# RULE MAKING ACTIVITIES

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

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

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

## Department of Civil Service

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

**Jurisdictional Classification**

**I.D. No.** CVS-15-16-00004-P

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

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

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

***Subject:*** Jurisdictional Classification.

***Purpose:*** To classify a position in the exempt class.

***Text of proposed rule:*** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "State Board of Elections," by adding thereto the position of Chief Enforcement Counsel.

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

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

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

***Regulatory Impact Statement***
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

***Regulatory Flexibility Analysis***
A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

***Rural Area Flexibility Analysis***
A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

***Job Impact Statement***
A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

**Jurisdictional Classification**

**I.D. No.** CVS-15-16-00005-P

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

***Proposed Action:*** Amendment of Appendix 2 of Title 4 NYCRR.

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

***Subject:*** Jurisdictional Classification.

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

***Text of proposed rule:*** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Education Department under the subheading "New York State Higher Education Services Corporation," by deleting therefrom the position of øAffirmative Action Administrator 2 (1); in the Executive Department under the subheading "Office of Information Technology Services," by deleting therefrom the positions of øDirector Information Technology Services 1 (1) and by decreasing the number of positions of øManager Information Technology Services 2 from 2 to 1; in the Department of Family Assistance under the subheading "Office of Temporary and Disability Assistance," by deleting therefrom the positions of Immigrant Community Specialist 1 (1) and Immigrant Community Specialist 2 (5); in the Executive Department under the subheading "Office of General Services," by adding thereto the position of øAffirmative Action Administrator 2 (1); in the Department of Financial Services, by adding thereto the positions of øDirector Information Technology Services 1 (1) and øManager Information Technology Services 2 (1); and, in the Department of State, by adding thereto the positions of Immigrant Community Specialist 1 (1) and Immigrant Community Specialist 2 (5).

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

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

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

***Regulatory Impact Statement***
A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was

previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

***Regulatory Flexibility Analysis***

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

***Rural Area Flexibility Analysis***

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

***Job Impact Statement***

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

### Jurisdictional Classification

**I.D. No.** CVS-15-16-00006-P

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

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

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

***Subject:*** Jurisdictional Classification.

***Purpose:*** To classify a position in the exempt class.

***Text of proposed rule:*** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Gaming Commission," by adding thereto the position of Investigative Auditor.

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

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

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

***Regulatory Impact Statement***

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

***Regulatory Flexibility Analysis***

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

***Rural Area Flexibility Analysis***

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

***Job Impact Statement***

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

### Jurisdictional Classification

**I.D. No.** CVS-15-16-00007-P

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

***Proposed Action:*** Amendment of Appendixes 1 and 2 of Title 4 NYCRR.

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

***Subject:*** Jurisdictional Classification.

***Purpose:*** To delete positions from and classify positions in the exempt and non-competitive classes.

***Text of proposed rule:*** Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Office of General Services," by deleting therefrom the position of Regional Director Public Buildings Management and by increasing the number of positions of Building Superintendent from 12 to 13; and

Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Family Assistance under the subheading "Office of Children and Family Services," by deleting therefrom the position of Agency Emergency Management Coordinator (OCFS) (1) and by adding thereto the position of Agency Emergency Management Coordinator (1); and, in the Department of Labor under the subheading "State Insurance Fund," by deleting therefrom the position of øDirector Training 2 (1) and by adding thereto the position of øAssociate Director Training 2 (1).

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

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

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

***Regulatory Impact Statement***

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

***Regulatory Flexibility Analysis***

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

***Rural Area Flexibility Analysis***

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

***Job Impact Statement***

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

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

### Jurisdictional Classification

**I.D. No.** CVS-15-16-00008-P

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

***Proposed Action:*** Amendment of Appendix 2 of Title 4 NYCRR.

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

***Subject:*** Jurisdictional Classification.

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

***Text of proposed rule:*** Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the State University of New York under the subheading "State University Colleges," by increasing the number of positions of øSecretary 2 at SUC at Oswego from 5 to 6.

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

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

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

***Regulatory Impact Statement***

A regulatory impact statement is not submitted with this notice because this rule is subject to a consolidated regulatory impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

***Regulatory Flexibility Analysis***

A regulatory flexibility analysis is not submitted with this notice because this rule is subject to a consolidated regulatory flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

***Rural Area Flexibility Analysis***

A rural area flexibility analysis is not submitted with this notice because this rule is subject to a consolidated rural area flexibility analysis that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

***Job Impact Statement***

A job impact statement is not submitted with this notice because this rule is subject to a consolidated job impact statement that was previously printed under a notice of proposed rule making, I.D. No. CVS-02-16-00003-P, Issue of January 13, 2016.

# Department of Corrections and Community Supervision

## NOTICE OF ADOPTION

**Standards of Inmate Behavior; Institutional Rules of Conduct; Rule Series 113 Contraband**

**I.D. No.** CCS-52-15-00001-A

**Filing No.** 348

**Filing Date:** 2016-03-23

**Effective Date:** 2016-04-13

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

***Action taken:*** Amendment of section 270.2(b)(14)(xiv) and (xv) of Title 7 NYCRR.

***Statutory authority:*** Correction Law, sections 112 and 138

***Subject:*** Standards of Inmate Behavior; Institutional Rules of Conduct; Rule Series 113 Contraband.

***Purpose:*** Provide clarification regarding the definition of a controlled substance for the purposes of this rule.

***Text or summary was published*** in the December 30, 2015 issue of the Register, I.D. No. CCS-52-15-00001-EP.

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

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

***Initial Review of Rule***

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

***Assessment of Public Comment***

The agency received no public comment.

## NOTICE OF ADOPTION

**Contraband Drugs**

**I.D. No.** CCS-52-15-00002-A

**Filing No.** 349

**Filing Date:** 2016-03-23

**Effective Date:** 2016-04-13

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

***Action taken:*** Amendment of sections 1010.2, 1010.4(b), (c), (d), (e), 1010.5(d), 1010.7 and 1010.8 of Title 7 NYCRR.

***Statutory authority:*** Correction Law, section 112

***Subject:*** Contraband Drugs.

***Purpose:*** This proposal introduces a second testing system that may be utilized when testing for suspected contraband drugs.

***Text or summary was published*** in the December 30, 2015 issue of the Register, I.D. No. CCS-52-15-00002-EP.

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

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

***Initial Review of Rule***

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

***Assessment of Public Comment***

The agency received no public comment.

## NOTICE OF ADOPTION

**Washington Correctional Facility**

**I.D. No.** CCS-52-15-00003-A

**Filing No.** 347

**Filing Date:** 2016-03-23

**Effective Date:** 2016-04-13

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

***Action taken:*** Amendment of section 100.116(b) of Title 7 NYCRR.

***Statutory authority:*** Correctional Law, section 70

***Subject:*** Washington Correctional Facility.

***Purpose:*** Amend the age for general confinement to 18 years and older.

***Text or summary was published*** in the December 30, 2015 issue of the Register, I.D. No. CCS-52-15-00003-P.

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

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

***Assessment of Public Comment***

The agency received no public comment.

# Department of Financial Services

## EMERGENCY RULE MAKING

**Standard Financial Aid Award Information Sheet for Institutions of Higher Education**

**I.D. No.** DFS-03-16-00003-E

**Filing No.** 351

**Filing Date:** 2016-03-25

**Effective Date:** 2016-03-25

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

***Action taken:*** Addition of Part 421 to Title 3 NYCRR.

***Statutory authority:*** Banking Law, section 9-w

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

***Specific reasons underlying the finding of necessity:*** I determined that it is necessary for the preservation of the general welfare that this regulation be adopted on an emergency basis as authorized by section 202(6) of the

State Administrative Procedure Act, effective immediately upon filing with the Department of State.

This regulation was adopted as an emergency measure because time is of the essence. Banking Law Section 9-w requires schools to use a standard financial aid information letter in responding to all financial aid applicants for the 2016-2017 academic year and thereafter. Schools are currently sending award packages and the regulations provide important clarity for schools using the model financial aid information letter. While comments on a final rule are being considered, these rules are being readopted on an emergency basis in order to give schools needed guidance to comply with Banking Law Section 9-w.

***Subject:*** Standard financial aid award information sheet for institutions of higher education.

***Purpose:*** Provides guidance to institutions of higher education for the implementation of a financial aid award information sheet.

***Text of emergency rule:*** *PART 421*

*FINANCIAL AID AWARD INFORMATION SHEET*

*§ 421.1 Scope and application of this Part*

*Section 9-w of the Banking Law authorizes the superintendent to adopt rules and regulations for the implementation of a standard financial aid award letter.*

*§ 421.2 Definitions*

*For purposes of this Part, unless otherwise stated herein, terms shall have the same meaning as set forth in section 601 of New York State Education Law.*

*§ 421.3 Content and Delivery of Financial Aid Award Information Sheet On or After May 15, 2016*

*(a) In responding to an incoming or prospective student's financial aid application on or after May 15, 2016, a college, vocational institution or other institution that offers an approved program as defined in section 601 of the Education Law shall provide the letter required in section 9-w of the Banking Law, hereby referred to as the "Financial Aid Award Information Sheet", in the form available at www.dfs.ny.gov/studentprotection.*

*(b) For purposes of the Financial Aid Award Information Sheet, the term "Campus" shall mean an institution affiliated with a single U.S. Department of Education Office of Postsecondary Education Identification code.*

*§ 421.4 Content and Delivery of Financial Aid Award Information Sheet Prior to May 15, 2016*

*(a) In responding to an incoming or prospective student's financial aid application prior to May 15, 2016, a college, vocational institution or other institution that offers an approved program as defined in section 601 of the Education Law shall provide the Financial Aid Award Information Sheet in accordance with section 421.3 of this Part or satisfy the requirements in subsections 421.4(b) and 421.4(c) of this Part.*

*(b) Beginning on or before February 1, 2016, and ending on or after September 1, 2016, a college, vocational institution or other institution that offers an approved program as defined in section 601 of the Education Law shall publish online an "Interim Period Financial Aid Award Information Sheet" in the form available at www.dfs.ny.gov/studentprotection.*

*(c) In responding to an incoming or prospective student's financial aid application before May 15, 2016, a college, vocational institution or other institution that offers an approved program as defined in section 601 of the Education Law shall include in, or accompany with, the response a clear and conspicuous disclosure stating "Additional Information Including Estimated Cost of Attendance Can be Found On the Web Page Below" and setting forth the URL address of the webpage that includes a completed Interim Period Financial Aid Award Information Sheet. For responses to an incoming or prospective student's financial aid application between January 1, 2016 and February 1, 2016, this disclosure shall be provided by February 1, 2016.*

*(d) For purposes of the Interim Period Financial Aid Award Information Sheet, the term "Campus" shall mean an institution affiliated with a single U.S. Department of Education Office of Postsecondary Education Identification code.*

***This notice is intended*** to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-03-16-00003-EP, Issue of January 20, 2016. The emergency rule will expire May 23, 2016.

***Text of rule and any required statements and analyses may be obtained from:*** Max Dubin, Department of Financial Services, One State Street, New York, NY 10004, (212) 480-7232, email: max.dubin@dfs.ny.gov

***Regulatory Impact Statement***

1. Statutory Authority: The Superintendent of Financial Services' ("Superintendent") authority for the promulgation of this rule derives from New York Banking Law § 9-w, which calls on the Superintendent to promulgate regulations implementing that section.

2. Legislative Objectives: The Legislature called on the Superintendent to issue this rule to implement New York Banking Law § 9-w, which requires all New York schools to use a uniform financial aid award letter. The Legislature mandated a uniform financial aid letter to give students a better understanding of the costs of a particular school and the options to pay for the education. The uniform letter will also help students to easily compare costs and financial aid options between schools.

3. Needs and Benefits: DFS consulted the New York State Higher Education Services Corporation for thoughts and challenges associated with implementing the form required in Banking Law § 9-w. The rule is required by New York Banking Law § 9-w. The rule provides needed guidance to institutions of higher education, including when and to whom schools must provide the financial aid award letter.

4. Costs: This rule does not create any additional costs to regulated parties or state and local governments. Any costs incurred by higher education institutions in implementing a standard financial aid award information sheet, including building any information technology infrastructure to generate and send the award sheets, were imposed by the Legislature by statute. No new costs are created by this rule, which simply implements New York Banking Law § 9-w.

5. Local Government Mandates: The rule does not create any new local government mandates.

6. Paperwork: There are no new paperwork requirements created by the rule.

7. Duplication: Some institutions of higher education have volunteered to, and in some cases are required, to use a standard student shopping sheet developed by the U.S. Department of Education when responding to financial aid applications. DFS consulted with U.S. Department of Education and designed a model shopping sheet that would meet federal and state requirements. New York schools already committed to using the federal form can add a supplement to their existing form to meet both requirements and avoid duplicative financial aid award information sheets.

8. Alternatives: No significant alternatives to the rule were considered.

9. Federal Standards: The rule does not exceed any federal standards.

10. Compliance Schedule: The rule should not take any time to implement. It has been previously proposed as a permanent rule and adopted on an emergency basis.

***Regulatory Flexibility Analysis***

The rule will not impose any new adverse economic impact or reporting, record keeping or other compliance requirements on small businesses and local governments. The rule implements Banking Law § 9-w. Some of the covered educational institutions may be small businesses. Any costs or compliance requirements were created statutorily by the Legislature and this rule does not create any additional costs or requirements.

