC Technical Committee. Public meetings were held in the Hudson area, and at the Marine Resources Advisory Council (MRAC) meetings to discuss options for the Hudson River fishery. Stakeholders also had the opportunity to take an internet survey to voice their preferences.

The proposed regulations provide a level of protection for larger female spawning striped bass between 29 and 40 inches long. The specific proposed regulations in the Hudson River allow all anglers to harvest striped bass for consumption (those in the 18 to 28 inch harvest slot) while continuing to allow for the harvest of a "trophy" sized striped bass (greater than 40 inches). Much of the lure of the Hudson River striped bass fishery is the chance that one might catch one of the very large striped bass that have returned to the Hudson River to spawn. DEC regulations were not established or amended in consideration of fishing tournaments. Fishing tournaments are a form of "use" of the resource and DEC has not, historically, set regulations that either favor, or specifically discourage, fishing tournaments.

Comment 7: Eleven (11) people felt use of circle hooks to fish for striped bass should be mandatory. One additional person felt DEC should not allow the use of treble hooks.

DEC Response: DEC encourages the use of circle hooks. The department is considering adopting a regulatory amendment in the future to require circle hooks when using live bait to fish for striped bass, as well as other species.

Comment 8: One person felt striped bass in the proposed slot limit would not eat live herring, the fisher's choice of bait.

DEC Response: There are many ways to catch striped bass, using either live or artificial bait.

Comment 9: One person suggested that DEC should allow the take of large male, but not female, striped bass greater than 28 inches.

DEC Response: ASMFC Interstate Fishery Management Plan (FMP) for striped bass allows states to propose conservation equivalent regulations for recreational harvest, but states must be able to show, through quantitative analysis, that the proposal achieves at least a 25% reduction in harvest. DEC lacks data to determine the proportion of male and female fish in the Hudson River. This strategy would require outreach and education of fishers to help them determine the difference between a male and a female striped bass; and would also increase the burden on law enforcement. It may also increase deaths of female striped bass inadvertently caught and not properly released back into the water.

Department of Financial Services

EMERGENCY RULE MAKING

Title Insurance Agents, Affiliated Relationships, and Title Insurance Business

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

Filing No. 524

Filing Date: 2015-06-15

Effective Date: 2015-06-15

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

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

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

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

Specific reasons underlying the finding of necessity: Long-sought and critically needed legislation to license title insurance agents was enacted as part of Chapter 57 of the New York Laws of 2014, which was signed into law by the governor on March 31, 2014. Chapter 57 took effect on September 27, 2014.

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

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

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

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

Substance of emergency rule: The following sections are amended:

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

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

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

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

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

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

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

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

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

Section 35.1 contains definitions for new Part 35.

Section 35.2 specifies forms for title insurance agent licensing applications.

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

Section 35.4 addresses affiliated business relationships.

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

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

Section 35.7 provides certain other minimum disclosure requirements.

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

Section 35.9 establishes record retention requirements for title insurance agents.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-29-14-00014-P, Issue of July 23, 2014. The emergency rule will expire August 13, 2015.

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

Consolidated Regulatory Impact Statement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Legislative objectives: Long-sought and critically needed legislation to license title insurance agents was enacted as part of Chapter 57 of the New York Laws of 2014, which was signed into law by the governor on March 31, 2014 and took effect on September 27, 2014. By way of background, title insurance agents in New York: (a) handle millions of dollars of borrowers' and sellers' funds, (b) record documents, and (c) pay off mortgages. Yet for years, title insurance agents have conducted business in New York without licensing or other regulatory oversight, standards or guidelines. Because, as a matter of practice in New York, the title insurance agents control the bulk of the title insurance business, including bringing in customers, conducting the searches and other title work, the title insurance corporations often have little choice but to deal with title insurance agents who they may otherwise consider questionable or unscrupulous. Without licensing or regulatory oversight, an unscrupulous title insurance agent who was fired by one title insurer could simply take the business to another title insurer, who is usually more than willing to appoint that title insurance agent.

This lack of State regulation over title insurance agents made for an alarming weakness in New York law, and specifically New York law addressing title insurance rebating and inducement. For example, lack of

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

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

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

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

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

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

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

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

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

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

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

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

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

Consolidated Regulatory Flexibility Analysis

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

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

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

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

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

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

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

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

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

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

7. Small business participation: Interested parties, including an organization representing title insurance agents, were given an opportunity to comment on draft proposed rules as well as the proposed rulemaking that was published in the State Register on July 23, 2014.

Consolidated Rural Area Flexibility Analysis

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

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

Rural area participation: Interested parties, including those located in rural areas, were given an opportunity to review and comment on draft versions of these rules as well as the proposed rulemaking that was published in the State Register on July 23, 2014.

Consolidated Job Impact Statement

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

Assessment of Public Comment

The agency received no public comment

New York State Gaming Commission

EMERGENCY RULE MAKING

Implementation of Rules Pertaining to Gaming Facility Request for Application and Gaming Facility License Application

I.D. No. SGC-28-14-00006-E

Filing No. 523

Filing Date: 2015-06-15

Effective Date: 2015-06-15

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

Action taken: Addition of Part 5300 to Title 9 NYCRR.

Statutory authority: Racing, Pari-Mutuel Wagering and Breeding Law, sections 104(19), 1305(20) and 1307(2)

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

Specific reasons underlying the finding of necessity: The Gaming Commission ("Commission") has determined that immediate adoption of these rules is necessary for the preservation of the general welfare. On March 31, 2014, the Gaming Facility Location Board, which the Commission established pursuant to section 109-a of the Racing, Pari-Mutuel Wagering and Breeding Law, issued a Request for Applications ("RFA") for applicants seeking a license to develop and operate a gaming facility in New York State pursuant to the Upstate New York Gaming Economic Development Act of 2013, as amended by Chapter 175 of the Laws of 2013 (the "Act"). The Act authorizes four upstate destination gaming resorts to enhance economic development in upstate New York, completed applications were due to the Gaming Facility Location Board by June 30, 2014. The immediate re-adoption of these rules is necessary to prescribe the form of the RFA and the information required to be submitted in response to the RFA. Standard rule making procedures would prevent the Commission from commencing the fulfillment of its statutory duties.

Subject: Implementation of rules pertaining to gaming facility request for application and gaming facility license application.

Purpose: To facilitate a fair and transparent process for applying for a license to operate a gaming facility.

Substance of emergency rule: This addition of Part 5300 of Subtitle T of Title 9 NYCRR will add new Sections 5300.1 through 5300.5 to allow the New York State Gaming Commission ("Commission") to prescribe the form of the application for a gaming facility license.

The new Part of the Gaming Commission regulations describes the form of application for applicants seeking a gaming facility license and the information the applicant must provide. Section 5300.1 sets forth the form of the application including disclosure of identifying information, finance and capital structure of the proposed gaming facility, economic and market analysis, proposed land and design of facility space, assessment of local support and plans to address regional tourism, problem gambling, workforce development and resource management. Section 5300.2 describes the scope of background information the applicant and related parties must provide in three disclosure forms, the Gaming Facility License Application Form, the Multi-Jurisdictional Personal History Disclosure Form and the Multi-Jurisdictional Personal History Disclosure Supplemental Form. Section 5300.3 describes the process by which all applicants for a gaming facility license shall submit fingerprints as part of a background investigation. Section 5300.4 describes the applicant's duty to update its application as necessary, following submission of the application. Section 5300.5 describes the application fee and procedure for refunding a portion of such fee in certain circumstances.

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. SGC-28-14-00006-EP, Issue of July 16, 2014. The emergency rule will expire August 13, 2015.

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

Regulatory Impact Statement

1. STATUTORY AUTHORITY: Racing, Pari-Mutuel Wagering and Breeding Law ("Racing Law") section 104(19) grants authority to the Gaming Commission ("Commission") to promulgate rules and regulations that it deems necessary to carry out its responsibilities. Racing Law section 1305(2) grants rule making authority to the Commission to implement, administer and enforce the provisions of Racing Law Article 13.

Racing Law section 1306(1) and section 1312(1) prescribe that the Gaming Facility Location Board ("Board"), which is established by the Commission, shall issue a request for applications ("RFA") for applicants seeking a license to develop and operate gaming facilities in New York State. On March 31, 2014, the Gaming Facility Location Board issued the RFA.

Racing Law section 1307(2) prescribes that the Commission regulate, among other things, the method and form of the application; the methods, procedures and form for delivery of information concerning an applicant's family, habits, character, associates, criminal record, business activities, and financial affairs; and the procedures for the fingerprinting of an applicant.

2. LEGISLATIVE OBJECTIVES: This emergency rule making carries out the legislative objectives of the above-referenced statutes by implementing the requirements of Racing Law section 1307(2).

3. NEEDS AND BENEFITS: This emergency rule making is necessary to enable the Board to carry out its statutory duty of issuing the RFA for applicants seeking a license to develop and operate a gaming facility in New York State.

4. COSTS:

(a) Costs to the regulated parties for the implementation of and continuing compliance with the rule: Those parties who choose to seek a gaming facility license will bear some costs. There is an application fee of $1 million that is prescribed by Racing Law section 1316(8) to defray the costs of processing the application and investigating the applicant. The extent of other costs incurred by applicants will depend upon the efforts that they put into completing and submitting the application.

(b) Costs to the regulating agency, the State, and local governments for the implementation of and continued administration of the rule: The rules will impose some costs on the Commission in reviewing gaming facility applications and in issuing licenses, but it is anticipated that the $1 million application fee paid by each applicant will offset such costs. The rules will not impose any additional costs on local governments.

(c) The information, including the source or sources of such information, and methodology upon which the cost analysis is based: The cost estimates are based on the Commission's experience regulating racing and gaming activities within the State.

5. PAPERWORK: The rules set forth the content of the application for a gaming facility license. The requirements apply only to those parties that choose to seek a gaming facility license.

6. LOCAL GOVERNMENT: The rules do not impose any mandatory program, service, duty, or responsibility upon local government because the licensing of gaming facilities is strictly a matter of State law.

7. DUPLICATION: The rules do not duplicate, overlap or conflict with any existing State or federal requirements.

8. ALTERNATIVES: The Commission is required to create these rules under Racing Law section 1307(2). Therefore, no alternatives were considered.

9. FEDERAL STANDARDS: There are no federal standards applicable to the licensing of gaming facilities in New York because such licensing is solely in accordance with New York State law.

10. COMPLIANCE SCHEDULE: The Commission anticipates that affected parties will be able to achieve compliance with the rules upon the adoption of the rules, which will occur upon filing.

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

This emergency rule making will not have any adverse impact on small businesses, local governments, jobs or rural areas. The rules prescribe the method and form of the application for a gaming facility license; the methods, procedures and form for delivery of information concerning an applicant's family, habits, character, associates, criminal record, business activities, and financial affairs; and the procedures for fingerprinting an applicant. It is not expected that any small business or local government will apply for a gaming facility license.

The rules impose no adverse economic impact or reporting, recordkeeping, or other compliance requirements on small businesses in rural or urban areas or on employment opportunities. It is anticipated that the opening of up to four gaming facilities in upstate New York will create new job opportunities. The rules apply uniformly throughout the State to any applicant seeking a license to develop and operate a gaming facility in the State.

The proposal will not adversely impact small businesses, local governments, jobs, or rural areas. It does not require a full Regulatory Flexibility Analysis, Rural Area Flexibility Analysis, or Job Impact Statement.

Assessment of Public Comment

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

Department of Health

EMERGENCY RULE MAKING

Children's Camps

I.D. No. HLT-26-15-00003-E
Filing No. 511
Filing Date: 2015-06-11
Effective Date: 2015-06-11

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

Action taken: Amendment of Subpart 7-2 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 225

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

Specific reasons underlying the finding of necessity: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"), in order to coordinate and improve the State's ability to protect those persons having various physical, developmental, or mental disabilities and who are receiving services from various facilities or provider agencies. The Department must promulgate regulations as a "state oversight agency." These regulations will assure proper coordination with the efforts of the Justice Center.

Among the facilities covered by Chapter 501 are children's camps having enrollments with 20 percent or more developmentally disabled campers. These camps are regulated by the Department and, in some cases, by local health departments, pursuant to Article 13-B of the Public Health Law and 10 NYCRR Subpart 7-2. Given the effective date of Chapter 501 and its relation to the start of the camp season, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such camps. Absent emergency promulgation, such persons would be denied initial coordinated protections until the 2015 camp season. Promulgating these regulations on an emergency basis will provide such protection, while still providing a full opportunity for comment and input as part of a formal rulemaking process which will also occur pursuant to the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to sections 201 and 225 of the Public Health Law.

Promulgating the regulations on an emergency basis will ensure that campers with special needs promptly receive the coordinated protections to be provided to similar individuals cared for in other settings. Such protections include reduced risk of being cared for by staff with a history of inappropriate actions such as physical, psychological or sexual abuse towards persons with special needs. Perpetrators of such abuse often seek legitimate access to children so it is critical to camper safety that individuals who that have committed such acts are kept out of camps. The regulation provides an additional mechanism for camp operators to do so. The regulations also reduce the risk of incidents involving physical, psychological or sexual abuse towards persons with special needs by ensuring that such occurrences are fully and completely investigated, by ensuring that camp staff are more fully trained and aware of abuse and reporting obligations, allowing staff and volunteers to better identify inappropriate staff behavior and provide a mechanism for reporting injustice to this vulnerable population. Early detection and response are critical components for mitigating injury to an individual and will prevent a perpetrator from hurting additional children. Finally, prompt enactment of the proposed regulations will ensure that occurrences are fully investigated and evaluated by the camp, and that measures are taken to reduce the risk of re-occurrence in the future. Absent emergency adoption, these benefits and protections will not be available to campers with special needs until the formal rulemaking process is complete, with the attendant loss of additional protections against abuse and neglect, including physical, psychological, and sexual abuse.

Subject: Children's Camps.

Purpose: To include camps for children w/developmental disabilities as a type of facility with in the oversight of the Justice Center.

Substance of emergency rule: The Department is amending 10 NYCRR Subpart 7-2 Children's Camps as an emergency rulemaking to conform the Department's regulations to requirements added or modified as a result of Chapter 501 of the Laws of 2012 which created the Justice Center for the Protection of Persons with Special Needs (Justice Center). Specifically, the revisions:

- amend section 7-2.5(o) to modify the definition of "adequate supervision," to incorporate the additional requirements being imposed on camps otherwise subject to the requirements of section 7-2.25
- amend section 7-2.24 to address the provision of variances and waivers as they apply to the requirements set forth in section 7-2.25
- amend section 7-2.25 to add definitions for "camp staff," "Department," "Justice Center," and "Reportable Incident"

With regard to camps with 20 percent or more developmentally disabled children, which are subject to the provisions of 10 NYCRR section 7-2.25, add requirements as follows:

- amend section 7-2.25 to add new requirements addressing the reporting of reportable incidents to the Justice Center, to require screening of camp staff, camp staff training regarding reporting, and provision of a code of conduct to camp staff
- amend section 7-2.25 to add new requirements providing for the disclosure of information to the Justice Center and/or the Department and, under certain circumstances, to make certain records available for public inspection and copying
- amend section 7-2.25 to add new requirements related to the investigation of reportable incidents involving campers with developmental disabilities
- amend section 7-2.25 to add new requirements regarding the establishment and operation of an incident review committee, and to allow an exemption from that requirement under appropriate circumstances
- amend section 7-2.25 to provide that a permit may be denied, revoked, or suspended if the camp fails to comply with the regulations, policies or other requirements of the Justice Center

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 8, 2015.

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

Regulatory Impact Statement

Statutory Authority:

The Public Health and Health Planning Council is authorized by Section 225(4) of the Public Health Law (PHL) to establish, amend and repeal sanitary regulations to be known as the State Sanitary Code (SSC), subject to the approval of the Commissioner of Health. Article 13-B of the PHL sets forth sanitary and safety requirements for children's camps. PHL Sections 225 and 201(1)(m) authorize SSC regulation of the sanitary aspects of businesses and activities affecting public health including children's camps.

Legislative Objectives:

In enacting to Chapter 501 of the Laws of 2012, the legislature established the New York State Justice Center for the Protection of People with Special Needs (Justice Center) to strengthen and standardize the safety net for vulnerable people that receive care from New York's Human Services Agencies and Programs. The legislation includes children's camps for children with developmental disabilities within its scope and requires the Department of Health to promulgate regulations approved by the Justice Center pertaining to incident management. The proposed

amendments further the legislative objective of protecting the health and safety of vulnerable children attending camps in New York State (NYS).

