

# 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.

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## Office of Children and Family Services

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

#### Implementation of Legislation for Destitute Children

**I.D. No.** CFS-12-15-00010-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 420.1, 421.1, 422.1, 427.2, 428.2, 430.10, 430.11, 431.17, 431.18, 436.1, 436.5, 441.2, 441.22, 443.1, 443.7 and 628.3 of Title 18 NYCRR.

**Statutory authority:** Social Services Law, sections 20(3)(d) and 34(3)(f); L. 2012, ch. 3

**Subject:** Implementation of legislation for destitute children.

**Purpose:** To implement legislation for destitute children, re-entry into foster care and to make other technical amendments.

**Substance of proposed rule (Full text is posted at the following State website: <http://ocfs.ny.gov>):** The proposed regulations would amend 18 NYCRR 420.1(a) to add juvenile delinquents, Persons in Need of Supervision (PINS) and destitute children to the definition of legally freed children where all parents who would be entitled to notice of the child's adoption are deceased in regard to the standards relating to the photo listing of children freed for adoption.

The proposed regulations would amend 18 NYCRR 421.1(i) to add juvenile delinquents, PINS and destitute children to the definition of a legally free child where all parents who would be entitled to notice of the child's adoption are deceased relating to the standards for adoption services.

The proposed regulations would amend 18 NYCRR 422.1(a) to add destitute children and children who re-enter foster care to the definition of a parent relating to the standards for parental support of children in foster care.

The proposed regulations would amend 18 NYCRR 427.2(b) to add destitute children and children who re-enter foster care to the definition of a foster child relating to the standards of payment for foster care of children.

The proposed regulations would amend 18 NYCRR 428.2(a) to add destitute children and children who re-enter foster care to the definition of case initiation date or day 1 relating to the standards for uniform case records and family and child assessments and service plans.

The proposed regulations would amend 18 NYCRR 430.10(d) to add destitute children and children who re-enter foster care to court ordered placements relating to the standards for the necessity of foster care placements.

The proposed regulations would amend 18 NYCRR 430.11(c) to add destitute children and children who re-enter foster care to the standards for continuity of the environment of a child entering foster care where the child is an Indian child.

The proposed regulations would amend 18 NYCRR 431.17 to add destitute children and children who re-enter foster care, add a reference to a surrender of a child in foster care in accordance with section 383-c of the Social Services Law and update the name of a state agency in regard to the standards for the care and custody of foster children placed in facilities operated or supervised by the Office of Mental Health or the Office for People With Developmental Disabilities.

The proposed regulations would amend 18 NYCRR 431.18(c)-(e) to add references to PINS and destitute children to the categories of child custody proceedings for which an Indian child's parent or Indian custodian and the Indian child's tribe must receive notice of the proceeding. The proposed regulations would require that active efforts be made to alleviate the need for removal of the Indian child from his or her home and would apply such requirement to destitute children and children who re-enter foster care. In addition, the proposed regulations would add PINS, destitute children and children who re-enter foster care to the cases where the social services official must inquire whether a child is an Indian child. Such proposed amendments reflect standards set forth in the federal Indian Child Welfare Act (25 U.S.C. §§ 1901 et seq.).

The proposed regulations would amend 18 NYCRR 436.1(b) to add destitute children to the definition of a child in regard to the kinship guardianship assistance program.

The proposed regulations would amend 18 NYCRR 436.5(c) to address when the income of a prospective kinship guardian would be disregarded for the purpose of calculating the payment rate the prospective kinship guardian would be eligible for to conform with standards in place for adoption subsidy.

The proposed regulations would amend 18 NYCRR 441.2(b) to add destitute children and children who re-enter foster care to the definition of a child for the purpose of regulatory standards dealing with children in residential care.

The proposed regulations would amend 18 NYCRR 441.22(e) and (f) to add references to destitute children in regard to the standards for health and medical services for foster children.

The proposed regulations would amend 18 NYCRR 443.1(e) and (f) to add destitute children, children who re-enter foster care and children who enter foster care by a surrender pursuant to section 383-c of the Social Services Law to the definition of foster family home care and approved home in the standards for the certification or approval of foster homes.

The proposed regulations would amend 18 NYCRR 443.7(a) to add the care of destitute children and children who re-enter foster care to those circumstances in which a foster home may be approved or certified on an emergency basis.

The proposed regulations would amend 18 NYCRR 628.3(a) and (c) to add a clarifying reference to section 1092 of the Family Court Act for

destitute children in the standards relating to claiming for children in foster care.

**Text of proposed rule and any required statements and analyses may be obtained from:** Public Information Office, Office of Children and Family Services, 52 Washington Street, Rensselaer, New York 12144-2796, (518) 473-7793

**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:

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 398(1) of the SSL requires the local commissioners of social services to assume charge of and provide support to destitute children who cannot be properly cared for in their home.

Section 398(6)(a) of the SSL requires the local commissioners of social services to determine what assistance and care, supervision or treatment foster children require.

##### 2. Legislative objectives:

The proposed regulations would implement statutory changes in relation to the definition of destitute children in the Family Court. Chapter 605 of the Laws of 2011 amended the definition of destitute child and created procedures for the entry of destitute children into foster care. Chapter 607 of the Laws of 2011 amended the SSL to add destitute children to the categories of children who may be eligible for the kinship guardianship assistance program. Chapter 3 of the Laws of 2012 further amended Chapter 605 of the Laws of 2011. All of the above referenced chapter laws go into effect once New York's amendment of its federal Title IV-E State Plan has been approved by the federal Department of Health and Human Services (DHHS). On September 18, 2012, DHHS approved New York State's amendment to its Title IV-E State Plan adding destitute children to the category of foster children eligible for Title IV-E reimbursement.

The revised definition of destitute children would provide that a destitute child is a child under the age of 18 who is in a state of want or suffering due to the lack of sufficient food, clothing, shelter or medical care and does not fit the definition of an abused or neglected child and is without any parent or caretaker available to sufficiently care for the child. Examples of destitute children include, but are not limited to, orphans, unaccompanied children, children whose parent, guardian or custodian's whereabouts are unknown, and children whose parent or only known or available parent, guardian or custodian suffers from dementia, or is in a coma. Children who meet the definition of a destitute child in statute can enter foster care pursuant to Article 10-C of the Family Court Act (FCA). The new destitute chapter laws mimic some of the procedures and treatment of children who enter foster care pursuant to Article 10 of the FCA as an abused and/or neglected child. The proposed regulations add destitute children to certain areas of the regulations that address Article 10 foster children, when appropriate.

In addition, the proposed regulations would add children who re-enter foster care pursuant to Article 10-B of the FCA to some of the regulatory amendments being proposed for destitute children, where appropriate. Chapter 342 of the Laws of 2010 permits youth who are former foster care youth between the ages of 18 and 21 to re-enter foster care under certain circumstances. This law went into effect November 11, 2010.

The proposed regulations would amend regulatory standards that implement the federal Indian Child Welfare Act (ICWA). The proposed regulations would clarify that notification requirements of ICWA apply to persons in need of supervision (PINS) and destitute child proceedings and that social services officials must routinely inquire whether the child is an Indian child in such proceedings and notify the court if the child is an Indian child. The proposed regulations also clarify that in any child custody proceeding, the social services official must demonstrate that active efforts were made to alleviate the need for removal, as required by ICWA.

##### 3. Needs and benefits:

The proposed regulations would implement Chapters 605 and 607 of the Laws of 2011, and Chapter 3 of the Laws of 2012 by making conforming changes to regulation. Historically, local social services districts have been required to provide services and/or assume charge of destitute children; however, prior to the new chapter laws listed above, there was no specific mechanism in law through which local districts could obtain a court order placing a destitute child in their care and custody into foster care. In cases where the court placed a child who satisfied the definition of a destitute child into foster care, prior law did not set forth a process for

periodic court review of the placement. As a result, local social services districts often faced difficulties in providing care and services to destitute children. In addition, local social services districts were unable to obtain federal Title IV-E reimbursement for the care provided to destitute children due to the lack of court involvement. The statutory changes as a result of the chapter laws named above address these issues and provide clear procedures for local social services to obtain custody of, provide services to, and receive federal reimbursement for destitute children in their care.

The proposed regulations add the destitute child category to multiple areas of regulation that address care, services, and support to children in foster care under the FCA and the SSL.

In addition, the proposed regulations address the need to add children who re-enter foster care pursuant to Article 10-B of the FCA to certain regulations to clarify that those children are also included. These children were defined under Chapter 342 of the Laws of 2010, and an administrative directive was issued by OCFS on March 3, 2011 informing local districts and voluntary authorized agencies of the procedures to follow.

The proposed regulations would amend the kinship guardianship assistance program regulations to provide that the income of an applicant is excluded where the applicant is 62 years of age or older or is within 5 years of mandatory retirement to bring the standard in line with the existing rule for adoption subsidy, which is a requirement of the statute governing this program.

The proposed regulations would also amend the definition of a legally freed child for photo-listing and adoption services purposes to include foster children who are placed into care in accordance with Article 3 or 7 of the FCA and whose parents are deceased. Finally, the proposed regulations would make a technical change to add a reference to section 383-c of the SSL when referring to a child whose guardianship and custody has been surrendered.

##### 4. Costs:

It is estimated that fewer than 100 children statewide would be impacted by the proposed regulations. This population is already served by social services districts and it is estimated that approximately 25% of them would become Title IV-E eligible as a result of this change to statute and regulations. Based on data provided by the New York City Administration for Children's Services, of the 35 children currently served, 20 do not meet the citizenship requirements for Title IV-E. At an estimated average annual cost of \$44,000 per foster child, approximately \$550,000 of new Title IV-E reimbursement would be generated for every 100 children who meet the definition of a destitute child, which would be a cost savings to social services districts. The cost of care for a Title IV-E eligible foster child is subject to 50% federal reimbursement.

##### 5. Local government mandates:

The proposed regulations would expand the category of legally freed children who must be photo-listed to include an additional, but very narrow category of PINS and juvenile delinquent youth whose parents are deceased. The amendments to the ICWA reflect current practice and federal law. Regarding destitute children, social services districts have had to deal with the services and care needs of the children who meet the definition of a destitute child under the new legislation. The proposed regulations reflect the new legislation that provides social services districts with the mechanisms to address those needs.

##### 6. Paperwork:

The proposed regulations would not create additional paperwork requirements other than to add destitute children to the regulations that address uniform case record documentation in foster care cases.

##### 7. Duplication:

The proposed regulations do not duplicate other state or federal requirements.

##### 8. Alternatives:

No alternative approaches to implementing the new destitute child laws were considered. These amendments to regulations are proposed to support the statutory changes as a result of Chapter 342 of the Laws of 2010, Chapters 605 and 607 of the Laws of 2011, and Chapter 3 of the Laws of 2012. The other proposed amendments update existing statutory standards.

##### 9. Federal standards:

The proposed regulations comply with applicable federal standards. On September 18, 2012, the federal Department of Health and Human Services, Administration for Children, Youth and Families approved the amendment to New York's Title IV-E State Plan adding destitute children to the categories of foster children who are eligible for Title IV-E reimbursement. The approval of the amendment to New York's Title IV-E State Plan permits local social services districts to qualify for federal Title IV-E foster care reimbursement.

##### 10. Compliance schedule:

Compliance with the proposed regulations must begin immediately upon final adoption.

#### **Regulatory Flexibility Analysis**

##### 1. Effect on Small Business and Local Governments:

Social services districts, the St. Regis Mohawk Tribe or voluntary au-

thorized agencies contracted by social services districts to provide foster care will be affected by the proposed regulations in the State of New York. There are 58 social services districts and approximately 160 voluntary authorized agencies.

#### 2. Compliance Requirements:

The proposed regulations would implement statutory changes in relation to the definition and procedures for destitute children in the Family Court. Chapter 605 of the Laws of 2011 amended the definition of destitute child and created procedures for the entry of destitute children into foster care. Chapter 607 of the Laws of 2011 amended the SSL to add destitute children to the categories of children who may be eligible for the kinship guardianship assistance program. Chapter 3 of the Laws of 2012 further amended Chapter 605 of the Laws of 2011 in relation to destitute children.

On September 18, 2012, the federal Department of Health and Human Services approved New York State's amendment to its Title IV-E State Plan to add destitute children to those categories of foster children for whom New York State may receive Title IV-E reimbursement. Federal approval of the amendment to New York's Title IV-E State Plan was a condition imposed by Chapter 3 of the Laws of 2012 for the state law to take effect.

Historically, local social services districts have been required to provide services and/or assume charge of destitute children; however, prior to the new chapter laws listed above, there was no specific mechanism in law through which local districts could obtain a court order placing a destitute child in their care and custody. In cases where the court placed a child who satisfied the definition of a destitute child, prior law did not set forth a process for periodic court review of the placement. As a result, local social services districts often faced difficulties in providing care and services to destitute children. In addition, local social services districts were unable to obtain federal Title IV-E reimbursement for the services provided to destitute children. The statutory changes as a result of the chapter laws named above address these issues and provide clear procedures for local social services to obtain custody of, provide services to, and receive federal reimbursement for destitute children in their care.

In addition, the proposed regulations add children who re-enter foster care pursuant to Article 10-B of the FCA to some of the regulatory amendments being proposed for destitute children, where appropriate. Chapter 342 of the Laws of 2010 permits youth who are former foster care youth between the ages of 18 and 21 to re-enter foster care under certain circumstances. This law went into effect November 11, 2010. An administrative directive was issued on March 3, 2011 by the Office of Children and Family Services (OCFS) informing local districts and voluntary authorized agencies of the procedures to follow for re-entry.

The proposed regulations would amend regulatory standards that implement the federal Indian Child Welfare Act (ICWA). The proposed regulations would clarify that notification requirements of ICWA apply to persons in need of supervision (PINS) and destitute child proceedings and that social services officials must routinely inquire whether the child is an Indian child in such proceedings and to notify the court if an Indian child is involved. The proposed regulations also clarify that in any child custody proceeding, the social services official must demonstrate that active efforts were made to alleviate the need for removal, as required by ICWA.

The proposed regulations would amend the kinship guardianship assistance program regulations to provide that the income of an applicant is excluded where the applicant is 62 years of age or older or is within 5 years of mandatory retirement to bring the standard in line with the existing rule for adoption subsidy.

The proposed regulations would also amend the definition of a legally freed child for photo-listing and adoption services purposes to include foster children who are placed into care in accordance with Article 3 or 7 of the Family Court Act and whose parents are deceased. In addition, the proposed regulations would add a reference to section 383-c of the SSL, when referring to a child whose guardianship and custody have been surrendered.

#### 3. Professional Requirements:

It is expected that most social services districts and voluntary authorized agencies will not have to hire additional staff to implement the proposed amendments to regulations.

#### 4. Compliance Costs:

It is estimated that fewer than 100 children would be impacted by the proposed regulations. This population is already served by social services districts and it is estimated that approximately 25% of them would become Title IV-E eligible as a result of this change in law and regulations. Based on data provided by the New York City Administration for Children's Services, of the 35 children currently served, 20 do not meet the citizenship requirements for Title IV-E eligibility. At an estimated annual cost of \$44,000 per foster child, approximately \$550,000 of new Title IV-E reimbursement would be generated for every 100 children who meet the definition of a destitute child, which would be a cost savings to social services districts. The cost of care for a Title IV-E eligible foster child is subject to 50% federal reimbursement.