***Rural Area Flexibility Analysis***

The rule will not impose any new adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in rural areas. The rule implements Banking Law § 9-w. Some of the covered educational institutions are located in rural areas. However, the rule does not impose any new costs or compliance requirements. Any costs or compliance requirements were created statutorily by the Legislature.

***Job Impact Statement***

The rule should have no adverse impact on jobs and employment opportunities in New York. The rule implements Banking Law § 9-w. It does not create any new burden or costs to businesses that are not already required by statute.

## EMERGENCY RULE MAKING

### Public Retirement Systems

**I.D. No.** DFS-15-16-00003-E

**Filing No.** 350

**Filing Date:** 2016-03-25

**Effective Date:** 2016-03-25

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

***Action taken:*** Amendment of Part 136 (Regulation 85) of Title 11 NYCRR.

***Statutory authority:*** Financial Services Law, sections 202 and 302; and Insurance Law, sections 301, 314, 7401(a) and 7402(n)

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

***Specific reasons underlying the finding of necessity:*** The Second Amend-

ment to 11 NYCRR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards of behavior with regard to investment of the assets of the New York State Common Retirement Fund ("Fund"), conflicts of interest, and procurement. In addition, it created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent events surrounding how placement agents conduct business on behalf of their clients with regard to the Fund compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. Rather, only an immediate ban on the use of placement agents will ensure sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

This regulation was previously promulgated on an emergency basis on June 18, 2009, September 16, 2009, January 5, 2010, April 2, 2010, May 28, 2010, July 29, 2010, September 23, 2010, November 19, 2010, January 18, 2011, March 21, 2011, May 19, 2011, August 16, 2011, November 10, 2011, February 7, 2012, May 7, 2012, August 3, 2012, October 31, 2012, January 28, 2013, April 26, 2013, July 24, 2013, October 21, 2013, January 17, 2014, April 16, 2014, July 14, 2014, October 10, 2014, January 7, 2015, April 6, 2015, July 3, 2015, September 30, 2015, and December 28, 2015.

***Subject:*** Public Retirement Systems.

***Purpose:*** To ban the use of placement agents by investment advisors engaged by the state employees' retirement systems.

***Text of emergency rule:*** Section 136-2.2 is amended to read as follows:

§ 136-2.2 Definitions.

The following words and phrases, as used in this Subpart, unless a different meaning is plainly required by the context, shall have the following meanings:

[(a) Retirement system shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.]

[(b) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law, which holds the assets of the retirement system.]

[(c)]*(a)* Comptroller shall mean the Comptroller of the State of New York in his capacity as administrative head of the Retirement System and the sole trustee of the [fund] *Fund*.

[(d) OSC shall mean the Office of the State Comptroller.]

[(e)]*(b)* Consultant or advisor shall mean any person (other than an OSC employee) or entity retained by the [fund] *Fund* to provide technical or professional services to the [fund] *Fund* relating to investments by the [fund] *Fund*, including outside investment counsel and litigation counsel, custodians, administrators, broker-dealers, and persons or entities that identify investment objectives and risks, assist in the selection of [money] *investment* managers, securities, or other investments, or monitor investment performance.

*(c) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.*

*(d) Fund shall mean the New York State Common Retirement Fund, a fund in the custody of the Comptroller as trustee, established pursuant to Section 422 of the Retirement and Social Security Law ("RSSL"), which holds the assets of the Retirement System.*

[f]*(e)* Investment manager shall mean any person (other than an OSC employee) or entity engaged by the Fund in the management of part or all of an investment portfolio of the [fund] *Fund*. "Management" shall include, but is not limited to, analysis of portfolio holdings, and the purchase, sale, and lending thereof. For the purposes hereof, any investment made by the Fund pursuant to RSSL § 177(7) shall be deemed to be the investment of the Fund in such investment entity (rather than in the assets of such investment entity).

*(f) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the Fund.*

*(g) OSC shall mean the Office of the State Comptroller.*

[(g)]*(h)* Placement agent or intermediary shall mean any person or entity*, including registered lobbyists, directly or indirectly* engaged *and compensated* by an investment manager (other than [an] *a regular* employee of the investment manager) to *promote investments to or solicit investment by* [assist the investment manager in obtaining investments by the fund, or otherwise doing business with] the [fund] *Fund*, whether compensated on a flat fee, a contingent fee, or any other basis. Regular employees of an investment manager are excluded from this definition unless they are employed principally for the purpose of *securing or influencing the decision to secure a particular transaction or investment by the Fund*.[obtaining investments or providing other intermediary services with respect to the fund.] *For purpose of this paragraph, the term "employee" shall include any person who would qualify as an employee under the federal Internal Revenue Code of 1986, as amended, but shall not include a person hired, retained or engaged by an investment manager to secure or influence the decision to secure a particular transaction or investment by the Fund.*

[(h) Investment policy statement shall mean a written document that, consistent with law, sets forth a framework for the investment program of the fund.]

[(i) Third party administrator shall mean any person or entity that contractually provides administrative services to the retirement system, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits or paying benefits and maintaining any other retirement system records. Administrative services do not include services provided to the fund relating to fund investments.]

*(i) Retirement System shall mean the New York State and Local Employees' Retirement System and the New York State and Local Police and Fire Retirement System.*

*(j) Third party administrator shall mean any person or entity that contractually provides administrative services to the Retirement System, including receiving and recording employer and employee contributions, maintaining eligibility rosters, verifying eligibility for benefits, paying benefits or maintaining any other Retirement System records. "Administrative services" do not include services provided to the Fund relating to Fund investments.*

[(j)]*(k)* Unaffiliated Person shall mean any person other than: (1) the Comptroller or a family member of the Comptroller, (2) an officer or employee of OSC, (3) an individual or entity doing business with OSC or the [fund] *Fund*, or (4) an individual or entity that has a substantial financial interest in an entity doing business with OSC or the [fund] *Fund*. For the purpose of this paragraph, the term "substantial financial interest" shall mean the control of the entity, whereby *"*control*"* means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract (except a commercial contract for goods or non-management services) or otherwise; but no individual shall be deemed to control an entity solely by reason of his being an officer or director of such entity. Control shall be presumed to exist if any individual directly or indirectly owns, controls or holds with the power to vote ten percent or more of the voting securities of such entity.

[(k) Family member shall mean any person living in the same household as the Comptroller, and any person related to the Comptroller within the third degree of consanguinity or affinity.]

Section 136-2.4(d) is amended to read as follows:

(d) Placement agents or intermediaries: In order to preserve the independence and integrity of the [fund] *Fund*, to [address] *preclude* potential conflicts of interest, and to assist the Comptroller in fulfilling his or her duties as a fiduciary to the [fund] *Fund*, [the Comptroller shall maintain a reporting and review system that must be followed whenever the fund] *the Fund shall not* [engages, hires, invests with, or commits] *engage, hire, invest with or commit* to[,] an outside investment manager who is using the services of a placement agent or intermediary to assist the investment manager in obtaining investments by the [fund] *Fund*. [, or otherwise doing business with the fund. The Comptroller shall require investment managers to disclose to the Comptroller and to his or her designee payments made to any such placement agent or intermediary. The reporting and review system shall be set forth in written guidelines and such guidelines shall be published on the OSC public website.]

Section 136-2.5(g) is amended to read as follows:

(g) The Comptroller shall:

(1) file with the superintendent an annual statement in the format prescribed by Section 307 of the Insurance Law, including the [retirement system's] *Retirement System's* financial statement, together with an opinion of an independent certified public accountant on the financial statement;

(2) file with the superintendent the Comprehensive Annual Financial Report within the time prescribed by law, but no later than the time it is published on the OSC public website;

(3) disclose on the OSC public website, on at least an annual basis, all fees paid by the [fund] *Fund* to investment managers, consultants or advisors, and third party administrators;

[(4) disclose on the OSC public website, on at least an annual basis, instances where an investment manager has paid a fee to a placement agent or intermediary;]

[(5)]*(4)* disclose on the OSC public website the [fund's] *Fund's* investment policies and procedures; and

[(6)]*(5)* require fiduciary and conflict of interest reviews of the [fund] *Fund* every three years by a qualified unaffiliated person.

***This notice is intended*** to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires June 22, 2016.

***Text of rule and any required statements and analyses may be obtained from:*** Mark McLeod, New York State Department of Financial Services, One State Street, New York, NY 10004, (212) 480-4937, email: mark.mcleod@dfs.ny.gov

***Regulatory Impact Statement***

1. Statutory authority: The Superintendent's authority for the adoption of the rule to 11 NYCRR 136 is derived from sections 202 and 302 of the Financial Services Law ("FSL") and sections 301, 314, 7401(a), and 7402(n) of the Insurance Law.

FSL section 202 establishes the office of the Superintendent and designates the Superintendent to be the head of the Department of Financial Services ("DFS").

FSL section 302 and Insurance Law section 301, in material part, authorize the Superintendent to effectuate any power accorded to him by the Insurance Law, the Banking Law, the Financial Services Law, or any other law of this state and to prescribe regulations interpreting the Insurance Law.

Insurance Law section 314 vests the Superintendent with the authority to promulgate standards with respect to administrative efficiency, discharge of fiduciary responsibilities, investment policies and financial soundness of the public retirement and pension systems of the State of New York, and to make an examination into the affairs of every system at least once every five years in accordance with Insurance Law sections 310, 311 and 312. The implementation of the standards is necessarily through the promulgation of regulations.

As confirmed by the Court of Appeals in Matter of Dinallo v. DiNapoli, 9 N.Y. 3d 94 (2007), the Superintendent functions in two distinct capacities. The first is as regulator of the insurance industry. The second is as statutory receiver of financially distressed insurance entities. Article 74 of the Insurance Law sets forth the Superintendent's role and responsibilities in this latter capacity.

Insurance Law section 7401(a) sets forth the entities, including the public retirement systems, to which Article 74 applies.

Insurance Law section 7402(n) provides that it is a ground for rehabilitation if an entity subject to Article 74 has failed or refused to take such steps as may be necessary to remove from office any officer or director whom the Superintendent has found, after appropriate notice and hearing, to be a dishonest or untrustworthy person.

2. Legislative objectives: Insurance Law section 314 authorizes the Superintendent to promulgate and amend, after consultation with the respective administrative heads of public retirement and pension systems and after a public hearing, standards with respect to the public retirement and pension systems of the State of New York.

This rule, which in effect bans the use of an investment tool that has been found to be untrustworthy, is consistent with the public policy objectives that the Legislature sought to advance in enacting Insurance Law section 314, which provides the Superintendent with the powers to promulgate standards to protect the New York State Common Retirement Fund (the "Fund").

3. Needs and benefits: The Second Amendment to 11 NYCRR 136 (Regulation 85), effective November 19, 2008, established new standards with regard to investment of the assets of the Fund, conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. The Third Amendment to Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund's members and beneficiaries, and safeguard the integrity of the Fund's investments. Further, the rule defines "placement agent or intermediary" in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

4. Costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this rule. There are no costs to the Department or other state government agencies or local governments. Investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

5. Local government mandates: The rule imposes no new programs, services, duties or responsibilities on any county, city, town, village, school district, fire district or other special district.

6. Paperwork: No additional paperwork should result from the prohibition imposed by the rule.

7. Duplication: This rule will not duplicate any existing state or federal rule.

8. Alternatives: The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining "placement agent" in more general terms.

In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor's Office, Comptroller's Office and Finance Department. These entities agreed with the concerns expressed by the Department and intend to explore remedies most appropriate to the pension funds that they represent.

Initially, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments. The proposed rule was published in the State Register on March 17, 2010. A Public Hearing was held on April 28, 2010. The following comments were received:

Blackstone Group, a global investment manager and financial advisor, wrote to oppose the proposed ban on the use of placement agents by investment advisors engaged by the New York State Common Retirement Fund ("The Fund"). It stated that the rule would lessen the number of investment opportunities brought before the Fund, adversely affect small, medium-sized and women-and minority-owned investment firms seeking to do business with the Fund, and adversely affect a number of New York-headquartered financial institutions doing business as placement agents.

Blackstone suggested the inclusion of the following provisions in the rule instead:

- A ban on political contributions by any employee of any placement agent seeking to do business with the Fund;
- A requirement that any placement agent seeking do to business with the Fund be registered as a broker dealer with the SEC and ensure that its professionals have passed the appropriate Series qualifications administered by Financial Industry Regulatory Authority ("FINRA");
- A requirement that any placement agent seeking to do business in New York register with the Department; and
- A requirement that any placement agent representing an investment manager before the Fund fully disclose the contractual arrangement between it and the manager, including the fee arrangement and the scope of services to be provided.

The Securities Industry and Financial Markets Association ("SIFMA"), representing hundreds of securities firms, banks, and asset managers, commented that the proposed rule (1) inadvertently limits the access of smaller fund managers to the Fund; (2) restricts the number and types of advisers that could be utilized by the Fund; (3) creates an inherent conflict between federal and state law that would make it impossible to do business with the Fund while complying with both; and (4) adds duplicative regulation in an area already substantially regulated at the state level and that is primed for further federal regulation through the imminent imposition of a federal pay-to-play regime on all registered broker-dealers acting as placement agents. In addition, SIFMA provided language that it believes would be consistent with the existing federal requirements on the use of placement agents. SIFMA requested that the Department either exclude from the proposed rule those placement agents who are registered as broker-dealers under the Securities Exchange Act of 1934 or delay the enactment of the proposed rule until the federal and state placement agent initiatives are finalized.