Needs and Benefits:

The legislation amended Article 11 of Social Services law as it pertains to children's camps as follows. It:

- included overnight, summer day and traveling summer day camps for children with developmental disabilities as facilities required to comply with the Justice Center requirements.
- defined the types of incident required to be reported by children's camps for children with developmental disabilities to the Justice Center Vulnerable Persons' Central Registry.
- mandated that the regulations pertaining to children's camps for children with developmental disabilities are amended to include incident management procedures and requirements consistent with Justice Center guidelines and standards.
- required that children's camps for children with developmental disabilities establish an incident review committee, recognizing that the Department could provide for a waiver of that requirement under certain circumstances.
- required that children's camps for children with developmental disabilities consult the Justice Center's staff exclusion list (SEL) to ensure that prospective employees are not on that list and to, where the prospective employee is not on that list, to also consult the Office of Children and Family Services State Central Registry of Child Abuse and Maltreatment (SCR) to determine whether prospective employees are on that list.
- required that children's camps for children with developmental disabilities publicly disclose certain information regarding incidents of abuse and neglect if required by the Justice Center to do so.

The children's camp regulations, Subpart 7-2 of the SSC are being amended in accordance with the aforementioned legislation.

Costs:

Cost to Regulated Parties:

The amendments impose additional requirements on children's camp operators for reporting and cooperating with Department of Health investigations at children's camps for children with developmental disabilities (hereafter "camps"). The cost to affected parties is difficult to estimate due to variation in salaries for camp staff and the amount of time needed to investigate each reported incident. Reporting an incident is expected to take less than half an hour; assisting with the investigation will range from several hours to two staff days. Using a high estimate of staff salary of $30.00 an hour, total staff cost would range from $120 to $1600 for each investigation. Expenses are nonetheless expected to be minimal statewide as between 40 and 50 children's camps for children with developmental disabilities operate each year, with combined reports of zero to two incidents a year statewide. Accordingly, any individual camp will be very unlikely to experience costs related to reporting or investigation.

Each camp will incur expenses for contacting the Justice Center to verify that potential employees, volunteers or others falling within the definition of "custodian" under section 488 of the Social Services Law (collectively "employees") are not on the Staff Exclusion List (SEL). The effect of adding this consultation should be minimal. An entry level staff person earning the minimum wage of $7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the Justice Center, within a few hours.

Similarly, each camp will incur expenses for contacting the Office of Children and Family Services (OCFS) to determine whether potential employees are on the State Central Registry of Child Abuse and Maltreatment (SCR) when consultation with the Justice Center shows that the prospective employee is not on the SEL. The effect of adding this consultation should also be minimal, particularly since it will not always be necessary. An entry level staff person earning the minimum wage of $7.25/hour should be able to compile the necessary information for 100 employees, and complete the consultation with the OCFS, within a few hours. Assuming that each employee is subject to both screens, aggregate staff time required should not be more than six to eight hours. Additionally, OCFS imposes a $25.00 screening fee for new or prospective employees.

Camps will be required to disclose information pertaining to reportable incidents to the Justice Center and to the permit issuing official investigating the incident. Costs associated with this include staff time for locating information and expenses for copying materials. Using a high estimate of staff salary of $30.00 an hour, and assuming that staff may take up to two hours to locate and copy the records, typical cost should be under $100.

Camps must also assure that camp staff, and certain others, who fall within the definition of mandated reporters under section 488 of the Social Services Law receive training related to mandated reporting to the Justice Center, and the obligations of those staff who are required to report incidents to the Justice Center. The costs associated with such training should be minimal as it is expected that the training material will be provided to the camps and will take about one hour to review during routine staff training. Camps must also ensure that the telephone number for the Justice Center reporting hotline is conspicuously posted for campers and staff. Cost associated with such posting is limited, related to making and posting a copy of such notice in appropriate locations.

The camp operator must also provide each camp staff member, and others who may have contact with campers, with a copy of a code of conduct established by the Justice Center pursuant to Section 554 of the Executive Law. The code must be provided at the time of initial employment, and at least annually thereafter during the term of employment. Receipt of the code of conduct must be acknowledged, and the recipient must further acknowledge that he or she has read and understands it. The cost of providing the code, and obtaining and filing the required employee acknowledgment, should be minimal, as it would be limited to copying and distributing the code, and to obtaining and filing the acknowledgments. Staff should need less than 30 minutes to review the code.

Camps will also be required to establish and maintain a facility incident review committee to review and guide the camp's responses to reportable incidents. The cost to maintain a facility incident review committee is difficult to estimate due to the variations in salaries for camp staff and the amount of time needed for the committee to do its business. A facility incident review committee must meet at least annually, and also within two weeks after a reportable incident occurs. Assuming the camp will have several staff members participate on the committee, an average salary of $50.00 an hour and a three hour meeting, the cost is estimated to be $450.00 dollars per meeting. However, the regulations also provide the opportunity for a camp to seek an exemption, which may be granted subject to Department approval based on the duration of the camp season and other factors. Accordingly, not all camps can be expected to bear this obligation and its associated costs.

Camps are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.

Finally, the regulations add noncompliance with Justice Center-related requirements as a ground for denying, revoking, or suspending a camp operator's permit.

Cost to State and Local Government:

State agencies and local governments that operate children's camps for children with developmental disabilities will have the same costs described in the section entitled "Cost to Regulated Parties." Currently, it is estimated that five summer day camps that meet the criteria are operated by municipalities. The regulation imposes additional requirements on local health departments for receiving incident reports and investigations of reportable incidents, and providing a copy of the resulting report to the Department and the Justice Center. The total cost for these services is difficult to estimate because of the variation in the number of incidents and amount of time to investigate an incident. However, assuming the typically used estimate of $50 an hour for health department staff conducting these tasks, an investigation generally lasting between one and four staff days, and assuming an eight hour day, the cost to investigate an incident will range $400.00 to $1600. Zero to two reportable incidents occur statewide each year, so a local health department is unlikely to bear such an expense. The cost of submitting the report is minimal, limited to copying and mailing a copy to the Department and the Justice Center.

Cost to the Department of Health:

There will be routine costs associated with printing and distributing the amended Code. The estimated cost to print revised code books for each regulated children's camp in NYS is approximately $1600. There will be additional cost for printing and distributing training materials. The expenses will be minimal as most information will be distributed electronically. Local health departments will likely include paper copies of training materials in routine correspondence to camps that is sent each year.

Local Government Mandates:

Children's camps for children with developmental disabilities operated by local governments must comply with the same requirements imposed on camps operated by other entities, as described in the "Cost to Regulated Parties" section of this Regulatory Impact Statement. Local governments serving as permit issuing officials will face minimal additional reporting and investigation requirements, as described in the "Cost to State and Local Government" section of this Regulatory Impact Statement. The proposed amendments do not otherwise impose a new program or responsibilities on local governments. City and county health departments continue to be responsible for enforcing the amended regulations as part of their existing program responsibilities.

Paperwork:

The paperwork associated with the amendment includes the completion and submission of an incident report form to the local health department and Justice Center. Camps for children with developmental disabilities will also be required to provide the records and information necessary for LHD investigation of reportable incidents, and to retain documentation of the results of their consultation with the Justice Center regarding whether any given prospective employee was found to be on the SEL or the SCR.

Duplication:
This regulation does not duplicate any existing federal, state, or local regulation. The regulation is consistent with regulations promulgated by the Justice Center.
Alternatives:
The amendments to the camp code are mandated by law. No alternatives were considered.
Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.
Federal Standards:
Currently, no federal law governs the operation of children's camps.
Compliance Schedule:
The proposed amendments are to be effective upon filing with the Secretary of State.

Regulatory Flexibility Analysis

Types and Estimated Number of Small Businesses and Local Governments:
There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. About 30% of summer day camps are operated by municipalities (towns, villages, and cities). Typical regulated children's camps representing small business include those owned/operated by corporations, hotels, motels and bungalow colonies, non-profit organizations (Girl/Boy Scouts of America, Cooperative Extension, YMCA, etc.) and others. None of the proposed amendments will apply solely to camps operated by small businesses or local governments.
Compliance Requirements:
Reporting and Recordkeeping:
The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties," "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.
Other Affirmative Acts:
The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" "Local Government Mandates," and "Paperwork" sections of the Regulatory Impact Statement.
Professional Services:
Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.
Compliance Costs:
Cost to Regulated Parties:
The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.
Cost to State and Local Government:
The obligations imposed on small business and local government as camp operators are no different from those imposed on camps generally, as described in the "Cost to Regulated Parties" section of the Regulatory Impact Statement. The obligations imposed on local government as the permit issuing official is described in "Cost to State and Local Government" and "Local Government Mandates" portions of the Regulatory Impact Statement.
Economic and Technological Feasibility:
There are no changes requiring the use of technology.
The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.
Minimizing Adverse Impact:
The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized.
Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.
Small Business Participation and Local Government Participation:
No small business or local government participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the regulations, and training will be provided to affected entities with regard to the new requirements.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:
There are between 40 and 50 regulated children's camps for children with development disabilities (38% are expected to be overnight camps and 62% are expected to be summer day camps) operating in New York State, which will be affected by the proposed rule. Currently, there are seven day camps and ten overnight camps operating in the 44 counties that have population less than 200,000. There are an additional four day camps and three overnight camps in the nine counties identified to have townships with a population density of 150 persons or less per square mile.
Reporting, Recordkeeping and Other Compliance Requirements:
Reporting and Recordkeeping:
The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.
Other Compliance Requirements:
The obligations imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.
Professional Services:
Camps with 20 percent or more developmentally disabled children are now explicitly required to obtain an appropriate medical examination of a camper physically injured from a reportable incident. A medical examination has always been expected for such injuries.
Costs:
Cost to Regulated Parties:
The costs imposed on camps in rural areas are no different from those imposed on camps generally, as described in "Cost to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.
Economic and Technological Feasibility:
There are no changes requiring the use of technology.
The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.
Minimizing Adverse Impact:
The amendments to the camp code are mandated by law. No alternatives were considered. The economic impact is already minimized, and no impacts are expected to be unique to rural areas.
Consideration was given to including a cure period to afford camp operators an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the department's ability to enforce the regulations could place this already vulnerable population at greater risk to their health and safety.
Rural Area Participation:
No rural area participation was used for this rule development. The amendments to the camp code are mandated by law. Ample opportunity for comment will be provided as part of the process of promulgating the routine regulations, and training will be provided to affected entities with regard to the new requirements.

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a (2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types and assisting with the investigation of new reportable incidents are expected to be completed by existing camp staff, and should not be appreciably different than that already required under current requirements.

EMERGENCY RULE MAKING

Standards for Adult Homes and Adult Care Facilities Standards for Enriched Housing

I.D. No. HLT-26-15-00011-E
Filing No. 525
Filing Date: 2015-06-15
Effective Date: 2015-06-15

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

Action taken: Amendment of Parts 487 and 488 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20, 20(3)(d), 34, 34(3)(f), 131-o, 460, 460-a—460-g, 461 and 461-a—461-h

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

Specific reasons underlying the finding of necessity: Chapter 501 of the Laws of 2012 established the Justice Center for the Protection of People with Special Needs ("Justice Center"), in order to coordinate and improve the State's ability to protect those persons having various physical, developmental, or mental disabilities and who are receiving services from various facilities or provider agencies. The Department must promulgate regulations, as a "state oversight agency" of some of the covered facilities, in order to assure proper coordination with the efforts of the Justice Center Chapter 501 which took effect on June 30, 2013, and the Justice Center becomes operational.

Among the facilities covered by Chapter 501 are adult homes and enriched housing programs having a capacity of eighty or more beds, and in which at least 25% (twenty-five percent) of the residents are persons with serious mental illness as defined by section 1.03(52) of the mental hygiene law, but not including an adult home which is authorized to operate 55% (fifty-five percent) or more of its total licensed capacity of beds as assisted living program beds. Given the effective date of Chapter 501, these implementing regulations must be promulgated on an emergency basis in order to assure the necessary protections for vulnerable persons at such adult homes and enriched housing programs for an additional period likely extending several months. Absent emergency promulgation, such persons would be denied initial coordinated protections for several additional months, creating an unacceptable risk to residents. Promulgating these regulations on an emergency basis will provide such protection, while still providing a full opportunity for comment and input as part of a formal rulemaking process which will be implemented subsequently, as required by the State Administrative Procedures Act. The Department is authorized to promulgate these rules pursuant to Sections 20, 34, 131-o, 460, 460-a—460-g, 461, 461-a—461-h of the Social Services Law; and L. 1997, ch.436; and and L. 2012, ch. 501.

Subject: Standards for Adult Homes and Adult Care Facilities Standards for Enriched Housing.

Purpose: Revisions to Parts 487 and 488 in regards to the establishment of the Justice Center for Protection of People with Special Needs.

Substance of emergency rule: The Department proposes to amend 18 NYCRR Parts 487 and 488 to address the creation of the Justice Center for the Protection of Persons with Special Needs (Justice Center) pursuant to Chapter 501 of the Laws of 2012, and to conform the Department's regulations to requirements added or modified as a result of that Chapter Law. Specifically, the amendments:

- add definitions specific to facilities subject to the Justice Center of "abuse," "mistreatment," "neglect," "misappropriation of property," "reasonable cause," "reportable incident," "Justice Center," "significant incident," "custodian," "facility subject to the Justice Center," "psychological abuse," "Department," and " unlawful use or administration of a controlled substance" at sections 487.2 (d)(1)-(13) and 488.2 (c)(1)-13;
- amend sections 487.5 and 488.5 to add occurrences which would constitute a reportable incident to the list of occurrences which residents should not experience, and to require the operator of certain facilities to conspicuously post the telephone number of the Justice Center incident reporting hotline;
- amend sections 487.7 and 488.7 to clarify a facility's obligations regarding what incidents must be investigated, how they must be investigated and who must investigate them;
- amend sections 487.7 and 488.7 to replace outdated references to the State Commission on Quality of Care for the Mentally Disabled with references to the Justice Center;
- amend sections 487.7 and 488.7 to add a requirement addressing when reports must be provided to the Justice Center, and requiring such reports to conform to the requirements of the Justice Center;
- amend sections 487.9 and 488.9 to add a requirement for staff training in the identification of reportable incidents and facility reporting procedures, and to add a requirement for certain facilities regarding the provision of a code of conduct to employees, volunteers, and others providing services at the facility who could be expected to have resident contact;
- amend sections 487.9 and 488.9 to add a requirement that certain facilities consult the Justice Center's staff exclusion list with regard to prospective employees, volunteers, and others, and that when such person is not on the staff exclusion list, that such facilities also consult the State Central Registry, with regard to such persons. The facility must maintain documentation of such consultation. The amendments also address the hiring consequences associated with the outcome of those consultations;
- amend sections 487.9 and 488.9 to specifically include investigation of reportable incidents to the administrative obligations of facilities, and to the duties of a case manager;
- amend sections 487.9 and 488.9 to require the operator of a facility to designate an additional employee to be a designated reporter;
- amend sections 487.10 and 488.10 to add a new requirement that certain facilities provide certain information to the Justice Center, and make certain information public, at the request of the Justice Center, and to allow sharing of information between the Department and the Justice Center;
- add new sections 487.14 and 488.13 to address reporting of certain incidents; and
- add new sections 487.15 and 488.14 to address the investigation of reportable incidents involving facilities subject to the Justice Center.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 12, 2015.

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

Summary of Regulatory Impact Statement

The Department believes that the proposed regulatory amendments enhance the health and safety of those served by adult homes and enriched housing programs.

Adult homes and enriched housing programs subject to the Justice Center will be required to consult the Justice Center's register of substantiated category one cases of abuse or neglect as established pursuant to section 495 of the Social Services Law prior to hiring certain employees, and where the person is not on that list, the facility will also be required to check the Office of Children and Family Services' Statewide Central Registry of Child Abuse and Maltreatment. The facility could not hire a person on the Justice Center's list, but would have the discretion to hire a person who was only on Office of Children and Family Services' list. Reporting and investigation obligations for all facilities would be expanded to cover "reportable incidents" which, are slightly more inclusive than what is covered by current reporting and investigation obligations. The amendments also add specific provisions addressing reporting and investigation procedures, to require the posting the telephone number of the Justice Center's reporting hotline, and to require the case manager to be capable of reporting and investigating incidents. Those amendments should not require any significant change in current practice or impose anything beyond nominal additional expense to facilities. Requirements imposed on facilities generally are limited to an obligation to train staff in the identification and reporting of reportable incidents. With regard to facilities subject to the Justice Center, that obligation, as well as the others imposed by the regulations, are required by virtue of Chapter 501 of the Laws of 2012. The costs imposed by the amendments are expected to be minimal. In many cases, particularly with regard to the investigation requirements, the amendments generally reflect existing practice, so should neither impose any significant new costs or require any significant change in practice.