#### 5. Economic and Technological Feasibility:

The proposed regulations would not have an adverse economic impact on social services districts or voluntary authorized agencies. The proposed regulations would not require the hiring of additional staff. Modifications to technology would not be required by the proposed regulations.

#### 6. Minimizing Adverse Impact:

In regard to destitute children, children who re-enter foster care and ICWA, the proposed regulation reflect statutory requirements. It is not anticipated that these amendments to regulations will result in an adverse impact on local government agencies or small businesses.

#### 7. Small Business and Local Government Participation:

The amendments to regulation would implement Chapter 342 of the Laws of 2010, Chapters 605 and 607 of the Laws of 2011, and Chapter 3 of the Laws of 2012 by making conforming changes to regulation. Over the years, some local districts, including the New York City Administration for Children's Services, have requested changes to the Family Court Act and the Social Services Law that would allow destitute children to be treated similarly to other classes of foster care children, including eligibility for Federal Title IV-E foster care reimbursement.

In addition, OCFS will address any comments or feedback from small businesses and/or local governments during the public comment period.

#### Rural Area Flexibility Analysis

##### 1. Types and Numbers of Rural Areas:

Social services districts, the St. Regis Mohawk Tribe and voluntary authorized agencies that have contracts with social services districts to provide foster care will be affected by the proposed regulations. There are 44 social services districts and the St. Regis Mohawk Tribe that are in rural areas. Currently, there are also approximately 100 voluntary authorized agencies in rural areas of New York State.

##### 2. Reporting, Recordkeeping and Compliance Requirements:

The proposed regulations would implement statutory changes in relation to the definition and procedures for destitute children in the Family Court. Chapter 605 of the Laws of 2011 amended the definition of destitute child and created procedures for the entry of destitute children into foster care. Chapter 607 of the Laws of 2011 amended the SSL to add destitute children to the categories of children that may be eligible for the kinship guardianship assistance program. Chapter 3 of the Laws of 2012 further amended Chapter 605 of the Laws of 2011 in relation to destitute children.

On September 18, 2012, the federal Department of Health and Human Services approved New York State's amendment to its Title IV-E State Plan to add destitute children to those categories of foster children for whom New York State may receive Title IV-E reimbursement. Such approval was a condition enacted by Chapter 3 of the Laws of 2012 for the New York State destitute child legislation to take effect.

Historically, local social services districts have been required to provide services and/or assume charge of destitute children; however, prior to the new chapter laws listed above, there was no specific mechanism in law through which local districts could obtain a court order placing a destitute child in their care and custody. In cases where the court placed a child who satisfied the definition of a destitute child, prior law did not set forth a process for periodic court review of the placement. As a result, local social services districts often faced difficulties in providing care and services to destitute children. In addition, local social services districts were unable to obtain federal Title IV-E reimbursement for the care provided to destitute children. The statutory changes as a result of the chapter laws named above address these issues and provide clear procedures for local social services to obtain custody of, provide services to, and receive federal reimbursement for destitute children in their care.

In addition, the proposed regulations add children who re-enter foster care pursuant to Article 10-B of the Family Court Act (FCA) to some of the regulatory amendments being proposed for destitute children, where appropriate. Chapter 342 of the Laws of 2010 permits youth who are former foster care youth between the ages of 18 and 21 to re-enter foster care under certain circumstances. This law went into effect November 11, 2010. An administrative directive was issued by the Office of Children and Family Services (OCFS) on March 3, 2011 informing local districts and voluntary authorized agencies of the procedures to follow for re-entry.

The proposed regulations would amend regulatory standards that implement the federal Indian Child Welfare Act (ICWA). The proposed regulations would clarify that notification requirements of ICWA apply to persons in need of supervision (PINS) and destitute child proceedings and that social services officials must routinely inquire whether the child is an Indian child in such proceedings and to notify the court if an Indian child is involved. The proposed regulations also clarify that in any child custody proceeding, the social services official must demonstrate that active efforts were made to alleviate the need for removal, as required by ICWA.

The proposed regulations would amend the kinship guardianship assistance program regulations to provide that the income of an applicant who is 62 years of age or older or who is within 5 years of mandatory retirement is excluded to bring the standard in line with the current rule regarding adoption subsidy.

The proposed regulation would also amend the definition of a legally freed child for photo-listing and adoption services purposes to include foster children who are placed into care in accordance with either Article 3 or 7 of the Family Court Act and whose parents are deceased. In addition, the proposed regulations would add a reference to section 383-c of the SSL when referring to a child whose guardianship and custody have been surrendered.

The proposed regulations would not create additional reporting, record-keeping or compliance requirements other than to add foster children who enter foster care pursuant to Article 10-B and 10-C of the FCA to the regulations that address reporting and documentation requirements for children in foster care.

#### 3. Professional Services:

It is expected that most social services districts and voluntary authorized agencies will not have to hire additional staff to implement the proposed amendments to regulations.

#### 4. Costs:

It is estimated that fewer than 100 children would be impacted by the proposed regulations. This population is already served by social services districts and it is estimated that approximately 25% of them would become Title IV-E eligible as a result of this change to statute and regulations. Based on data provided by the New York City Administration for Children's Services, of the 35 children currently served, 20 do not meet the citizenship requirements for Title IV-E eligibility. At an estimated average annual cost of \$44,000 per foster child, approximately \$550,000 of new Title IV-E reimbursement would be generated for every 100 children who meet the definition of a destitute child, which would be a cost savings to social services districts. The cost of care for a Title IV-E foster child is subject to 50% federal reimbursement.

#### 5. Minimizing Adverse Impact:

In regard to destitute children, children who re-enter foster care and ICWA, the proposed regulations reflect statutory requirements. It is not anticipated that these amendments to regulations will result in an adverse impact upon local social services districts or small businesses that are in rural areas.

#### 6. Rural Area Participation:

The amendments to regulation would implement Chapter 342 of the Laws of 2010, Chapters 605 and 607 of the Laws of 2011, and Chapter 3 of the Laws of 2012 by making conforming changes to regulation. Over the years, local districts requested changes to the Family Court Act and the Social Services Law that would allow destitute children to be treated similarly to other classes of foster care children, including eligibility for Federal Title IV-E foster care reimbursement.

In addition, OCFS will address any comments or feedback from rural social services districts or businesses during the public comment period.

#### Job Impact Statement

The proposed regulations will not have a negative impact on jobs or employment opportunities in either public or private child welfare agencies. A full job impact statement has not been prepared for the proposed regulations as it is assumed that the proposed regulations will not result in the loss of any jobs.

Governor Andrew Cuomo signed into law the SUNY Tax-free Areas to Revitalize and Transform UPstate New York (START-UP NY) program, which offers an array of tax benefits to eligible businesses and their employees that locate in facilities affiliated with New York universities and colleges. The START-UP NY program will leverage these tax benefits to attract innovative start-ups and high tech industries to New York so as to create jobs and promote economic development.

Regulatory action is required to implement the START-UP NY program. The legislation creating the START-UP NY program delegated to the Department of Economic Development the establishment of procedures for the implementation and execution of the START-UP NY program. Without regulatory action by the Department of Economic Development, procedures will not be in place to accept applications from institutions of higher learning desiring to create Tax-Free Areas, or businesses wishing to participate in the START-UP NY program.

Adoption of this rule will enable the State to begin accepting applications from businesses to participate in the START-UP NY program, and represent a step towards the realization of the strategic objectives of the START-UP NY program: attracting and retaining cutting-edge start-up companies, and positioning New York as a global leader in high tech industries.

**Subject:** START-UP NY Program.

**Purpose:** Establish procedures for the implementation and execution of START-UP NY.

**Substance of emergency rule:** START-UP NY is a new program designed to stimulate economic development and promote employment of New Yorkers through the creation of tax-free areas that bring together educational institutions, innovative companies, and entrepreneurial investment.

1) The regulation defines key terms, including: "business in the formative stage," "campus," "competitor," "high tech business," "net new job," "new business," and "underutilized property."

2) The regulation establishes that the Commissioner shall review and approve plans from State University of New York (SUNY) colleges, City University of New York (CUNY) colleges, and community colleges seeking designation of Tax-Free NY Areas, and report on important aspects of the START-UP NY program, including eligible space for use as Tax-Free Areas and the number of employees eligible for personal income tax benefits.

3) The regulation creates the START-UP NY Approval Board, composed of three members appointed by the Governor, Speaker of the Assembly and Temporary President of the Senate, respectively. The START-UP NY Approval Board reviews and approves plans for the creation of Tax-Free NY Areas submitted by private universities and colleges, as well as certain plans from SUNY colleges, CUNY colleges, and community colleges, and designates Strategic State Assets affiliated with eligible New York colleges or universities. START-UP NY Approval Board members may designate representatives to act on their behalf during their absence. START-UP NY Approval Board members must remain disinterested, and recuse themselves where appropriate.

4) The regulation establishes eligibility criteria for Tax-Free Areas. Eligibility of vacant land and space varies based on whether it is affiliated with a SUNY college, CUNY college, community college, or private college, and whether the land or space in question is located upstate, downstate, or in New York City. The regulation prohibits any allocation of land or space that would result in the closure or relocation of any program or service associated with a university or college that serves students, faculty, or staff.

5) The regulation establishes eligibility requirements for businesses to participate in the START-UP NY program, and enumerates excluded industries. To be eligible, a business must: be a new business to the State at the time of its application, subject to exceptions for NYS incubators, businesses restoring previously relocated jobs, and businesses the Commissioner has determined will create net new jobs; comply with applicable worker protection, environmental, and tax laws; align with the academic mission of the sponsoring institution (the Sponsor); demonstrate that it will create net new jobs in its first year of operation; and not be engaged in the same line of business that it conducted at any time within the last five years in New York without the approval of the Commissioner. Businesses locating downstate must be in the formative stages of development, or engaged in a high tech business. To remain eligible, the business must, at a minimum, maintain net new jobs and the average number of jobs that existed with the business immediately before entering the program.

6) The regulation describes the application process for approval of a Tax-Free Area. An eligible institution may submit a plan to the Commissioner identifying land or space to be designated as a Tax-Free Area. This plan must: identify precisely the location of the applicable land or space; describe business activities to be conducted on the land or space; establish that the business activities in question align with the mission of the institution; indicate how the business would generate positive community and

## Department of Economic Development

### EMERGENCY RULE MAKING

#### START-UP NY Program

**I.D. No.** EDV-12-15-00001-E

**Filing No.** 148

**Filing Date:** 2015-03-06

**Effective Date:** 2015-03-06

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

**Action taken:** Addition of Part 220 to Title 5 NYCRR.

**Statutory authority:** Economic Development Law, art. 21, sections 435-36; L. 2013, ch. 68

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

**Specific reasons underlying the finding of necessity:** On June 24, 2013,

economic benefits; summarize the Sponsor's procedures for attracting businesses; include a copy of the institution's conflict of interest guidelines; attest that the proposed Tax-Free Area will not jeopardize or conflict with any existing tax-exempt bonds used to finance the Sponsor; and certify that the Sponsor has not relocated or eliminated programs serving students, faculty, or staff to create the vacant land. Applications by private institutions require approval by both the Commissioner and START-UP NY Approval Board. The START-UP NY Approval Board is to approve applications so as to ensure balance among rural, urban and suburban areas throughout the state.

7) A sponsor applying to create a Tax-Free Area must provide a copy of its plan to the chief executive officer of any municipality in which the proposed Tax-Free Area is located, local economic development entities, the applicable university or college faculty senate, union representatives and the campus student government. Where the plan includes land or space outside of the campus boundaries of the university or college, the institution must consult with the chief executive officer of any municipality in which the proposed Tax-Free Area is to be located, and give preference to underutilized properties identified through this consultation. The Commissioner may enter onto any land or space identified in a plan, or audit any information supporting a plan application, as part of his or her duties in administering the START-UP program.

8) The regulation provides that amendments to approved plans may be made at any time through the same procedures as such plans were originally approved. Amendments that would violate the terms of a lease between a sponsor and a business in a Tax-Free Area will not be approved. Sponsors may amend their plans to reallocate vacant land or space in the case that a business, located in a Tax-Free Area, is disqualified from the program but elects to remain on the property.

9) The regulation describes application and eligibility requirements for businesses to participate in the START-UP program. Businesses are to submit applications to sponsoring universities and colleges by 12/31/20. An applicant must: (1) authorize the Department of Labor (DOL) and Department of Taxation and Finance (DTF) to share the applicant's tax information with the Department of Economic Development (DED); (2) allow DED to monitor the applicant's compliance with the START-UP program; (3) provide to DED, upon request, information related to its business organization, tax returns, investment plans, development strategy, and non-competition with any businesses in the community but outside of the Tax-Free Area; (4) certify efforts to ascertain that the business would not compete with another business in the same community but outside the Tax-Free Area, including an affidavit that notice regarding the application was published in a daily publication no fewer than five consecutive days; (5) include a statement of performance benchmarks as to new jobs to be created through the applicant's participation in START-UP; (6) provide a statement of consequences for non-conformance with the performance benchmarks, including proportional recovery of tax benefits when the business fails to meet job creation benchmarks in up to three years of a ten-year plan, and removal from the program for failure to meet job creation benchmarks in at least four years of a ten-year plan; (7) identify information submitted to DED that the business deems confidential, proprietary, or a trade secret. Sponsors forward applications deemed to meet eligibility requirements to the Commissioner for further review. The Commissioner shall reject any application that does not satisfy the START-UP program eligibility requirements or purpose, and provide written notice of the rejection to the Sponsor. The Commissioner may approve an application anytime after receipt; if the Commissioner approves the application, the business applicant is deemed accepted into the START-UP NY Program and can locate to the Sponsor's Tax-Free NY Area. Applications not rejected will be deemed accepted after sixty days. The Commissioner is to provide documentation of acceptance to successful applicants.

10) The regulation allows a business to amend a successful application at any time in accordance with the procedure of its original application. No amendment will be approved that would contain terms in conflict with a lease between a business and a SUNY college when the lease was included in the original application.

11) The regulation permits a business that has been rejected from the START-UP program to locate within a Tax-Free Area without being eligible for START-UP program benefits, or to reapply within sixty days via a written request identifying the reasons for rejection and offering verified factual information addressing the reasoning of the rejection. Failure to reapply within sixty days waives the applicant's right to resubmit. Upon receipt of a timely resubmission, the Commissioner may use any resources to assess the claim, and must notify the applicant of his or her determination within sixty days. Disapproval of a reapplication is final and non-appealable.

12) With respect to audits, the regulation requires businesses to provide access to DED, DTF, and DOL to all records relating to facilities located in Tax-Free Areas at a business location within the State during normal business hours. DED, DTF, and DOL are to take reasonable steps to

prevent public disclosure of information pursuant to Section 87 of the Public Officers Law where the business has timely informed the appropriate officials, the records in question have been properly identified, and the request is reasonable.

13) The regulation provides for the removal of a business from the program under a variety of circumstances, including violation of New York law, material misrepresentation of facts in its application to the START-UP program, or relocation from a Tax-Free Area. Upon removing a business from the START-UP program, the Commissioner is to notify the business and its Sponsor of the decision in writing. This removal notice provides the basis for the removal decision, the effective removal date, and the means by which the affected business may appeal the removal decision. A business shall be deemed served three days after notice is sent. Following a final decision, or waiver of the right to appeal by the business, DED is to forward a copy of the removal notice to DTF, and the business is not to receive further tax benefits under the START-UP program.