The Superintendent did consider other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. The Department considered limiting the ban to include intent on the part of the party using placement agents, or defining "placement agent" in more general terms. At the time, the Superintendent concluded that only an immediate, total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

9. Federal standards: The Securities and Exchange Commission issued a "Pay-To-Play" regulation for financial advisors on July 1, 2010, which may have an impact on the issues addressed in the proposed rule.

10. Compliance schedule: The emergency adoption of this regulation

on June 18, 2009 ensured that the ban would become enforceable immediately. The ban needs to remain in effect on an emergency basis until such time as an amended regulation can be made permanent.

***Regulatory Flexibility Analysis***

1. Effect of the rule: This rule strengthens standards for the management of the New York State and Local Employees' Retirement System and New York State and Local Police and Fire Retirement System (collectively, "the Retirement System"), and the New York State Common Retirement Fund ("the Fund").

The Second Amendment to 11 NYCRR 136 (Insurance Regulation 85), effective November 19, 2008, established new standards with regard to investment of the assets of the Fund, conflicts of interest and procurement. In addition, the Second Amendment created new audit and actuarial committees, and greatly strengthened the investment advisory committee. The Second Amendment also set high ethical standards, strengthened internal controls and governance, enhanced the operational transparency of the Fund, and strengthened supervision by the Department.

Nevertheless, recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, compel the Superintendent to conclude that the mere strengthening of the Fund's control environment is insufficient to protect the integrity of the state employees' retirement systems. The Third Amendment to Insurance Regulation 85 will adopt an immediate ban on the use of placement agents to ensure sufficient protection of the Fund's members and beneficiaries, and safeguard the integrity of the Fund's investments. Further, the rule defines "placement agent or intermediary" in a manner that both thwarts evasion of the ban while ensuring that such ban not extend to persons otherwise acting lawfully on behalf of investment managers.

These standards are intended to assure that the conduct of the business of the Retirement System and the Fund, and of the State Comptroller (as administrative head of the Retirement System and as sole trustee of the Fund), are consistent with the principles specified in the rule. Most among all affected parties, the State Comptroller, as a fiduciary whose responsibilities are clarified and broadened, is impacted by the rule. The State Comptroller is not a "small business" as defined in section 102(8) of the State Administrative Procedure Act.

This rule will affect investment managers and other intermediaries (other than OSC employees) who provide technical or professional services to the Fund related to Fund investments. The rule will prohibit investment managers from using the services of a placement agent unless such agent is a regular employee of the investment manager and is acting in a broader capacity than just providing specific investment advice to the Fund. In addition, the rule is also directed to placement agents, who as a result of this rule, will no longer be engaged directly or indirectly by investment managers that do business with the Fund. Some investment managers and placement agents may come within the definition of "small business" set forth in section 102(8) of the State Administrative Procedure Act, because they are independently owned and operated, and employ 100 or fewer individuals.

The rule bans the use of placement agents in connection with investments by the Fund. This may adversely affect the business of placement agents, who will lose opportunities to earn profits in connection with investments by the Fund. Nevertheless, as a result of recent allegations regarding "pay to play" practices, whereby politically connected individuals reportedly sold access to investment opportunities with the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund's members and beneficiaries and to safeguard the integrity of the Fund's investments.

This rule will not impose any adverse compliance requirements or result in any adverse impacts on local governments. The basis for this finding is that this rule is directed at the State Comptroller; employees of the Office of State Comptroller; and investment managers, placement agents, consultant or advisors - none of which are local governments.

2. Compliance requirements: None.

3. Professional services: Investment managers, consultants and advisors who provide services to the Fund, and are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may need to employ other professional services.

4. Compliance costs: The rule does not impose any additional requirements on the Comptroller, and no additional costs are expected to result from the implementation of the ban imposed by this rule. There are no costs to the Department of Financial Services or other state government agencies or local governments. However, investment managers, consultants and advisors who provide services to the Fund, which are required to discontinue the use of placement agents in connection with investment services they provide to the Fund, may lose opportunities to do business with the Fund.

5. Economic and technological feasibility: The rule does not impose any economic and technological requirements on affected parties, except for placement agents who will lose the opportunity to earn profits in connection with investments by the Fund.

6. Minimizing adverse impact: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund. The Superintendent considered other ways to limit the influence of placement agents, including a partial ban, increased disclosure requirements, and adopting alternative definitions of placement agent or intermediary. But in the end, the Superintendent concluded that only an immediate total ban on the use of placement agents could provide sufficient protection of the Fund's members and beneficiaries and safeguard the integrity of the Fund's investments.

7. Small business and local government participation: In developing the rule, the Superintendent and State Comptroller not only consulted with one another, but also briefed representatives of: (1) New York State and New York City Public Employee Unions; (2) New York City Retirement and Pension Funds; (3) the Borough Presidents of the five counties of New York City; and (4) officials of the New York City Mayor's Office, Comptroller's Office and Finance Department.

A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

***Rural Area Flexibility Analysis***

1. Types and estimated numbers of rural areas: Investment managers, placement agents, consultants or advisors that do business in rural areas as defined under State Administrative Procedure Act Section 102(10) will be affected by this rule. The rule bans the use of placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"), which may adversely affect the business of placement agents and of other entities that utilize placement agents and are involved in Fund investments.

2. Reporting, recordkeeping and other compliance requirements, and professional services: This rule will not impose any reporting, recordkeeping or other compliance requirements on public or private entities in rural areas, with the exception of requiring investment managers, consultants and advisors who provide services to the Fund to discontinue the use of placement agents.

3. Costs: The costs to placement agents are lost opportunities to earn profits in connection with investments by the Fund.

4. Minimizing adverse impact: The rule does not adversely impact rural areas.

5. Rural area participation: A public hearing was held on April 28, 2010. Comments were received from two entities recommending that the total ban on the use of placement agents be modified. The Department will continue to assess the comments that have been received and any others that may be submitted.

***Job Impact Statement***

The Department of Financial Services finds that this rule will have little or no impact on jobs and employment opportunities. The rule bans investment managers from using placement agents in connection with investments by the New York State Common Retirement Fund ("the Fund"). The rule may adversely affect the business of placement agents, who could lose the opportunity to earn profits in connection with investments by the Fund. Nevertheless, in view of recent events about how placement agents conduct business on behalf of their clients with regard to the Fund, the Superintendent has concluded that an immediate ban on the use of placement agents is necessary to protect the Fund's members and beneficiaries, and to safeguard the integrity of the Fund's investments.

# Department of Health

## NOTICE OF ADOPTION

**Rate Rationalization—Prevocational Services, Respite, Supported Employment and Residential Habilitation**

**I.D. No.** HLT-16-15-00014-A
**Filing No.** 352
**Filing Date:** 2016-03-25
**Effective Date:** 2016-04-13

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

***Action taken:*** Addition of Subpart 86-13 to Title 10 NYCRR.

***Statutory authority:*** Public Health Law, section 201

***Subject:*** Rate Rationalization—Prevocational Services, Respite, Supported Employment and Residential Habilitation

***Purpose:*** To establish new rate methodology effective July 1, 2015.

***Substance of final rule:*** This regulation establishes a new reimbursement methodology for Prevocational (Site-based and Community-based), Respite (Hourly and Free-standing), Supported Employment Services, and Residential Habilitation (Family Care) programs, which will be effective July 1, 2015.

For Prevocational (Site-based) and Respite (Hourly and Free-standing) programs, the methodology will include the following elements:

1) The use of a base period Consolidated Fiscal Report (CFR) for the period of January 1, 2013 – December 31, 2013 for calendar year filers or the period of July 1, 2012 –June 30, 2013 for fiscal year filers.

2) The assignment of geographic location, based on CFR information and consistent with Department of Health (DOH) regions.

3) Operating, facility and capital components.

- The operating component recognizes a blend of actual provider costs and average regional costs.
- The facility component recognizes actual provider costs.
- The methodology for the capital component has not been significantly changed from that of the previous reimbursement methodology, except that the initial reimbursement will remain in the rate for only two years from the date of site certification unless actual costs are verified with the Department of Health.

4) Wage equalization factors.

5) A budget neutrality factor.

6) A two year phase-in period for transition to the methodology.

For Prevocational (Community-based) Services, Supported Employment Services and Residential Habilitation (Family Care) programs, the methodology will include the following elements:

1) The use of a base period Consolidated Fiscal Report (CFR) for the period of January 1, 2013 – December 31, 2013 for calendar year filers or the period of July 1, 2012 –June 30, 2013 for fiscal year filers to calculate a fee reimbursement schedule.

2) The assignment of geographic location, based on CFR information.

- For Residential Habilitation (Family Care), the geographic location will be consistent with DOH regions.
- For Prevocational (Community-based) Services and Supported Employment Services, the geographic location will be consistent with Office for People With Developmental Disabilities (OPWDD) regions.

***Final rule as compared with last published rule:*** Nonsubstantive changes were made in section 86-13.3.

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

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

Changes made to the last published rule do not necessitate revision to the previously published RIS, RFA, RAFA and JIS.

***Assessment of Public Comment***

The Department of Health (DOH) received one set of comments during the public comment period from the Cerebral Palsy Associations of New York State.

Comment:

DOH recognized the fact that the 7/1/15 pre-vocational service fees for specialized template populations, as calculated and presented in the proposed regulation, need to be revised to incorporate compensation funding increases for direct support professionals that were effective 1/1/15 and 4/1/15 for clinical employees.

To be consistent, DOH must also recognize the need for similar revisions to the proposed 7/1/15 community pre-vocational and Supported Employment (SEMP) fees since these proposed fees also did not include either of these compensation funding increases when they were developed.

Response:

DOH will not change the regulation at this time. However, the comment will be taken under advisement for consideration when subsequent amendments are made to the regulation.

Comment:

We are asking that DOH recognize and make an appropriate adjustment in the calculation of the SEMP and pre-vocational service fees as well as in Agency respite rates to recognize the cost associated with a NYC law (called the Earned Sick Time Act) that went into effect on 4/1/14. Many of the new key provisions of the Act will have direct fiscal impact on our OPWDD funded providers that operate in New York City – resulting in increased expenses not previously incurred. Some of the key provisions of the Act are attached to the letter.

Obviously, of major concern is that now NYC providers will be required to provide sick leave to basically ALL part-time employees, substitute direct support professionals, as well as per diem professionals, and clinical staff. This is a NEW cost that is now mandated by this NYC law, so an adjustment will need to be made by DOH at least until such time as the 7/1/14-6/30/15 cost period or after is used to establish fees/rates. This also impacts other OPWDD service rates (IRA residential and day habilitation and ICF services) that are being revised effective 7/1/15.

Response:

DOH will not change the regulation as this time. However, the comment will be taken under advisement for consideration when subsequent amendments are made to the regulation.

Comment:

The DOH regulations need to be clear that the SEMP fees do not include the cost related to the generic round trip transportation of an individual with developmental disabilities between their home and their job.

Response:

DOH will not change the regulation as this time. However, the comment will be taken under advisement for consideration when subsequent amendments are made to the regulation.

Comment:

Community pre-vocation is a new OPWDD service with no prior programmatic or cost experience. The regional fees developed by DOH were developed based upon the existing community habilitation program and fees with an adjustment for noncertified site cost. The new fee schedule for Community Pre-vocational services is very much lower than those for Supported Employment in both the intensive and extended phases. People involved in pre-vocational services have been enrolled in that program because they need more supports in order to be ready to work. The supports that they will need will be more intensive and more structured due to their higher needs levels. Therefore, it is not likely that the proposed fees will be sufficient. Once sufficient program and cost experience is obtained, DOH will need to modify the fee schedule accordingly.

Response:

DOH will not change the regulation at this time. However, the comment will be taken under advisement for consideration when subsequent amendments are made to the regulation.

## NOTICE OF ADOPTION

### Medicaid Provider Enrollment

**I.D. No.** HLT-30-15-00006-A

**Filing No.** 353

**Filing Date:** 2016-03-25

**Effective Date:** 2016-04-13

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

***Action taken:*** Amendment of section 504.5 of Title 18 NYCRR.

***Statutory authority:*** Social Services Law, sections 363-a and 364

***Subject:*** Medicaid Provider Enrollment.

***Purpose:*** To make technical, conforming changes to regulations governing the enrollment of Medicaid providers of care, services and supplies.

***Text or summary was published*** in the July 29, 2015 issue of the Register, I.D. No. HLT-30-15-00006-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: regsqna@health.ny.gov

***Assessment of Public Comment***

The agency received no public comment.