Regulatory Flexibility Analysis

Effect of Rule:

This rule imposes some new obligations and administrative costs on regulated parties (adult homes and enriched housing programs). Some of the changes to Sections 487 and 488 apply to all adult home and enriched housing facilities; other only apply to those adult homes and enriched housing facilities which fall under the purview of the Justice Center. None of the requirements imposed by the amendments would impose different, or unique, burdens on small businesses or local governments; the requirements apply equally statewide. The costs and obligations associated with the amendments are fully described in the "Costs to Regulated Parties" section of the Regulatory Impact Statement.

Most of the five-hundred twenty-two (522) certified adult homes in New York State, including the forty-seven (47) which fall under the purview of the Justice Center, are operated by small businesses as defined in Section 102 of the State Administrative Procedure Act. Those entities would be subject to all of the above additional requirements.

Of the six (6) facilities operated by local governments, two (2) are scheduled to close within the next year. Of the four (4) remaining homes, none fall within the scope of the Justice Department required reporting facilities. Accordingly, the only additional cost imposed on those four (4) homes would be those nominal costs associated with obligations applicable to all adult homes and enriched housing facilities, as described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

Compliance Requirements:

As the facilities operated by local governments are not among those within the purview of the Justice Center for the Protection of Persons with Special Needs (Justice Center), the only impact upon facilities operated by

local governments will be those resulting from obligations applicable to all adult homes and enriched housing facilities, as described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement.

The four (4) affected facilities run by local governments will experience minimal additional regulatory burdens in complying with the amendment's requirements, as functions related to Justice Center activities will not cause a need for additional staff or equipment.

Those facilities which constitute small businesses would be subject to additional requirements, as they include facilities both subject to, and not subject to, the purview of the Justice Center. The scope of the impact upon any given facility depends on whether it falls within the Justice Center's purview. Such obligations and impacts are fully described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. The amendments are not expected to create a need for any additional staff or equipment for those facilities.

The Department expects that regulated parties will be able to comply with these regulations as of their effective date, upon filing with the Secretary of State.

Professional Services:

No need for additional professional services is anticipated. Existing professional staff are expected to be able to assume any increase in workload resulting from the additional requirements.

Compliance Costs:

This rule imposes limited new administrative costs on regulated parties (adult homes and enriched housing programs), as described in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. The changes to Sections 487 and 488 add additional administrative responsibilities for those adult home and enriched housing facilities within the Justice Center's jurisdiction. None of the requirements imposed by the amendments would impose different, or unique, burdens on small businesses or local governments; the requirements apply equally statewide.

Economic and Technological Feasibility:

The proposed regulation would present no economic or technological difficulties to any small businesses and local governments affected by this amendment. The infrastructure for contacting the Justice Center, and establishing an Incident Review Committee, are already in place.

Minimizing Adverse Impact:

Department efforts to consider minimizing the impact of the amendments, and its consideration of alternatives to the amendments, are discussed in the "Alternatives" section of the Regulatory Impact Statement.

These amendments will not have an adverse impact on the ability of small businesses or local governments to comply with Department requirements, as full compliance would require minimal enhancements to present hiring and follow-up practices.

Consideration was given to including a cure period to afford adult home and enriched housing programs an opportunity to correct violations associated with this rule; however, this option was rejected because it is believed that lessening the Department's ability to enforce the regulations for violations could expose this already vulnerable population to greater risk to their health and safety.

Small Business and Local Government Participation:

The Department will notify all New York State certified ACFs by a Dear Administrator Letter (DAL) informing them of this Justice Center expansion of the protection of vulnerable people. Regulated parties that are small businesses and local governments are expected to be prepared to participate in required Justice Center activities on the effective date of this amendment because the staff and infrastructure needed for performance of these are already in place.

Rural Area Flexibility Analysis

Types and Estimated Number of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Of the forty-seven (47) current facilities that will fall under the purview of the Justice Center for the Protection of People with Special Needs (Justice Center), six (6) are located in rural counties, as follows: Allegany County, Cayuga County, Greene County, Genesee County, Monroe County and Rensselaer County. Of the 522 adult homes and enriched housing programs statewide, including those not under the purview of the Justice Center, 160 are in rural areas.

Reporting and Recordkeeping and Other Compliance Requirements:

Reporting and Recordkeeping:

Reporting, recordkeeping and other compliance requirements are addressed in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Other Compliance Requirements:

Compliance requirements are discussed in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Professional Services:

There are no additional professional services required to comply with the proposed amendments.

Compliance Costs:

Cost to Regulated Parties:

Compliance requirements and associated costs are discussed in the "Costs to Regulated Parties" and "Paperwork" sections of the Regulatory Impact Statement. None of the requirements imposed by the amendments would impose different, or unique, burdens on rural areas; the requirements apply equally statewide.

Economic and Technological Feasibility:

There are no changes requiring the use of technology. The proposal is believed to be economically feasible for impacted parties. The amendments impose additional reporting and investigation requirements that will use existing staff that already have similar job responsibilities. There are no requirements that that involve capital improvements.

Minimizing Adverse Impact:

Department efforts to consider minimizing the impact of the amendments, and its consideration of alternatives to the amendments, are discussed in the "Alternatives" section of the Regulatory Impact Statement.

Rural Area Participation:

Of the forty-seven (47) current facilities that will fall under the purview of the Justice Center, six (6) are located in rural counties, as follows: Allegany County, Cayuga County, Greene County, Genesee County, Monroe County and Rensselaer County. The Department will notify all New York State-certified adult care facilities (ACFs) by a Dear Administrator Letter (DAL) informing them of this expansion of requirements to protect people with special needs. Regulated parties in rural areas are expected to be able to participate in requirements of the Justice Center on the effective date of this amendment.

Job Impact Statement

No Job Impact Statement is required pursuant to Section 201-a (2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment that it will have no impact on jobs and employment opportunities, because it does not result in an increase or decrease in current staffing level requirements. Tasks associated with reporting new incidents types, reporting to the Justice Center for the Protection of People with Special Needs (Justice Center), as opposed to the Commission on the Quality of Care and Advocacy for People with Disabilities, making public certain information as directed by the Justice Center and assisting with the investigation of new reportable incidents are expected to be completed by existing facility staff. Similarly, the need for a medical examination of the patient in the course of investigating reportable incidents is similarly not appreciably different from the current practice of obtaining such examination under such circumstances. Accordingly, the amendments should not have any appreciable effect on employment as compared to current requirements.

Office for People with Developmental Disabilities

EMERGENCY RULE MAKING

Implementation of the Protection of People with Special Needs Act and Reforms to Incident Management

I.D. No. PDD-26-15-00004-E

Filing No. 512

Filing Date: 2015-06-11

Effective Date: 2015-06-11

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

Action taken: Amendment of Parts 624, 633 and 687; and addition of Part 625 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b) and 16.00; L. 2012, ch. 501

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

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

In December 2012, the Governor signed the Protection of People with Special Needs Act (PPSNA). This new law created the Justice Center for the Protection of People with Special Needs (Justice Center) and established many new protections for vulnerable persons, including a new system for incident management in services operated or certified by OPWDD and new requirements for more comprehensive and coordinated pre-employment background checks.

OPWDD filed emergency regulations effective June 30, 2013 through September 25, 2013, and replacement emergency regulations effective September 26, 2013; December 25, 2013; March 24, 2014; June 22, 2014; September 17, 2014; December 15, 2014; and March 15, 2015 to implement many of the provisions contained in the PPSNA. The March 15, 2015 replacement emergency regulations are now expiring. New emergency regulations are necessary to continue implementing regulations that are in conformance with the PPSNA. If OPWDD did not file new emergency regulations effective June 11, 2015, regulatory requirements would revert to the regulations that were in effect prior to June 30, 2013.

The promulgation of these regulations is essential to preserve the health, safety and welfare of individuals with developmental disabilities who receive services in the OPWDD system. If OPWDD did not promulgate regulations on an emergency basis, many of the protections established by the PPSNA vital to the health, safety, and welfare of individuals with developmental disabilities would not be implemented or would be implemented ineffectively. Further, protections for individuals receiving services would be threatened by the confusion resulting from inconsistent requirements. For example, the emergency regulations change the categories of incidents to conform to the categories established by the PPSNA. Without the promulgation of these amendments, agencies would be required to report incidents based on one set of definitions to the Justice Center and incidents based on a different set of definitions to OPWDD. Requirements for the management of incidents would also be inconsistent. Especially concerning regulatory requirements related to incident management and pre-employment background checks, it is crucial that OPWDD regulations are changed to support the new requirements in the PPSNA so that this initiative is implemented in a coordinated fashion.

OPWDD was not able to use the regular rulemaking process established by the State Administrative Procedure Act because there was not sufficient time to develop and promulgate regulations within the necessary timeframes. OPWDD is making only one substantive revision, with additional conforming changes for clarity, in the new emergency regulations, compared with the March 15, 2015 regulations, based on a change in the input from the field and experience with the new systems and requirements gained over the past year and eighteen months. By filing new emergency regulations, OPWDD is able to revise the regulations to reflect recent input and current needs.

Subject: Implementation of the Protection of People with Special Needs Act and reforms to incident management.

Purpose: To enhance protections for people with developmental disabilities served in the OPWDD system.

Substance of emergency rule: The emergency regulations conform OPWDD regulations to Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act or PPSNA) by making a number of revisions. The major changes to OPWDD regulations made to implement the PPSNA are:

- Revisions to 14 NYCRR Part 624 (now titled "Reportable incidents and notable occurrences") to incorporate categories of "reportable incidents" as established by the PPSNA. Programs and facilities certified or operated by OPWDD must report "reportable incidents" to the Vulnerable Persons' Central Register (VPCR), a part of the Justice Center for the Protection of People with Special Needs (Justice Center). Part 624 is amended to incorporate other revisions related to the management of reportable incidents in conformance with various provisions of the PPSNA.
- Revisions to 14 NYCRR Section 633.7 concern the code of conduct adopted by the Justice Center in accordance with Section 554 of the Executive Law and impose requirements on programs certified or operated by OPWDD. The code of conduct must be read and signed by custodians who have regular and direct contact with individuals receiving services as specified in the regulations.
- Revisions to 14 NYCRR Section 633.22 reflect the consolidation of the criminal history record check function in the Justice Center. The Justice Center will receive requests for criminal history record checks and will process those requests, instead of OPWDD.
- A new 14 NYCRR Section 633.24 contains requirements for background checks (in addition to criminal history record checks).
- Revisions to Part 687 incorporate changes to criminal history record check and background check requirements in family care homes.

The regulations include numerous changes associated with incident management or the implementation of the PPSNA. These changes include:

- The amendments delete the current categories and definitions of events and situations that must be reported to agencies and OPWDD. The amendments add definitions of "reportable incidents." Types of reportable incidents are "abuse," "neglect," and "significant incidents." The amendments also add definitions of "notable occurrences." Part 624 includes requirements for reporting and investigating these types of events.
- The requirements of Part 624 are limited to events and situations that occur under the auspices of an agency.
- A new Part 625 contains requirements that apply to events and situations which are not under the auspices of an agency.
- The amendments mandate the use of OPWDD's Incident Report and Management Application (IRMA), a secure electronic statewide incident reporting system, for reporting information about specified events and situations, and remove the current requirement to submit a paper based incident report to OPWDD in certain instances.
- The amendments make several changes to requirements for investigations. The amendments require that investigations of specified events and situations be initiated immediately following occurrence or discovery (with limitations when it is anticipated that the Justice Center or the Central Office of OPWDD will conduct the investigation). Investigations conducted by agencies must be completed no later than thirty days after the initiation of an investigation, unless the agency documents an acceptable justification for an extension of the thirty-day time frame. The amendments also add new requirements to enhance the independence of investigators, and require agency investigators to use a standardized investigative report format.
- The amendments make several changes regarding Incident Review Committees (IRC). The amendments change requirements concerning membership of the IRC and include specific provisions concerning shared committees, using another agency's committee or making alternative arrangements for IRC review. The amendments also modify the responsibilities of a provider agency's IRC when an incident is investigated by the Central Office of OPWDD or the Justice Center.
- The amendments expand on requirements for notification to service coordinators.
- The amendments contain an explicit requirement that providers must comply with OPWDD recommendations concerning a specific event or situation or must explain its reasons for not complying with a recommendation within a month of the recommendation being made.
- When the Justice Center makes findings concerning matters referred to its attention and the Justice Center issues a report and recommendations to the agency regarding such matters, the agency is required to make a written response to OPWDD within sixty days of receipt of such report, of action taken regarding each of the recommendations in the report.
- The amendments add a requirement that agencies retain records pertaining to incidents and allegations of abuse for a minimum time period of seven years. In cases when there is a pending audit or litigation, the pertinent records must be retained throughout the pendency of the audit or litigation. The amendments specify what information must be retained.
- The amendments add requirements that agencies check the "Staff Exclusion List" of the Vulnerable Persons' Central Register as a part of the background check process.
- The amendments also include requirements concerning background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013. These requirements are added to implement section 16.34 on the Mental Hygiene Law as amended by the PPSNA.
- In accordance with changes in Section 424-a of the Social Services Law, the amendments extend requirements for checks of the Statewide Central Register of Child Abuse and Maltreatment to employees and others that have the potential for regular and substantial contact with individuals receiving services in programs certified or operated by OPWDD. Prior to June 30, 2013, providers were only required to request an SCR check for those who have the potential for regular and substantial contact with children.
- Definitions are changed in Parts 624 and 633 to conform to PPSNA definitions.
- The amendments include revisions to reflect the restructuring of entities within OPWDD and OPWDD's name change.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire September 8, 2015.

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

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

Regulatory Impact Statement

1. Statutory Authority:

a. Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act), added Article 20 to the Executive Law and Article 11 to the Social Services Law and amended other laws including the Mental Hygiene Law. Chapter 501 incorporates requirements for implementing regulations by "State Oversight Agencies," which include OPWDD.

b. OPWDD has the statutory responsibility to provide and encourage the provision of appropriate programs and services in the area of care, treatment, rehabilitation, education, and training of persons with developmental disabilities, as stated in the New York State Mental Hygiene Law Section 13.07.

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

d. OPWDD has the statutory authority to adopt regulations concerning the operation of programs, provision of services and facilities pursuant to the New York State Mental Hygiene Law Section 16.00.

2. Legislative Objectives: These emergency amendments further the legislative objectives embodied in Chapter 501 of the Laws of 2012 (Protection of People with Special Needs Act) and sections 13.07, 13.09(b), and 16.00 of the Mental Hygiene Law. The emergency amendments incorporate a number of reforms to OPWDD regulations in order to increase protections and improve the quality of services provided to people with developmental disabilities in OPWDD's system.

3. Needs and Benefits: The majority of the amendments include extensive new and modified requirements for OPWDD regulations in 14 NYCRR Part 624 pertaining to incident management. Additional amendments add and revise requirements in other OPWDD regulations in order to implement the Protection of People with Special Needs Act (PPSNA).

The PPSNA requires the establishment of comprehensive protections for vulnerable persons, including people with developmental disabilities, against abuse, neglect, and other harmful conduct. The PPSNA created a Justice Center with responsibilities for effective incident reporting and investigation systems, fair disciplinary processes, informed and appropriate staff hiring procedures, and strengthened monitoring and oversight systems. The Justice Center operates a 24/7 hotline for reporting abuse, neglect, and significant incidents in accordance with the PPSNA's provisions for uniform definitions, mandatory reporting, and minimum standards for incident management programs. In collaboration with OPWDD, the Justice Center is also charged with developing and delivering appropriate training for caregivers, their supervisors, and investigators. Additionally, the Justice Center is responsible for conducting criminal background checks for applicants in the OPWDD system.

The PPSNA creates a Vulnerable Persons' Central Register (VPCR). This register will contain the names of custodians found to have committed substantiated acts of abuse or neglect using a preponderance of evidence standard. All custodians found to have committed such acts have the right to a hearing before an administrative law judge to challenge those findings. Custodians having committed egregious or repeated acts of abuse or neglect are prohibited from future employment in providing services for vulnerable persons, and may be subject to criminal prosecution. Less serious acts of misconduct are subject to progressive discipline and retraining. Applicants with criminal records who seek employment serving vulnerable persons will be individually evaluated as to suitability for such positions.