14) To appeal removal from the START-UP program, a business must send written notice of appeal to the Commissioner within thirty days from the mailing of the removal notice. The notice of appeal must contain specific factual information and all legal arguments that form the basis of the appeal. The appeal is to be adjudicated in the first instance by an appeal officer who, in reaching his or her decision, may seek information from outside sources, or require the parties to provide more information. The appeal officer is to prepare a report and make recommendations to the Commissioner. The Commissioner shall render a final decision based upon the appeal officer's report, and provide reasons for any findings of fact or law that conflict with those of the appeal officer.

15) With regard to disclosure authorization, businesses applying to participate in the START-UP program authorize the Commissioner to disclose any information contained in their application, including the projected new jobs to be created.

16) In order to assess business performance under the START-UP program, the Commissioner may require participating businesses to submit annual reports within thirty days at the end of their taxable year describing the businesses' continued satisfaction of eligibility requirements, jobs data, an accounting of wages paid to employees in net new jobs, and any other information the Commissioner may require. The Commissioner shall prepare annual reports on the START-UP program for the Governor and publication on the DED website, beginning April 1, 2015. Information contained in businesses' annual reports may be published in these reports or otherwise disseminated.

17) The Freedom of Information Law is applicable to the START-UP program, subject to disclosure waivers to protect certain proprietary information submitted in support of an application to the START-UP program.

18) All businesses must keep relevant records throughout their participation in the START-UP program, plus three years. DED has the right to inspect all such documents upon reasonable notice.

19) If the Commissioner determines that a business has acted fraudulently in connection with its participation in the START-UP program, the business shall be immediately terminated from the program, subject to criminal penalties, and liable for taxes that would have been levied against the business during the current year.

20) The regulation requires participating universities and colleges to maintain a conflict of interest policy relevant to issues that may arise during the START-UP program, and to report violations of said policies to the Commissioner for publication.

*This notice is intended* to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 3, 2015.

*Text of rule and any required statements and analyses may be obtained from:* Phillip Harmonick, New York State Department of Economic Development, 625 Broadway, Albany, New York 12207, (518) 292-5112, email: pharmonick@esd.ny.gov

#### **Regulatory Impact Statement**

##### **STATUTORY AUTHORITY:**

Chapter 68 of the Laws of 2013 requires the Commissioner of Economic Development to promulgate rules and regulations to establish procedures for the implementation and execution of the SUNY Tax-free Areas to Revitalize and Transform Upstate New York program (START-UP NY). These procedures include, but are not limited to, the application processes for both academic institutions wishing to create Tax-Free NY Areas and businesses wishing to participate in the START-UP NY program, standards for evaluating applications, and any other provisions the Commissioner deems necessary and appropriate.

##### **LEGISLATIVE OBJECTIVES:**

The proposed rule is in accord with the public policy objectives the New York State Legislature sought to advance by enacting the START-UP NY program, which provides an incentive to businesses to locate critical high-tech industries in New York State as opposed to other competitive

markets in the U.S. and abroad. It is the public policy of the State to establish Tax-Free Areas affiliated with New York universities and colleges, and to afford significant tax benefits to businesses, and the employees of those businesses, that locate within these Tax-Free Areas. The tax benefits are designed to attract and retain innovative start-ups and high-tech industries, and secure for New York the economic activity they generate. The proposed rule helps to further such objectives by establishing the application process for the program, clarifying the nature of eligible businesses and facilities, and describing key provisions of the START-UP NY program.

#### NEEDS AND BENEFITS:

The emergency rule is necessary in order to implement the statute contained in Article 21 of the Economic Development Law, creating the START-UP NY program. The statute directs the Commissioner of Economic Development to establish procedures for the implementation and execution of the START-UP NY program.

Upstate New York has faced longstanding economic challenges due in part to the departure of major business actors from the region. This divestment from upstate New York has left the economic potential of the region unrealized, and left many upstate New Yorkers unemployed.

START-UP NY will promote economic development and job creation in New York, particularly the upstate region, through tax benefits conditioned on locating business facilities in Tax-Free NY Areas. Attracting start-ups and high-tech industries is critical to restoring the economy of upstate New York, and to positioning the state as a whole to be competitive in a globalized economy. These goals cannot be achieved without first establishing procedures by which to admit businesses into the START-UP NY program.

The proposed regulation establishes procedures and standards for the implementation of the START-UP program, especially rules for the creation of Tax-Free NY Areas, application procedures for the admission of businesses into the program, and eligibility requirements for continued receipt of START-UP NY benefits for admitted businesses. These rules allow for the prompt and efficient commencement of the START-UP NY program, ensure accountability of business participants, and promote the general welfare of New Yorkers.

The emergency regulations clarify several items. In Section 220.4(b), language was modified to clarify that the START-UP NY Approval Board reviews and approves Plans for approval as a Tax-Free NY Area from certain, not all, SUNY, CUNY, or community college campuses seeking designation of Tax-Free NY Areas as described in Section 220.5.

In Section 220.7 and 220.8, the regulations have been clarified to permit schools to submit information identifying the space or land proposed for designation in digital formats approved by the Commissioner. This change affords greater flexibility in view of the digital mapping software and other related resources available to different schools.

Section 220.10(k) was clarified to note that, upon receipt of an application from a business to participate in the START-UP NY Program, the Commissioner may approve the application anytime after receipt; if the Commissioner approves the application, the business applicant is deemed accepted into the START-UP NY Program and can locate to the Sponsor's Tax-Free NY Area. If the Commissioner does not reject the application within 60 days, the business applicant is deemed accepted into the Program.

#### COSTS:

I. Costs to private regulated parties (the business applicants): None. The proposed regulation will not impose any additional costs to eligible business applicants.

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

III. Costs to the State government: None.

IV. Costs to local governments: None.

#### LOCAL GOVERNMENT MANDATES:

The rule establishes certain property tax benefits for businesses locating in Tax-Free NY Areas that may impact local governments. However, as described in the accompanying statement in lieu of a regulatory flexibility analysis for small businesses and local governments, the program is expected to have a net-positive impact on local government.

#### PAPERWORK:

The rule establishes application and eligibility requirements for Tax-Free NY Areas proposed by universities and colleges, and participating businesses. These regulations establish paperwork burdens that include materials to be submitted as part of applications, documents that must be submitted to maintain eligibility, and information that must be retained for auditing purposes.

#### DUPLICATION:

The proposed rule will create a new section of the existing regulations of the Commissioner of Economic Development, Part 220 of 5 NYCRR. Accordingly, there is no risk of duplication in the adoption of the proposed rule.

#### ALTERNATIVES:

No alternatives were considered in regard to creating a new regulation in response to the statutory requirement. The regulation implements the statutory requirements of the START-UP NY program regarding the application process for creation of Tax-Free NY Areas and certification as an eligible business. This action is necessary in order to clarify program participation requirements and is required by the legislation establishing the START-UP NY program.

#### FEDERAL STANDARDS:

There are no federal standards applicable to the START-UP NY program; it is purely a State program that offers tax benefits to eligible businesses and their employees. Therefore, the proposed rule does not exceed any federal standard.

#### COMPLIANCE SCHEDULE:

The affected State agency (Department of Economic Development) and the business applicants will be able to achieve compliance with the regulation as soon as it is implemented.

#### *Regulatory Flexibility Analysis*

Participation in the START-UP NY program is entirely at the discretion of qualifying business that may choose to locate in Tax-Free NY Areas. Neither statute nor the proposed regulations impose any obligation on any business entity to participate in the program. Rather than impose burdens on small business, the program is designed to provide substantial tax benefits to start-up businesses locating in New York, while providing protections to existing businesses against the threat of tax-privileged start-up companies locating in the same community. Local governments may not be able to collect tax revenues from businesses locating in certain Tax-Free NY Areas. However, the regulation is expected to have a net-positive impact on local governments in light of the substantial economic activity associated with businesses locating their facilities in these communities.

Because it is evident from the nature of the proposed rule that it will have a net-positive impact on small businesses and local government, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a regulatory flexibility analysis for small businesses and local government is not required and one has not been prepared.

#### *Rural Area Flexibility Analysis*

The START-UP NY program is open to participation from any business that meets the eligibility requirements, and is organized as a corporation, partnership, limited liability company, or sole proprietorship. A business's decision to locate its facilities in a Tax-Free NY Area associated with a rural university or college would be no impediment to participation; in fact, START-UP NY allocates space for Tax-Free NY Areas specifically to the upstate region which contains many of New York's rural areas. Furthermore, START-UP NY specifically calls for the balanced allocation of space for Tax-Free NY Areas between eligible rural, urban, and suburban areas in the state. Thus, the regulation will not have a substantial adverse economic impact on rural areas, and instead has the potential to generate significant economic activity in upstate rural areas designated as Tax-Free NY Areas. Accordingly, a rural flexibility analysis is not required and one has not been prepared.

#### *Job Impact Statement*

The regulation establishes procedures and standards for the administration of the START-UP NY program. START-UP NY creates tax-free areas designed to attract innovative start-ups and high-tech industries to New York so as to stimulate economic activity and create jobs. The regulation will not have a substantial adverse impact on jobs and employment opportunities; rather, the program is focused on creating jobs. Because it is evident from the nature of the rulemaking that it will have either no impact or a positive impact on job and employment opportunities, no further affirmative steps were needed to ascertain that fact and none were taken. Accordingly, a job impact statement is not required and one has not been prepared.

## Department of Financial Services

### EMERGENCY RULE MAKING

#### Business Conduct of Mortgage Loan Servicers

**I.D. No.** DFS-12-15-00003-E

**Filing No.** 150

**Filing Date:** 2015-03-06

**Effective Date:** 2015-03-08

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

**Action taken:** Addition of Part 419 to Title 3 NYCRR.

**Statutory authority:** Banking Law, art. 12-D

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

**Specific reasons underlying the finding of necessity:** The legislature required the registration of mortgage loan servicers as part of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") to help address the existing foreclosure crisis in the state. By registering servicers and requiring that servicers engage in the business of mortgage loan servicing in compliance with rules and regulations adopted by the Superintendent, the legislature intended to help ensure that servicers conduct their business in a manner acceptable to the Department. However, since the passage of the Mortgage Lending Reform Law, foreclosures continue to pose a significant threat to New York homeowners. The Department continues to receive complaints from homeowners and housing advocates that mortgage loan servicers' response to delinquencies and their efforts at loss mitigation are inadequate. These rules are intended to provide clear guidance to mortgage loan servicers as to the procedures and standards they should follow with respect to loan delinquencies. The rules impose a duty of fair dealing on loan servicers in their communications, transactions and other dealings with borrowers. In addition, the rule sets standards with respect to the handling of loan delinquencies and loss mitigation. The rule further requires specific reporting on the status of delinquent loans with the Department so that it has the information necessary to assess loan servicers' performance.

In addition to addressing the pressing issue of mortgage loan delinquencies and loss mitigation, the rule addresses other areas of significant concern to homeowners, including the handling of borrower complaints and inquiries, the payment of taxes and insurance, crediting of payments and handling of late payments, payoff balances and servicer fees. The rule also sets forth prohibited practices such as engaging in deceptive practices or placing homeowners' insurance on property when the servicers has reason to know that the homeowner has an effective policy for such insurance.

**Subject:** The business conduct of mortgage loan servicers.

**Purpose:** To implement the purpose and provisions of the Mortgage Lending Reform Law of 2008 with respect to mortgage loan servicers.

**Substance of emergency rule:** Section 419.1 contains definitions of terms that are used in Part 419 and not otherwise defined in Part 418, including "Servicer", "Qualified Written Request" and "Loan Modification".

Section 419.2 establishes a duty of fair dealing for Servicers in connection with their transactions with borrowers, which includes a duty to pursue loss mitigation with the borrower as set forth in Section 419.11.

Section 419.3 requires compliance with other State and Federal laws relating to mortgage loan servicing, including Banking Law Article 12-D, RESPA, and the Truth-in-Lending Act.

Section 419.4 describes the requirements and procedures for handling to consumer complaints and inquiries.

Section 419.5 describes the requirements for a servicer making payments of taxes or insurance premiums for borrowers.

Section 419.6 describes requirements for crediting payments from borrowers and handling late payments.

Section 419.7 describes the requirements of an annual account statement which must be provided to borrowers in plain language showing the unpaid principal balance at the end of the preceding 12-month period, the interest paid during that period and the amounts deposited into and disbursed from escrow. The section also describes the Servicer's obligations with respect to providing a payment history when requested by the borrower or borrower's representative.

Section 419.8 requires a late payment notice be sent to a borrower no later than 17 days after the payment remains unpaid.

Section 419.9 describes the required provision of a payoff statement that contains a clear, understandable and accurate statement of the total amount that is required to pay off the mortgage loan as of a specified date.

Section 419.10 sets forth the requirements relating to fees permitted to be collected by Servicers and also requires Servicers to maintain and update at least semi-annually a schedule of standard or common fees on their website.

Section 419.11 sets forth the Servicer's obligations with respect to handling of loan delinquencies and loss mitigation, including an obligation to make reasonable and good faith efforts to pursue appropriate loss mitigation options, including loan modifications. This Section includes requirements relating to procedures and protocols for handling loss mitigation, providing borrowers with information regarding the Servicer's loss mitigation process, decision-making and available counseling programs and resources.

Section 419.12 describes the quarterly reports that the Superintendent may require Servicers to submit to the Superintendent, including information relating to the aggregate number of mortgages serviced by the Servicer, the number of mortgages in default, information relating to loss mitigation activities, and information relating to mortgage modifications.

Section 419.13 describes the books and records that Servicers are required to maintain as well as other reports the Superintendent may require Servicers to file in order to determine whether the Servicer is complying with applicable laws and regulations. These include books and records regarding loan payments received, communications with borrowers, financial reports and audited financial statements.

Section 419.14 sets forth the activities prohibited by the regulation, including engaging in misrepresentations or material omissions and placing insurance on a mortgage property without written notice when the Servicer has reason to know the homeowner has an effective policy in place.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 3, 2015.

**Text of rule and any required statements and analyses may be obtained**

**from:** Hadas A. Jacobi, NYS Department of Financial Services, 1 State Street, New York, NY 10004, (212) 480-5890, email: hadas.jacobi@dfs.ny.gov

#### Regulatory Impact Statement

##### 1. Statutory Authority.

Article 12-D of the Banking Law, as amended by the Legislature in the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), creates a framework for the regulation of mortgage loan servicers. Mortgage loan servicers are individuals or entities which engage in the business of servicing mortgage loans for residential real property located in New York. That legislation also authorizes the adoption of regulations implementing its provisions. (See, e.g., Banking Law Sections 590(2) (b-1) and 595-b.)

Subsection (1) of Section 590 of the Banking Law was amended by the Mortgage Lending Reform Law to add the definitions of "mortgage loan servicer" and "servicing mortgage loans". (Section 590(1)(h) and Section 590(1)(i).)

A new paragraph (b-1) was added to Subdivision (2) of Section 590 of the Banking Law. This new paragraph prohibits a person or entity from engaging in the business of servicing mortgage loans without first being registered with the Superintendent. The registration requirements do not apply to an "exempt organization," licensed mortgage banker or registered mortgage broker.

This new paragraph also authorizes the Superintendent to refuse to register an MLS on the same grounds as he or she may refuse to register a mortgage broker under Banking Law Section 592-a(2).