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

### Zika Action Plan; Performance Standards

**I.D. No.** HLT-15-16-00016-P

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

***Proposed Action:*** Addition of section 40-2.24 to Title 10 NYCRR.

***Statutory authority:*** Public Health Law, sections 602, 603 and 619

***Subject:*** Zika Action Plan; Performance Standards.

***Purpose:*** To require local health departments to develop a Zika Action Plan as a condition of State Aid.

***Text of proposed rule:*** Pursuant to the authority vested in the Commissioner of Health by sections 602, 603 and 619 of the Public Health Law, Subpart 40-2 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new section 40-2.24, to be effective upon publication of a Notice of Adoption in the State Register, as follows:

*§ 40-2.24 Zika Action Plan; performance standards.*

*(a) By April 15, 2016, the local health department shall adopt and implement a Zika Action Plan (ZAP), in accordance with guidance to be issued by the Department, and which shall include, but not be limited to, the following activities:*

*(1) for all local health departments:*

*(i) human disease monitoring, response and control; and*

*(ii) education about Zika virus and its prevention; and*

*(2) in addition, for those local health departments identified by the Department as jurisdictions where mosquitoes capable of transmitting the Zika virus are currently located or may be located in the future:*

*(i) enhanced human disease monitoring, response, control;*

*(ii) enhanced education about Zika virus and its prevention;*

*(iii) mosquito trapping, testing and habitat inspections specific to Aedes albopictus, and for such other species as the Department may deem appropriate;*

*(iv) mosquito control; and*

*(v) identification and commitment of appropriate staff available to join State-coordinated rapid response teams, which may be deployed to those areas where the Department determines that there is the potential for transmission of Zika virus by mosquitoes.*

*(b) For so long as determined necessary and appropriate by the Department, local health departments shall update their ZAPs annually, or as directed by the Department, and submit such plans to the Department as part of the Application for State Aid made pursuant to section 40-1.0 of this Part.*

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

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

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

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

***Regulatory Impact Statement***

Statutory Authority:

Article 6 of the Public Health Law (PHL) sets forth the statutory framework for the Department's State Aid program, which partially reimburses local health departments (LHDs) for eligible expenses related to specified public health services. PHL §§ 602(4), 603(1), and 619 authorize the commissioner to promulgate rules and regulations to effectuate the provisions of PHL Article 6. PHL § 619 specifies that such regulations shall include establishing standards of performance for core public health services and for monitoring performance, collecting data, and evaluating the provision of such services.

Legislative Objectives:

PHL Article 6 establishes a program that provides State Aid to LHDs to partially reimburse the cost of core public health services, including communicable disease control and emergency preparedness and response.

Needs and Benefits:

Zika virus is newly emerging as a worldwide threat to public health, and it is spreading widely in the Western Hemisphere. Zika virus has been associated with microcephaly and potentially other birth defects. In particular, there have been reports in Brazil and other countries of microcephaly in infants of mothers who were infected with Zika virus while pregnant. Developing research appears to support this association. Zika virus may also cause Guillain-Barré Syndrome, which can cause muscle weakness and sometimes paralysis. For these reasons, in February 2016, the World Health Organization declared the recent cluster of microcephaly and other neurological abnormalities associated with in utero exposure to the Zika virus a public health emergency of international concern.

Because 80% of cases are asymptomatic, limited control measures exist. Further, although Zika virus is transmitted primarily though the bite of a mosquito, sexual transmission has also been documented.

To date, the Department's Wadsworth Center has conducted tests on samples from more than 2,300 patients, and 55 have been found to be positive for Zika virus. New York has the second highest total of any state in the continental United States after Florida. With the exception of one possible case of sexual transmission, all of these infections have occurred in returning travelers from countries with active mosquito-borne transmission of Zika virus.

In the Western Hemisphere, the Zika virus has been primarily transmitted by a mosquito bite from the species Aedes aegypti. That species is not currently established in New York State; however, a related species of mosquito, Aedes albopictus, is established in New York City, as well as Orange, Nassau, Putnam, Rockland, Suffolk, and Westchester Counties. Additionally, Dutchess, Sullivan, and Ulster Counties are located on the northern border of these affected areas.

Because Aedes albopictus is a tropical mosquito, it has difficulty surviving cold winters, limiting its northward spread, but it has adapted to survive in a broader temperature range. Although researchers are currently uncertain if Aedes albopictus can effectively transmit the Zika virus, New York State must prepare for this contingency.

A primary public health objective is to reduce the risk to developing fetuses of pregnant women in New York State. As such, during the spring, summer and fall, it is important that the Department and LHDs take action to protect the health and safety of all New Yorkers from the Zika virus.

LHDs are integral State partners and play important roles in human disease monitoring, response and control; health education and prevention; and mosquito trapping, testing, habitat inspection, and control. As a result, it is essential that LHDs are prepared to respond to the threat of Zika virus in their communities. Many LHDs may need to respond to travel-associated cases only, because they do not have mosquitoes capable of transmitting Zika virus within their borders. However, those counties that do have mosquitoes capable of transmitting Zika virus generally have large human populations and a high number of travelers to affected areas.

Accordingly, these regulations require that, as a condition of State Aid for public health work, each LHD must adopt and implement a Zika Action Plan (ZAP) that includes specified elements, but that can also be tailored to the situation within its borders. Those counties that do not have Aedes albopictus, or other mosquitoes capable of transmitting the Zika virus, must perform human disease monitoring of travel-associated cases and provide education about Zika virus. For those counties that have, or that are at risk for acquiring, Aedes albopictus, or other mosquitoes capable of transmitting the Zika virus, additional required activities include: enhanced human disease monitoring and disease control; enhanced education about Zika virus and its prevention; mosquito trapping, testing and habitat inspection specific to Aedes albopictus, or other mosquitoes capable of transmitting the Zika virus; mosquito control; and identification and commitment of appropriate staff available to join State-coordinated rapid response teams, which may be deployed to those areas where the Department determines that there is a potential transmission of Zika virus by mosquitoes.

Costs:

Although exact costs cannot be predicted at this time, the Department does not expect compliance to result in significant costs with respect to plan development, which can be achieved using existing staff. Preparation time will vary according to the demographics of the jurisdiction served by the LHD. However, the cost of these personnel hours is expected to be greatly outweighed by the benefit to public health. LHDs may incur costs including salaries and related expenditures associated with ongoing human disease monitoring, response and control, as well as public education activities and programs.

Those LHDs identified by the Department as jurisdictions where mosquitoes capable of transmitting the Zika virus are currently located or may be located in the future may incur additional costs, including salaries and related expenditures associated with mosquito trapping, testing, and habitat inspections as well as expenditures related to mosquito control, to the extent such counties are not already performing these activities.

Local Government Mandates:

Although compliance is not strictly mandatory, the adoption, implementation, and updating of a ZAP is a condition of State Aid for general public health work. As set forth in the regulation, the activities that must be performed to be eligible for State Aid vary by county, and are described in detail below.

By April 15, 2016 all LHDs must electronically transmit a ZAP to the Department that describes how they will conduct timely education, as well as human disease monitoring and reporting of Zika virus.

For those LHDs identified by the Department as jurisdictions where mosquitoes capable of transmitting the Zika virus are currently located or may be located in the future, their ZAP must include processes and procedures for:

(1) enhanced human disease monitoring, response and control;

(2) enhanced education to the public and health care providers regarding the possibility of local Zika virus transmission and the risk to pregnant women;

(3) mosquito trapping, testing, and habitat inspections;

(4) mosquito control plans tailored to local needs; and

(5) names, roles and contact information of LHD and/or county staff that will join the state-coordinated rapid response teams.

Paperwork:

This regulation requires preparation of a ZAP to respond to an emergency threat to public health.

Duplication:

No relevant rules or legal requirements of the Federal and State governments duplicate, overlap or conflict with this rule.

Alternatives:

The alternative would be to continue a situation in which there is inconsistent approaches across the State with respect to monitoring and control of the spread of the Zika virus.

Federal Standards:

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

Compliance Schedule:

These permanent regulations will be effective upon publication of a Notice of Adoption in the State Register. LHDs must adopt and implement their ZAPs by April 15, 2016, consistent with the emergency regulations issued on March 17, 2016.

***Regulatory Flexibility Analysis***

Effect on Small Business and Local Governments:

Local health departments (LHDs) will be required to develop Zika Action Plans (ZAPs).

Compliance Requirements:

These regulations apply exclusively to local governments. Accordingly, please refer to the Regulatory Impact Statement.

Professional Services:

In response to the mosquito control plan requirement, those LHDs identified by the Department as jurisdictions where mosquitoes capable of transmitting the Zika virus are currently located, or may be located in the future, may need to obtain the services of a commercial pesticide applicator.

Capital Costs and Annual Costs of Compliance:

The Department does not expect compliance to result in significant costs. Compliance can be achieved using existing staff. Preparation time will vary according to the demographics of the jurisdiction served by the LHD. However, the cost of these personnel hours is expected to be greatly outweighed by the benefit to public health.

Economic and Technological Feasibility:

The proposed regulatory changes will not impose any new technology requirements or costs, or otherwise pose feasibility concerns.

Minimizing Adverse Impact:

No adverse impacts have been identified.

Small Business and Local Government Input:

The Department has been in contact with LHDs regarding the emergency regulations, upon which these permanent regulations are based.

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 under the proposed regulation. Zika virus represents a significant threat to public health. Further, the emergency regulations, effective March 17, 2016, provided time for LHDs to adopt and implement their ZAPs. Hence, no cure period is necessary.

***Rural Area Flexibility Analysis***

A Rural Area Flexibility Analysis for these amendments is not being submitted because amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

***Job Impact Statement***

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

## REGULATORY IMPACT STATEMENT, REGULATORY FLEXIBILITY ANALYSIS, RURAL AREA FLEXIBILITY ANALYSIS AND/OR JOB IMPACT STATEMENT

**Zika Action Plan; Performance Standards**

**I.D. No.** HLT-14-16-00001-E

***This regulatory impact statement, regulatory flexibility analysis, rural area flexibility analysis and/or job impact statement*** pertain(s) to a notice of Emergency rule making, I.D. No. HLT-14-16-00001-E, printed in the *State Register* on April 6, 2016.

***Regulatory Impact Statement***

Statutory Authority:

Article 6 of the Public Health Law (PHL) sets forth the statutory framework for the Department's State Aid program, which partially reimburses local health departments (LHDs) for eligible expenses related to specified public health services. PHL §§ 602(4), 603(1), and 619 authorize the commissioner to promulgate rules and regulations to effectuate the provisions of PHL Article 6. PHL § 619 specifies that such regulations shall include establishing standards of performance for core public health services and for monitoring performance, collecting data, and evaluating the provision of such services.

Legislative Objectives:

PHL Article 6 establishes a program that provides State Aid to LHDs to partially reimburse the cost of core public health services, including communicable disease control and emergency preparedness and response.

Needs and Benefits:

Zika virus is newly emerging as a worldwide threat to public health, and it is spreading widely in the Western Hemisphere. Zika virus has been associated with microcephaly and potentially other birth defects. In particular, there have been reports in Brazil and other countries of microcephaly in infants of mothers who were infected with Zika virus while pregnant. Developing research appears to support this association. Zika virus may also cause Guillain-Barré Syndrome, which can cause muscle weakness and sometimes paralysis. For these reasons, in February 2016, the World Health Organization declared the recent cluster of microcephaly and other neurological abnormalities associated with in utero exposure to the Zika virus a public health emergency of international concern.

Because 80% of cases are asymptomatic, limited control measures exist. Further, although Zika virus is transmitted primarily though the bite of a mosquito, sexual transmission has also been documented.

To date, the Department's Wadsworth Center has conducted tests on samples from more than 2,300 patients, and 55 have been found to be positive for Zika virus. New York has the second highest total of any state in the continental United States after Florida. With the exception of one possible case of sexual transmission, all of these infections have occurred in returning travelers from countries with active mosquito-borne transmission of Zika virus.

In the Western Hemisphere, the Zika virus has been primarily transmitted by a mosquito bite from the species Aedes aegypti. That species is not currently established in New York State; however, a related species of mosquito, Aedes albopictus, is established in New York City, as well as Orange, Nassau, Putnam, Rockland, Suffolk, and Westchester Counties. Additionally, Dutchess, Sullivan, and Ulster Counties are located on the northern border of these affected areas.

Because Aedes albopictus is a tropical mosquito, it has difficulty surviving cold winters, limiting its northward spread, but it has adapted to survive in a broader temperature range. Although researchers are currently uncertain if Aedes albopictus can effectively transmit the Zika virus, New York State must prepare for this contingency.

A primary public health objective is to reduce the risk to developing fetuses of pregnant women in New York State. As such, during the spring, summer and fall, it is important that the Department and LHDs take action to protect the health and safety of all New Yorkers from the Zika virus.

LHDs are integral State partners and play important roles in human disease monitoring, response and control; health education and prevention; and mosquito trapping, testing, habitat inspection, and control. As a result, it is essential that LHDs are prepared to respond to the threat of Zika virus in their communities. Many LHDs may need to respond to travel-associated cases only, because they do not have mosquitoes capable of transmitting Zika virus within their borders. However, those counties that

do have mosquitoes capable of transmitting Zika virus generally have large human populations and a high number of travelers to affected areas.

Accordingly, these regulations require that, as a condition of State Aid for public health work, each LHD must adopt and implement a Zika Action Plan (ZAP) that includes specified elements, but that can also be tailored to the situation within its borders. Those counties that do not have Aedes albopictus, or other mosquitoes capable of transmitting the Zika virus, must perform human disease monitoring of travel-associated cases and provide education about Zika virus. For those counties that have, or that are at risk for acquiring, Aedes albopictus, or other mosquitoes capable of transmitting the Zika virus, additional required activities include: enhanced human disease monitoring and disease control; enhanced education about Zika virus and its prevention; mosquito trapping, testing and habitat inspection specific to Aedes albopictus, or other mosquitoes capable of transmitting the Zika virus; mosquito control; and identification and commitment of appropriate staff available to join State-coordinated rapid response teams, which may be deployed to those areas where the Department determines that there is a potential transmission of Zika virus by mosquitoes.