Pursuant to the PPSNA, the Justice Center is charged with recommending policies and procedures to OPWDD for the protection of people with developmental disabilities; this effort involves the development of requirements and guidelines in areas including but not limited to incident management, rights of people receiving services, criminal background checks, and training of custodians. In accordance with the PPSNA, these requirements and guidelines must be reflected, wherever appropriate, in OPWDD's regulations. Consequently, these amendments incorporate the requirements in regulations and guidelines developed by the Justice Center.

The amendments also make numerous changes to OPWDD's incident management process to strengthen the process and to provide further protection to people receiving serves from harm and abuse. For example, the amendments make changes related to definitions, reporting, investigation, notification, and committee review of events and situations both under and not under the auspices of OPWDD or a provider agency. It is OPWDD's expectation that implementation of the emergency amendments will enhance safeguards for people with developmental disabilities, which will in turn allow individuals to focus on achieving maximum independence and living richer lives.

The amendments also include requirements addressing background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law. These requirements, applicable to all programs and services operated, certified, approved, and/or funded by OPWDD, will augment the protections provided to people receiving services by the PPSNA.

4. Costs:

a. Costs to the Agency and to the State and its local governments: OPWDD will not incur significant additional costs as a provider of services. While the regulations impose new requirements on providers, OPWDD expects that they will comply with the new requirements with no additional staff. Furthermore, OPWDD has already implemented some of the new requirements contained in the regulations in state-operated services through implementation of policy/procedure changes. There may be minimal one-time costs associated with notification and training of staff.

The PPSNA creates the Justice Center, which will assume designated functions that are now performed by OPWDD. The Justice Center will manage the criminal background check process and will conduct some investigations that had previously been conducted by OPWDD. OPWDD will experience savings associated with the reduction in staff performing these functions; however, the staff will be shifting to the Justice Center so the net effect will be cost neutral. Minimal additional OPWDD staff will be needed to implement some provisions of the PPSNA and implementing regulations, such as staff to coordinate MHL 16.34 background checks.

Any costs or savings will have no impact on Medicaid rates, prices or fees. Therefore, there is no impact on New York State in its role paying for Medicaid services.

There are no costs to local governments as there are no changes to Medicaid reimbursement and even if there were, the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

b. Costs to private regulated parties: It is difficult to estimate the cost impact on private regulated parties, however, OPWDD expects that cost to providers will be minimal. OPWDD already requires the reporting and investigation of incidents. The implementation of these reforms in general will not result in costs. There may be costs associated with the amendment of Section 424-a of the Social Service Law (as reflected in these regulations) which requires background checks of the Statewide Central Register of Child Abuse and Maltreatment (which cost $25 per check). However, OPWDD cannot estimate how many additional checks will be required. There may also be additional costs associated with the need for clinical assessments needed to demonstrate psychological abuse. There may be costs associated with the requirement that agencies conduct a "reasonably diligent search" for records of past abuse/neglect related to background checks required in accordance with Section 16.34 of the Mental Hygiene Law. Again, OPWDD is not able to estimate these cost impacts. Concerning the reforms to Part 624 that are in addition to the changes needed to implement the PPSNA, most of the amendments have either already been implemented by OPWDD policy directives (e.g. mandate to use IRMA), merely clarify existing requirements or interpretive guidance, or can be implemented without cost to the agency (e.g. restrictions on committee review).

There may be minor costs as a result of other amendments; however, OPWDD anticipates that generally any potential costs incurred would be mitigated by savings that the provider will realize from the improvements to the incident management process. OPWDD expects that in the long-term the amendments will ultimately reduce incidents and abuse in its system and increase efficiency and quality in the reporting, investigation, notification, and review of such events. OPWDD is not able to quantify the minor potential costs or the savings that might be realized by the promulgation of these amendments.

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

6. Paperwork: The new regulations require additional paperwork to be completed by providers. Examples of additional paperwork are found in new requirements pertaining to reporting reportable incidents to the Justice Center and making additional notifications. The regulations require that all custodians with regular and direct contact in programs certified or operated by OPWDD review and sign the Justice Center's code of conduct on an annual basis. In addition, new paperwork is associated with the requirements for additional background checks (Staff Exclusion List, MHL 16.34 and Statewide Central Register of Child Abuse and Maltreatment). However, the regulations remove paperwork requirements in other ways, such as the deletion of the requirement for the completion of a paper based incident report for specified events or situations.

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

Federal requirements that are applicable to services for persons with developmental disabilities. In some instances, the regulations reiterate requirements in NYS law.

8. Alternatives: Current definitions of incidents in OPWDD regulations that require reporting and investigation exceed the criteria in the new statutory definitions in the PPSNA. OPWDD considered reducing or eliminating requirements applying to events and situations that do not meet the criteria in the statutory definitions for "reportable incidents," but OPWDD decided to include the continuation of protections associated with these events and situations as reflected in the definitions of notable occurrences.

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

10. Compliance Schedule: The regulations will be effective on June 11, 2015 to ensure continued compliance with Chapter 501 of the Laws of 2012. The emergency regulations replace prior emergency regulations that were effective March 15, 2014 and expired on June 10, 2015.

Regulatory Flexibility Analysis

1. Effect on small business: OPWDD has determined, through a review of the certified cost reports, that most OPWDD-funded services are provided by non-profit agencies that employ more than 100 people overall. However, some smaller agencies that employ fewer than 100 employees overall would be classified as small businesses. Currently, there are approximately 700 agencies providing services that are certified, authorized or funded by OPWDD. OPWDD is unable to estimate the portion of these providers that may be considered to be small businesses.

The amendments have been reviewed by OPWDD in light of their impact on small businesses. The regulations make extensive changes to OPWDD's requirements for incident management that will necessitate significant changes in compliance activities and result in additional costs and savings to providers, including small business providers. However, OPWDD is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, OPWDD considers that the improvements in protections for people served in the OPWDD system will help safeguard individuals from harm and abuse and that the benefits more than outweigh any potential negative impacts on providers.

2. Compliance requirements: The regulations add a number of new requirements with which providers must comply. Amendments associated with the implementation of the PPSNA include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries. For psychological abuse, a clinical assessment could be needed in order to demonstrate the impact of suspected psychological abuse. While OPWDD anticipates that providers are already obtaining examinations of physical injuries, clinical assessments of suspected psychological abuse are not generally obtained.

The regulations impose requirements that all new custodians with regular and direct contact in such programs must read and sign the code of conduct at the time of employment or affiliation, and that all custodians with regular and direct contact in such programs must read and sign the code of conduct at on an annual basis.

The PPSNA expanded requirements to obtain background checks of the Statewide Central Register of Child Abuse and Maltreatment to require checks of employees (and others) who have the potential for regular and substantial contact with individuals receiving services in programs that are certified or operated by OPWDD. Prior to June 30, 2013 the statute limited this requirement to employees who have the potential for regular and substantial contact with children. The emergency regulations reflect the statutory changes to section 424-a of the Social Services Law in the PPSNA. While many providers that also serve children have been obtaining these checks, the new requirements clearly expand the pool of employees and others who must be checked. Further, OPWDD regulations require that agencies conduct SCR checks of applicants when the check is permitted by the Social Services Law.

The regulations also include requirements addressing background checks for potential employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law.

Prior OPWDD regulations already required reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate many changes and reforms, the basic requirements are conceptually unchanged. OPWDD therefore expects that additional compliance activities (except as noted above) will be minimal. Aside from the provisions related to implementation of the PPSNA, and section 16.34 of the Mental Hygiene Law, the amendments have either already been implemented by OPWDD policy directives, clarify existing requirements or interpretive guidance, or can be implemented without cost to the agency.

Agencies must comply with the new requirement to complete investigations within a 30 day timeframe. Agencies must also comply with new requirements to enhance the independence of investigators and agency incident review committees. However, OPWDD expects that additional compliance activities will be minimal since agencies are already required to comply with existing requirements that prohibit situations which compromise the independence of investigators and committee members.

The new requirements pertaining to the dissemination of agency policies and procedures, OPWDD incident management regulations, and written information specified by OPWDD add new compliance activities; however, the regulations minimize compliance activities by requiring that providers offer to provide such information in electronic format (unless paper copies are specifically requested) as opposed to requiring the provision of paper copies only. The amendments require that information be provided in conjunction with training that is mandated by current regulations in order to consolidate efforts, increase efficiency, and reduce compliance activities.

Enhancements in required notification to service coordinators will also add compliance activities for providers because providers will have to make additional notifications and/or provide subsequent information about an incident or occurrence to these parties.

The amendments that add a new requirement that agencies enter minutes of their incident review committee meetings into IRMA within three weeks of the meeting for serious incidents, allegations of abuse, and all deaths, may result in a minimal amount of additional clerical work. OPWDD expects that most agencies have adopted an electronic recordkeeping system to maintain their minutes and that these agencies would only have to copy and paste their minutes into IRMA. Agencies that do not have an electronic recordkeeping system and that maintain handwritten or typed minutes will have to assign staff to type the minutes into IRMA. OPWDD expects that these agencies will add this task to the duties of clerical staff who are trained and experienced in data entry and who can perform this function in an efficient manner.

The amendments extend access to information in accordance with Jonathan's Law and add a new requirement that agencies retain records pertaining to incidents and allegations of abuse for a minimum time period of seven years. In cases when there is a pending audit or litigation, the pertinent records must be retained throughout the pendency of the audit or litigation. The amendments specify what information must be retained. OPWDD considers that the new requirements will not add any additional compliance activities for agencies. OPWDD expects that generally most agencies have been implementing agency specific policies on record retention and that the new required record retention schedule merely standardizes existing policies/procedures. The amendments will have no effect on local governments.

3. Professional services: There may be additional professional services required for small business providers as a result of these amendments. The definition of psychological abuse references specific impacts on an individual receiving services that must be supported by a clinical assessment. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: There may be modest costs for small business providers associated with the amendments. There may be costs associated with obtaining a clinical assessment in the case of suspected psychological abuse. Additionally, there may be nominal costs for agencies to comply with the expanded notification requirements and requirements for the provision of policies and procedures when it is necessary to provide paper copies of information to the appropriate parties upon request. There are costs associated with the change to Section 424-a of the Social Services Law and OPWDD regulations which will require agencies to obtain additional background checks for employees and other individuals associated with the agencies. These checks cost $25 per check. However, OPWDD is unable to estimate how many additional checks will be needed and therefore cannot estimate the cost impact. There may be costs associated with new background check requirements in MHL 16.34, including costs associated with the requirement that agencies conduct a "reasonably diligent search" for past records of abuse/neglect. There may also be costs associated with requirements that agencies request a search of the "Staff Exclusion List." There may be costs associated with the requirement to train members of the Incident Review Committee.

Providers may experience savings if the Justice Center or OPWDD assume responsibility for investigations that were previously conducted by provider agency staff.

In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Economic and technological feasibility: The amendments may impose the use of new technological processes on small business providers. Providers have already been reporting incidents and abuse in IRMA in accordance with an existing OPWDD policy directive so the new require-

ments related to IRMA do not impose the use of new technological processes on small business providers. However, requirements to report reportable incidents to the Justice Center in the manner specified by the Justice Center may impose a requirement to use an electronic reporting system for that purpose, if that is the manner specified by the Justice Center. Currently the Justice Center is directing that reports be made either by telephone or by using a Web form, so the use of the Web form is optional.

6. Minimizing adverse impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OPWDD expects that compliance with these new regulations will result in savings in the long term and there may be some short term savings as a result of the conduct of investigations by the Justice Center. Further, OPWDD expects that the amendments will provide some relief to providers by the removal of the previous requirement for a paper based incident report for reporting serious reportable incidents, allegations of abuse, and all deaths. OPWDD expects that these provisions will mitigate any adverse economic impact that results from complying with other new requirements.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. OPWDD modified several requirements to minimize adverse economic impact. As noted above, OPWDD eliminated the requirement that agencies complete paper forms when information about incidents is submitted electronically. In addition, the new regulations allow agencies to provide instructions on how to access information on incident management electronically to individuals, families and others, rather than requiring the provision of paper copies in all instances. Agencies are only required to make paper copies available upon request. OPWDD did not consider the exemption of small businesses from the amendments or the establishment of differing compliance or reporting requirements since OPWDD considers compliance with the emergency amendments to be crucial for the health, safety, and welfare of the individuals served by small business providers. Related to the requirement to conduct background checks in accordance with Section 16.34 of the Mental Hygiene Law, OPWDD has implemented several significant measures to streamline the process, such as the use of web-based forms.

7. Small business participation: The PPSNA was originally a Governor's Program Bill which received extensive media attention. Providers have had opportunities to become familiar with its provisions since it was made available on various government websites during June 2013. Related to the components of the regulations that are unrelated to implementation of the PPSNA, draft regulations containing these components were sent out for review and comment to representatives of providers, including the New York State Association of Community and Residential Agencies (NYSACRA), on March 12, 2012. Some of the members of NYSACRA have fewer than 100 employees. OPWDD carefully considered the comments received and made some suggested changes to the amendments (e.g. eliminated the paper based incident report and allowed for the provision of policies and procedures in electronic format). OPWDD also presented the reforms at a widely-attended provider training in the fall of 2012. OPWDD also hosted many informational sessions regarding the requirements in the prior emergency regulations during the spring and summer of 2013, including in-person sessions, webinars and state-wide videoconferences. OPWDD informed providers about the new requirements and invited public comment on the requirements. OPWDD has also responded to numerous questions and comments on prior emergency regulations. Finally, OPWDD has posted extensive information about the new requirements on its website.

8. (IF APPLICABLE) For rules that either establish or modify a violation or penalties associated with a violation: The emergency amendments do not establish or modify a violation or penalties associated with a violation.

Rural Area Flexibility Analysis

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

The amendments have been reviewed by OPWDD in light of their impact on rural areas. The regulations make extensive changes to OPWDD's requirements for incident management that will necessitate significant changes in compliance activities and result in additional costs and savings to providers, including small business providers. However, OPWDD is unable to quantify the potential additional costs and savings to providers as a result of these amendments. In any event, OPWDD considers that the improvements in protections for people served in the OPWDD system will help safeguard individuals from harm and abuse and that the benefits more than outweigh any potential negative impacts on providers.

The geographic location of any given program (urban or rural) will not be a contributing factor to any additional costs to providers.

2. Compliance requirements: The regulations add a number of new requirements with which providers must comply. Amendments associated with the implementation of the PPSNA include a requirement that providers report "reportable incidents" and deaths to the Justice Center. In addition, the regulations impose an obligation on providers to obtain an examination for physical injuries. For psychological abuse, a clinical assessment could be needed in order to demonstrate the impact of suspected psychological abuse. While OPWDD anticipates that providers are already obtaining examinations of physical injuries, clinical assessments of suspected psychological abuse are not generally obtained.

The regulations impose requirements that all new custodians with regular and direct contact in such programs must read and sign the code of conduct at the time of employment or affiliation, and that all custodians with regular and direct contact in such programs must read and sign the code of conduct on an annual basis.

The PPSNA expanded requirements to obtain background checks of the Statewide Central Register of Child Abuse and Maltreatment to require checks of employees (and others) who have the potential for regular and substantial contact with individuals receiving services. Prior to June 30, 2013 the statute limited this requirement to employees who have the potential for regular and substantial contact with children. The emergency regulations reflect the statutory changes to section 424-a of the Social Services Law in the PPSNA. While many providers that also serve children have been obtaining these checks, the new requirements clearly expand the pool of employees who must be checked. Further, OPWDD regulations require that agencies conduct SCR checks of applicants when the check is permitted by the Social Services Law.

The regulations also include requirements addressing background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law. Agencies are also required to request a check of the Staff Exclusion List maintained by the Justice Center.

Prior OPWDD regulations already required reporting and investigation of incidents, and that providers request criminal background checks. While the amendments incorporate many changes and reforms, the basic requirements are conceptually unchanged. OPWDD therefore expects that additional compliance activities (except as noted above) will be minimal. Aside from the provisions related to implementation of the PPSNA, and section 16.34 of the Mental Hygiene Law, the amendments have either already been implemented by OPWDD policy directives, clarify existing requirements or interpretive guidance, or can be implemented without cost to the agency.

Agencies must comply with the new requirement to complete investigations within a 30 day timeframe. Agencies must also comply with new requirements to enhance the independence of investigators and agency incident review committees. However, OPWDD expects that additional compliance activities will be minimal since agencies are already required to comply with existing requirements that prohibit situations which compromise the independence of investigators and committee members.