Subsection (3) of Section 590 was amended by the Subprime Law to clarify the power of the banking board to promulgate rules and regulations and to extend the rulemaking authority regarding regulations for the protection of consumers and regulations to define improper or fraudulent business practices to cover mortgage loan servicers, as well as mortgage bankers, mortgage brokers and exempt organizations. The functions and powers of the banking board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89.

New Paragraph (d) was added to Subsection (5) of Section 590 by the Mortgage Lending Reform Law and requires mortgage loan servicers to engage in the servicing business in conformity with the Banking Law, such rules and regulations as may be promulgated by the Banking Board or prescribed by the Superintendent, and all applicable federal laws, rules and regulations.

New Subsection (1) of Section 595-b was added by the Mortgage Lending Reform Law and requires the Superintendent to promulgate regula-

tions and policies governing the grounds to impose a fine or penalty with respect to the activities of a mortgage loan servicer. Also, the Mortgage Lending Reform Law amends the penalty provision of Subdivision (1) of Section 598 to apply to mortgage loan servicers as well as to other entities.

New Subdivision (2) of Section 595-b was added by the Mortgage Lending Reform Law and authorizes the Superintendent to prescribe regulations relating to disclosure to borrowers of interest rate resets, requirements for providing payoff statements, and governing the timing of crediting of payments made by the borrower.

Section 596 was amended by the Mortgage Lending Reform Law to extend the Superintendent's examination authority over licensees and registrants to cover mortgage loan servicers. The provisions of Banking Law Section 36(10) making examination reports confidential are also extended to cover mortgage loan servicers.

Similarly, the books and records requirements in Section 597 covering licensees, registrants and exempt organizations were amended by the Mortgage Lending Reform Law to cover servicers and a provision was added authorizing the Superintendent to require that servicers file annual reports or other regular or special reports.

The power of the Superintendent to require regulated entities to appear and explain apparent violations of law and regulations was extended by the Mortgage Lending Reform Law to cover mortgage loan servicers (Subdivision (1) of Section 39), as was the power to order the discontinuance of unauthorized or unsafe practices (Subdivision (2) of Section 39) and to order that accounts be kept in a prescribed manner (Subdivision (5) of Section 39).

Finally, mortgage loan servicers were added to the list of entities subject to the Superintendent's power to impose monetary penalties for violations of a law, regulation or order. (Paragraph (a) of Subdivision (1) of Section 44).

The fee amounts for mortgage loan servicer registration and branch applications are established in accordance with Banking Law Section 18-a.

#### 2. Legislative Objectives.

The Mortgage Lending Reform Law was intended to address various problems related to residential mortgage loans in this State. The law reflects the view of the Legislature that consumers would be better protected by the supervision of mortgage loan servicing. Even though mortgage loan servicers perform a central function in the mortgage industry, there had previously been no general regulation of servicers by the state or the Federal government.

The Mortgage Lending Reform Law requires that entities be registered with the Superintendent in order to engage in the business of servicing mortgage loans in this state. The new law further requires mortgage loan servicers to engage in the business of servicing mortgage loans in conformity with the rules and regulations promulgated by the Banking Board and the Superintendent.

The mortgage servicing statute has two main components: (i) the first component addresses the registration requirement for persons engaged in the business of servicing mortgage loans; and (ii) the second authorizes the Superintendent to promulgate appropriate rules and regulations for the regulation of servicers in this state.

Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, addresses the first component of the mortgage servicing statute by setting standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as setting financial responsibility standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. This part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers' conduct and prohibits certain practices such as engaging in deceptive business practices.

Collectively, the provisions of Part 418 and 419 implement the intent of the Legislature to register and supervise mortgage loan servicers.

#### 3. Needs and Benefits.

The Mortgage Lending Reform Law adopted a multifaceted approach to the lack of supervision of the mortgage loan industry, particularly with respect to servicing and foreclosure. It addressed a variety of areas in the residential mortgage loan industry, including: i. loan originations; ii. loan foreclosures; and iii. the conduct of business by residential mortgage loans servicers.

Until July 1, 2009, when the mortgage loan servicer registration provisions first became effective, the Department regulated the brokering and

making of mortgage loans, but not the servicing of these mortgage loans. Servicing is vital part of the residential mortgage loan industry; it involves the collection of mortgage payments from borrowers and remittance of the same to owners of mortgage loans; to governmental agencies for taxes; and to insurance companies for insurance premiums. Mortgage servicers also act as agents for owners of mortgages in negotiations relating to loss mitigation when a mortgage becomes delinquent. As "middlemen," moreover, servicers also play an important role when a property is foreclosed upon. For example, the servicer may typically act on behalf of the owner of the loan in the foreclosure proceeding.

Further, unlike in the case of a mortgage broker or a mortgage lender, borrowers cannot "shop around" for loan servicers, and generally have no input in deciding what company services their loans. The absence of the ability to select a servicer obviously raises concerns over the character and viability of these entities given the central part of they play in the mortgage industry. There also is evidence that some servicers may have provided poor customer service. Specific examples of these activities include: pyramiding late fees; misapplying escrow payments; imposing illegal prepayment penalties; not providing timely and clear information to borrowers; erroneously force-placing insurance when borrowers already have insurance; and failing to engage in prompt and appropriate loss mitigation efforts.

More than 2,000,000 loans on residential one-to-four family properties are being serviced in New York. Of these over 9% were seriously delinquent as of the first quarter of 2012. Despite various initiatives adopted at the state level and the creation of federal programs such as Making Home Affordable to encourage loan modifications and help at risk homeowners, the number of loans modified, have not kept pace with the number of foreclosures. Foreclosures impose costs not only on borrowers and lenders but also on neighboring homeowners, cities and towns. They drive down home prices, diminish tax revenues and have adverse social consequences and costs.

As noted above, Part 418, initially adopted on an emergency basis on July 1 2009, relates to the first component of the mortgage servicing statute – the registration of mortgage loan servicers. It was intended to ensure that only those persons and entities with adequate financial support and sound character and general fitness will be permitted to register as mortgage loan servicers. It also provided for the suspension, revocation and termination of licensees involved in wrongdoing and establishes minimum financial standards for mortgage loan servicers.

Part 419 addresses the business practices of mortgage loan servicers and establishes certain consumer protections for homeowners whose residential mortgage loans are being serviced. These regulations provide standards and procedures for servicers to follow in their course of dealings with borrowers, including the handling of borrower complaints and inquiries, payment of taxes and insurance premiums, crediting of borrower payments, provision of annual statements of the borrower's account, authorized fees, late charges and handling of loan delinquencies and loss mitigation. Part 419 also identifies practices that are prohibited and imposes certain reporting and record-keeping requirements to enable the Superintendent to determine the servicer's compliance with applicable laws, its financial condition and the status of its servicing portfolio.

Since the adoption of Part 418, 67 entities have been approved for registration or have pending applications and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements.

All Exempt Organizations, mortgage bankers and mortgage brokers that perform mortgage loan servicing with respect to New York mortgages must notify the Superintendent that they do so, and are required to comply with the conduct of business and consumer protection rules applicable to mortgage loan servicers.

These regulations will improve accountability and the quality of service in the mortgage loan industry and will help promote alternatives to foreclosure in the state.

#### 4. Costs.

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar

guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publishes quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial services businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

The ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, and should assist in decreasing the number of foreclosures in this state.

The regulations will not result in any fiscal implications to the State. The Department is funded by the regulated financial services industry. Fees charged to the industry will be adjusted periodically to cover Department expenses incurred in carrying out this regulatory responsibility.

#### 5. Local Government Mandates.

None.

#### 6. Paperwork.

Part 419 requires mortgage loan servicers to keep books and records related to its servicing for a period of three years and to produce quarterly reports and financial statements as well as annual and other reports requested by the Superintendent. It is anticipated that the quarterly reporting relating to mortgage loan servicing will be done electronically and would therefore be virtually paperless. The other recordkeeping and reporting requirements are consistent with standards generally required of mortgage bankers and brokers and other regulated financial services entities.

#### 7. Duplication.

The regulation does not duplicate, overlap or conflict with any other regulations. The various federal laws that touch upon aspects of mortgage loan servicing are noted in Section 9 "Federal Standards" below.

#### 8. Alternatives.

The Mortgage Lending Reform Law required the registration of mortgage loan servicers and empowered the Superintendent to prescribe rules and regulations to guide the business of mortgage servicing. The purpose of the regulation is to carry out this statutory mandate to register mortgage loan servicers and regulate the manner in which they conduct business. The Department circulated a proposed draft of Part 419 and received comments from and met with industry and consumer groups. The current Part 419 reflects the input received. The alternative to these regulations is to do nothing or to wait for the newly created federal bureau of consumer protection to promulgate national rules, which could take years, may not happen at all or may not address all the practices covered by the rule. Thus, neither of those alternatives would effectuate the intent of the legislature to address the current foreclosure crisis, help at-risk homeowners vis-à-vis their loan servicers and ensure that mortgage loan servicers engage in fair and appropriate servicing practices.

#### 9. Federal Standards.

Currently, mortgage loan servicers are not required to be registered by any federal agencies, and there are no comprehensive federal rules governing mortgage loan servicing. Federal laws such as the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601 et seq. and regulations adopted thereunder, 24 C.F.R. Part 3500, and the Truth-in-Lending Act, 15 U.S.C. section 1600 et seq. and Regulation Z adopted thereunder, 12 C.F.R. section 226 et seq., govern some aspects of mortgage loan servicing, and there have been some recent amendments to those laws and regulations regarding mortgage loan servicing. For example, Regulation Z, 12 C.F.R. section 226.36(c), was recently amended to address the crediting of payments, imposition of late charges and the provision of payoff statements. In addition, the recently enacted Dodd-Frank Wall Street Reform and Protection Act of 2010 (Dodd-Frank Act) establishes requirements for the handling of escrow accounts, obtaining force-placed insurance, responding to borrower requests and providing information related to the owner of the loan.

Additionally, the newly created Bureau of Consumer Financial Protection established by the Dodd-Frank Act may soon propose additional regulations for mortgage loan servicers.

#### 10. Compliance Schedule.

Similar emergency regulations first became effective on October 1, 2010.

#### *Regulatory Flexibility Analysis*

##### 1. Effect of the Rule:

The rule will not have any impact on local governments. The Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law") requires all mortgage loan servicers, whether registered or exempt from registration under the law, to service mortgage loans in accordance with the rules and regulations promulgated by the Banking Board or Superintendent. The functions and powers of the Banking Board have since been transferred to the Superintendent of Financial Services, pursuant to Part A of Chapter 62 of the Laws of 2011, Section 89. Of the 67 entities which have been approved for registration or have pending applications and the nearly 400 entities which have indicated that they are exempt from the registration requirements, it is estimated that very few are small businesses.

##### 2. Compliance Requirements:

The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers who are not a bank, mortgage banker, mortgage broker or other exempt organizations (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "Mortgage Loan Servicer Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1 2009, sets for the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting of borrower payments, late payments, account statements, delinquencies and loss mitigation, fees and recordkeeping.

##### 3. Professional Services:

None.

##### 4. Compliance Costs:

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Moreover, any additional costs are likely to be mitigated by the fact that many of the requirements of Part 419, including those relating to the handling of residential mortgage delinquencies and loss mitigation (419.11) and quarterly reporting (419.12), are consistent with or substantially similar to standards found in other federal or state laws, federal mortgage modification programs or servicers own protocols.

For example, Fannie Mae and Freddie Mac, which own or insure approximately 90% of the nation's securitized mortgage loans, have similar guidelines governing various aspects of mortgage servicing, including handling of loan delinquencies. In addition, over 100 mortgage loan servicers participate in the federal Making Home Affordable (MHA) program which requires adherence to standards for handling of loan delinquencies and loss mitigation similar to those contained in these regulations. Those servicers not participating in MHA have, for the most part, adopted programs which parallel many components of MHA.

Reporting on loan delinquencies and loss mitigation has likewise become increasingly common. The OCC publishes quarterly reports on credit performance, loss mitigation efforts and foreclosures based on data provided by national banks and thrifts. And, states such as Maryland and North Carolina have adopted similar reporting requirements to those contained in section 419.12.

Many of the other requirements of Part 419 such as those related to handling of taxes, insurance and escrow payments, collection of late fees and charges, crediting of payments derive from federal or state laws and reflect best industry practices. The periodic reporting and bookkeeping and record keeping requirements are also standard among financial ser-

vices businesses, including mortgage bankers and brokers (see, for example section 410 of the Superintendent's Regulations).

Compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

5. Economic and Technological Feasibility:

For the reasons noted in Section 4 above, the rule should impose no adverse economic or technological burden on mortgage loan servicers that are small businesses.

6. Minimizing Adverse Impacts:

As noted in Section 1 above, most servicers are not small businesses. Many of the requirements contained in the rule derive from federal or state laws, existing servicer guidelines utilized by Fannie Mae and Freddie Mac and best industry practices.

Moreover, the ability by the Department to regulate mortgage loan servicers is expected to reduce costs associated with responding to consumers' complaints, decrease unnecessary expenses borne by mortgagors, help borrowers at risk of foreclosure and decrease the number of foreclosures in this state.

7. Small Business and Local Government Participation:

The Department distributed a draft of proposed Part 419 to industry representatives, received industry comments on the proposed rule and met with industry representatives in person. The Department likewise distributed a draft of proposed Part 419 to consumer groups, received their comments on the proposed rule and met with consumer representatives to discuss the proposed rule in person. The rule reflects the input received from both industry and consumer groups.

**Rural Area Flexibility Analysis**

Types and Estimated Numbers:

Since the adoption of the Mortgage Lending Reform Law of 2008 (Ch. 472, Laws of 2008, hereinafter, the "Mortgage Lending Reform Law"), which required mortgage loan servicers to be registered with the Department unless exempted under the law, 67 entities have pending applications or have been approved for registration and nearly 400 entities have indicated that they are a mortgage banker, broker, bank or other organization exempt from the registration requirements. Only one of the non-exempt entities applying for registration is located in New York and operating in a rural area. Of the exempt organizations, all of which are required to comply with the conduct of business contained in Part 419, approximately 400 are located in New York, including several in rural areas. However, the overwhelming majority of exempt organizations, regardless of where located, are banks or credit unions that are already regulated and are thus familiar with complying with the types of requirements contained in this regulation.

Compliance Requirements:

The provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers has two main components: it requires the registration by the Department of servicers that are not a bank, mortgage banker, mortgage broker or other exempt organization (the "MLS Registration Regulations"), and it authorizes the Department to promulgate rules and regulations that are necessary and appropriate for the protection of consumers, to define improper or fraudulent business practices, or otherwise appropriate for the effective administration of the provisions of the Mortgage Lending Reform Law relating to mortgage loan servicers (the "MLS Business Conduct Regulations").

The provisions of the Mortgage Lending Reform Law of 2008 requiring registration of mortgage loan servicers which are not mortgage bankers, mortgage brokers or exempt organizations became effective on July 1, 2009. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2010, sets forth the standards and procedures for applications for registration as a mortgage loan servicer, for approving and denying applications to be registered as a mortgage loan servicer, for approving changes of control, for suspending, terminating or revoking the registration of a mortgage loan servicer as well as the financial responsibility standards for mortgage loan servicers.