Costs:

Although exact costs cannot be predicted at this time, the Department does not expect compliance to result in significant costs with respect to plan development, which can be achieved using existing staff. Preparation time will vary according to the demographics of the jurisdiction served by the LHD. However, the cost of these personnel hours is expected to be greatly outweighed by the benefit to public health. LHDs may incur costs including salaries and related expenditures associated with ongoing human disease monitoring, response and control, as well as public education activities and programs.

Those LHDs identified by the Department as jurisdictions where mosquitoes capable of transmitting the Zika virus are currently located or may be located in the future may incur additional costs, including salaries and related expenditures associated with mosquito trapping, testing, and habitat inspections as well as expenditures related to mosquito control, to the extent such counties are not already performing these activities.

Local Government Mandates:

Although compliance is not strictly mandatory, the adoption, implementation, and annual updating of a ZAP is a condition of State Aid for general public health work. As set forth in the regulation, the activities that must be performed to be eligible for State Aid vary by county, and are described in detail below.

By April 15, 2016 all LHDs must electronically transmit a ZAP to the Department that describes how they will conduct timely education, as well as human disease monitoring and reporting of Zika virus.

For those LHDs identified by the Department as jurisdictions where mosquitoes capable of transmitting the Zika virus are currently located or may be located in the future, their ZAP must include processes and procedures for:

(1) enhanced human disease monitoring, response and control;

(2) enhanced education to the public and health care providers regarding the possibility of local Zika virus transmission and the risk to pregnant women;

(3) mosquito trapping, testing, and habitat inspections;

(4) mosquito control plans tailored to local needs; and

(5) names, roles and contact information of LHD and/or county staff that will join the state-coordinated rapid response teams.

Paperwork:

This regulation requires preparation of a ZAP to respond to an emergency threat to public health.

Duplication:

No relevant rules or legal requirements of the Federal and State governments duplicate, overlap or conflict with this rule.

Alternatives:

The alternative would be to continue a situation in which there is inconsistent approaches across the State with respect to monitoring and control of the spread of the Zika virus.

Federal Standards:

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

Compliance Schedule:

The regulation became effective upon filing the Emergency Adoption with the Department of State on March 17, 2016. However, LHDs will have until April 15, 2016 to adopt and implement the ZAP.

***Regulatory Flexibility Analysis***

Effect on Small Business and Local Governments:

Local health departments (LHDs) will be required to develop Zika Action Plans (ZAPs).

Compliance Requirements:

These regulations apply exclusively to local governments. Accordingly, please refer to the Regulatory Impact Statement.

Professional Services:

In response to the mosquito control plan requirement, those LHDs identified by the Department as jurisdictions where mosquitoes capable of transmitting the Zika virus are currently located, or may be located in the future, may need to obtain the services of a commercial pesticide applicator.

Capital Costs and Annual Costs of Compliance:

The Department does not expect compliance to result in significant costs. Compliance can be achieved using existing staff. Preparation time will vary according to the demographics of the jurisdiction served by the LHD. However, the cost of these personnel hours is expected to be greatly outweighed by the benefit to public health.

Economic and Technological Feasibility:

The proposed regulatory changes will not impose any new technology requirements or costs, or otherwise pose feasibility concerns.

Minimizing Adverse Impact:

No adverse impacts have been identified.

Small Business and Local Government Input:

Because of the emergency nature of these regulations, local government input has not been solicited.

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 under the proposed regulation. Zika virus represents a significant threat to public health, and the regulation provides the appropriate time for LHDs to adopt and implement their ZAPs. Hence, no cure period is necessary.

***Rural Area Flexibility Analysis***

A Rural Area Flexibility Analysis for these amendments is not being submitted because amendments will not impose any adverse impact or significant reporting, record keeping or other compliance requirements on public or private entities in rural areas. There are no professional services, capital, or other compliance costs imposed on public or private entities in rural areas as a result of the proposed amendments.

***Job Impact Statement***

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

# Office of Mental Health

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

**Telepsychiatry Services**

**I.D. No.** OMH-15-16-00001-P

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

***Proposed Action:*** Addition of Part 596; and repeal of section 599.17 of Title 14 NYCRR.

***Statutory authority:*** Mental Hygiene Law, sections 7.09 and 31.04

***Subject:*** Telepsychiatry Services.

***Purpose:*** Establish basic standards to approve telepsychiatry in certain OMH-licensed programs; repeal unnecessary existing provisions.

***Text of proposed rule:*** 1. Section 599.17 of Title 14 NYCRR is repealed.

2. A new Part 596 is added to Title 14 NYCRR to read as follows:

*Part 596*

*TELEPSYCHIATRY SERVICES*

*§ 596.1 Background and intent.*

*(a) Telepsychiatry is defined as the use of two-way real-time interactive audio and video equipment to provide and support mental health services at a distance. Such services do not include a telephone conversation, electronic mail message or facsimile transmission between a clinic and a recipient, or a consultation between two professional or clinical staff.*

*(b) Telepsychiatry can be beneficial to a mental health care delivery system, particularly when on-site services are not available or would be delayed because of distance, location, time of day, or availability of resources. The benefits of telespsychiatry can include improved access to care, provision of care locally in a more timely fashion, improved continuity of care, improved treatment compliance, and coordination of care.*

*(c) The Office of Mental Health supports the use of telepsychiatry as an appropriate component of the mental health delivery system to the extent that it is in the best interests of the person served and is performed in compliance with applicable federal and state laws and regulations and the provisions of this Part in order to address legitimate concerns about privacy, security, patient safety, and interoperability.*

*§ 596.2 Legal base.*

*(a) Section 7.09 of the Mental Hygiene Law grants the Commissioner of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.*

*(b) Sections 31.02 and 31.04 of the Mental Hygiene Law authorize the Commissioner of Mental Health to set standards of quality and adequacy of facilities, equipment, personnel, services, records and programs for the rendition of services for persons diagnosed with mental illness, pursuant to an operating certificate.*

*§ 596.3 Applicability.*

*(a) The provisions of this Part shall apply to any provider licensed pursuant to Article 31 of the Mental Hygiene Law who has been authorized by the Office under this Part to include the use of telepsychiatry as a means of rendering licensed services, provided, however, that telepsychiatry shall not be utilized in Personalized Recovery Oriented Services (PROS) programs subject to Part 512 of this Title or Assertive Community Treatment (ACT) programs approved pursuant to Part 551 of this Title.*

*(b) The provisions of this Part do not apply to telehealth services subject to regulations of the Department of Health at 18 NYCRR Section 505.38, provided, however, nothing in this Part shall be deemed to restrict the ability of providers under the jurisdiction of the Office from contracting for telehealth services delivered in accordance with such regulations.*

*§ 596.4 Definitions. For purposes of this Part:*

*(a) Distant or "hub" site means the distant location at which the practitioner rendering the telepsychiatry service is located at the time the services are provided.*

*(b) Encounter means a telepsychiatry event involving patient contact, whereby the care of the patient is the direct responsibility of both the originating (spoke site) provider and the distant (hub site) provider.*

*(c) Encryption means a system of encoding data on a Web page or email where the information can only be retrieved and decoded by the person or computer system authorized to access it.*

*(d) Hospital means an inpatient facility licensed by the Office under Article 31 of the Mental Hygiene Law or a ward, wing, unit or other part of a hospital as defined in Article 28 of the Public Health Law which is operated as a part of such hospital for the purpose of providing services for persons with mental illness pursuant to an operating certificate issued by the Office.*

*(e) Office means the Office of Mental Health.*

*(f) Originating or "spoke" site means the site where the patient is physically located at the time mental health services are delivered to her/him by means of telepsychiatry.*

*(g) Nurse practitioner in psychiatry means a person currently certified as a nurse practitioner with an approved specialty area of psychiatry (NPP) by the New York State Education Department or who possesses a permit from the New York State Education Department.*

*(h) Physician means a psychiatrist currently licensed to practice medicine in New York State who (i) is a diplomat of the American Board of Psychiatry and Neurology or is eligible to be certified by that Board, or (ii) is certified by the American Osteopathic Board of Neurology and Psychiatry or is eligible to be certified by that Board.*

*(i) Practitioner means a physician or nurse practitioner in psychiatry who is providing telepsychiatry services from a distant or hub site in accordance with the provisions of this Part.*

*(j) Provider of services means a provider of mental health services licensed pursuant to Article 31 of the Mental Hygiene Law.*

*(k) Qualified mental health professional means a practitioner possessing a license or a permit from the New York State Education Department who is qualified by credentials, training, and experience to provide direct services related to the treatment of mental illness and shall include physicians and nurse practitioner in psychiatry, as defined in subdivisions (e) and (f) of this Section, as well as the following:*

*(1) Creative arts therapist: a person currently licensed as a creative arts therapist by the New York State Education Department or who possesses a creative arts therapist permit from the New York State Education Department.*

*(2) Licensed practical nurse: a person currently licensed as a licensed practical nurse by the New York State Education Department or who possesses a licensed practical nurse permit from the New York State Education Department.*

*(3) Licensed psychoanalyst: a person currently licensed as a psychoanalyst by the New York State Education Department or who possesses a permit from the New York State Education Department.*

*(4) Licensed psychologist: a person currently licensed as a psychologist by the New York State Education Department, or who possesses a permit from the New York State Education Department and who possesses a doctoral degree in psychology, or an individual who has obtained at least a master's degree in psychology who works in a federal, state, county or municipally operated clinic.*

*(5) Marriage and family therapist: a person currently licensed as a marriage and family therapist by the New York State Education Department or who possesses a permit from the New York State Education Department.*

*(6) Mental health counselor: a person currently licensed as a mental health counselor by the New York State Education Department or who possesses a permit from the New York State Education Department.*

*(7) Nurse practitioner: a person currently certified as a nurse practitioner by the New York State Education Department or who possesses a permit from the New York State Education Department.*

*(8) Physician: a person currently licensed as a physician by the New York State Education Department or who possesses a permit from the New York State Education Department.*

*(9) Physician assistant: a person currently registered as a physician assistant by the New York State Education Department or who possesses a permit from the New York State Education Department.*

*(10) Registered professional nurse: a person currently licensed as a registered professional nurse by the New York State Education Department or who possesses a permit from the New York State Education Department.*

*(11) Social worker: a person who is either currently licensed as a licensed master social worker or as a licensed clinical social worker (LCSW) by the New York State Education Department, or who possesses a permit from the New York State Education Department to practice and use the title of either licensed master social worker or licensed clinical social worker.*

*(l) Telecommunication system means an interactive telecommunication system that is used to transmit data between the originating/ spoke and distant/ hub sites.*

*(m) Telepsychiatry means the use of two-way real-time interactive audio and video to provide and support clinical psychiatric care at a distance. Such services do not include a telephone conversation, electronic mail message, or facsimile transmission between a provider and a patient or a consultation between two physicians or nurse practitioners, or other staff, although these activities may support telepsychiatry services.*

*§ 596.5 Approval to Utilize Telepsychiatry Services.*

*(a) A provider of services must obtain prior written approval of the Office before utilizing telepsychiatry services.*

*(b) Approval shall be based on receipt by the Office of the following:*

*(1) Sufficient written demonstration that telepsychiatry will be used for assessment and treatment services consistent with the provisions of this Part, and that the services are being requested because they are necessary to improve the quality of care of individuals receiving services;*

*(2) Submission of a written plan to provide telepsychiatry services that satisfies the provisions of this Part and includes:*

*(i) confidentiality protections for persons who receive telepsychiatry services, including measures to ensure the security of the electronic transmission;*

*(ii) informed consent of persons who receive telepsychiatric services;*

*(iii) procedures for handling emergencies with persons who receive telepsychiatric services; and*

*(iv) contingency procedures to use when the delivery of telepsychiatric service is interrupted, or when the transmission of the two-way interactions is deemed inadequate for the purpose of service provision.*

*(c) Requests for approval to offer telepsychiatry services shall be submitted to the Field Office serving the area in which the originating/ spoke site is located. If both sites are licensed by the Office, then the request for approval shall be submitted by the originating site. Such Field Office may make an on-site visit to either or both sites prior to issuing approval.*

*(d) The Office shall provide its approval to utilize telepsychiatry services in writing. The provider of services must retain a copy of the approval document and shall make it available for inspection upon request of the Office.*

*(e) Failure to adhere to the requirements set forth in this Part may be grounds for revocation of such approval. In the event that the Office determines that approval to utilize telepsychiatry services must be revoked, it will notify the provider of services of its decision in writing. The provider of services may request an informal administrative review of such decision.*

*(1) The provider of services must request such review in writing within 15 days of the date it receives notice of revocation of approval to utilize telepsychiatry services to the Commissioner or designee. The request shall state specific reasons why such provider considers the revo-*

*cation of approval incorrect and shall be accompanied by any supporting evidence or arguments.*

*(2) The Commissioner or designee shall notify the provider of services, in writing, of the results of the informal administrative review within 20 days of receipt of the request for review. Failure of the Commissioner or designee to respond within that time shall be considered confirmation of the revocation of deemed status.*