The new requirements pertaining to the dissemination of agency policies and procedures, OPWDD incident management regulations, and written information specified by OPWDD add new compliance activities; however, the regulations minimize compliance activities by requiring that providers offer to provide such information in electronic format (unless paper copies are specifically requested) as opposed to requiring the provision of paper copies only. The amendments require that information be provided in conjunction with training which is mandated by current regulations in order to consolidate efforts, increase efficiency, and reduce compliance activities.

Enhancements in required notification to service coordinators will also add compliance activities for providers because providers will have to make additional notifications and/or provide subsequent information about an incident or occurrence to these parties.

The amendments that add a new requirement that agencies enter minutes of their incident review committee meetings into IRMA within three weeks of the meeting for serious incidents, allegations of abuse, and all deaths, may result in a minimal amount of additional clerical work. OPWDD expects that most agencies have adopted an electronic record-keeping system to maintain their minutes and that these agencies would only have to copy and paste their minutes into IRMA. Agencies that do

not have an electronic recordkeeping system and that maintain handwritten or typed minutes will have to assign staff to type the minutes into IRMA. OPWDD expects that these agencies will add this task to the duties of clerical staff who are trained and experienced in data entry and who can perform this function in an efficient manner.

The amendments extend access to information in accordance with Jonathan's Law and add a requirement that agencies retain records pertaining to incidents and allegations of abuse for a minimum time period of seven years. In cases when there is a pending audit or litigation, the pertinent records must be retained throughout the pendency of the audit or litigation. The amendments specify what information must be retained. OPWDD considers that the new requirements will not add any additional compliance activities for agencies. OPWDD expects that generally most agencies have been implementing agency specific policies on record retention and that the new required record retention schedule merely standardizes existing policies/procedures. The amendments will have no effect on local governments.

3. Professional services: There may be additional professional services required for small business providers as a result of these amendments. The definition of psychological abuse references specific impacts on an individual receiving services that must be supported by a clinical assessment. The amendments will not add to the professional service needs of local governments.

4. Costs: There may be modest costs for small business providers associated with the amendments. There may be costs associated with obtaining a clinical assessment in the case of suspected psychological abuse. Additionally, there may be nominal costs for agencies to comply with the expanded notification requirements and requirements for the provision of policies and procedures when it is necessary to provide paper copies of information to the appropriate parties upon request. There are costs associated with the change to Section 424-a of the Social Services Law and OPWDD regulations which will require agencies to obtain additional background checks for employees and other individuals associated with the agencies. These checks cost $25 per check. However, OPWDD is unable to estimate how many additional checks will be needed and therefore cannot estimate the cost impact. There may be costs associated with new background check requirements in MHL 16.34, including costs associated with the requirement that agencies conduct a "reasonably diligent search" for past records of abuse/neglect. There may also be costs associated with requirements that agencies request a search of the "Staff Exclusion List." There may be costs associated with the requirement to train members of the Incident Review Committee.

Providers may experience savings if the Justice Center or OPWDD assumes responsibility for investigations that were previously conducted by provider agency staff.

In the long term, compliance activities associated with the implementation of these amendments are expected to reduce future incidents and abuse, resulting in savings for providers as well as benefits to the wellbeing of individuals receiving services.

5. Minimizing adverse impact: The amendments may result in an adverse economic impact for small business providers due to additional compliance activities and associated compliance costs. However, as stated earlier, OPWDD expects that compliance with these new regulations will result in savings in the long term and there may be some short term savings as a result of the conduct of investigations by the Justice Center. Further, OPWDD expects that the amendments will provide some relief to providers by the removal of the previous requirement for a paper based incident report for reporting serious reportable incidents, allegations of abuse, and all deaths. OPWDD expects that these provisions will mitigate any adverse economic impact that results from complying with other new requirements.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act. OPWDD modified several requirements to minimize adverse economic impact. As noted above, OPWDD eliminated the requirement that agencies complete paper forms when information about incidents is submitted electronically. In addition, the new regulations allow agencies to provide instructions on how to access information on incident management electronically to individuals, families and others, rather than requiring the provision of paper copies in all instances. Agencies are only required to make paper copies available upon request. Related to the requirement to conduct background checks in accordance with Section 16.34 of the Mental Hygiene Law, OPWDD has implemented several significant measures to streamline the process, such as the use of web-based forms.

OPWDD did not consider the exemption of small businesses from the emergency amendments or the establishment of differing compliance or reporting requirements since OPWDD considers compliance with the emergency amendments to be crucial for the health, safety, and welfare of the individuals served by providers in rural areas.

6. Rural area participation: The PPSNA was originally a Governor's Program Bill that received extensive media attention. Providers have had opportunities to become familiar with its provisions since it was made available on various government websites during June 2013. Related to the components of the regulations that are unrelated to implementation of the PPSNA, draft regulations containing these components were sent out for review and comment to representatives of providers, including NYSARC, the NYS Association of Community and Residential Agencies, NYS Catholic Conference, and CP Association of NYS, which represent providers in rural areas, on March 12, 2012. OPWDD carefully considered the comments received and made some suggested changes to the amendments (e.g. eliminated the paper based incident report and allowed for the provision of policies and procedures in electronic format). OPWDD also presented the reforms at a widely-attended provider training in the fall of 2012. OPWDD also hosted many informational sessions regarding the requirements in the prior emergency regulations during the spring and summer of 2013, including in-person sessions, webinars, and state-wide videoconferences. OPWDD informed providers about the new requirements and invited public comment on the requirements. OPWDD has also responded to numerous questions and comments on the prior emergency regulations. Finally, OPWDD has posted extensive information about the new requirements on its website.

Job Impact Statement

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

The amendments incorporate a number of reforms to improve the quality and consistency of incident management activities throughout the OPWDD system. Most of these reforms have already been implemented by OPWDD policy directive, such as the mandates to use IRMA and a standardized investigation format. Consequently these amendments will not affect jobs or employment opportunities.

The amendments that impose new requirements on providers, such as additional reporting requirements, the timeframe for completion of investigations, notification to the service coordinator and other parties of subsequent information about incidents and abuse, retention of records, and the provision of policies and procedures to specified parties, will not result in an adverse impact on jobs. OPWDD anticipates that there will be no effect on jobs as agencies will use current staff to perform the required compliance activities.

The PPSNA and these implementing regulations will require that providers request additional checks from the Statewide Central Register of Child Abuse and Maltreatment. The regulations also include requirements addressing background checks for prospective employees and volunteers to determine if an applicant was involved in substantiated abuse or neglect in the OPWDD system before June 30, 2013, in accordance with section 16.34 on the Mental Hygiene Law. OPWDD anticipates that the requests and checks will be made using current staff.

The PPSNA and these implementing regulations will also mean that some functions that are currently performed by OPWDD staff will instead be performed by the staff of the Justice Center. OPWDD expects that the volume of incidents and occurrences investigated will be roughly similar. To the extent that the Justice Center performs investigations, oversees the management of reportable incidents, and manages requests for criminal history record checks, the result is expected to be neutral in that positions lost by OPWDD will be gained by the Justice Center. OPWDD may add minimal new staff to perform functions required by the regulations, such as the requirements for MHL 16.34 checks.

It is therefore apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities.

NOTICE OF ADOPTION

Site Based and Community Prevocational Services

I.D. No. PDD-16-15-00016-A
Filing No. 530
Filing Date: 2015-06-16
Effective Date: 2015-07-01

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

Action taken: Amendment of Subparts 635-10 and 635-99 of Title 14 NYCRR.

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

Subject: Site Based and Community Prevocational Services.

Purpose: To distinguish requirements for site based prevocational services and community prevocational services.

Text or summary was published in the April 22, 2015 issue of the Register, I.D. No. PDD-16-15-00016-P.

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

Text of rule and any required statements and analyses may be obtained from: Regulatory Affairs Unit, OPWDD, 44 Holland Avenue, Albany, NY 12229, (518) 474-7700, email: RAU.unit@opwdd.ny.gov

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

Assessment of Public Comment

This document contains responses to public comments submitted during the public comment period for proposed regulations concerning site based and community prevocational services. OPWDD received comments from five provider associations and three providers of prevocational services.

Note: This assessment does not provide answers to questions submitted, as questions are not addressed through the regulatory comment process. Questions are being answered through other mechanisms (e.g. trainings and policy/guidance). This assessment does not respond to comments that did not directly address the proposed regulations.

Comment: A provider association expressed concern about the prohibition of new enrollments into site based prevocational services in day training programs. The provider commented that this is an expansion of the existing requirement that prohibits new enrollments into sheltered workshops. The provider association commented that it has day training programs that are not sheltered workshops and that, on the operating certificate issued by OPWDD's Division of Quality Improvement, the sheltered workshop is certified as "day training/sheltered workshop." The provider association recommended that the regulation be amended to clarify that the prohibition only applies to day training programs that are sheltered workshops.

A provider association and a provider also requested clarification as to where site based prevocational services can be provided.

Response: OPWDD will issue an Administrative Memorandum (ADM) that will provide clarification on the prohibition of new enrollment into day training/sheltered workshops and on the location of site based prevocational services. Although OPWDD is promulgating the proposed regulations without changes, OPWDD may make clarifying changes in future proposed regulations.

Comment: A provider association and a provider suggested that OPWDD provide clarification that "site based" means only sites certified by OPWDD that primarily service individuals with disabilities.

Response: OPWDD confirms that for the purpose of delivery and reimbursement of prevocational services, "site based" means only nonresidential facilities certified by OPWDD, as stated in the regulation.

Comment: A provider commented that the regulations do not contain any reference to compliance with the federal Home and Community Based Services (HCBS) Settings regulations. The provider suggested adding the following to the regulation: "All site based Prevocational Services must be provided in settings that do not have institutional qualities, and that optimize, but do not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact, and that do not isolate individuals from individuals not receiving Medicaid HCBS in the broader community."

Response: OPWDD plans to reference compliance with federal HCBS Settings regulations in its ADM on site based and community prevocational services. OPWDD appreciates the suggested language from the provider and will consider using such language in its ADM.

Comment: A provider is requesting clarification regarding the provision that OPWDD approval for enrollment into site based prevocational services is not required for individuals enrolled in prevocational services at a site prior to July 1, 2015. The provider commented that it strongly objects to this provision if this provision means that people already in site-based prevocational service programs will be permanently "grandfathered in" to those programs. The provider commented that since the proposed requirements are new and substantially different from existing requirements, no "pro forma" review can be accepted. The site and service plan must be carefully scrutinized "de novo" and a written statement indicating compliance or noncompliance with federal HCBS settings and person-centered planning requirements should be issued. The provider recognizes that compliance with HCBS settings requirements is not required until October 1, 2018 and recommended making a change to the provision in the proposed regulation to add that the provision doesn't go into effect until October 1, 2018.

Response: OPWDD clarifies that the provision of the regulation only applies to enrollment and that it is not meant to address the review of service delivery plans. Therefore, OPWDD is promulgating the proposed regulations without changes. OPWDD expects providers to comply with the requirements outlined for service delivery and documentation of service delivery beginning on the effective date of the regulations, July 1, 2015.

Comment: Two provider associations recommended deleting the requirement in regulation that, to participate in site based prevocational services, the individual must have a demonstrated or assessed earning capacity of less than 50 percent of the current state minimum wage, federal minimum wage or prevailing wage, whichever is greatest.

A provider association and a provider commented that it is unclear whether the requirement for earning capacity of less than 50 percent of the minimum wage applies to community prevocational services because it is not found in the proposed regulation for this service. Another provider association expressed that it is hopeful that omitting any restriction of eligibility for individuals whose earnings exceed 50 percent of the minimum wage suggests that OPWDD is trying to create ways for such individuals to become eligible for community prevocational services.

Response: In an effort to promote service delivery in the community under the new community prevocational service, OPWDD did not include a requirement for earning capacity of less than 50 percent of the minimum wage in regulations on community prevocational services. For this same reason, OPWDD does not intend to expand eligibility requirements for site based prevocational services to allow for individuals with a capacity that exceeds 50 percent of the minimum wage to participate in site based prevocational services. Consequently, OPWDD is promulgating the proposed regulations without any changes.

Comment: A provider association recommends a clarification in the definition of community prevocational services to include consideration of the individual's choice when determining the integrated setting that is the most appropriate to the needs of the individualThe provider cited employment guidance from the Centers of Medicare and Medicaid Services (CMS) that advises that employment plans be constructed in a manner that reflects individual choice.

Response: OPWDD plans to implement requirements for person-centered planning and HCBS Settings that require consideration of individual choice of integrated settings and services in its service delivery system. OPWDD has been and continues to train and guide providers on how to offer individual choice in service planning and delivery. OPWDD will consider adding employment guidance, similar to the guidance issued by CMS, to its ADM on site based and prevocational services in order to reinforce that individual choice should be considered in deciding on the most integrated setting for site based prevocational services.

Comment: A provider expressed concern about provisions of the regulation that allow individuals to meet for time-limited periods at a site while receiving community prevocational services. The provider commented that there is potential under such provisions for people who are supposed to be receiving services "in the most integrated settings" to spend 4 continuous hours daily in a segregated congregate setting. The provider commented that this is especially problematic considering that many full-time day program attendees only spend a total of five or six hours daily in such programs and part-time attendees typically spend 3 to 4 hours in such programs. The provider commented that "the purpose of prevocational services is not to provide supervision or to keep people busy. It is to teach specific skills, which a specific individual can reasonably be expected to actually learn within a limited period of time, after which they will stop receiving the service. If the necessary training environment is not available, then no training should be paid for."

The provider recommended that OPWDD remove requirements that allow for individuals to meet at a site due to inclement weather or a public emergency, or to identify activities for the day, and revise the provision that allows for job readiness training at a site to state, "individuals may use a site (see subdivision 635-10.4(k) of this subpart) as a meeting space for job readiness training that meets their individually assessed needs, as specified in their individual person centered plan, on a time limited basis not to exceed 2 hours for a single training event, and not to exceed a total of 20 hours annually."

Response: OPWDD will provide clarification in the ADM on the criteria for providing community prevocational services in a certified setting.

Comment: A provider commented that a rate structure that forces use of groups will severely reduce the number and variety of employment situations that can be used for training. The provider commented that a group model will reduce the extent to which training can be matched to individual needs, preferences, and abilities, and the result will be a low rate of success in getting people trained and moved on to real jobs.

The provider suggests that the regulations be modified to state, "The number of individuals receiving community prevocational services while in a group assembled for the purpose of receiving generic job readiness

training or preliminary tours of job sites shall be limited to no more than 8 individuals. 'Generic job readiness training' means instruction in matters that do not need to be individualized for each participant, such as expectations for appropriate dress, or information about the impact of employment on public benefits. Potentially appropriate training sites in which a participant has expressed interest shall not be excluded because they cannot accommodate more than one participant and one staff person at one time."

The provider suggests adding a provision that states, "Individualized skills training as a community prevocational service shall ordinarily be delivered in a staff-to-participant ratio of 1-to-1. A staff-to-participant ratio of 1-to-2 may be used only when the individually assessed needs, abilities, and interests of both participants are so similar as to ensure an equally high likelihood of eventual successful transition to competitive employment for both."

Response: OPWDD will provide clarification in the ADM on the criteria for providing community prevocational services in a groups of 2-8 individuals.

Comment: Two provider associations commented that Federal and State Department of Labor (DOL) regulations require that employers reimburse employees for travel when those employees are being paid for their work. The provider associations commented that failure to include travel for staff providing community prevocational services as a billable activity represents a major inconsistency with existing DOL regulations and threatens the viability of prevocational services. The provider associations recommended that OPWDD amend the regulations to create consistency with existing DOL regulations. The provider associations also commented that clarification is needed to indicate the individual to whom the staff transportation activity is to be "billed." The provider associations recommend that the individual to whom the staff person is traveling to support would be appropriate.

Response: OPWDD has considered these concerns about transportation and plans to include the following guidance in the ADM on site based and community prevocational services: Allowable transportation activities include time that staff travels to billable prevocational activities, such as travel (with or without the individual) to assist the individual to experience a variety of employment options within the community. Travel time should be billed to either an individual or group activity with specific prevocational service participants identified. A staff member's travel between his or her home and place of employment at the start and conclusion of the work day is not a billable transportation service. In addition, staff travel to a non-billable activity, such as travel to lunch, is not a billable transportation service. With this guidance provided in the ADM, OPWDD plans to promulgate the proposed regulation without any changes.