Part 419 implements the provisions of the Mortgage Lending Reform Law of 2008 by setting the standards by which mortgage loan servicers conduct the business of mortgage loan servicing. The rule sets the standards for handling complaints, payments of taxes and insurance, crediting borrower payments, late payments, account statements, delinquencies and loss mitigation and fees. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers' conduct and prohibits certain practices such as engaging in deceptive business practices.

Costs:

The requirements of Part 419 do not impose any direct costs on mortgage loan servicers. The periodic reporting requirements of Part 419 are consistent with those imposed on other regulated entities. In addition, many of the other requirements of Part 419, such as those related to the

handling of loan delinquencies, taxes, insurance and escrow payments, collection of late fees and charges and crediting of payments, derive from federal or state laws, current federal loan modification programs, servicing guidelines utilized by Fannie Mae and Freddie Mac or servicers' own protocols. Although mortgage loan servicers may incur some additional costs as a result of complying with Part 419, the overwhelming majority of mortgage loan servicers are banks, credit unions, operating subsidiaries or affiliates of banks, large independent servicers or other financial services entities that service millions, and even billions, of dollars in loans and have the experience, resources and systems to comply with these requirements. Of the 67 entities that have been approved for registration or that have pending applications, only one is located in a rural area of New York State. Of the few exempt organizations located in rural areas of New York, virtually all are banks or credit unions. Moreover, compliance with the rule should improve the servicing of residential mortgage loans in New York, including the handling of mortgage delinquencies, help prevent unnecessary foreclosures and reduce consumer complaints regarding the servicing of residential mortgage loans.

Minimizing Adverse Impacts:

As noted in the "Costs" section above, while mortgage loan servicers may incur some higher costs as a result of complying with the rules, the Department does not believe that the rule will impose any meaningful adverse economic impact upon private or public entities in rural areas.

In addition, it should be noted that Part 418, which establishes the application and financial requirements for mortgage loan servicers, authorizes the Superintendent to reduce or waive the otherwise applicable financial responsibility requirements in the case of mortgage loans servicers that service not more than 12 mortgage loans or more than \$5,000,000 in aggregate mortgage loans in New York and which do not collect tax or insurance payments. The Superintendent is also authorized to reduce or waive the financial responsibility requirements in other cases for good cause. The Department believes that this will ameliorate any burden on mortgage loan servicers operating in rural areas.

Rural Area Participation:

The Department issued a draft of Part 419 in December 2009 and held meetings with and received comments from industry and consumer groups following the release of the draft rule. The Department also maintains continuous contact with large segments of the servicing industry through its regulation of mortgage bankers and brokers and its work in the area of foreclosure prevention. The Department likewise maintains close contact with a variety of consumer groups through its community outreach programs and foreclosure mitigation programs. The Department has utilized this knowledge base in drafting the regulation.

**Job Impact Statement**

Article 12-D of the Banking Law, as amended by the Mortgage Lending Reform Law (Ch. 472, Laws of 2008), requires persons and entities which engage in the business of servicing mortgage loans after July 1, 2009 to be registered with the Superintendent. Part 418 of the Superintendent's Regulations, initially adopted on an emergency basis on July 1, 2009, sets forth the application, exemption and approval procedures for registration as a mortgage loan servicer, as well as financial responsibility requirements for applicants, registrants and exempted persons.

Part 419 addresses the business practices of mortgage loan servicers in connection with their servicing of residential mortgage loans. Thus, this part addresses the obligations of mortgage loan servicers in their communications, transactions and general dealings with borrowers, including the handling of consumer complaints and inquiries, handling of escrow payments, crediting of payments, charging of fees, loss mitigation procedures and provision of payment histories and payoff statements. This part also imposes certain recordkeeping and reporting requirements in order to enable the Superintendent to monitor servicers' conduct and prohibits certain practices such as engaging in deceptive business practices.

Compliance with Part 419 is not expected to have a significant adverse effect on jobs or employment activities within the mortgage loan servicing industry. The vast majority of mortgage loan servicers are sophisticated financial entities that service millions, if not billions, of dollars in loans and have the experience, resources and systems to comply with the requirements of the rule. Moreover, many of the requirements of the rule reflect derive from federal or state laws and reflect existing best industry practices.

## Department of Health

### EMERGENCY RULE MAKING

#### Personal Care Services Program (PCSP) and Consumer Directed Personal Assistance Program (CDPAP)

I.D. No. HLT-12-15-00002-E

Filing No. 149

Filing Date: 2015-03-06

Effective Date: 2015-03-06

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

**Action taken:** Amendment of sections 505.14 and 505.28 of Title 18 NYCRR.

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

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

**Specific reasons underlying the finding of necessity:** Pursuant to the authority vested in the Commissioner of Health by Social Services Law § 365-a(2)(e), the Commissioner is authorized to adopt standards, pursuant to emergency regulation, for the provision and management of services for individuals whose need for such services exceeds a specified level to be determined by the Commissioner.

**Subject:** Personal Care Services Program (PCSP) and Consumer Directed Personal Assistance Program (CDPAP).

**Purpose:** To establish definitions, criteria and requirements associated with the provision of continuous PC and continuous CDPA services.

**Text of emergency rule:** Paragraph (3) of subdivision (a) of section 505.14 is repealed and a new paragraph (3) is added to read as follows:

(3) *Continuous personal care services means the provision of uninterrupted care, by more than one person, for more than 16 hours per day for a patient who, because of the patient's medical condition and disabilities, requires total assistance with toileting, walking, transferring or feeding at times that cannot be predicted.*

Paragraph (4) of subdivision (a) of section 505.14 is amended by adding new subparagraph (iii) to read as follows:

(iii) *Personal care services shall not be authorized if the patient's need for assistance can be met by either or both of the following:*

(a) *voluntary assistance available from informal caregivers including, but not limited to, the patient's family, friends or other responsible adult; or formal services provided by an entity or agency; or*

(b) *adaptive or specialized equipment or supplies including, but not limited to, bedside commodes, urinals, walkers and wheelchairs, when such equipment or supplies can be provided safely and cost-effectively.*

Paragraph (5) of subdivision (a) of section 505.14 is repealed and a new paragraph (5) is added to read as follows:

(5) *Live-in 24-hour personal care services means the provision of care by one person for a patient who, because of the patient's medical condition and disabilities, requires some or total assistance with one or more personal care functions during the day and night and whose need for assistance during the night is infrequent or can be predicted.*

Clause (b) of subparagraph (i) of paragraph (6) of subdivision (a) of section 505.14 is amended to read as follows:

(b) The [initial] authorization for Level I services shall not exceed eight hours per week. [An exception to this requirement may be made under the following conditions:

(1) The patient requires some or total assistance with meal preparation, including simple modified diets, as a result of the following conditions:

(i) informal caregivers such as family and friends are unavailable, unable or unwilling to provide such assistance or are unacceptable to the patient; and

(ii) community resources to provide meals are unavailable or inaccessible, or inappropriate because of the patient's dietary needs.

(2) In such a situation, the local social services department may authorize up to four additional hours of service per week.]

Clause (b) of subparagraph (ii) of paragraph (6) of subdivision (a) of section 505.14 is amended to read as follows:

(b) When continuous [24-hour care] *personal care services* is indicated, additional requirements for the provision of services, as specified in clause (b)(4)(i)(c) of this section, must be met.

Clause (c) of subparagraph (ii) of paragraph (3) of subdivision (b) of section 505.14 is relettered as clause (d) and a new clause (c) is added to read as follows:

(c) *When live-in 24-hour personal care services is indicated, the social assessment shall evaluate whether the patient's home has adequate sleeping accommodations for a personal care aide.*

Subclauses (5) and (6) of clause (b) of subparagraph (iii) of paragraph (3) of subdivision (b) of section 505.14 are renumbered as subclauses (6) and (7), and new subclause (5) is added to read as follows:

(5) *an evaluation whether adaptive or specialized equipment or supplies including, but not limited to, bedside commodes, urinals, walkers and wheelchairs, can meet the patient's need for assistance with personal care functions, and whether such equipment or supplies can be provided safely and cost-effectively;*

Subclause (7) of clause (a) of subparagraph (iv) of paragraph (3) of subdivision (b) of section 505.14 is amended to read as follows:

(7) whether the patient can be served appropriately and more cost-effectively by using *adaptive or specialized medical equipment or supplies* covered by the MA program including, but not limited to, *bedside commodes, urinals, walkers, wheelchairs and insulin pens*; and

Clause (c) of subparagraph (iv) of paragraph (3) of subdivision (b) of section 505.14 is amended to read as follows:

(c) A social services district may determine that the assessments required by subclauses (a)(1) through (6) and (8) of this subparagraph may be included in the social assessment or the nursing assessment.

Clause (c) of subparagraph (i) of paragraph (4) of subdivision (b) of section 505.14 is amended to read as follows:

(c) the case involves the provision of continuous [24-hour] personal care services as defined in paragraph (a)(3) of this section. Documentation for such cases shall be subject to the following requirements:

Subclause (2) of clause (c) of subparagraph (i) of paragraph (4) of subdivision (b) of section 505.14 is amended to read as follows:

(2) The nursing assessment shall document that: the functions required by the patient[.]; the degree of assistance required for each function, *including that the patient requires total assistance with toileting, walking, transferring or feeding*; and the time of this assistance require the provision of continuous [24-hour care] *personal care services*.

Subparagraph (ii) of paragraph (4) of subdivision (b) of section 505.14 is amended to read as follows:

(ii) The local professional director, or designee, must review the physician's order and the social, nursing and other required assessments in accordance with the standards for levels of services set forth in subdivision (a) of this section, and is responsible for the final determination of the level and amount of care to be provided. *The local professional director or designee may consult with the patient's treating physician and may conduct an additional assessment of the patient in the home.* The final determination must be made [within five working days of the request] *with reasonable promptness, generally not to exceed seven business days after receipt of the physician's order and the completed social and nursing assessments, except in unusual circumstances including, but not limited to, the need to resolve any outstanding questions regarding the level, amount or duration of services to be authorized.*

Paragraph (4) of subdivision (b) of section 505.28 is amended to read as follows:

(4) "continuous [24-hour] consumer directed personal assistance" means the provision of uninterrupted care, by more than one consumer directed personal assistant, *for more than 16 hours per day* for a consumer who, because of the consumer's medical condition [or] and disabilities, requires total assistance with toileting, walking, transferring or feeding at [unscheduled times during the day and night] *at times that cannot be predicted.*

Paragraphs (8) through (13) of subdivision (b) of section 505.28 are renumbered as paragraphs (9) through (14) and the renumbered paragraph (9) is amended to read as follows:

(9) "personal care services" means the nutritional and environmental support functions, personal care functions, or both such functions, that are specified in Section 505.14(a)(6) of this Part *except that, for individuals whose needs are limited to nutritional and environmental support functions, personal care services shall not exceed eight hours per week.*

A new paragraph (8) of subdivision (b) of section 505.28 is added to read as follows:

(8) "live-in 24-hour consumer directed personal assistance" means the provision of care by one consumer directed personal assistant for a consumer who, because of the consumer's medical condition and disabilities, requires some or total assistance with personal care functions, home health aide services or skilled nursing tasks during the day and night and whose need for assistance during the night is infrequent or can be predicted.

Subparagraph (iii) of paragraph (2) of subdivision (d) of section 505.28

is amended, and new subparagraphs (iv) and (v) of such paragraph are added, to read as follows:

(iii) an evaluation of the potential contribution of informal supports, such as family members or friends, to the individual's care, which must consider the number and kind of informal supports available to the individual; the ability and motivation of informal supports to assist in care; the extent of informal supports' potential involvement; the availability of informal supports for future assistance; and the acceptability to the individual of the informal supports' involvement in his or her care [...] and;

(iv) for cases involving continuous consumer directed personal assistance, documentation that: all alternative arrangements for meeting the individual's medical needs have been explored or are infeasible including, but not limited to, the provision of consumer directed personal assistance in combination with other formal services or in combination with contributions of informal caregivers; and

(v) for cases involving live-in 24-hour consumer directed personal assistance, an evaluation whether the individual's home has adequate sleeping accommodations for a consumer directed personal assistant.

Subparagraph (i) of paragraph (3) of subdivision (d) of section 505.28 is repealed and a new subparagraph (i) is added to read as follows:

(i) The nursing assessment must be completed by a registered professional nurse who is employed by the social services district or by a licensed or certified home care services agency or voluntary or proprietary agency under contract with the district.

Clauses (g) and (h) of subparagraph (ii) of paragraph (3) of subdivision (d) of section 505.28 are relettered as clauses (h) and (i) and a new clause (g) is added to read as follows:

(g) for continuous consumer directed personal assistance cases, documentation that: the functions the consumer requires; the degree of assistance required for each function, including that the consumer requires total assistance with toileting, walking, transferring or feeding; and the time of this assistance require the provision of continuous consumer directed personal assistance;

Paragraph (5) of subdivision (d) of section 505.28 is amended to read as follows:

(5) Local professional director review. If there is a disagreement among the physician's order, nursing and social assessments, or a question regarding the level, amount or duration of services to be authorized, or if the case involves continuous [24-hour] consumer directed personal assistance, an independent medical review of the case must be completed by the local professional director, a physician designated by the local professional director or a physician under contract with the social services district. The local professional director or designee must review the physician's order and the nursing and social assessments and is responsible for the final determination regarding the level and amount of services to be authorized. *The local professional director or designee may consult with the consumer's treating physician and may conduct an additional assessment of the consumer in the home.* The final determination must be made with reasonable promptness, generally not to exceed [five] seven business days after receipt of the physician's order and the completed social and nursing assessments, except in unusual circumstances including, but not limited to, the need to resolve any outstanding questions regarding the level, amount or duration of services to be authorized.

Paragraph (1) of subdivision (e) of section 505.28 is amended to read as follows:

(1) When the social services district determines pursuant to the assessment process that the individual is eligible to participate in the consumer directed personal assistance program, the district must authorize consumer directed personal assistance according to the consumer's plan of care. The district must not authorize consumer directed personal assistance unless it reasonably expects that such assistance can maintain the individual's health and safety in the home or other setting in which consumer directed personal assistance may be provided. *Consumer directed personal assistance shall not be authorized if the consumer's need for assistance can be met by either or both of the following:*

(i) voluntary assistance available from informal caregivers including, but not limited to, the consumer's family, friends or other responsible adult; or formal services provided by an entity or agency; or

(ii) adaptive or specialized equipment or supplies including, but not limited to, bedside commodes, urinals, walkers and wheelchairs, when such equipment or supplies can be provided safely and cost-effectively.

**This notice is intended** to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire June 3, 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: regsqa@health.ny.gov

### Regulatory Impact Statement

Statutory Authority:

Social Services Law ("SSL") § 363-a(2) and Public Health Law § 201(1)(v) provide that the Department has general rulemaking authority to adopt regulations to implement the Medicaid program.

The Commissioner has specific rulemaking authority under SSL § 365-a(2)(e)(ii) to adopt standards, pursuant to emergency regulation, for the provision and management of personal care services for individuals whose need for such services exceeds a specified level to be determined by the Commissioner.

Under SSL § 365-a(2)(e)(iv), personal care services shall not exceed eight hours per week for individuals whose needs are limited to nutritional and environmental support functions.

Legislative Objectives:

The Legislature sought to reform the Medicaid personal care services program by controlling expenditure growth and promoting self-sufficiency.