*(3) The Commissioner's determination after informal administrative review shall be final and not subject to further administrative review.*

*§ 596.6 Requirements for Telepsychiatry Services.*

*(a) General requirements.*

*(1) The distant/ hub site practitioner must:*

*(i) possess a current, valid license to practice in New York State;*

*(ii) directly render the telepsychiatry service;*

*(iii) abide by the laws and regulations of the State of New York including the New York State Mental Hygiene Law and any other law, regulation, or policy that governs the assessment or treatment service being provided; and*

*(iv) exercise the same standard of care as in-house delivered services; and*

*(v) be enrolled in the Medicaid program.*

*(2) The distant/hub practitioner and originating/spoke site provider of service must not be terminated, suspended, or barred from the Medicaid or Medicare program.*

*(3) If the originating/spoke site is a hospital, the distant/hub practitioner must be credentialed and privileged by such hospital, consistent with applicable accreditation standards.*

*(4) Telepsychiatry services must be rendered using an interactive telecommunication system.*

*(5) A notation must be made in the clinical record that indicates that the service was provided via telepsychiatry and which specifies the time the service was started and the time it ended.*

*(6) Telepsychiatry services provided to patients under age 18 may include staff that are qualified mental health professionals, as such term is defined in this Part, in the room with the patient. Such determinations shall be clinically based, consistent with clinical guidelines issued by the Office.*

*(7) For the purposes of this Part, telepsychiatry services shall be considered face-to-face contacts when the service is delivered in accordance with the provisions of the plan approved by the Office pursuant to Section 596.5 of this Part.*

*(8) Culturally competent interpreter services shall be provided in the patient's preferred language when the patient and distant/hub practitioners do not speak the same language.*

*(9) The practitioner providing telepsychiatry services at a distant/hub site shall be considered an active part of the patient's treatment team and shall be available for discussion of the case or for interviewing family members and others, as the case may require. Such practitioner shall prepare appropriate progress notes and securely forward them to the originating/spoke provider as a condition of reimbursement.*

*(10) Telepsychiatry services shall not be used:*

*(i) for purposes of ordering medication over objection or restraint or seclusion, as defined in section 526.4 of this Title; or*

*(ii) to satisfy any specific statutory examination, evaluation or assessment requirement necessary for the involuntary removal from the community, or involuntary retention in a hospital pursuant to any of the provisions of Article 9 of the Mental Hygiene Law. Physicians conducting such examinations, evaluations or assessments may only utilize telepsychiatry on a consultative basis.*

*(b) Protocols and Procedures. A provider of services approved to utilize telepsychiatry services must have written protocols and procedures that address the following:*

*(1) Informed Consent: Protocols must exist to afford persons receiving services with the opportunity to provide informed consent to participate in any such services by utilizing telepsychiatry. Patients shall be advised of their right to refuse these services and to be apprised of the alternatives to telepsychiatry services, including any delays in service, need to travel, or risks associated with not having the services provided by telepsychiatry.*

*(i) The patient must be provided with basic information about telepsychiatry and shall provide his or her informed consent to participate in services utilizing this technology.*

*(ii) For patients under age 18, such information shall be shared with and informed consent obtained from the patient's parent or guardian.*

*(iii) The patient has the right to refuse to participate in telepsychiatry services, in which case evaluations must be conducted in-person by appropriate clinicians.*

*(iv) Telepsychiatry sessions shall not be recorded without the patient's consent.*

*(2) Confidentiality: Protocols and procedures should be maintained as required by Mental Hygiene Law Section 33.13 and the Health Insurance Portability and Accountability Act (HIPAA) at 45 CFR Parts 160 and 164. Such protocols shall ensure that all current confidentiality requirements and protections that apply to written clinical records shall apply to services delivered by telecommunications, including the actual transmission of the service, any recordings made during the time of transmission, and any other electronic records.*

*(i) All confidentiality requirements that apply to written medical records shall apply to services delivered by telecommunications, including the actual transmission of the service, any recordings made during the time of transmission, and any other electronic records.*

*(ii) The spaces occupied by the patient at the originating/spoke site and the practitioner at the distant/hub site must meet the minimum standards for privacy expected for patient-clinician interaction at a single Office of Mental Health licensed location.*

*(3) Security of Electronic Transmission: All telepsychiatry services must be performed on dedicated secure transmission linkages that meet minimum federal and state requirements, including but not limited to 45 C.F.R. Parts 160 and 164 (HIPAA Security Rules), and which are consistent with guidelines of the Office. Transmissions must employ acceptable authentication and identification procedures by both the sender and the receiver.*

*(4) Psychiatric emergencies: Protocols should exist to address psychiatric emergencies, which may override the right to confidentiality to require the presence of others if, for instance, an individual receiving services is suicidal, homicidal, dissociated, or acutely psychotic during the evaluation or treatment service. In general this individual should not be managed via telepsychiatry without qualified mental health professionals present at the originating/spoke site, unless there are no adequate alternatives and immediate intervention is deemed essential for patient safety. All telepsychiatry sites must have a written procedure detailing the availability of in-person assessments by a physician or nurse practitioner in an emergency situation.*

*(5) Prescribing medications via telepsychiatry: Procedures for prescribing medications through telepsychiatry must be identified and must be in accordance with applicable New York State and federal regulations.*

*(6) Procedures for first evaluations for involuntary commitments: Under New York State law, physicians must conduct first evaluations for involuntary commitments of individuals. If these evaluators want additional consultation before rendering their decision, they may obtain consultation from psychiatrists via telepsychiatry. The responsibility for signing the commitment papers remains with the physician who actually conducted the evaluation of the individual at the facility, not the psychiatrist who provided the telepsychiatric consultation.*

*(7) Patient rights: Patient rights policies must ensure that each individual receiving telepsychiatry services:*

*(i) is informed and made aware of the role of the practitioner at the distant/hub site, as well as qualified professional staff at the originating/spoke site who are going to be responsible for follow-up or on-going care;*

*(ii) is informed and made aware of the location of the distant/hub site and all questions regarding the equipment, the technology, etc., are addressed;*

*(iii) has the right to have appropriately trained staff immediately available to him/her while receiving the telepsychiatry service to attend to emergencies or other needs; and*

*(iv) has the right to be informed of all parties who will be present at each end of the telepsychiatry transmission.*

*(8) Quality of Care: All telepsychiatry sites shall have established written quality of care protocols to ensure that the services meet the requirements of New York state and federal laws and established patient care standards. A review of telepsychiatry services shall be included in the provider's quality management process.*

*(9) Contingency Plan: All telepsychiatry sites must have a written procedure detailing the contingency plan when there is a failure of the transmission or other technical difficulties that render the service undeliverable.*

*(c) Guidelines of the Office. The Office shall develop guidelines to assist providers in complying with the provisions of this Part and in achieving treatment goals through the use of telepsychiatry. The Office shall post such guidelines on its public website.*

*§ 596.7 Reimbursement for Telepsychiatry Services.*

*(a) The originating/spoke site where the patient is admitted is the only site authorized to bill Medicaid for telepsychiatry services.*

*(b) Under the Medicaid program, telepsychiatry services are covered when medically necessary and when provided under the following circumstances:*

*(1) the person receiving services is physically located at the originating/spoke site and the practitioner is physically located at the distant/hub site;*

*(2) the person receiving services is present at the originating/spoke site during the telepsychiatry encounter or consultation;*

*(3) the physician/nurse practitioner is not conducting the telepsychiatry encounter consultation at the originating/spoke site;*

*(4) the request for telepsychiatry services and the rationale for the request are documented in the individual's clinical record;*

*(5) the clinical record includes documentation that the telepsychiatry encounter or consultation occurred and that the results and findings were communicated to the requesting provider of services;*

*(6) the practitioner at the distant/hub site is:*

*(i) licensed in New York State;*

*(ii) practicing within his/her scope of specialty practice;*

*(iii) enrolled in New York Medicaid;*

*(iv) affiliated with the originating/spoke site facility; and*

*(v) if the originating/spoke site is a hospital, is credentialed and privileged at the originating/spoke site facility, and is in compliance with regulations of the Department of Health, where applicable.*

*(c) If the person receiving services is not present during the provision of the telepsychiatry service, the service is not eligible for Medicaid reimbursement and remains the responsibility of the originating/spoke facility.*

*(d) The following interactions do not constitute reimbursable telepsychiatry services;*

*(1) telephone conversations;*

*(2) video cell phone interactions;*

*(3) e-mail messages.*

*(e) The originating/spoke site may bill for administrative expenses only when a telepsychiatric connection is being provided and a physician or nurse practitioner is not present with the patient at the time of the encounter.*

*(f) Reimbursement for services provided via telepsychiatry must be in accordance with the rates and fees established by the Office and approved by the Director of the Budget.*

*(g) If all or part of a telepsychiatry service is undeliverable due to a failure of transmission or other technical difficulty, reimbursement shall not be provided.*

*§ 596.8 Contracts for the Provision of Telepsychiatry Services.*

*(a) Nothing in this Part shall be deemed to prohibit a provider of services from providing assessment and treatment services, consistent with applicable regulations of the Office, as a distant/hub site via telepsychiatry pursuant to contract with an originating/spoke site provider that is not licensed or operated by the Office, but which is enrolled in the Medicaid program.*

*(b) Although prior approval of the Office is not required before entering into such contracts, notice of such contracts or agreements shall be provided by the distant/hub provider of services within 30 days after execution of such contract to the Field Office serving the area where such provider of services is located.*

*(c) Reimbursement for telepsychiatry service shall be pursuant to such contracts and are not separately billable by the distant/hub site.*

*(d) Providers of service shall not engage in distant/hub telepsychiatric services that violate the provisions of paragraph (10) of subdivision (a) of Section 596.6 of this Part.*

***Text of proposed rule and any required statements and analyses may be obtained from:*** Kim Breen, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229, (518) 474-1331, email: regs@omh.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: Sections 7.09 and 31.04 of the Mental Hygiene Law grant the Commissioner of Mental Health the authority and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

2. Legislative objectives: Articles 7 and 31 of the Mental Hygiene Law reflect the Commissioner's authority to establish regulations regarding mental health programs.

3. Needs and benefits: Technology has made it possible to increase access to health care, including behavioral health care, by utilizing secure interactive communications. Telepsychiatry is the use of electronic communication and information technologies to provide or support clinical psychiatric care at a distance. Telepsychiatry is appropriate in situations where on-site services are not available due to distance, location, time of day, or availability of resources. The many advantages offered through telepsychiatry have led to a rapid expansion of such programs across New York State and the rest of the country. While clinical practice standards are developing along with this proliferation, OMH regulations currently address the use of telepsychiatry only in OMH licensed clinics. These amendments are intended to establish basic standards and parameters to approve the use of telepsychiatry by providers licensed pursuant to Article 31 of the Mental Hygiene Law that choose to offer this services; however, telepsychiatry shall not be utilized in Personalized Recovery Oriented Services (PROS) programs subject to Part 512 of this Title or Assertive Community Treatment (ACT) programs approved pursuant to Part 551 of this Title. This regulatory proposal also serves to repeal the telepsychiatry provisions found in 14 NYCRR Section 599.17 because they will be unnecessary upon promulgation of these amendments.

4. Costs: Costs to implement telepsychiatry, in general, are significantly offset by the cost savings that can result from its use, in terms of commuting time, cost of fuel, losses due to "no show" appointments, and number of appointments that can be booked per day. Specifically:

(a) cost to State government: There are no new costs to State government as a result of these amendments.

(b) cost to local government: There are no new costs to local government as a result of these amendments.

(c) cost to regulated parties: For providers that wish to offer these services (which includes any provider licensed pursuant to Article 31 of the Mental Hygiene Law with the exception of PROS and ACT program providers), the minimum requirements for an Internet-based solution are approximately $120 for a Webcam and then a WebEx end user license. Software licensing cost can vary, depending on the number of users at a site.

5. Local government mandates: The provision of this service is not required. These regulatory amendments will not involve or result in any additional imposition of duties or responsibilities upon county, city, town, village, school, or fire districts.

6. Paperwork: For providers that wish to provide this service, written plans must be submitted for approval by the Office.

7. Duplication: These regulatory amendments do not duplicate existing State or federal requirements.

8. Alternatives: OMH has been granting regulatory waivers in accordance with 14 NYCRR Part 501 to providers that have wished to provide telepsychiatry services. OMH could continue to grant such waivers on an ad hoc basis; however, given the interest in, and advantages to, this service, OMH wishes to advance these amendments to establish basic standards for the provision of telepsychiatry services to ensure quality and efficacy.

9. Federal standards: There are currently no federal standards specific to the provision of in-state telepsychiatry. However, the regulatory amendments conform to the minimum standards of the federal government with respect to the privacy and security of transmissions of protected health information (45 C.F.R. Parts 160 and 164, or HIPAA). In addition, the regulatory amendments are consistent with the definition of "telemedicine" issued by the Centers for Medicare and Medicaid Services (42 U.S.C. §§ 1395m(m)(1), 42 C.F.R. § 410.78(a)(3)).