Comment: A provider association recommended that OPWDD add the following allowable activities under community prevocational services in order to be consistent with the supported employment (SEMP) activities that are a part of the SEMP regulation:

• Support services in the community setting that will enable the individual to be successfully integrated into that setting (e.g., development of natural supports) and as a preparation for the individual to possibly be integrated into a workplace environment;

• Developing community based settings with prospective entities on behalf of an individual;

• Communication with an existing community setting to review the individual's progress in meeting expectations and to discuss and address any challenges the individual may have in the community based setting;

• Communication with family and/or an individual's advocate to discuss and address any issues or concerns;

• Meetings and communication with staff providing other OPWDD approved services that impact an individual's ability to successfully achieve his or her prevocational goals.

Response: OPWDD will provide clarification in the ADM on how these activities are covered in the regulation.

Comment: A provider commented that OPWDD's Transformation Agreement with CMS specifies that the agency must make efforts to reduce the use of segregated congregate non-employment day programs, and the provider thinks that the agency must, at minimum, create a clear and attractive financial incentive for providers to do so. The provider commented that it is questionable as to whether the billing limits in the regulation create such a financial incentive depending on what fees will be paid for both services. The provider commented that, at present, the proposed regulation states that fee information can be found in a location in state regulations that does not exist; therefore the provider can't assess the impact of the billing limits.

Response: The Department of Health (DOH) is responsible for promulgating regulations pertaining to prevocational fees. Consequently, OPWDD is promulgating the proposed regulations without any changes.

Comment: A provider noted that the combinations of services identified in provisions on billing limits do not include SEMP.

Response: OPWDD will provide clarification in the ADM that the billing limits are not applicable to SEMP.

NOTICE OF ADOPTION

Supported Employment Services (SEMP) Redesign

I.D. No. PDD-16-15-00017-A
Filing No. 531
Filing Date: 2015-06-16
Effective Date: 2015-07-01

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

Action taken: Amendment of Subparts 635-10, 635-12 and 635-99 of Title 14 NYCRR.

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

Subject: Supported Employment Services (SEMP) Redesign.

Purpose: To redesign SEMP by establishing requirements for the provision and funding of Intensive and Extended SEMP.

Substance of final rule: The proposed amendments make changes to regulations in 14 NYCRR subparts 635-10 and 635-12 concerning supported employment services (SEMP) and liability for services.

The proposed amendments redesign the existing SEMP service delivery model. The amendments limit applicability of existing SEMP regulations to SEMP provided before July 1, 2015, and add new regulations on the delivery and reimbursement of Intensive and Extended SEMP delivered on and after July 1, 2015. The amendments also make changes to requirements on liability of services related to individuals applying for SEMP.

Delivery of SEMP:

New requirements for the delivery of SEMP include the following:

• The amendments specify various allowable activities for SEMP that may be provided to and/or on behalf of an individual.

• The amendments identify two phases for the delivery of SEMP: Intensive SEMP and Extended SEMP.

• Intensive SEMP services include job development and/or intensive job coaching and may be provided as:

- Intensive - 1, which is Intensive SEMP provided to one individual; or

- Intensive - 2, which is Intensive SEMP provided to a group of 2-8 individuals.

• Extended SEMP services include ongoing job coaching and career development services provided to individuals who may have received up to 365 days of intensive supported employment services and who are currently employed. Extended SEMP may be provided as:

- Extended - 1, which is Extended SEMP provided to one individual; or

- Extended - 2, which is Extended SEMP provided to a group of 2-8 individuals.

• The amendments also include provisions for SEMP services and supports to assist an individual to achieve self-employment, including home-based self-employment. Wages earned in self-employment may be below the New York State minimum wage.

• Intensive and Extended SEMP may be provided as self-directed services to an individual who hires his or her own SEMP support staff.

• The amendments include qualifications for staff providing SEMP services and a definition of competitive integrated employment to the glossary found in section 635-99.1.

Reimbursement of SEMP

New provisions for the reimbursement of SEMP include the following:

• Reimbursement is not permitted for delivery of Intensive and Extended SEMP on the same date of service.

• The amendments require OPWDD approval for enrollment into Intensive and Extensive SEMP on and after July 1, 2015 and add eligibility criteria for enrollment into the service. Prior OPWDD approval is not required for individuals who were enrolled in SEMP prior to July 1, 2015 and who remained continuously enrolled on and after July 1, 2015.

• The amendments limit hours of service for Intensive SEMP to no more than 250 hours across 365 days, unless OPWDD authorizes an extension. The amendments limit hours of service for Extended SEMP to no more than 200 hours of service across a 365 day time period, unless OPWDD authorizes an extension. Extensions must have prior authorization from OPWDD. OPWDD's decision will be based on specified criteria.

• An individual may move between individual and group employment as needed in Intensive and Extended SEMP.

• The unit of service for Intensive and Extended SEMP is one hour, which equals 60 minutes, and is reimbursed in 15-minute increments.

• Individuals in the Intensive phase of SEMP are not eligible to receive the Pathway to Employment service.

• The amendments address documentation requirements for development of a service delivery plan, documentation of service delivery and documentation of the service in the individual's ISP. The amendments require providers to identify the unit of service change for SEMP in the ISP within a specified timeframe.

• The amendments require the service provider to maintain documentation that there is no SEMP funding available to the individual from ACCES-VR (Adult Career and Continuing Education Services-Vocational Rehabilitation).

Liability for Services

Changes to existing liability for services regulations include the following:

• Existing regulations permit a limited exception to liability for services regulations described in section 635-12.12 for individuals applying for SEMP, who meet specified criteria. The proposed amendments prohibit the limited exception for individuals who enroll in SEMP on and after July 1, 2015.

• The proposed regulations permit the limited exception for individuals who were enrolled in SEMP prior to July 1, 2015, and who were continuously enrolled in SEMP with the same provider on and after July 1, 2015. The regulations also permit the limited exception in other specified circumstances.

• The proposed amendments add new notice requirements concerning the changes in criteria for qualification of the limited exception and situations when individuals enrolled in SEMP prior to July 1, 2015 switch service providers on and after July 1, 2015. Notification must be provided within the specified timeframes.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 635-10.5(af).

Text of rule and any required statements and analyses may be obtained from: Regulatory Affairs Unit, OPWDD, 44 Holland Avenue, Albany, NY 12229, (518) 474-7700, email: RAU.unit@opwdd.ny.gov

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

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

There was one non-substantive amendment made to text of the regulations to correct a minor typographical error, the misspelling of the acronym for ACCES-VR (Adult Career and Continuing Education Services-Vocational Rehabilitation).

This change does not necessitate revisions to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Business and Local Governments, Rural Area Flexibility Analysis or Job Impact Statement.

Assessment of Public Comment

This document contains responses to public comments submitted during the public comment period for proposed regulations concerning the Supported Employment (SEMP) service redesign and changes to liability for services regulations. OPWDD received comments from five provider associations and one provider of SEMP services.

Note: This assessment does not provide answers to questions submitted, as questions are not addressed through the regulatory comment process. Questions are being answered through other mechanisms (e.g. trainings and policy/guidance). This assessment does not respond to comments that did not directly address the proposed regulations.

Comment: Three provider associations recommended that OPWDD provide the following clarifications in the regulations or in policy/guidance associated with the regulations:

• Clarification of the individual service recipient to whom the staff transportation activity is to be "billed," and a comment that the individual to whom the staff person is traveling to support would be appropriate.

• Clarification of which of the services/activities are or are not required to be face-to-face.

• Clarification that billing for activities conducted on behalf of one individual, but performed by different staff simultaneously is allowable.

• Clarification of what providers can bill as "other" activities.

• Clarification of the timeframe for processing extension requests and providing extension authorization of the service limit, and recommendation of a 30-day maximum.

• Clarification of the process for submission of group requests and the process for determining that a group setting is the most effective setting for an individual.

• Clarification as to whether the 365 day service limit does or does not count breaks in service delivery against this limit.

• Clarification of what is meant by documentation of no ACCES-VR service availability and that providers must only maintain this documentation prospectively from July 1, 2015.

• Clarification regarding how SEMP providers are to make determinations about the provision of and funding for services in relation to ACCESS-VR and SEMP.

• Clarification regarding individuals who are not Medicaid eligible and receiving SEMP supports prior to July 1, 2015, as to whether they will be "grandfathered" in as eligible for the limited exception specified in the liability regulations, and if so, how these services will be paid.

• Clarification regarding the form and format for submission of the notice required in liability for services regulations.

Response: Regarding the SEMP service redesign, OPWDD has been providing clarification of the requirements in the proposed regulations through trainings to providers and responses to questions raised in emails and by telephone. OPWDD also plans to issue an administrative memorandum (ADM) on the effective date of the regulation that interprets provisions of the regulation for providers. OPWDD will continue providing clarification through the ADM, trainings, and other forms of technical assistance. Consequently, OPWDD plans to promulgate the proposed regulation without any changes.

Regarding changes to the liability for services regulation, OPWDD plans to issue guidance on the new regulations. OPWDD also plans to update its liability notices and issue a new notice to inform individuals affected by the regulations about the changes. Providers will be notified when this notice is available and instructions will be provided. OPWDD plans to promulgate the proposed regulation without any changes.

Comment: Two provider associations recommended amending the allowable activity: "job coaching, training, and planning within the work environment" to delete the phrase "within the work environment" because these activities often occur outside the work environment.

Response: OPWDD notes that there are several allowable activities that can be provided outside of the work environment, such as training and systemic instruction, person-centered employment planning, development of job retention strategies, etc. Consequently, OPWDD plans to promulgate the proposed regulation without any changes.

Comment: Two provider associations commented that allowable activities should include development of functional job skills (e.g., use of technology, remediation).

Response: OPWDD notes that development of functional job skills is already included as part of the following allowable services: job development, analysis, customization and carving; training and systemic instruction; and job training. Consequently, OPWDD plans to promulgate the proposed regulation without any changes.

Comment: Two provider associations commented that Federal and State Department of Labor (DOL) regulations require that employers reimburse employees for travel when employees are being paid for their work. The provider associations commented that failure to include travel for staff providing SEMP services as a billable activity represents a major inconsistency with existing DOL regulations and threatens the viability of SEMP. The provider associations recommended that OPWDD amend the regulations to create consistency with existing DOL regulations. Another provider association commented that the regulations should be amended to allow for staff transportation between activities without the individual to be counted as billable service time.

Another provider association commented that it should be made clear that billable service time does not include the "generic round trip transportation" of an individual between his or her home and job.

Response: OPWDD has considered these concerns about transportation and plans to include the following guidance in its SEMP ADM: "Allowable transportation activities include time that a job coach, job developer or employment specialist travels (during the day, evening or weekend) to billable SEMP activities, such as travel (with or without the individual) to job sites to provide SEMP services; meetings with potential and current employers; and to conduct vocational assessments. Travel time should be billed to either an individual or group activity with specific SEMP participants identified. A staff member's travel between his or her home and place of employment at the start and conclusion of the work day is not a billable transportation service. In addition, staff travel to a non-billable activity, such as travel to lunch, is not a billable transportation service." Consequently, OPWDD plans to promulgate the proposed regulation without any changes.

Comment: Two provider associations recommended changing the requirement for staff to complete training in an OPWDD approved vocational rehabilitation program or SEMP training program to eliminate the requirement that the trainings be approved by OPWDD, so that OPWDD does not have to individually approve hundreds of trainings. The provider associations recommended that the regulations specify the provision of specific training in job coaching, person-centered planning, job development, and job discovery. The provider associations also recommended that the regulations specify that the training requirement only applies to staff who begin providing SEMP on or after the effective date of the regulations.

A provider association recommended that a mechanism be developed to reimburse providers for costs associated with the new training requirements that are in addition to basic training requirements for direct support professionals found in OPWDD's Part 633 regulations. Another provider association recommended that training time be billable.

A provider association expressed concern that even with the one or two year time frames for completion of training, it could be complicated by the potential lack of timely availability of the training courses offered. The provider association recommended that the regulations provide for training to take place as per course availability.

Response: OPWDD notes that the required training approved by OPWDD is its Innovations in Employment Supports trainings. These trainings include training in job coaching, person-centered planning, job development, and job discovery. OPWDD's SEMP ADM will further detail the requirements for participation in these trainings and, therefore, OPWDD plans to promulgate the proposed regulation without any changes. The training requirement applies to staff who begin delivering services prior to July 1, 2015. However, such staff will have a 2-year grace period to come into compliance with the requirement. This will be specified in OPWDD's SEMP ADM. OPWDD has considered the concerns related to lack of timely availability of training courses offered and has worked with its contractor to ensure that trainings will be available across the State.

Comment: The SEMP provider also commented that the Extended phase service limit of 200 hours per year or 16.66 hours per month is too high and not necessary. The SEMP provider also commented that operational overhead for SEMP involves fixed costs that do not fall below a minimum threshold regardless of the number of people served.

The provider association recommended that OPWDD commit to evaluating the effectiveness of the hourly unit of service after the first year of implementation and remain open to reconsidering the monthly performance reimbursement approach. The SEMP provider recommended that OPWDD introduce tiers of hourly rates corresponding to the three levels of current monthly rates for Extended services and, with this new approach, delay implementation of the redesign for another year to give providers time to adjust to the changes.

Response: OPWDD worked with the Department of Health (DOH), which has created an hourly reimbursement for SEMP. As part of the SEMP redesign, services can be provided with or without an individual present. The annual limit on hours in the Intensive and Extended phases will ensure that individuals with developmental disabilities have enough supports to successfully obtain and maintain competitive employment. Extensions are available if an individual requires more hours of service. Consequently, OPWDD is promulgating the regulations without changes.

OPWDD appreciates the suggestion to evaluate SEMP after the first year of its implementation. As it does with all of its services, OPWDD plans to continuously monitor implementation of SEMP and make changes to the service if and when such changes are needed.

Comment: A provider association expressed concern about the significant challenge in changing procedures and protocols, developing guidance for employees, and overhauling internal compliance review procedures to implement the changes to SEMP. The provider association commented that some providers will not receive training on the changes until a week before the regulations are promulgated, and recommended that audit protocols and effective dates be lagged by 30 days following the date of dissemination of the final SEMP ADM.

Response: OPWDD and DOH made a commitment to CMS to effectuate the changes to the SEMP service and its fee structure on July 1, 2015. OPWDD and DOH have worked extensively with provider associations and providers on the redesign of SEMP and the development of the proposed regulations. OPWDD considers that providers have been given sufficient notice of the proposed requirements through participation in redesigning the service, trainings on the new requirements, and mailings and other correspondence about the new requirements. OPWDD does not plan to lag the effective date for compliance with the regulations.

Comment: A provider association commented on the criteria for extension of service time in the Intensive and Extended phases of SEMP, noting that both phases require criteria that the extension be in the best interests of the individual. The provider association commented that clarification is needed about whether all criteria must be met or only one criterion, and recommends that OPWDD require that only one criterion be met in addition to the extension being in the best interests of the individual.

Response: OPWDD notes that the regulations list the criteria for each phase and use the term "or" instead of "and" to indicate that only one of the criterion must be met for consideration of approval for an extension of either phase.

Comment: A SEMP provider recommended that OPWDD define "integrated employment in the general workforce," "integrated in the general workforce" and "nondisabled workers." The provider is concerned that, with language used in this regulation and other material disseminated by OPWDD on this topic, OPWDD will authorize the provision of SEMP in facilities that are "cosmetically converted" sheltered workshops.

Response: OPWDD notes that the regulation requires the outcome of SEMP services to be paid employment at or above the minimum wage in an integrated setting in the general workforce. This language is consistent with the 2011 CMS Informational Bulletin on Employment Services. OPWDD has determined that additional clarification is not needed and plans to promulgate the regulation without any changes.

Comment: A provider association recommended that the regulations identify the types of documentation that are acceptable as evidence that competitive integrated employment is compensated at or above the minimum wage, and state explicitly that this proof must be obtained only once for the duration of the individual's employment.

Response: OPWDD will identify the types of documentation that may be used to demonstrate that employment is at or above the minimum wage and the frequency for obtaining such documentation in its SEMP ADM. Consequently, OPWDD plans to promulgate the proposed regulations without any changes.

Comment: A SEMP provider commented that it is inappropriate to deliver SEMP in a group because group models result in insufficient individual attention to the specific needs of individuals, restriction of the range of available worksites and failure of individuals to maintain long-term placements in real jobs. The provider commented that group settings that only include individuals with disabilities isolate individuals with disabilities from nondisabled co-workers and do not conform to the new Medicaid Home and Community Based Services (HCBS) Settings regulations. The provider recommended changes to the regulations that would only allow service delivery in groups of 2 people.