The Legislature authorized the Commissioner of Health to adopt standards for the provision and management of personal care services for Medicaid recipients whose need for such services exceeds a specified level. The regulations adopt such standards for Medicaid recipients who seek continuous personal care services or continuous consumer directed personal assistance for more than 16 hours per day.

The Legislature additionally sought to promote the goal of self-sufficiency among Medicaid recipients who do not need hands-on assistance with personal care functions such as bathing, toileting or transferring. It determined that recipients whose need for personal care services is limited to nutritional and environmental support functions, such as shopping, laundry and light housekeeping, could receive no more than eight hours per week of such assistance.

Needs and Benefits:

The regulations have two general purposes: to conform the Department's personal care services and consumer directed personal assistance program (CDPAP) regulations to State law limiting the amount of services that can be authorized for individuals who require assistance only with nutritional and environmental support functions; and, to implement State law authorizing the Department to adopt standards for the provision and management of personal care services for individuals whose need for such services exceeds a specified level that the Commissioner may determine.

The term "nutritional and environmental support functions" refers to housekeeping tasks including, but not limited to, laundry, shopping and meal preparation. Department regulations refer to these support functions as "Level I" personal care services. Department regulations have long provided that social services districts cannot initially authorize Level I services for more than eight hours per week; however, an exception permitted authorizations for Level I services to exceed eight hours per week under certain circumstances.

The Legislature has nullified this regulatory exception. The regulations conform the Department's personal care services regulations to the new State law. They repeal the regulatory exception that permitted social services districts to authorize up to 12 hours of Level I services per week, capping such authorizations at no more than eight hours per week.

The regulations similarly amend the Department's CDPAP regulations. Some CDPAP participants are authorized to receive only assistance with nutritional and environmental support functions. Since personal care services are included within the CDPAP, it is consistent with the Legislature's intent to extend the eight hour weekly cap on nutritional and environmental services to that program.

The regulations also implement the Department's specific statutory authority to adopt standards pursuant to emergency regulation for the provision and management of personal care services for individuals whose need for such services exceeds a specified level. The Commissioner has determined to adopt such standards for individuals whose need for continuous personal care services or continuous consumer directed personal assistance exceeds 16 hours per day.

The regulations repeal the definition of "continuous 24-hour personal care services," replacing it with a definition of "continuous personal care services." The prior definition applied to individuals who required total assistance with certain personal care functions for 24 hours at unscheduled times during the day and night. The new definition applies to individuals who require such assistance for more than 16 hours per day at times that cannot be predicted.

Cases in which continuous personal care services are indicated must be referred to the local professional director or designee. Such referrals would now be required in additional cases: those involving provision of continuous care for more than 16 hours per day.

The regulations permit the local professional director or designee to consult with the recipient's treating physician and conduct an additional assessment of the recipient in the home.

The regulations amend the documentation requirements for nursing assessments in continuous personal care services cases.

The regulations add a definition of live-in 24 hour personal care services. This level of service has long existed, primarily in New York City, but has never been explicitly set forth in the Department's regulations. The regulations also require that, for recipients who may be eligible for such services, the social assessment evaluate whether the recipient's home has adequate sleeping accommodations for the live-in aide.

The regulations provide that personal care services shall not be authorized when the recipient's need for assistance can be met by the voluntary assistance of informal caregivers or by formal services or by adaptive or specialized equipment or supplies that can be provided safely and cost-effectively. The regulations require that the nursing assessments that districts currently complete or obtain include an evaluation whether adaptive or specialized equipment or supplies can meet the recipient's need for assistance and whether such equipment or supplies can be provided safely and cost-effectively.

The regulations adopt conforming amendments to the Department's CDPAP regulations.

#### Costs:

##### Costs to Regulated Parties:

Regulated parties include entities that voluntarily contract with social services districts to provide personal care services to, or to perform certain CDPAP functions for, Medicaid recipients. These entities include licensed home care services agencies, agencies that are exempt from licensure, and CDPAP fiscal intermediaries.

Social services districts may no longer authorize certain Medicaid recipients to receive more than eight hours per week of assistance with nutritional and environmental support functions. To the extent that regulated parties were formerly reimbursed for more than eight hours per week for these services, their Medicaid revenue will decrease. This is a consequence of State law, not the regulations. The regulations do not impose any additional costs on these regulated parties.

##### Costs to State Government:

The regulations impose no additional costs on State government.

The statutory cap on nutritional and environmental support functions will result in cost-savings to the State share of Medicaid expenditures. The estimated annual personal care services and CDPAP cost-savings for subsequent State fiscal years are approximately \$3.4 million.

This estimate is based on 2010 recipient and expenditure data for the personal care services program. According to such data, 2,377 New York City recipients received more than eight hours per week of Level I services, the average being 11 weekly hours of such service. The number of Level I hours that exceeded eight hours per week was thus approximately 370,800 hours (2,377 recipients x 3 hours per week x 52 weeks). Multiplying this hourly total by the 2010 average hourly New York City personal care aide cost (\$17.30) results in total annual savings of \$6.4, or \$3.2 million in State share savings. Application of this calculation to the Rest of State recipient and expenditure data yields an additional \$200,000 in State share savings, or \$3.4 million.

State Medicaid cost-savings are also projected to occur as a result of changes to continuous personal care services authorizations. It is not possible to accurately estimate such savings. However, the Department anticipates that most recipients currently authorized for continuous 24-hour personal care services will continue to receive that level of care. Others may be authorized for continuous services for 16 hours per day or live-in 24 hour personal care services. Still others may be authorized for services for more than 16 hours per day but fewer than 24 hours per day.

The estimated State share savings for this portion of the regulations are \$33.1 million. This comprises approximately \$17.1 million in personal care savings and \$15.9 million in CDPAP savings. This estimate is based on 2010 personal care services and CDPAP recipient and expenditure data. In 2010, 1,809 Medicaid recipients were authorized to receive more than 16 hours of services per day. The assumption is that these recipients were authorized for continuous 24-hour services, which has an average annual per person cost of approximately \$166,000. Assuming that 20 percent were authorized for live-in 24-hour services at an average annual per person cost of approximately \$83,000, and 15 percent were authorized for 16 hours per day at an average hourly cost of between approximately \$17.00 and \$22.00, depending on service and location, the annual State share savings per recipient would range from approximately \$28,000 to \$35,000.

##### Costs to Local Government:

The regulation will not require social services districts to incur new costs. State law limits the amount that districts must pay for Medicaid services provided to district recipients. Districts may claim State reimbursement for any costs they may incur when administering the Medicaid program.

##### Costs to the Department of Health:

There will be no additional costs to the Department.

##### Local Government Mandates:

The regulations require social services districts to refer additional cases

to their local professional directors or designees. Currently, the regulations require that such referrals be made for continuous 24 hour care and certain other cases. Under the proposed regulations, such referrals must also be made for recipients who may require continuous services for more than 16 hours.

#### Paperwork:

The regulations specify additional documentation requirements for the social and nursing assessments that districts currently complete or obtain for personal care services and CDPAP applicants and recipients. For persons who may be eligible for live-in 24 hour services, the social assessment must evaluate whether the recipient's home has adequate sleeping accommodations for the live-in aide. The nursing assessments for all personal care services and CDPAP cases, including those not involving continuous services, must include an evaluation whether adaptive or specialized equipment or supplies can meet the recipient's need for assistance and whether such equipment or supplies can be used safely and cost-effectively. The amendments to the CDPAP regulations also specify additional documentation requirements for the social and nursing assessments for cases involving continuous consumer directed personal assistance. These requirements mirror long-standing documentation requirements in the personal care services regulations.

#### Duplication:

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

#### Alternatives:

With respect to the regulation that caps authorizations for nutritional and environmental support functions to eight hours per week, no alternatives exist. The regulation must conform to State law that imposes this weekly cap. With respect to the regulation that establishes new requirements for continuous services, alternatives existed but were not now pursued. One such alternative may be the repeal of the regulatory authorization for continuous 24-hour services. The Department determined to promulgate further regulatory controls regarding the provision and management of continuous services, rather than repeal such services in their entirety.

#### Federal Standards:

This rule does not exceed any minimum federal standards.

#### Compliance Schedule:

The Department has issued instructions to social services districts advising them of the new State law that limits nutritional and environmental support functions to no more than eight hours per week for certain recipients. Districts should not now be authorizing more than eight hours per week of such assistance and should thus be able to comply with the regulations when they become effective. With regard to the remaining regulations, social services districts should be able to comply with the regulations when they become effective. For applicants, social services districts would apply the regulations when assessing applicants' eligibility for personal care services and the CDPAP. For current recipients, districts would apply the regulations upon reassessing these recipients' continued eligibility for services.

#### Regulatory Flexibility Analysis

##### Effect of Rule:

The regulation limiting authorizations of nutritional and environmental support functions to no more than eight hours per week primarily affects licensed home care services agencies and exempt agencies that provide only such Level I services. These entities are the primary employers of individuals providing Level I services. Most recipients of Level I personal care services are located in New York City. There are currently eight Level I only personal care service providers in New York City, none of which employ fewer than 100 persons.

Fiscal intermediaries that are enrolled as Medicaid providers and that facilitate payments for the nutritional and environmental support functions provided to consumer directed personal assistance program (CDPAP) participants may also experience slight reductions in service hours reimbursed. There are approximately 46 fiscal intermediaries that contract with social services districts. Fiscal intermediaries are typically non-profit entities such as independent living centers but may also include home care services agencies.

With respect to continuous care, a significant majority of existing 24-hour a day continuous care cases are located in New York City. There are currently 60 Level II personal care service providers in New York City, none of which employ fewer than 100 persons.

The regulations also affect social services districts. There are 62 counties in New York State, but only 58 social services districts. The City of New York comprises five counties but is one social services district.

##### Compliance Requirements:

Social services districts currently assess whether Medicaid recipients are eligible for personal care services and the CDPAP. When 24 hour continuous care is indicated, districts are currently required to refer such cases to the local professional director or designee for final determination.

The regulations would require districts to refer additional continuous care cases to the local professional director or designee; namely, those cases in which continuous care for more than 16 hours a day is indicated would also be referred to the local professional director or designee. The local professional director or designee would be required to consult with the recipient's treating physician before approving continuous care for more than 16 hours per day.

In addition, the nursing assessments that districts currently complete or obtain for personal care services and CDPAP applicants and recipients would be required to include an evaluation of whether adaptive or specialized equipment or supplies would be appropriate and could be safely and cost-effectively provided. In cases involving the authorization of live-in 24 hour services, the social assessments that districts currently are required to complete would have to include an evaluation whether the recipient's home had sufficient sleeping accommodations for a live-in aide.

**Professional Services:**

No new or additional professional services are required in order to comply with the rule.

**Compliance Costs:**

No capital costs will be imposed as a result of this rule, nor are there any annual costs of compliance.

**Economic and Technological Feasibility:**

There are no additional economic costs or technology requirements associated with this rule.

**Minimizing Adverse Impact:**

The regulations should not have an adverse economic impact on social services districts. Districts currently assess Medicaid recipients to determine whether they are eligible for personal care services or the CDPAP. The regulations modify these assessment procedures. Should districts incur administrative costs to comply with the regulation, they may seek State reimbursement for such costs.

Small businesses providing Level I personal care services and consumer directed environmental and nutritional support functions may experience slight reductions in service hours provided. This is a consequence of State law limiting these services to no more than eight hours per week.

Small businesses currently providing continuous 24-hour services may experience some reductions in service hours provided.

**Small Business and Local Government Participation:**

The Department solicited comments on the regulations from the New York City Human Resources Administration, which administers the personal care services program and CDPAP for New York City Medicaid recipients who are not enrolled in managed care. Most of the State's personal care services and CDPAP recipients reside in New York City. Personal care services provided to New York City recipients comprises approximately 84 percent of Medicaid personal care services expenditures.

Small business and local governments also have the opportunity to provide input into the redesign of New York State's Medicaid program. The Medicaid Redesign Team (MRT) was tasked by Governor Cuomo to find ways to reduce costs and increase quality and efficiency in the Medicaid program for the 2011-12 Fiscal Year. As part of its work, the MRT sought and continues to seek ideas from the public at large, as well as experts in health care delivery and insurance, the health care workforce, economics, business, consumer rights and other relevant areas. The MRT conducted regional public hearings across the State to solicit ideas from the public on ways to reduce costs and improve the quality of the Medicaid program. Additionally, a web page was established, providing a vehicle for all individuals and organizations to provide ideas, comments and recommendations.

**Cure Period:**

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

**Rural Area Flexibility Analysis**

**Types and Estimated Numbers of Rural Areas:**

Rural areas are defined as counties with populations less than 200,000 and, for counties with populations greater than 200,000, include towns with population densities of 150 persons or less per square mile. In 2010, only 6% of all continuous care cases resided in the counties listed below. Currently there are 34 organizations which maintain contracts with local districts to provide consumer directed environmental and nutritional support functions, and 50 individual licensed home care services agencies which maintain contracts with local districts to provide Level I personal care services, within the following 43 counties having populations of less than 200,000:

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

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

Social services districts would be required to refer additional cases to their local professional directors or designees. Currently, the personal care services and CDPAP regulations require that such referrals be made for recipients seeking continuous 24-hour services and in certain other cases. Under the regulations, such referrals must also be made for recipients who require continuous care for more than 16 hours. The regulations also specify additional documentation requirements for the social and nursing assessments that districts currently complete or obtain for personal care services and CDPAP applicants and recipients.

**Costs:**

There are no new capital or additional operating costs associated with the rule.

**Minimizing Adverse Impact:**

It is anticipated the rule will have minimal impact on rural areas as the Department has determined that the preponderance of Level I services in excess of eight hours per week occur in downstate urban areas. Additionally, in 2010, only 6% of all individuals receiving continuous care services resided in those counties listed above. To the extent that social services districts incur administrative costs to comply with the regulations' requirements for referral of continuous care cases and social and nursing assessment documentation requirements, they may seek State reimbursement for such expenses.

**Rural Area Participation:**

Individuals and organizations from rural areas have the opportunity to provide input into the redesign of New York State's Medicaid program. The Medicaid Redesign Team (MRT) is tasked by Governor Cuomo to find ways to reduce costs and increase quality and efficiency in the Medicaid program for the 2011-12 Fiscal Year. As part of its work, the MRT sought and continues to seek ideas from the public at large, as well as experts in health care delivery and insurance, the health care workforce, economics, business, consumer rights and other relevant areas. The MRT conducted regional public hearings across the State to solicit ideas from the public on ways to reduce costs and improve the quality of the Medicaid program. Additionally, a web page was established, providing a vehicle for all individuals and organizations to provide ideas, comments and recommendations.

**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 not have a substantial adverse impact on jobs and employment opportunities.

**NOTICE OF ADOPTION**

**Amendment of Certificate of Need (CON) Applications**

**I.D. No.** HLT-29-14-00013-A

**Filing No.** 153

**Filing Date:** 2015-03-10

**Effective Date:** 2015-03-25

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

**Action taken:** Amendment of sections 600.3 and 710.5 of Title 10 NYCRR.

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**Statutory authority:** Public Health Law, sections 2801-a(1) and 2802(1)  
**Subject:** Amendment of Certificate of Need (CON) Applications.  
**Purpose:** To eliminate requirement for Public Health and Health Planning Council review of certain types of amendments to CON applications.  
**Text or summary was published** in the July 23, 2014 issue of the Register, I.D. No. HLT-29-14-00013-C.  
**Final rule as compared with last published rule:** No changes.  
**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: regsqa@health.ny.gov  
**Assessment of Public Comment**  
 The agency received no public comment.