10. Compliance schedule: The amendments would be effective upon adoption.

***Regulatory Flexibility Analysis***

The amendments to 14 NYCRR Part 596 are intended to establish basic standards and parameters to approve the use of telepsychiatry in certain OMH-licensed programs that choose to offer this service. The provision of telepsychiatry services is not required, and the amendments themselves do not create new local government mandates. As a result of this rule making, the regulations with respect to telepsychiatry will be located in a new Part, specifically 14 NYCRR Part 596; therefore, the existing telepsychiatry provisions in 14 NYCRR Section 599.17 must be repealed to avoid confusion to providers of service. As there will be no adverse economic impact on small businesses or local governments as a result of these amendments, a regulatory flexibility analysis is not submitted with this notice.

***Rural Area Flexibility Analysis***

The amendments to 14 NYCRR Part 596 are intended to establish basic standards and parameters to approve the use of telepsychiatry in certain OMH-licensed programs that choose to offer this service. The provision of telepsychiatry services is not required. As a result of this rule making, the regulations with respect to telepsychiatry will be located in a new Part, specifically 14 NYCRR Part 596; therefore, the existing telepsychiatry provisions in 14 NYCRR Section 599.17 must be repealed to avoid confusion to providers of service. The proposed rule will not impose any adverse economic impact on rural areas; therefore, a Rural Area Flexibility Analysis is not submitted with this notice.

***Job Impact Statement***

The amendments to 14 NYCRR Part 596 are intended to establish basic standards and parameters to approve the use of telepsychiatry in certain OMH-licensed programs that choose to offer this service. The provision of telepsychiatry services is not required. As a result of this rule making,

the regulations with respect to telepsychiatry will be located in a new Part, specifically 14 NYCRR Part 596; therefore, the existing telepsychiatry provisions in 14 NYCRR Section 599.17 must be repealed to avoid confusion to providers of service. Because it is evident from the subject matter that there will be no adverse impact on jobs and employment opportunities as a result of these amendments, a Job Impact Statement is not submitted with this notice.

# Metropolitan Transportation Agency

## NOTICE OF ADOPTION

**MTA Bus Company - Rules and Regulations**

**I.D. No.** MTA-50-15-00005-A
**Filing No.** 355
**Filing Date:** 2016-03-29
**Effective Date:** 2016-04-13

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

***Action taken:*** Addition of Part 1044 to Title 21 NYCRR.

***Statutory authority:*** Public Authorities Law, section 1265

***Subject:*** MTA Bus Company - Rules and Regulations.

***Purpose:*** Regulate conduct on MTA buses and facilities to enhance safety and protect employees, customers, bus facilities and the public.

***Text or summary was published*** in the December 16, 2015 issue of the Register, I.D. No. MTA-50-15-00005-P.

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

***Text of rule and any required statements and analyses may be obtained from:*** Paige Graves, MTA Bus, 2 Broadway, New York, NY 10004, (646) 252-3754, email: Paige.Graves@nyct.com

***Initial Review of Rule***

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2019, which is no later than the 3rd year after the year in which this rule is being adopted.

***Assessment of Public Comment***

The MTA Bus Company ("MTABC") published a Notice of Proposed Rule Making in the New York State Register on December 16, 2015. The Notice of Proposed Rule Making entitled "Rules and Regulations Governing the Conduct and Safety of the Public" sets forth rules of conduct to promote safety; to facilitate the proper use of MTABC transportation facilities; and to protect MTABC transportation facilities, its customers, employees and the public ("Proposed Rules"). Pursuant to State Administrative Procedure Act (S.A.P.A) Section 202(1)(a), MTABC accepted public comments for forty-five days after the Notice of Proposed Rule Making was published in the New York State Register.

During the forty-five day period, MTABC received six comments. The comments suggested the following revisions to the Proposed Rules: (1) include emotional support animals in the definition of service animals; (2) exclude eating and drinking from paid areas; (3) extend the definition of farecard to include radio-frequency identification card; (4) remove photography restrictions; (5) remove restriction that passengers refrain from blocking the free movement of others by putting their feet or item on the seat.

The comments and the MTABC's responses are summarized below:

1. Emotional Support Animals

Two commenters suggested that MTABC include emotional support animal in the definition of "service animals." One commenter stated that prohibiting emotional support service animals violates the Americans with Disabilities Act ("ADA"). Another commenter suggested that excluding emotional support animals may make it more difficult for veterans with PTSD to use public transportation. The commenters' suggestions explicitly contradicts the Americans with Disabilities Act ("ADA") and the respective U.S. Department of Justice's guidance material.

First, the Proposed Rules define "service animal" as:

"a guide dog, signal dog, or other animal individually trained to perform tasks for the benefit of a person with a disability that such person is unable to perform due to such disability, such as guiding persons with impaired vision, alerting persons with impaired hearing to sounds, pulling a wheelchair, retrieving dropped items or providing rescue assistance. The term service animal does not include a therapy animal or animal used for emotional support." (Emphasis added)

The abovementioned definition is consistent with 28 CFR 36.104. § 36.104 explains that "…the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks…" under the definition of "service animal."

Second, to further clarify the work and tasks that a "service animal" provides, the U.S. Department of Justice's guidance material explains that:

"…work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person's disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA." U.S. Department of Justice: ADA Requirements, http://www.ada.gov/service_animals_2010.htm (last visited Feb. 23, 2016).

Finally, based on the foregoing, the definition of service animal in the Proposed Rules is consistent with the definition set forth in the 28 CFR 36.104 and the U.S. Department of Justice's guidance material.

2. Exclude Eating And Drinking From Paid Areas

One commenter suggested that customers should be prohibited from eating and drinking in paid areas to save money on cleaning costs. The commenter further suggested that the cost of enforcing the rule should be covered by rule violators. This suggestion is outside the scope of the Proposed Rules. The Proposed Rules are established to promote safety.

3. Farecard Definition

One commenter suggested that MTABC extends the definition of farecard from magnetically encoded cards to include radio-frequency identification cards. The commenter acknowledges that the definition accurately describes the current farecard system. However, the commenter posits that should MTABC transitions to radio-frequency identification cards such as those used in Boston, Atlanta, and Chicago, MTABC will be required to rewrite its definition of farecard. The Proposed Rules explain that farecards "include, but are not limited to, (i) value-based, magnetically encoded cards (frequently referred to as pay-per-ride MetroCards) containing stored monetary value from which a specified amount of value is deducted as payment of a fare, and (ii) time-based, magnetically encoded cards (frequently referred to as unlimited ride MetroCards) which permit entrance onto conveyances for a specified period of time." (Emphasis added) MTABC acknowledges that its farecard may not solely be limited to magnetically encoded card. Therefore, the definition contains the phrase "include, but are not limited to." The phrase denotes that the list is neither restrictive nor exhaustive. Therefore, if MTABC transitions to radio-frequency identification cards, the definition would still apply.

4. Photography Restrictions

One commenter suggested that MTABC remove the restriction for a passenger to take photographs. The Proposed Rules contain no such restriction. The Proposed Rules make clear that "[p]hotography, filming or video recording in any facility or bus is permitted except that ancillary equipment such as lights, reflectors or tripods may not be used. Members of the press holding valid identification issued by the New York City Police Department are hereby authorized to use necessary ancillary equipment. All photographic activity must be conducted in accordance with the provisions of these rules."

5. Blocking Free Movement

One commenter suggested that MTABC remove the restriction that passengers refrain from blocking the free movement of others by putting their feet or items on the seat. The commenter posits that "for many well-meaning passengers it [would be] … impossible not to break this rule." MTABC disagrees with this assessment. The Proposed Rules are established to promote safety and protect MTABC transportation facilities. Blocking the free movement of other passengers and placing one's feet on the seat are among the activities MTABC intends to discourage.

# Department of Motor Vehicles

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

**Enforcement of Off Premise Sales Regulation**

**I.D. No.** MTV-15-16-00009-P

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

***Proposed Action:*** Amendment of section 78.3 of Title 15 NYCRR.

***Statutory authority:*** Vehicle and Traffic Law, sections 215(a) and 415

***Subject:*** Enforcement of off premise sales regulation.

***Purpose:*** To provide for enforcement of off premise sales regulation.

***Text of proposed rule:*** Subdivision (d) of section 78.3 is amended to read as follows:

(d) Place of business in New York. An applicant for a dealer registration must have and continuously maintain a place of business in this state. Only a New York registered retail dealer may engage in the buying and selling of vehicles at retail as a business in New York. *An application for registration shall be denied, or, if one has been approved, such application shall be subject to suspension, revocation and/or a civil penalty as provided for in section 78.32 of this Part, where the Commissioner has reasonable grounds to believe that such registration has been or will be used for the purpose of circumventing the restrictions set forth in section 78.8 of this Part regarding sales away from premises.*

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

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

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

***Regulatory Impact Statement***

1. Statutory authority: Vehicle and Traffic Law (VTL) section 215(a) provides that the Commissioner of Motor Vehicles may enact rules and regulations that regulate and control the exercise of the powers of the Department. VTL section 415 controls the registration, rights and responsibilities of dealers.

2. Legislative objectives: VTL 415(1)(c) provides that a dealer must have a "place of business," which "means a designated location at which the business of the dealer is conducted, and, in relation to a retail dealer, facilities for displaying new or used motor vehicles." However, under the Commissioner's broad regulatory, authority, Section 78.8 establishes the parameters for conducting off-premise sales. The purpose of the proposed regulation is to prohibit dealers and applicants for dealer registrations from circumventing the restrictions applicable to off-premise sales.

3. Needs and benefits: On August 15, 2015, the Commissioner adopted regulations that provided specific guidance for the conduct of off-premise sales in New York State. The Department noted in the Regulatory Impact Statement that, "[o]ver the past several years, an increasing number of dealerships have exploited loopholes in the current regulation by using third-party promotional companies to sell vehicles, instead of the dealer's own employees, selling vehicles far from their relevant market area, and conducting almost constant off-premise sales, making it a part of their every-day business model, rather than a "special event" conducted periodically. These amendments are intended to control these excesses."

Since the enactment of those regulations, the Department has received complaints that certain businesses are obtaining dealer registrations at specific sites, but then conducting little or no business at such sites. Such businesses are not continuously maintaining a place of business, as required by section 78.3(d). Rather, such businesses create a shell dealership so that they may conduct off-premise sales, thereby, circumventing the restrictions in section 78.8.

This proposed regulation provides the Department with the necessary enforcement tools to suspend, revoke and/or impose civil penalties against dealers who violate the provisions related to off-premise sales or to deny the application for a dealer registration where such application manifests an intent to circumvent the off-premise sales regulations. A dealer would have the right to an administrative hearing prior to the imposition of any sanctions or penalties.

4. Costs:

a. to regulated parties: Dealers who are found at a hearing to have violated the Commissioner's regulations could be subject to a civil penalty, as set forth in Vehicle Traffic Law section 415(12).

b. cost to the State, the agency and local governments: This proposed rule will have no fiscal impact on the DMV. In addition, it will not impact local governments, since the regulation concerns the regulation of off-premise sales by dealers.

c. source: The Department's Office of Vehicle Safety provided this information.

5. Local government mandates: The proposed rule will not impact local governments, since it concerns the regulation of off-premise sales by dealers.

6. Paperwork: The proposed rule imposes no new paperwork requirements.

7. Duplication: This proposed regulation does not duplicate or conflict with any State or Federal rule.

8. Alternatives: The Department received complaints regarding circumvention of the off-premise sales regulations. Therefore, the Department believes it has no alternative but to seek enforcement action against dealers who violate the off-premise sales regulations and to deny applications for dealer registrations by parties who seek to circumvent such regulations.

9. Federal standards: The rule does not exceed any Federal standards.

10. Compliance schedule: The Department expects that all regulated parties will be in compliance upon adoption of the regulation.

***Regulatory Flexibility Analysis***

1. Effect of rule: There are currently over 11,800 dealers in New York State, the majority of which are small businesses. This proposed regulation would have no impact on local governments.

2. Compliance requirements: Dealers who violate the off-premise sales regulations, as set forth in Part 78.8, would be subject to suspension, revocation and/or civil penalties.

3. Professional services: This regulation would not require dealers to obtain new professional services.

4. Compliance costs: Dealers who are found at a hearing to have violated the Commissioner's regulations could be subject to a civil penalty, as set forth in Vehicle Traffic Law section 415(12).

5. Economic and technological feasibility: Not applicable.

6. Minimizing adverse impact: The Department received complaints regarding circumvention of the off-premise sales regulations. Therefore, the Department believes it has no alternative but to seek enforcement action against dealers who violate the off-premise sales regulations and to deny applications for dealer registrations by parties who seek to circumvent such regulations.

7. Small business and local government participation: See response to number 6 above.

8. Cure Period: If between the time of the violation and the hearing, the dealer cures the problem, the Department could consider withdrawing the charge, depending on the facts and circumstances and the severity of the violation.

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

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

This proposal concerns the enforcement of regulations governing off-premise sales by motor vehicle dealers. Due to its narrow focus, this rule will not impose an adverse economic impact on rural areas or on employment opportunities.

# Office for People with Developmental Disabilities

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

**Site Based Prevocational Services Certification and Physical Plant Requirements**

**I.D. No.** PDD-15-16-00002-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 635-7.5 of Title 14 NYCRR.

***Statutory authority:*** Mental Hygiene Law, sections 13.07, 13.09(b), 16.00 and 16.05

***Subject:*** Site Based Prevocational Services Certification and Physical Plant Requirements.

***Purpose:*** To apply existing physical plant and certification requirements in OPWDD regulations to site based prevocational services.