Response: OPWDD notes that group employment is an allowable HCBS waiver service as defined in the 2011 CMS Informational Bulletin on Employment. The OPWDD regulation is consistent with the language in the CMS Bulletin. Consequently, OPWDD plans to promulgate the regulations without any changes.

Comment: A SEMP provider expressed appreciation of the inclusion of Intensive SEMP as a separate service because it will allow providers to take the time needed to help people find a job that is both fulfilling as well as suitable for them and should lead to an increase in positive employment outcomes for people with disabilities. The provider commented that the identified service time limit of 250 hours per year will allow service providers to spend a significant amount of time on career exploration, setting up assessments, job development, and job coaching, and devoting more time on these areas should generate a higher job retention rate.

Response: OPWDD appreciates the support from the SEMP provider.

Comment: A provider association commented that it presumes that existing SEMP plans prior to the redesign will remain in effect after July 1, 2015, through the time period of the plan.

Response: OPWDD will provide this clarification in its SEMP ADM. The SEMP plan does not need to be updated as SEMP is still the service being provided and the valued outcomes do not change. There is no need to identify whether an individual receives Intensive or Extended SEMP. The plan just needs to identify SEMP as the service.

Comment: A provider association recommended changing the timeframe requirement for notification of individuals who are qualified for the limited exception in the liability regulations from August 1, 2015 to November 1, 2015.

Response: OPWDD considers that one month is a reasonable timeframe requirement for notification of the changes to the limited exception in the liability regulations. This timeframe is consistent with the timeframe for notifications when the existing regulations were initially promulgated in 2009. OPWDD expects that fewer notifications will need to be made than were required in 2009 under the same timeframe requirements because the notification required in the proposed regulations only pertains to individuals receiving SEMP services only. Consequently, OPWDD plans to promulgate the proposed regulations without any changes.

Public Service Commission

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

To Consider the Request for Partial Waiver of the Energy Audit Requirements in 16 NYCRR Section 96.5(k)

I.D. No. PSC-26-15-00014-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Greater Centennial Homes HDFC, Inc., for partial waiver of the energy audit requirements in 16 NYCRR section 96.5(k).

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

Subject: To consider the request for partial waiver of the energy audit requirements in 16 NYCRR section 96.5(k).

Purpose: To consider the request for partial waiver of the energy audit requirements in 16 NYCRR section 96.5(k).

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Petition filed by Greater Centennial Homes HDFC, Inc., for partial waiver of the energy audit requirements in 16 NYCRR 96.(5)(k)(3) for 102, 103 and 106 West 5th Street, 127, 129, 266, 268 West 4th Street, 254 and 262 South 9th Street, 329, 333, 337, 338, 342, 343, 346, 347, 350, 351, 403, 407, 408, 416 8th Ave. and 257 South 10th Avenue and 69 West 5th Street, Located in the Territory of Consolidated Edison Company of New York, Inc. and to take other actions necessary to address the Petition.

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.

(12-E-0409SP2)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

The Brooklyn Union Gas Company D/b/a National Grid (KEDNY) Petition for SIR Recovery Surcharge Increase

I.D. No. PSC-26-15-00015-P

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

Proposed Action: The Commission is considering the petition of The Brooklyn Union Gas Company requesting approval to increase its existing SIR Recovery Surcharge by $37.5 million annually.

Statutory authority: Public Service Law, section 66

Subject: The Brooklyn Union Gas Company d/b/a National Grid (KEDNY) Petition for SIR Recovery Surcharge Increase.

Purpose: To authorize KEDNY to increase its SIR Recovery Surcharge.

Substance of proposed rule: The Public Service Commission is considering a Petition submitted by The Brooklyn Union Gas Company d/b/a National Grid (KEDNY). In its petition, KEDNY requests the ability to increase its existing SIR Recovery Surcharge by $37.5 million annually. The Commission may grant, deny or modify, in whole or in part, KEDNY's petition, and may consider other related items.

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-0323SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Petition to Submeter Electricity

I.D. No. PSC-26-15-00016-P

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

Proposed Action: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Petition to submeter electricity filed by 39 Plaza Housing Corporation, for the premises located at 39 Plaza Street West, Brooklyn, New York.

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

Subject: Petition to Submeter electricity.

Purpose: To consider the request of 39 Plaza Housing Corporation to submeter electricity at 39 Plaza Street West, Brooklyn, New York.

Substance of proposed rule: The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the Petition filed by 39 Plaza Housing Corporation, to submeter electricity at 39 Plaza Street West, Brooklyn, New York, located in the territory of Consolidated Edison Company of New York, Inc., and to take other actions necessary to address the Petition.

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-0300SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

The Brooklyn Union Gas Company D/b/a National Grid (KEDNY) Petition for Capital Reconciliation Mechanism Modification

I.D. No. PSC-26-15-00017-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 petition of The Brooklyn Union Gas Company requesting modification to its existing Capital Expenditures and Net Utility Plant and Depreciation Expense Reconciliation Mechanism (Capital Reconciliation Mechanism).

Statutory authority: Public Service Law, section 66

Subject: The Brooklyn Union Gas Company d/b/a National Grid (KEDNY) Petition for Capital Reconciliation Mechanism Modification.

Purpose: To authorize KEDNY to modify its Capital Reconciliation Mechanism.

Substance of proposed rule: The Public Service Commission is considering a Petition submitted by The Brooklyn Union Gas Company d/b/a National Grid (KEDNY). In its petition, KEDNY requests the ability to extend the Capital Reconciliation Mechanism period from two years to four years, over the period January 1, 2013 through December 31, 2016. The Commission may grant, deny or modify, in whole or in part, KEDNY's petition, and may consider other related items.

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.

(12-G-0544SP2)

Department of State

EMERGENCY RULE MAKING

Personal Protective Equipment

I.D. No. DOS-26-15-00001-E
Filing No. 506
Filing Date: 2015-06-10
Effective Date: 2015-06-10

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

Action taken: Amendment of sections 160.11 and 160.20 of Title 19 NYCRR.

Statutory authority: Executive Law, section 91; General Business Law, sections 402(5) and 404

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

Specific reasons underlying the finding of necessity: The Department of State ("Department") is charged, inter alia, with the enforcement of New York General Business Law ("NY GBL") Article 27, which relates to the appearance enhancement industry. A principal purpose behind the enactment of Article 27 was to provide a system of licensure of appearance enhancement businesses and operators that would both allow for the greatest possible flexibility in the establishment of regulated services and implement measures to protect those who practice in the industry. Consistent with the legislative intent of Article 27, the Department is empowered to issue regulations which protect the general welfare of the public, including those who provide nail care services. New information regarding the practice of nail specialty indicates that many practitioners are at risk for preventable disease and injury because of the lack of readily available protective gear.

To help ensure that workers are better protected, the Department is adopting these emergency health and safety regulations. The enhancement of public safety, health and general welfare necessitates the promulgation of these regulations on an emergency basis. The Department finds that imposing new requirements and clarifying existing regulations will protect the approximately 162,000 licensed cosmetologists and nail specialists in New York.

Subject: Personal protective equipment.

Purpose: To require the provision of personal protective equipment.

Text of emergency rule: Section 160.11 of Title 19 of the NYCRR is amended as follows:

Section 160.11. Owner responsibilities

(a) An owner [, an area renter or both] shall be responsible for the proper conduct of the licensed business and for the proper provision of appearance enhancement services to the public by its employees or operators.

(b) An owner [, an area renter or both] shall be responsible for compliance with all applicable health and sanitary codes, and all statutory and regulatory requirements with respect to the practices of the occupation and business prescribed by this Part.

(c) An owner shall be responsible for maintaining the following equipment at each workstation, to be made available, upon request and without cost, to each person providing nail care services who uses such workstation:

(1) A properly fitting N-95 or N-100 respirator, approved by the National Institute for Occupational Safety and Health ("NIOSH"), for each individual who uses such workstation, to reduce inhalation of dust and particulate matter;

(2) Protective gloves made of nitrile, or other similar non-permeable material for workers with a sensitivity to nitrile gloves, in quantities sufficient to allow each individual providing nail care services to have a new pair of gloves for each customer served; and

(3) Eye protection sufficient to protect from splashes when pouring or transferring potentially hazardous chemicals from bulk containers or when preparing potentially hazardous chemicals for use in nail care services.

(d) The requirements of Subdivisions (a) and (b) were in effect prior to the filing of this emergency regulation, and remain in continuous full force and effect. Subdivision (c) of this Section shall take effect on June 15, 2015.

Section 160.20 of Title 19 of the NYCRR is amended as follows:

160.20 Hygienic practices.

(a) Cotton applicators may be used and must be stored in a closed container or sealed bag.

(b) A clean sheet of paper or a clean towel not previously used for any purpose shall be placed on the table or headrest before any client reclines on a table or chair.

(c) Cloth towels may be used once then bagged, machine washed and dried.

(d) A paper strip or clean towel shall be placed completely around the neck of each client before an apron or any other protective device is fastened around the neck.

(e) All practitioners and nail care clients must wash hands with soap and water before each client service.

(f) All sharp or pointed equipment shall be stored when not in use so as not to be accessible to consumers.

(g) All fluids, semifluids and powders must be dispensed with a shaker, dispenser pump or spray type container. All creams, lotions and other cosmetics used for clients must be kept in closed containers and dispensed with disposable applicators. When only a portion of a preparation is to be used on a client, it shall be removed from the container in such a way as not to contaminate the remaining portion.

(h) All practitioners shall have access to and may use a properly fitted N-95 or N-100 respirator, provided by the owner and approved by the National Institute for Occupational Safety and Health ("NIOSH"), in accordance with manufacturer's specifications when buffing or filing artificial nails or using acrylic powder.

(i) All practitioners shall have access to and may wear gloves, provided by the owner, when handling potentially hazardous chemicals or waste and during cleanup, or when performing any procedure that has a risk of breaking a customer's skin.

(j) All practitioners shall have access to and may wear eye protection, provided by the owner, when pouring or transferring potentially hazardous chemicals from bulk containers and when preparing potentially hazardous chemicals for use in nail care services.

(k) The requirements of Subdivisions (a) through (g) were in effect prior to the filing of this emergency regulation, and remain in continuous full force and effect. Subdivisions (h), (i), and (j) of this Section shall take effect on June 15, 2015.

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 September 7, 2015.

Text of rule and any required statements and analyses may be obtained from: David A. Mossberg, Esq., NYS Dept. of State, 123 William Street, 20th Fl., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

Regulatory Impact Statement

1. Statutory Authority:

New York Executive Law § 91 and New York General Business Law ("GBL") § § 402(5); 404; 404(b) and 405(2). Section 91 of the Executive Law authorizes the Secretary of State to: "adopt and promulgate such rules which shall regulate and control the exercise of the powers of the department of state." In addition, Sections 405(1) and 404 of the GBL authorize the Secretary of State to promulgate rules specifically relating to the appearance enhancement industry. Specifically, 404-b requires all owners and operators of appearance enhancement businesses that practice nail specialty to make available, upon request, gloves and facemasks for nail specialty licensees who work in such businesses.

2. Legislative Objectives:

Article 27 of the GBL was enacted, inter alia¸ to provide a system of licensure of appearance enhancement businesses and operators that would allow for the greatest possible flexibility in the establishment of regulated services, while establishing protective measures. Consistent with this legislative intent, the Department is empowered to issue regulations that accomplish these purposes.

3. Needs and Benefits:

This rule is needed to implement provisions of the GBL, specifically sections 404 and 404-b. The Department finds that these regulations, which clarify existing requirements relating to availability of personal protective equipment will further the legislative intent of Section 404-b of the GBL.

4. Costs:

a. Costs to regulated parties:

Businesses which offer nail care services will be required pursuant to this rule to have available gloves, respirators and sufficient eye protection for individuals who practice nail specialty services. The Department estimates the following costs to businesses: 1) a box of 100 disposable nitrile gloves will cost approximately $15.00; 2) a box of 20 approved respirators will cost approximately $15.00; and 3) sufficient eye protection will cost approximately $3.00 per employee.

b. Costs to the Department of State, the State, and Local Governments:

The Department does not anticipate any additional costs to implement the rule.

5. Local Government Mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

This rule does not impose any new paperwork requirement.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department considered not proposing the instant rulemaking. It was determined, however, that this rule is needed to protect the general welfare of approximately 162,000 individuals who practice nail specialty services.

9. Federal Standards:

The proposed rulemaking is necessary to implement the provisions of existing law and standards.

10. Compliance Schedule:

As stated in the emergency rule, this rule will be effective June 15, 2015.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule requires the provision of personal protective equipment. Businesses that offer nail care services will be required to provide such equipment as provided for by this rule to individuals who practice nail specialty services without cost. There are approximately 26,753 appearance enhancement businesses and 7,764 area renters in New York State that may be subject to this rule.

2. Compliance requirements:

The rule implements statutory requirements established under Section 404-b of Article 27 of the General Business Law. Owners subject to this rule will be required to provide gloves, respirators and sufficient eye protection to individuals who practice nail specialty services. The rule does not impose reporting or recordkeeping on owners.

3. Professional services:

The Department does not anticipate the need for professional services.

4. Compliance costs:

The Department estimates the following costs to businesses: 1) a box of 100 disposable nitrile gloves will cost approximately $15.00; 2) a box of 20 approved respirators will cost approximately $15.00; and 3) sufficient eye protection will cost approximately $3.00 per employee.

5. Economic and technological feasibility:

This proposal is economically and technically feasible. Based on the Department's cost estimates and that the personal protective equipment provided for by this rule is readily available in retail stores and through online purchasing, businesses should have no difficulty complying with this rule.

6. Minimizing adverse impact:

The Department did not identify any feasible alternatives that would achieve the results of the proposed rule and also be less restrictive and less burdensome in terms of compliance. The Department has consulted with Department of Labor, Department of Health, and several advocacy and business groups and finds this rule is necessary to implement existing law relating to the provision and availability of personal protective equipment.

7. Small business and local government participation:

The Department, in conjunction with other state agencies, has consulted with small business interests that may be affected by this rule. In addition, the Department has conducted significant outreach to inform the public regarding this rule, including posting this rule on the Department's website and participating in a public forum detailing, inter alia, the purpose of this rule. Publication of the rule in the State Register will provide further notice of the proposed rulemaking to all interested parties. Additional comments will be received and entertained during the public comment period associated with this rulemaking.

8. Compliance:

As stated in the emergency rule, this rule is effective June 15, 2015.

9. Cure period:

The Department is not providing for a cure period prior to enforcement of these regulations. The Department finds that the implementation of existing law relating to personal protective equipment requires emergency action and should be enforced without delay. Further, as this rule does not take effect until June 15, 2015, the Department believes that those impacted by this rule will have adequate time to comply.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule will apply to appearance enhancement businesses that are licensed pursuant to Article 27 of the General Business Law. There are approximately 26,753 appearance enhancement businesses and 7,764 area renters across New York State that may be subject to this rule. Licensed owners throughout the state, including those in rural areas, are responsible for complying with this rule.

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

The rule implements statutory requirements established under Section 404-b of Article 27 of the General Business Law. The rule does not impose reporting or recordkeeping on owners. Further, there are no additional professional services required as a result of this regulation. No different or additional requirements are applicable exclusively to rural areas of the state.

3. Costs:

The Department estimates the following costs to businesses: 1) a box of 100 disposable nitrile gloves will cost approximately $15.00; 2) a box of 20 approved respirators will cost approximately $15.00; and 3) sufficient eye protection will cost approximately $3.00 per employee.

4. Minimizing adverse impact:

The proposed rulemaking will implement existing law relating to provision and use of personal protective equipment for nail care providers throughout the state, including rural areas. The Department has consulted with Department of Labor, Department of Health as well as several advocacy groups, but did not identify any feasible alternatives that would achieve the results of the proposed rules and also be less restrictive and less burdensome in terms of compliance.

5. Rural area participation:

No significant comments have been received regarding this rulemaking. Publication of the Notice in the State Register will provide notice to all interested parties, including those in rural areas. Additional comments received on this rulemaking will be considered and assessed during imminent Proposed Rule Making process on this matter.

Job Impact Statement

1. Nature of impact:

This rulemaking applies to all appearance enhancement owners and individuals who offer nail specialty services. Pursuant to this rule, owners are required to provide at no cost gloves, respirators and eye protection while offering certain services. Though the rule is intended to implement existing law, the Department finds that it will also improve the wellbeing of those working in the nail care industry, and as such the rule will have a positive impact on jobs and employment opportunities.