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## Higher Education Services Corporation

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### NOTICE OF ADOPTION

**Default Fee**  
**I.D. No.** ESC-52-14-00016-A  
**Filing No.** 157  
**Filing Date:** 2015-03-10  
**Effective Date:** 2015-03-25

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:  
**Action taken:** Repeal of section 2101.5 of Title 8 NYCRR.  
**Statutory authority:** Education Law, sections 653, 655 and 680(2); 20 USC, section 1078(b)(1)(H)(i)  
**Subject:** Default fee.  
**Purpose:** To repeal section 2101.5 of Title 8 of the NYCRR as obsolete.  
**Text or summary was published** in the December 31, 2014 issue of the Register, I.D. No. ESC-52-14-00016-P.  
**Final rule as compared with last published rule:** No changes.  
**Text of rule and any required statements and analyses may be obtained from:** Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov  
**Assessment of Public Comment**  
 The agency received no public comment.

### NOTICE OF ADOPTION

**New York State Math and Science Teaching Incentive Program**  
**I.D. No.** ESC-52-14-00017-A  
**Filing No.** 154  
**Filing Date:** 2015-03-10  
**Effective Date:** 2015-03-25

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:  
**Action taken:** Amendment of section 2201.10 of Title 8 NYCRR.  
**Statutory authority:** Education Law, sections 653, 655 and 669-d  
**Subject:** New York State Math and Science Teaching Incentive Program.  
**Purpose:** To delete an outdated and incorrect reference.  
**Text or summary was published** in the December 31, 2014 issue of the Register, I.D. No. ESC-52-14-00017-P.  
**Final rule as compared with last published rule:** No changes.  
**Text of rule and any required statements and analyses may be obtained from:** Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov  
**Assessment of Public Comment**  
 The agency received no public comment.

### NOTICE OF ADOPTION

**Volunteer Recruitment Service Scholarships Program**  
**I.D. No.** ESC-52-14-00018-A  
**Filing No.** 156  
**Filing Date:** 2015-03-10  
**Effective Date:** 2015-03-25

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:  
**Action taken:** Repeal of section 2201.11 of Title 8 NYCRR.  
**Statutory authority:** Education Law, sections 653, 655 and 669-c  
**Subject:** Volunteer Recruitment Service Scholarships Program.  
**Purpose:** To repeal section 2201.11 of Title 8 of the NYCRR as obsolete.  
**Text or summary was published** in the December 31, 2014 issue of the Register, I.D. No. ESC-52-14-00018-P.  
**Final rule as compared with last published rule:** No changes.  
**Text of rule and any required statements and analyses may be obtained from:** Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov  
**Assessment of Public Comment**  
 The agency received no public comment.

### NOTICE OF ADOPTION

**Adjustments to Income**  
**I.D. No.** ESC-01-15-00003-A  
**Filing No.** 155  
**Filing Date:** 2015-03-10  
**Effective Date:** 2015-03-25

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:  
**Action taken:** Amendment of section 2202.3 of Title 8 NYCRR.  
**Statutory authority:** Education Law, sections 653, 655, 661 and 663  
**Subject:** Adjustments to income.  
**Purpose:** To delete incorrect references.  
**Text or summary was published** in the January 7, 2015 issue of the Register, I.D. No. ESC-01-15-00003-P.  
**Final rule as compared with last published rule:** No changes.  
**Text of rule and any required statements and analyses may be obtained from:** Cheryl B. Fisher, NYS Higher Education Services Corporation, 99 Washington Avenue, Room 1325, Albany, New York 12255, (518) 474-5592, email: regcomments@hesc.ny.gov  
**Assessment of Public Comment**  
 The agency received no public comment.

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## Department of Motor Vehicles

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

**Physician Assistants Performing Medical Review After Loss of Consciousness**  
**I.D. No.** MTV-12-15-00009-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:  
**Proposed Action:** This is a consensus rule making to amend sections 9.1, 9.3, 9.4 and 9.5 of Title 15 NYCRR.  
**Statutory authority:** Vehicle and Traffic Law, sections 215(a), 502(1) and 510(3)(b)  
**Subject:** Physician assistants performing medical review after loss of consciousness.

**Purpose:** To allow physician assistants to perform a medical review after a loss of consciousness.

**Text of proposed rule:** Section 9.1 is amended to read as follows:

Section 502 of the Vehicle and Traffic Law requires an applicant for a driver license to submit proof of fitness. This Part establishes procedures and standards to be applied by the commissioner with respect to the licensing of persons who have experienced loss of consciousness. The Part shall be applicable to an applicant for an original license in this State who has ever suffered loss of consciousness, to an applicant for renewal of a license in this State who has suffered loss of consciousness since his last license was issued in this State, to a person who is required to submit physicians', *physician assistants*', or nurse practitioners' statements as a condition for continuing licensing, and to licensees concerning whom the commissioner has received evidence of loss of consciousness.

Subdivisions (a), (b) and (c) of section 9.3 are amended to read as follows:

(a) such person has not experienced a loss of consciousness within the previous 12-month period, and such person submits a physician's, *physician assistant's* [statement] or nurse practitioner's statement confirming such fact;

(b) such person has experienced loss of consciousness within the previous 12-month period, if such loss of consciousness was due solely to a directed change in medication by a physician, a *physician assistant*, or nurse practitioner, and such person submits a physician's, a *physician assistant's*, or nurse practitioner's statement confirming such fact and the commissioner acting after recommendation of his medical consultant finds no grounds to disagree with or to question the physician's, *physician assistant's* or nurse practitioner's statement; or

(c) such person has experienced loss of consciousness within the previous 12-month period, if such person submits a physician's, *physician assistant's* or nurse practitioner's statement confirming the physician's, *physician assistant's* or nurse practitioner's awareness of any or all such incidents and notwithstanding such history, the physician, *physician assistant* or nurse practitioner recommends licensing by making a positive statement that, in his or her opinion, the condition will not interfere with such person's safe operation of a vehicle on the public highway, and the commissioner acting after recommendation of his or her medical consultant finds no grounds to disagree with or to question the physician's, *physician assistant's* or nurse practitioner's statement.

Subdivisions (a), (c) and (d) of section 9.4 are amended to read as follows:

(a) Upon receipt of an application for an original driver license, or for renewal of a driver license, or upon a scheduled review of a required physician's, *physician assistant's* or nurse practitioner's statement, or upon receipt of evidence confirmed by a departmental hearing or investigation that a licensee has experienced loss of consciousness, if the commissioner has not received an acceptable physician's, *physician assistant's* or nurse practitioner's statement as defined in subdivision (d) of this section, or, if such a statement is received but the commissioner's medical consultant finds grounds to disagree with or to question a recommendation of such physician, *physician assistant*, or nurse practitioner made in accordance with the provisions of section 9.3 of this Part, the commissioner shall, unless he or she deems such person's operation of a motor vehicle on a public highway to be an immediate hazard, send to such person a proposed denial or suspension of license, whichever is appropriate, with an offer to withhold such action until after a department hearing, if such hearing is requested by such person. The failure of such person to reply to the commissioner, either accepting the denial or suspension or requesting a hearing, within 30 days of the date of such notice shall result in the imposition of the denial or suspension.

(c) For the purposes of this section, a person's operation on the public highway shall be deemed to constitute an immediate hazard if the commissioner has received evidence from a physician, *physician assistant*, or nurse practitioner that the person's condition does, in the opinion of the physician, *physician assistant* or nurse practitioner, create an immediate hazard if such person were to operate a vehicle on the public highway or, if the commissioner has received evidence that such person's loss of consciousness has caused or contributed to a motor vehicle accident.

(d) In order for a physician's, *physician assistant's* or nurse practitioner's statement to be acceptable, such statement must be submitted by a licensed physician, *physician assistant*, or nurse practitioner who has attended or examined the patient within 120 days of the date of such statement, and if required by the commissioner, may be required to be submitted by a physician licensed in a specialty appropriate to the condition in question.

The heading of section 9.5 is amended and such section is amended to read as follows:

9.5 Submission of physician's, *physician assistant's* or nurse practitioner's statements as a condition for licensing.

The commissioner may require the submission of physicians', *physi-*

*cian assistants*', or nurse practitioners' statements on a scheduled basis as a condition of licensing in those cases in which a person has experienced loss of consciousness, but meets standards of fitness as set forth in this Part, and the physician's, *physician assistant's* or nurse practitioner's statement indicates that medication is being taken to meet such standards and, in the opinion of either the submitting physician, *physician assistant* or nurse practitioner or the medical consultant to the commissioner, the submission of such scheduled physician's, *physician assistant's* or nurse practitioner's statements is considered necessary or desirable. However, this requirement shall not be applicable in any case where an individual has been seizure free without medication for a minimum period of one year and submits a physician's, *physician assistant's* or nurse practitioner's statement.

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

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

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

#### Consensus Rule Making Determination

This proposed regulation is necessary to permit physician assistants to evaluate drivers who have suffered a loss of consciousness. Currently, if the Department learns that a motorist has suffered a loss of consciousness, we require the motorist to present proof of his or her fitness to safely operate a motor vehicle. The motorist's physician or nurse practitioner submits the MV-80U.1 form, "Physician's Statement for Medical Review Unit." The Department's medical consultant may accept or reject the physician's or nurse practitioner's conclusion, and if rejected, the Department may permissively suspend the motorist's license, pursuant to VTL section 510(3)(b), while affording the motorist an opportunity to be heard.

Under the proposed regulation, a physician assistant would be authorized to conduct the examination of the motorist and evaluate whether he or she could safely operate a motor vehicle. As with a physician's or nurse practitioner's assessment, our medical consultant may accept or reject the conclusion of the physician assistant, or the consultant may require that a specialist, such as a neurologist, evaluate the motorist.

Education Law section 6542 provides, "Notwithstanding any other provision of law, a physician assistant may perform medical services, but only when under the supervision of a physician and only when such acts and duties as are assigned to him or her are within the scope of practice of such supervising physician." And section 3703 of the Public Health Law provides, "A physician assistant may perform any function in conjunction with a medical service lawfully performed by the physician assistant, in any health care setting, that a statute authorizes or directs a physician to perform and that is appropriate to the education, training and experience of the licensed physician assistant and within the ordinary practice of the supervising physician. This section shall not be construed to increase or decrease the lawful scope of practice of a physician assistant under the education law." Pursuant to these sections of law, a properly license and trained physician assistant is authorized to make a medical assessment about whether a motorist may safely operate a motor vehicle.

Since this proposed rule simply reflects a physician assistant's scope of practice as codified in the Education Law and Public Health Law, a consensus rulemaking is appropriate.

#### Job Impact Statement

A Job Impact Statement is not submitted because this rule will have no adverse impact on job creation or job development in New York State.

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## Office for People with Developmental Disabilities

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### NOTICE OF ADOPTION

#### Direct Care and Clinical Compensation Payments

**I.D. No.** PDD-02-15-00007-A

**Filing No.** 159

**Filing Date:** 2015-03-10

**Effective Date:** 2015-03-25

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

**Action taken:** Amendment of Part 641 of Title 14 NYCRR.  
**Statutory authority:** Mental Hygiene Law, sections 13.09(b), 41.24, 41.36(c) and 43.02  
**Subject:** Direct Care and Clinical Compensation Payments.  
**Purpose:** To amend rate-setting for eligible services in order to implement increases in direct care and clinical compensation.  
**Text or summary was published** in the January 14, 2015 issue of the Register, I.D. No. PDD-02-15-00007-EP.  
**Final rule as compared with last published rule:** No changes.  
**Text of rule and any required statements and analyses may be obtained from:** 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 will have no effect on the environment, and an E.I.S. is not needed.  
**Assessment of Public Comment**  
 The agency received no public comment.

**NOTICE OF ADOPTION**

**Updates to SSI Offset and SNAP Benefit Offset**

**I.D. No.** PDD-02-15-00008-A  
**Filing No.** 158  
**Filing Date:** 2015-03-10  
**Effective Date:** 2015-03-25

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:  
**Action taken:** Amendment of sections 671.7, 686.17 and Subpart 641-1 of Title 14 NYCRR.  
**Statutory authority:** Mental Hygiene Law, sections 13.09(b), 41.24, 41.36(c) and 43.02  
**Subject:** Updates to SSI offset and SNAP benefit offset.  
**Purpose:** To adjust reimbursement to affected providers for rent and food costs.  
**Text or summary was published** in the January 14, 2015 issue of the Register, I.D. No. PDD-02-15-00008-EP.  
**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 will have no effect on the environment, and an E.I.S. is not needed.  
**Assessment of Public Comment**  
 The agency received no public comment.

**Public Service Commission**

**NOTICE OF ADOPTION**

**Approving, in Part, and Modify, in Part, National Grid’s Request to Recover Incremental Costs**

**I.D. No.** PSC-30-09-00010-A  
**Filing Date:** 2015-03-04  
**Effective Date:** 2015-03-04

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:  
**Action taken:** On 2/26/15, the PSC adopted an order approving, in part, and modifying, in part, the petition of Niagara Mohawk Power Corporation d/b/a National Grid to recover incremental costs of its interim gas energy efficiency programs.  
**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)  
**Subject:** Approving, in part, and modify, in part, National Grid’s request to recover incremental costs.

**Purpose:** To approve, in part, and modify, in part, National Grid’s request to recover incremental costs.  
**Substance of final rule:** The Commission, on February 26, 2015, adopted an order approving, in part, and modifying, in part, National Grid’s petition to recover \$3,634,894 in incremental expenditures in its interim gas energy efficiency programs, subject to the terms and conditions set forth in the order.  
**Final rule as compared with last published rule:** No changes.  
**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.  
**Assessment of Public Comment**  
 An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
 (08-G-0609SA3)

**NOTICE OF ADOPTION**

**Niagara Mohawk’s Energy Efficiency Portfolio Standard “Fast Track” Residential Electric HVAC Program**

**I.D. No.** PSC-11-10-00011-A  
**Filing Date:** 2015-03-04  
**Effective Date:** 2015-03-04

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:  
**Action taken:** On 2/26/15, the PSC adopted an order regarding Niagara Mohawk Power Corporation’s (Niagara Mohawk) request for reconsideration and to recover overspending in its Central Air Conditioning (CAC) Program.  
**Statutory authority:** Public Service Law, sections 4(1), 5(2) and 66(1)  
**Subject:** Niagara Mohawk’s Energy Efficiency Portfolio Standard “Fast Track” Residential Electric HVAC Program.  
**Purpose:** To address petitions for reconsideration and recovery of overspending.  
**Substance of final rule:** The Commission, on February 26, 2015, adopted an order denying the request of Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk) for reconsideration of a January 20, 2010 order to reduce its Energy Efficiency Portfolio Standard (EEPS) electric surcharge by \$576,450 in 2010 and by \$768,600 in 2011 to reflect the termination of its High Efficiency Central Air Conditioning (CAC) Program. In addition, Niagara Mohawk is authorized to recover \$1,546,668 in overspending in its terminated CAC from unspent EEPS funds authorized for its other EEPS electric programs implemented during the time period 2009 – 2011, subject to the terms and conditions set forth in the order.  
**Final rule as compared with last published rule:** No changes.

**Text of rule may be obtained from:** Elaine Agresta, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2660, email: elaine.agresta@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.  
**Assessment of Public Comment**  
 An assessment of public comment is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.  
 (08-E-1014SA3)

**NOTICE OF ADOPTION**

**Approving Costs Related to Large Multi-family Energy Efficiency Services**

**I.D. No.** PSC-31-10-00008-A  
**Filing Date:** 2015-03-04  
**Effective Date:** 2015-03-04

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:  
**Action taken:** On 2/26/15, the PSC adopted an order approving the request

of KEDNY to retain \$7,348,374 in expenditures incurred to serve large multifamily service classes in its Interim Low Income Program.

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

**Subject:** Approving costs related to large multi-family energy efficiency services.

**Purpose:** To approve costs related to large multi-family energy efficiency services.

**Substance of final rule:** The Commission, on February 26, 2015, adopted an order approving the petition of The Brooklyn Union Gas Company d/b/a National Grid (KEDNY) to retain \$7,348,374 in expenditures incurred to serve large multifamily service classes in its Interim Low Income Program, previously collected from customers, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(06-G-1185SA12)

**NOTICE OF ADOPTION**

**Approving Costs Related to Large Multi-Family Energy Efficiency Services**

**I.D. No.** PSC-31-10-00009-A

**Filing Date:** 2015-03-04

**Effective Date:** 2015-03-04

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

**Action taken:** On 2/26/15, the PSC adopted an order approving the request of KEDLI to retain \$4,082,406 in expenditures incurred to serve large multifamily service classes in its Low Income Program.

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

**Subject:** Approving costs related to large multi-family energy efficiency services.

**Purpose:** To approve costs related to large multi-family energy efficiency services.

**Substance of final rule:** The Commission, on February 26, 2015, adopted an order approving the petition of KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island (KEDLI) to retain \$4,082,406 in expenditures incurred to serve large multifamily service classes in its Low Income Program, previously collected from customers, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(06-G-1186SA9)

**NOTICE OF ADOPTION**

**Approving, with Modifications, National Grid's Request to Recover Overspending in its HVAC Program**

**I.D. No.** PSC-16-11-00010-A

**Filing Date:** 2015-03-04

**Effective Date:** 2015-03-04

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

**Action taken:** On 2/26/15, the PSC adopted an order approving, with

modifications, the petition of Niagara Mohawk Power Corporation d/b/a National Grid to recover overspending associated with its HVAC Program.

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

**Subject:** Approving, with modifications, National Grid's request to recover overspending in its HVAC Program.

**Purpose:** To approve, with modifications, National Grid's request to recover overspending in its HVAC Program.

**Substance of final rule:** The Commission, on February 26, 2015, adopted an order approving, with modifications, National Grid's petition to recover overspending associated with its Residential Heating, Water Heating, and Controls Program (HVAC Program), subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(07-M-0548SA36)

**NOTICE OF ADOPTION**

**Approving the Use of the GE/Dresser ES3 Electronic Temperature Compensating Index**

**I.D. No.** PSC-46-13-00007-A

**Filing Date:** 2015-03-04

**Effective Date:** 2015-03-04

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

**Action taken:** On 2/26/15, the PSC adopted an order approving a petition of Niagara Mohawk Power Corporation d/b/a National Grid to use the GE/Dresser ES3 Electronic Temperature Compensating Index for customer billing applications in New York State.

**Statutory authority:** Public Service Law, section 67(1)

**Subject:** Approving the use of the GE/Dresser ES3 Electronic Temperature Compensating Index.

**Purpose:** To approve the use of the GE/Dresser ES3 Electronic Temperature Compensating Index.

**Substance of final rule:** The Commission, on February 26, 2015, adopted an order approving a petition of Niagara Mohawk Power Corporation d/b/a National Grid to use the GE/Dresser ES3 Electronic Temperature Compensating Index for customer billing applications in New York State, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(13-G-0470SA1)

**NOTICE OF ADOPTION**

**Approval of SATEC Branch Feed Monitor BFM 136 Electric Submeter**

**I.D. No.** PSC-25-14-00014-A

**Filing Date:** 2015-03-04

**Effective Date:** 2015-03-04

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

**Action taken:** On 2/26/15, the PSC adopted an order approving the peti-

tion by the SATEC Corporation (SATEC) for its Branch Feed Monitor BFM 136 electric submeter.

**Statutory authority:** Public Service Law, section 67(1)

**Subject:** Approval of SATEC Branch Feed Monitor BFM 136 electric submeter.

**Purpose:** To approve the SATEC Branch Feed Monitor BFM 136 electric submeter.

**Substance of final rule:** The Commission, on February 26, 2015, adopted an order approving the petition of the SATEC Corporation, allowing the SATEC Branch Feed Monitor BFM 136 to be used in New York State to monitor electric flow in residential submetering applications, subject to the terms and conditions set forth in the order.

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

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

**Assessment of Public Comment**

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

(14-E-0203SA1)

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

**Reliability Support Services Agreement for Electric Service Reliability**

**I.D. No.** PSC-12-15-00005-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 an agreement, filed on March 2, 2015, by Niagara Mohawk Power Corp. (d/b/a National Grid) to procure Reliability Support Services from NRG Energy, Inc.'s Dunkirk Power LLC generating facility located in Dunkirk, New York.

**Statutory authority:** Public Service Law, sections 4(1), 5(1)(b), (2), 65(1), (2), (3), 66(1), (2), (3), (4), (5), (6), (8), (9), (10), (11), (12), (12-a), (12-b), (16) and (20)

**Subject:** Reliability Support Services Agreement for electric service reliability.

**Purpose:** Consideration of an extension of the Reliability Support Services Agreement for electric service reliability.

**Substance of proposed rule:** The Public Service Commission is considering whether to adopt, modify, or reject, in whole or in part, the March 2, 2015 filing made by Niagara Mohawk Power Corporation (d/b/a National Grid), seeking approval to extend an agreement to procure Reliability Support Services (RSS) from NRG Energy, Inc.'s Dunkirk Power LLC generating facility located in Dunkirk, New York, and to recover the costs associated with the RSS agreement. National Grid maintains that the RSS agreement is needed to ensure transmission system reliability in western New York for an interim period.

**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-0136SP3)

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

**To Consider a Stock Purchase for the Cable System and Related Assets**

**I.D. No.** PSC-12-15-00006-P

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

**Proposed Action:** The Public Service Commission is considering a joint petition from Adams CATV Inc. and Oquaga Lake Cable System to approve transfer of control of the cable system properties and franchise.

**Statutory authority:** Public Service Law, section 222

**Subject:** To consider a stock purchase for the cable system and related assets.

**Purpose:** To allow Adams CATV to purchase 100% of the stock of Oquaga Lake Cable System.

**Substance of proposed rule:** The Public Service Commission is considering whether to grant, deny or modify, in whole or part, the petition filed by Adams CATV Inc. (Adams), seeking approval under Public Service Law (PSL) § 222 to purchase the cable system, franchise and assets of Oquaga Lake Cable System (Oquaga). Under the proposed transaction, Adams has entered into an agreement with Oquaga whereby Adams will acquire 100 percent of Oquaga stock and plans to retain all of Oquaga's existing assets in New York State. The full text of the petition may be reviewed online at the Department of Public Service web page: [www.dps.ny.gov](http://www.dps.ny.gov). The Commission may take such further action as deemed warranted.

**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-V-0090SP1)

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

**Annual Reconciliation of Gas Expenses and Gas Cost Recoveries Codified at Title 16 NYCRR Section 720.6.5**

**I.D. No.** PSC-12-15-00007-P

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

**Proposed Action:** The Commission is considering whether to approve or reject, in whole or in part, a petition filed by the Small Customer Marketer Coalition to examine the Annual Reconciliation of Gas Expenses and Gas Cost Recoveries.

**Statutory authority:** Public Service Law, sections 65 and 66

**Subject:** The Annual Reconciliation of Gas Expenses and Gas Cost Recoveries codified at Title 16 NYCRR section 720.6.5.

**Purpose:** Examine the Annual Reconciliation of Gas Expenses and Gas Cost Recoveries mechanism.

**Substance of proposed rule:** The Public Service Commission is considering whether to institute a proceeding to examine the Annual Reconciliation of Gas Expenses and Gas Cost Recoveries as proposed in a petition filed by the Small Customer Marketer Coalition (SCMC) on February 24, 2015. SCMC is an ad-hoc coalition of Energy Service Companies (ESCOs) providing gas supply service at retail to residential and commercial customers throughout the State of New York. The SCMC requests that the Commission institute an investigation and examination of (i) the Annual Reconciliation of Gas Expenses and Gas Cost Recoveries codified at Title 16 NYCRR Section 720.6.5 to assess its impact and efficacy in the

current regulatory and economic environment, and (ii) alternative cost recovery mechanisms that would ensure that the monthly gas adjustment clauses are truly reflective of current market costs.

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

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: Elaine.Agresta@dps.ny.gov

**Data, views or arguments may be submitted to:** Kathleen H. Burgess, 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-0101SP1)

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

**Minor Electric Rate Filing**

**I.D. No.** PSC-12-15-00008-P

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

**Proposed Action:** The Public Service Commission is considering whether to approve, reject or modify, in whole or in part, a proposal by the Village of Arcade to make various changes in the rates, charges, rules and regulations contained in PSC No. 1—Electricity.

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

**Subject:** Minor electric rate filing.

**Purpose:** To approve an increase in annual electric revenues by approximately \$299,966 or 3.2%.

**Substance of proposed rule:** The Commission is considering whether to approve, modify or reject, in whole or in part, a tariff filing by the Village of Arcade, requesting approval to increase its annual electricity revenues by approximately \$299,966 or 3.2% to P.S.C. No. 1 – Electricity. The monthly bill of a residential customer using 750 kilowatt-hours will increase from \$43.18 to approximately \$44.68 or 3.47%. The proposed amendments have an effective date of August 1, 2015. The Commission may also consider other related matters.

**Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact:** Elaine Agresta, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2660, email: elaine.agresta@dps.ny.gov

**Data, views or arguments may be submitted to:** Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

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

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

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(15-E-0132SP1)

**Office of Temporary and  
Disability Assistance**

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

**Delete Regulatory References to the Learnfare Program**

**I.D. No.** TDA-12-15-00004-P

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

**Proposed Action:** Amendment of 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, 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 of proposed rule:** The content description for Part 351 of article 1 of Subchapter B of Chapter II of 18 NYCRR is amended to read as follows:

Sec. [351.12 Learnfare.]

Subparagraph (i) of paragraph (7) of subdivision (l) of § 351.2 of 18 NYCRR is amended to read as follows:

(i) Waivers are a temporary suspension of public assistance program requirements including, but not limited to, residency rules, child support and paternity cooperation requirements, alcohol and substance abuse screening and referral requirements, and employment and training requirements[, and learnfare]. Any such waivers must be consistent with federal law.

§ 351.12 of 18 NYCRR is REPEALED.

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

§ 20(3)(d) of the Social Services Law (SSL) authorizes the Office of Temporary and Disability Assistance (OTDA) to promulgate regulations to carry out its powers and duties.

§ 188 of Chapter 81 of the Laws of 1995 amended the SSL by adding former § 131-y, authorizing and directing OTDA to establish the Learnfare Program (Learnfare). Learnfare tracked the school attendance of children in grades one through six from households receiving public assistance, and mandated that when a child accrued three or more unexcused absences during an academic quarter without good cause, social services districts (SSDs) were to refer the child for counseling and initiate a conference with the child's parent or other head of household. After a child accrued five or more unexcused absences during an academic quarter without good cause, SSDs were authorized to withhold, for a three month period, a pro-rata share of the public assistance allowance from the child's household of residence. If a child whose unexcused absences caused a grant reduction during the previous academic quarter had no unexcused absences in the immediately subsequent academic quarter, then the SSDs were to pay to the child's household of residence the amount of benefits previously withheld as a result of the child's unexcused absences. § 246(18) of Chapter 81 of the Laws of 1995 provided that Learnfare would expire and be deemed repealed after July 31, 1998.

§ 18 of Part B of Chapter 436 of the Laws of 1997 amended former SSL § 131-y by requiring that Learnfare be implemented in 6 SSDs beginning the September 1997 school year, in 15 SSDs beginning the September 1998 school year, and in all remaining SSDs Statewide beginning the September 1999 school year. § 21 of Part B of Chapter 436 of the Laws of 1997 amended § 246(18) of Chapter 81 of the Laws of 1995 and provided that Learnfare would expire and be deemed repealed after July 31, 2000. Pursuant to this amendment, the statutory authority for Learnfare expired on July 31, 2000.

2. Legislative objectives:

The proposed regulatory amendments would bring the State regulations into compliance with § 246(18) of Chapter 81 of the Laws of 1995 and

§ 21 of Part B of Chapter 436 of the Laws of 1997, which provided for the repeal of Learnfare.

3. Needs and benefits:

Former SSL § 131-y, which authorized and directed OTDA to establish Learnfare, has expired and was deemed repealed after July 31, 2000. Deletion of references to Learnfare from the existing State regulations would therefore render them consistent with current law.

4. Costs:

It is anticipated that there will be no costs associated with this proposal, since the proposed regulatory amendments are intended to update State regulations to reflect that the statutory authority to operate Learnfare has expired.

5. Local government mandates:

It is not anticipated that the proposed regulatory amendments will create any new mandates for local governments.

6. Paperwork:

The proposed regulatory amendments will not create any new reporting requirements or additional paperwork.

7. Duplication:

The proposed amendments would not duplicate, overlap or conflict with any existing State or federal statutes or regulations.

8. Alternatives:

An alternative to the proposed regulatory amendments would be to retain the existing State regulations. However, these regulatory amendments are necessary to bring the State regulations into compliance with § 246(18) of Chapter 81 of the Laws of 1995 and § 21 of Part B of Chapter 436 of the Laws of 1997.

9. Federal standards:

The proposed amendments would not conflict with federal standards for public assistance.

10. Compliance schedule:

There is no need to establish a compliance schedule because the proposed regulatory amendments would not impose substantive requirements on regulated persons. OTDA will be in compliance with the proposed regulatory amendments on their effective date.

**Regulatory Flexibility Analysis**

A Regulatory Flexibility Analysis for Small Businesses and Local Governments is not required because the proposed regulatory amendments will neither have an adverse impact upon, nor impose reporting, recordkeeping, or other compliance requirements upon small businesses or local governments. As it was evident from the proposed regulations that they would not have an adverse impact or impose reporting, recordkeeping, or other compliance requirements, no further measures were needed to ascertain those facts and, consequently, none were taken.

**Rural Area Flexibility Analysis**

A Rural Area Flexibility Analysis is not required because the proposed regulatory amendments will neither have an adverse impact upon, nor impose reporting, recordkeeping, or other compliance requirements upon public or private entities in rural areas. As it was evident from the proposed regulations that they would not have an adverse impact or impose reporting, recordkeeping, or other compliance requirements, no further measures were needed to ascertain those facts and, consequently, none were taken.

**Job Impact Statement**

A Job Impact Statement is not required for the proposed amendments. It is apparent from the nature and the purpose of the proposed amendments that they will not have a substantial adverse impact on jobs and employment opportunities in either the public or private sectors. The proposed amendments will not affect the jobs of the workers in the social services districts or the State. These regulatory amendments are technical to reflect that the statutory authority to operate the Learnfare Program has expired. Thus, the changes will not have any adverse impact on jobs and employment opportunities in New York State.