2. Categories and numbers affected:

There are approximately 30,000 owners which would potentially be subject to this rulemaking. Further, there are approximately 162,000 licensees who offer services specified by this rule.

3. Regions of adverse impact:

The proposed rulemaking will not have any disproportionate regional adverse impact on jobs or lawful employment opportunities.

4. Minimizing adverse impact:

The Department considered not proposing the instant rulemaking. It was determined, however, that this rule is immediately needed to implement existing law through rules regarding availability and use of personal protective equipment. The Department has consulted with Department of Labor, Department of Health and several advocacy groups, but did not identify any alternatives that would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance.

Assessment of Public Comment

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

EMERGENCY RULE MAKING

Rules Relating to Insurance and Bond Requirements

I.D. No. DOS-26-15-00002-E
Filing No. 507
Filing Date: 2015-06-10
Effective Date: 2015-06-10

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

Action taken: Repeal of section 160.9; and addition of new section 160.9 to Title 19 NYCRR.

Statutory authority: Executive Law, section 91; General Business Law, sections 402(5) and 404

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

Specific reasons underlying the finding of necessity: The Department of State ("Department") is charged, inter alia, with the enforcement of New York General Business Law ("NY GBL") Article 27, which relates to the appearance enhancement industry. A principal purpose behind the enactment of Article 27 was to provide a system of licensure of appearance enhancement businesses and operators that would both allow for the greatest possible flexibility in the establishment of regulated services and implement measures to protect those inextricably entwined in the industry. Consistent with this legislative intent of Article 27, the Department is empowered to issue regulations which protect the general welfare of the public, including workers employed by business owners. Notwithstanding existing laws and regulations, a number of businesses have taken unfair advantage of a significant number of licensed workers who contribute to the community and economy. The ease with which some establishments have been able to deprive workers of fair wages and other rights is due in part to inadequate protections.

To help ensure that workers receive wages that are legally due, new bonding and insurance requirements are needed. The enhancement of public safety, health and general welfare necessitates the promulgation of this regulation on an emergency basis. The Department finds that by imposing new bonding and insurance provisions potential abuses by unscrupulous business owners will be reduced and hardworking employees will be protected.

Subject: Rules relating to insurance and bond requirements.

Purpose: To enhance protections to workers by adding new provisions requiring wage coverage.

Text of emergency rule: Section 160.9 of Title 19 of the NYCRR is repealed and a new 160.9 is added to read as follows:

19 NYCRR § 160.9 Bond or liability insurance

(a) An owner must maintain proof of minimum financial security in the following amounts:

(1) for accident and professional liability, at least $25,000 per individual occurrence and $75,000 in the aggregate; and

(2) for payment of wages and remuneration legally due employees who provide nail specialty services pursuant to the following schedule:

(i) if owner employs the equivalent of two to five full time individuals who provide nail specialty services, at least $25,000 or in such other amount as directed by the Secretary;

(ii) if owner employs the equivalent of six to ten full time individuals who provide nail specialty services, at least $40,000 or in such other amount as directed by the Secretary;

(iii) if owner employs the equivalent of 11 to 25 full time individuals who provide nail specialty services, at least $75,000 or in such other amount as directed by the Secretary; or

(iv) if owner employs the equivalent of 26 or more full time individuals who provide nail specialty services, at least $125,000 or in such other amount as directed by the Secretary.

(b) Such proof may be satisfied by purchasing:

(1) accident and professional liability insurance, or general liability insurance; or

(2) a bond with a corporate surety, from a company authorized to do business in this state, payable in favor of the people of the state of New York; or

(3) any combination of (1) or (2) as provided in this Subdivision provided that the coverage amounts set forth in Subdivision (a) of this Section are satisfied.

(c) Proof of bond and liability insurance coverage, as applicable, must be filed with the Secretary and may be terminated only in accordance with the following provisions:

(1) A bond shall not be cancelled, revoked, or terminated by the owner, nor shall the owner take action that would result in the cancellation, revocation, or termination of such bond, except after notice to, and with the consent of, the Secretary at least forty-five days in advance of such cancellation, revocation, or termination. The bond shall include a provision requiring the surety to provide forty-five days' notice to the Secretary prior to cancelling the bond.

(2) A liability insurance policy obtained pursuant to this Section shall not be cancelled, revoked, or terminated by the owner, nor shall the owner take action that would result in the cancellation, revocation, or termination of such insurance policy, except after notice to the Secretary at least forty-five days in advance of such cancellation, revocation, or termination, in a form prescribed by the Secretary.

(d) Proof of such bond or liability insurance policy must be maintained on the business premises. Such proof shall be accessible by all employees at all times that the business is open.

(e) An owner will be permitted to maintain a bond or liability insurance policy as required by former Section 160.09 until June 30, 2015. All owners shall comply with the provisions of this Section on or after July 1, 2015.

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 September 7, 2015.

Text of rule and any required statements and analyses may be obtained from: David A. Mossberg, Esq., NYS Dept. of State, 123 William Street, 20th Fl., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

Regulatory Impact Statement

1. Statutory Authority:

New York Executive Law § 91 and New York General Business Law ("GBL") §§ 402(5); 404 and 405(2). Section 91 of the Executive Law authorizes the Secretary of State to: "adopt and promulgate such rules which shall regulate and control the exercise of the powers of the department of state." In addition, Sections 405(1) and 404 of the GBL authorize the Secretary of State to promulgate rules specifically relating to the appearance enhancement industry. Section 405(2) requires an appearance enhancement licensee to be bonded or insured.

2. Legislative Objectives:

Article 27 of the GBL was enacted, inter alia, to provide a system of licensure of appearance enhancement businesses and operators that would allow for the greatest possible flexibility in the establishment of regulated services, while establishing measures to protect members of the public, including those who work in the industry. Consistent with this legislative intent, the Department is empowered to issue regulations that accomplish these purposes.

3. Needs and Benefits:

It has come to the attention of the Department that a number of appearance enhancement businesses may be engaging in exploitive practices to deprive employees who provide nail specialty services of wages due. Individuals providing nail specialty services to the public have been particularly impacted. While the regulations of the Department, in accord with statutory mandate, have long required bonding or insurance for the protection of the public welfare, the Department finds that new and more particularized bonding and insurance requirements are needed to help ensure that employees that provide nail specialty services receive the wages and benefits they have earned.

After consulting with the Department of Labor and advocacy groups, it was determined that this regulation is needed to help protect the wellbeing of employees who provide nail specialty services to the public.

4. Costs:

a. Costs to regulated parties:

Prior regulatory requirements were primarily concerned with liability coverage, whether by bond or insurance. The majority of appearance enhancement business owners satisfied their obligations by obtaining an insurance policy in the required amount of $25,000 per occurrence and $75,000 in the aggregate. This rulemaking maintains such liability requirement and adds a new requirement that the business' payment of wages and remuneration legally due employees who provide nail specialty services be guaranteed in amounts keyed to the number of such individuals employed by the business owner and the amount of hours that these employees work on a weekly basis. Therefore, the cost to the regulated parties is the cost of acquiring the wage guarantee.

The Department is informed that for purchasers in good credit standing, the cost of acquiring a "wage bond" is likely to be 2 - 4% of the amount of the bond. Thus, a surety bond in the amount of $25,000 (2 – 5 employees) would range between $500 and $1,000. Businesses employing more individuals are required to maintain greater coverage. Bond amounts and cost of acquisition are as follows: $40,000 for 6 -10 individuals, $800

-$1,600; $75,000 for 11 – 25 individuals, $1,500 - $3,000, and $125,000 for 26 or more individuals, $2,500 - $5,000.

b. Costs to the Department of State, the State, and Local Governments:

The Department does not anticipate any additional costs to implement the rule. Existing staff will manage new filing requirements.

5. Local Government Mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

The rule requires a licensee to file proof of its bond and insurance coverage with the Secretary and to notify the Secretary of the bond or insurance policy's impending cancellation.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department considered not proposing the instant rulemaking. It was determined, however, that this rule is immediately needed to protect the general welfare of a significant population of practitioners who have been deprived of legally due wages.

9. Federal Standards:

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

10. Compliance Schedule:

As stated in the emergency rule itself, compliance will be required by July 1, 2015.

Regulatory Flexibility Analysis

1. Effect of rule:

In addition to continuing the requirement that appearance enhancement business owners acquire and maintain liability insurance, this rulemaking requires appearance enhancement business owners to acquire and maintain a guarantee by a surety or insurer for the business' payment of wages and remuneration legally due employees. The rule will protect employees who provide nail specialty services from the exploitive and pernicious practice of wage theft. There are 26,753 appearance enhancement businesses and 7,764 area renters in New York State that may be subject to this rule. Compliance is required depending upon the numbers of persons employed who provide nail specialty services, and the number of hours per week that they work.

2. Compliance requirements:

Prior regulatory requirements provided that appearance enhancement business owners provide liability coverage, whether by bond or insurance, in the amount or $25,000 per occurrence and $75,000 in the aggregate. This rulemaking maintains such liability requirement, and adds a new requirement that the business' payment of wages and remuneration legally due employees and providers of appearance enhancement services be guaranteed in amounts keyed to the number of individuals who provide nail specialty services that are employed by the business owner and the number of hours that they work on a weekly basis. The rule requires a licensee to file its bond and insurance, as applicable, with the Secretary and to notify the Secretary of any impending cancellation of the bond or insurance. Additionally, the rule continues the current requirement that owners maintain proof of such coverage at the licensed business premises.

3. Professional services:

The Department does not anticipate the need for professional services.

4. Compliance costs:

Prior regulatory requirements were primarily concerned with liability coverage, whether by bond or insurance. The majority of appearance enhancement business owners satisfied their obligations by obtaining an insurance policy in the required amount of $25,000 per occurrence and $75,000 in the aggregate. This rulemaking maintains such liability requirement and adds a new requirement that the business' payment of wages and remuneration legally due employees who provide nail specialty services be guaranteed in amounts keyed to the number of such individuals employed by the business owner and the amount of hours that these employees work on a weekly basis. Therefore, the cost to the regulated parties is the cost of acquiring the wage guarantee.

The Department is informed that for purchasers in good credit standing, the cost of acquiring a "wage bond" is likely to be 2 -4% of the amount of the bond. Thus, a surety bond in the amount of $25,000 (2 – 5 employees) would range between $500 and $1,000. Businesses employing more individuals are required to maintain greater coverage. Bond amounts and cost of acquisition are as follows: $40,000 for 6 -10 individuals, $800 -$1,600; $75,000 for 11 – 25 individuals, $1,500 - $3,000, and $125,000 for 26 or more individuals, $2,500 - $5,000.

5. Economic and technological feasibility:

The amount of coverage required and thus, the cost of acquiring such coverage, has been keyed to the relative size of the business. The smallest business identified, one that employees 2-5 individuals, may expend as little as $500 to comply with new "wage bond" requirement. Although additional collateral may be required to secure the bond, the Department believes it is both economically and technically feasible to comply with this rule.

6. Minimizing adverse impact:

The Department did not identify any alternatives that would achieve the results of the proposed rule and also be less restrictive and less burdensome in terms of compliance. The Department has consulted with Department of Labor and several advocacy groups and finds that this rule is necessary for the wellbeing of those who engage in appearance enhancement practices.

7. Small business and local government participation:

The Department, in conjunction with other state agencies, has consulted with small business interests, both businesses and organizations, that may be affected by this rule. Although this particular proposal was not presented, businesses were, generally, supportive and amenable to the changes discussed.

8. Compliance:

As stated in the emergency rule, itself, compliance will be required by July 1, 2015.

9. Cure period:

The Department is not providing for a cure period prior to enforcement of these regulations. The Department finds that protecting the wages of workers is a significant public concern. In addition, as this rule is not effective until July 1, 2015, the Department believes that those employers impacted by this rule will have sufficient time to comply. Accordingly, the Department finds that a cure period is not appropriate.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule will apply to appearance enhancement businesses that are licensed pursuant to Article 27 of the General Business Law. There are approximately 26,753 appearance enhancement businesses and 7,764 area renters across New York State that may be subject to this rule. Licensed owners are responsible for complying with this rule.

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

Prior regulatory requirements provided that appearance enhancement business owners provide liability coverage, whether by bond or insurance, in the amount or $25,000 per occurrence and $75,000 in the aggregate. This rulemaking maintains such liability requirement, and adds a new requirement that the business' payment of wages and remuneration legally due individuals who practice nail specialty services be guaranteed in amounts keyed to the number of individuals who provide nail specialty services that are employed by the business owner and the number of hours that they work on a weekly basis. The rule requires a licensee to file its bond and insurance, as applicable, with the Secretary and to notify the Secretary of any impending cancellation of the bond or insurance. Additionally, the rule continues the current requirement that the owners maintain evidence of such coverage at the licensed business premises. No different or additional compliance requirements apply to businesses located in rural areas.

3. Costs:

Prior regulatory requirements were primarily concerned with liability coverage, whether by bond or insurance. The majority of appearance enhancement business owners satisfied their obligations by obtaining an insurance policy in the required amount of $25,000 per occurrence and $75,000 in the aggregate. This rulemaking maintains such liability requirement and adds a new requirement that the business' payment of wages and remuneration legally due employees who provide nail specialty services be guaranteed in amounts keyed to the number of such individuals employed by the business owner and the amount of hours that these employees work on a weekly basis. Therefore, the cost to the regulated parties is the cost of acquiring the wage guarantee.

The Department is informed that for purchasers in good credit standing, the cost of acquiring a "wage bond" is likely to be 2 -4% of the amount of the bond. Thus, a surety bond in the amount of $25,000 (2 – 5 employees) would range between $500 and $1,000. Businesses employing more individuals are required to maintain greater coverage. Bond amounts and cost of acquisition are as follows: $40,000 for 6 -10 individuals, $800 -$1,600; $75,000 for 11 – 25 individuals, $1,500 - $3,000, and $125,000 for 26 or more individuals, $2,500 - $5,000.

4. Minimizing adverse impact:

The Department has consulted with Department of Labor and several advocacy groups, but did not identify any alternatives that would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance. Businesses in rural areas will not be impacted any more or less than businesses in other areas.

5. Rural area participation:

The Department, in conjunction with other state agencies, has consulted with business interests which may be affected by this rule. Publication of

this rule in the New York State Register will provide notice to those in rural areas and afford everyone an opportunity to comment. The Department has posted a copy of this rule on the Department's website, which will provide additional opportunity for rural area participation.

Job Impact Statement

1. Nature of impact:

This rulemaking will help to insure the payment of wages lawfully due and owing to individuals who provide nail specialty services. Insomuch as this rulemaking will help protect workers, the Department believes that it will have a positive impact on jobs and employment opportunities. Specifically, more workers may seek employment in this industry if they know that their wages will now be guaranteed.

2. Categories and numbers affected:

There are approximately 26,753 appearance enhancement businesses and 7,764 area renters in New York State that may be subject to this rule.

3. Regions of adverse impact:

The proposed rulemaking will not have any disproportionate regional adverse impact on jobs or employment opportunities.

4. Minimizing adverse impact:

The Department considered not proposing the instant rulemaking. It was determined, however, that this rule is immediately needed to protect the general welfare of a significant population of individuals who have been deprived of legally due wages. The Department has consulted with Department of Labor and several advocacy groups, but did not identify any alternatives that would achieve the results of the proposed rules and at the same time be less restrictive and less burdensome in terms of compliance.

Assessment of Public Comment

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

Office of Temporary and Disability Assistance

NOTICE OF ADOPTION

Delete Regulatory References to the Learnfare Program

I.D. No. TDA-12-15-00004-A

Filing No. 526

Filing Date: 2015-06-16

Effective Date: 2015-07-01

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

Action taken: Amendment of section 351.2; and repeal of section 351.12 of Title 18 NYCRR.

Statutory authority: Social Services Law, section 20(3)(d); L. 1995, ch. 81, sections 188 and 246(18); L. 1997, ch. 436, part B, section 21

Subject: Delete regulatory references to the Learnfare Program.

Purpose: Make technical amendments to reflect that the statutory authority to operate the Learnfare Program has expired.

Text or summary was published in the March 25, 2015 issue of the Register, I.D. No. TDA-12-15-00004-P.

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

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

Initial Review of Rule

As a rule that does not require a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2020, which is no later than the 5th year after the year in which this rule is being adopted.

Assessment of Public Comment

The agency received no public comment.