***Text of proposed rule:*** • Section 635-7.5 is amended as follows:

Section 635-7.5. Physical plant, environmental and certification requirements for *site based* day habilitation [sites] *and for site based prevocational services sites established on and after September 1, 2016*

• Subdivision 635-7.5(a) is amended as follows:

(a) Any building or space purchased or leased for the purpose of the delivery of day habilitation services *or site based prevocational services* through the home and community-based services (HCBS) waiver shall be certified pursuant to the requirements of section 16.05 of the Mental Hygiene Law.

• Subdivision 635-7.5(b) is amended as follows:

(b) The requirements associated with the [Certificate] *Certification* of Need (CON) application and approval process as set forth in Part 620 of this Title shall be applicable to any day habilitation site *or site based prevocational services site* for which an operating certificate will be issued pursuant to this section. [However, those day habilitation sites in operation as of June 7, 1995 will not be required to retroactively participate in the Certificate of Need process.]

• Subdivision 635-7.5(c) is amended as follows:

(c) An operating certificate for such building or space may only be issued to the entity that is also the authorized provider (section 635-10.1(b) of this Part) of the HCBS waiver day habilitation services (see section 635-10.4(b)(2) of this Part) *or site based prevocational services (see section 635-10.4(k))* to be provided at the site.

• Subdivision 635-7.5(d) is amended as follows:

(d) The following physical plant requirements must be met for the certification of day habilitation sites *or site based prevocational service sites*:

Note: Existing paragraphs (1) - (3) remain unchanged.

Note: Existing subdivisions (e) and (f) remain unchanged.

• Subdivision 635-7.5(g) is amended as follows:

(g) When a day habilitation site or *site based prevocational services site* is financed with a Dormitory Authority of the State of New York (DASNY) loan granted pursuant to the provisions of Part 621 of this Title, the certificate holder shall, throughout the term of the loan:

(1) be the primary provider of day habilitation services *or site based prevocational services* at the site; and

(2) project and generate income or other receivables for such day habilitation services *or site based prevocational services* at the site, in the form of State reimbursement for such holder, in an amount adequate and sufficient to meet the amount of the monthly debt service payable under a DASNY loan obtained by it, or obtained jointly by it in conjunction with a related holding company as owner of the site, for the purposes of financing or refinancing capital costs associated with such site.

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

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

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

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

***Regulatory Impact Statement***

1. Statutory authority:

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

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

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

d. OPWDD has the authority to prescribe the terms and conditions for issuance of an operating certificate, as stated in the NYS Mental Hygiene Law Section 16.05.

2. Legislative objectives: The proposed regulations further the legislative objectives embodied in sections 13.07, 13.09(b), 16.00, and 16.05 of the Mental Hygiene Law. The proposed regulations apply existing physical plant, environmental and certification requirements in OPWDD regulations to site based prevocational services.

3. Needs and benefits: Existing regulations in 14 NYCRR section 635-7.5 delineate physical plant, environmental and certification requirements for day habilitation sites. The proposed amendments expand applicability of these requirements to site based prevocational services.

Site based prevocational services are prevocational services that are provided in non-residential settings that are certified by OPWDD. In order to ensure that these services are certified and delivered in settings that are compliant with OPWDD requirements, OPWDD considers it is necessary to expand applicability of existing regulations on physical plant, environmental and certification of site based day habilitation to apply to site based prevocational services. OPWDD has determined that the existing regulations for site based day habilitation are appropriate for site based prevocational services.

The proposed regulations explicitly require the following: 1) that site based prevocational services be certified pursuant to section 16.05 of the Mental Hygiene Law; 2) that the Certification of Need (CON) process specified in Part 620 of existing OPWDD regulations be applied to site based prevocational services; 3) that the operating certificate for settings used for site based prevocational services only be issued to the entity that is also the authorized provider of the service; and 4) that site based prevocational services be delivered in settings that are in compliance with the existing physical plant requirements for site based day habilitation. Compliance with these requirements will promote individuals' safety and quality of life while receiving site based prevocational services.

4. Costs:

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

The proposed amendments may result in nominal costs to the State in its role paying for Medicaid as providers may seek additional Medicaid funding to comply with existing CON process requirements or to adapt space designated for site based prevocational services to be compliant with the new requirements. OPWDD cannot quantify such costs as it cannot anticipate whether adaptions need to be made until providers make requests for funding. However, OPWDD expects that providers will utilize existing OPWDD-certified space used to deliver other day services, to deliver site based prevocational services. Such space is required to be in compliance with the existing OPWDD environmental and physical plant requirements for site based day habilitation that are now being applied to site based prevocational services. OPWDD expects that any nominal cost increase to comply with existing CON process requirements will be easily absorbed by providers' reimbursement for administrative costs.

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

The proposed amendments may result in nominal costs to OPWDD as a provider of site based prevocational services. As stated above, it is expected that any nominal cost increase to comply with existing CON process requirements will be easily absorbed by providers' reimbursement for administrative costs. Additionally, it is expected that providers will utilize existing OPWDD-certified space used to deliver other day services, to deliver site based prevocational services and such space is already in compliance with the existing OPWDD environmental and physical plant requirements.

b. Costs to private regulated parties:

The proposed amendments may result in nominal costs to providers of site based prevocational services. As stated above, OPWDD expects that any nominal cost increase to comply with existing CON process requirements will be easily absorbed by providers' reimbursement for administrative costs. Additionally, OPWDD expects that providers will utilize existing OPWDD-certified space used to deliver other day services, to deliver site based prevocational services. Providers may request additional Medicaid funding to cover costs necessary to adapt new space designated for site based prevocational services to be compliant with the new requirements. OPWDD cannot quantify such costs as it cannot anticipate whether adaptions need to be made until providers make requests for funding.

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

6. Paperwork: The proposed regulations will result in some additional paperwork for providers of site based prevocational services to comply with existing CON process requirements in OPWDD's Part 620 regulations. However, these paperwork requirements are necessary to ensure proper use of federal and State Medicaid funds.

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

8. Alternatives: OPWDD considered not certifying and regulating space for site based prevocational services, but determined that regulations, particularly environmental and physical plant requirements, are in the best interests of individuals receiving services.

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

10. Compliance schedule: OPWDD intends to adopt the proposed amendments as soon as possible within the time frames mandated by the State Administrative Procedure Act. The effective date of these regulations is September 1, 2016. This allows providers time to prepare for compliance with applicable requirements.

***Regulatory Flexibility Analysis***

1. Effect on Small Business: OPWDD has determined, through a review of the certified cost reports, that most OPWDD-funded services are provided by non-profit agencies which employ more than 100 people overall. However, some smaller agencies which employ fewer than 100 employees overall would be classified as small businesses. Currently, there are 82 providers of prevocational services, some of whom may wish to provide site based prevocational services. OPWDD is unable to estimate the portion of these agencies that may be considered to be small businesses.

The proposed amendments have been reviewed by OPWDD in light of their impact on small businesses. The proposed amendments apply existing physical plant, environmental and certification requirements in OPWDD regulations to site based prevocational services.

2. Compliance Requirements: The proposed amendments will impose compliance requirements on providers of site based prevocational services. Providers will be responsible for 1) complying with the Certification of Need (CON) process specified in Part 620 of existing OPWDD regulations, and 2) for complying with physical plant requirements in Section 635-7.5.

OPWDD considers that compliance with these requirements will promote individuals' safety and quality of life while receiving site based prevocational services, and that compliance is necessary to ensure the proper use of federal and state public funds. OPWDD expects that providers are likely to utilize existing OPWDD-certified space used to deliver other day services, to deliver site based prevocational services. Such space is required to be in compliance with the existing OPWDD environmental and physical plant requirements for site based day habilitation that are now being applied to site based prevocational services. However, if providers are not already in compliance, the effective date of the regulations is prolonged to give providers adequate time to prepare for compliance with applicable requirements. Consequently, OPWDD does not expect that these requirements will be burdensome for providers.

The amendments will have no effect on local governments.

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

4. Compliance Costs: The proposed amendments may result in nominal costs to providers of site based prevocational services to comply with existing CON process requirements or to adapt space designated for site based prevocational services to be compliant with the new requirements. However, OPWDD expects that any nominal cost increase to comply with existing CON process requirements will be easily absorbed by providers' reimbursement for administrative costs. Additionally, as stated above, OPWDD expects that providers will utilize existing OPWDD-certified space used to deliver other day services, to deliver site based prevocational services. Such space is required to be in compliance with the existing OPWDD environmental and physical plant requirements for site based day habilitation that are now being applied to site based prevocational services.

If new space needs to be adapted to comply with the new requirements, providers may make a request to OPWDD for additional Medicaid funding to cover any necessary compliance costs. OPWDD cannot quantify such costs as it cannot anticipate whether adaptions need to be made until providers make requests for funding. OPWDD does not expect costs to vary for providers that are small businesses or for local governments of different types and sizes.

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

6. Minimizing Adverse Impact: The purpose of these proposed amendments is to establish requirements for the certification and regulation of site based prevocational services settings. The amendments apply existing certification, environmental and physical plant requirements for site based day habilitation, to site based prevocational services. There may be nominal costs to all providers, including small business providers, as stated above in the section on compliance costs; however, OPWDD does not expect that such costs will result in an adverse impact to providers, and if providers do experience significant costs, providers may make a request to OPWDD for additional funding.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act (SAPA). However, since the documentation, quality standards and other compliance provisions in the amendments are needed to ensure the proper use of federal and state public funds, OPWDD did not establish different compliance, reporting requirements or timetables on small business providers or local governments or exempt small business providers or local governments from these requirements and timetables.

7. Small Business Participation: The proposed regulations were discussed with representatives of providers, including providers who have fewer than 100 employees, on December 14, 2015. The regulations were also discussed on a conference call with the Developmental Disability Advisory Council Employment Subcommittee on December 14, 2015, and on a conference call with providers of supported employment services on December 15, 2015. OPWDD also plans to inform all providers, including small business providers, of the proposed amendments approximately three months in advance of their scheduled effective date.

8. (IF APPLICABLE) For rules that either establish or modify a violation or penalties associated with a violation: The proposed amendments do not establish or modify a violation or penalties associated with a violation.

***Rural Area Flexibility Analysis***

1. Description of the types and estimation of the number of rural areas in which the rule will apply: OPWDD services are provided in every county in New York State. 43 counties have a population of less than 200,000: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Lewis, Livingston, Madison, Montgomery, Ontario, Orleans, Oswego, Otsego, Putnam, Rensselaer, St. Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Wyoming and Yates. 10 counties with certain townships have a population density of 150 persons or less per square mile: Albany, Broome, Dutchess, Erie, Monroe, Niagara, Oneida, Onondaga, Orange and Saratoga.

The proposed amendments have been reviewed by OPWDD in light of their impact on entities in rural areas. The proposed amendments apply existing physical plant, environmental and certification requirements in OPWDD regulations to site based prevocational services.

2. Compliance requirements: The proposed amendments will impose compliance requirements on providers of site based prevocational services. Providers will be responsible for 1) complying with the Certification of Need (CON) process specified in Part 620 of existing OPWDD regulations, and 2) for delivering site based prevocational services in settings that are in compliance with the existing physical plant requirements for site based day habilitation.

OPWDD considers that compliance with these requirements will promote individuals' safety and quality of life while receiving site based prevocational services, and that compliance is necessary to ensure the proper use of federal and state public funds. OPWDD expects that providers are likely to utilize existing OPWDD certified space used to deliver other day services, to deliver site based prevocational services. Such space is already likely to be in compliance with the existing OPWDD environmental and physical plant requirements for site based day habilitation that are now being applied to site based prevocational services. However, the effective date of the regulations is prolonged to give providers adequate time to prepare for compliance with applicable requirements. Consequently, OPWDD does not expect that these requirements will be burdensome for providers.

The amendments will have no effect on local governments.

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

4. Compliance costs: The proposed amendments may result in nominal costs to providers of site based prevocational services to comply with existing CON process requirements or to adapt space designated for site based prevocational services to be compliant with the new requirements. However, OPWDD expects that any nominal cost increase to comply with existing CON process requirements will be easily absorbed by providers' reimbursement for administrative costs. Additionally, as stated above, OPWDD expects that providers will utilize existing OPWDD certified space used to deliver other day services, to deliver site based prevocational services. Such space is already likely to be in compliance with the existing OPWDD environmental and physical plant requirements for site based day habilitation that are now being applied to site based prevocational services.

If space needs to be adapted to comply with the new requirements,

providers may make a request to OPWDD for additional Medicaid funding to cover any necessary compliance costs. OPWDD cannot quantify such costs as it cannot anticipate whether adaptions need to be made until providers make requests for funding. OPWDD does not expect costs to vary for providers in rural areas or for local governments of different types and sizes.

5. Minimizing adverse economic impact: The purpose of these proposed amendments is to establish requirements for the certification and regulation of site based prevocational services settings. The amendments apply existing certification, environmental and physical plant requirements for site based day habilitation, to site based prevocational services. There may be nominal costs to all providers, including providers in rural areas, as stated above in the section on compliance costs; however, OPWDD does not expect that such costs will result in an adverse impact to providers, and if providers do experience significant costs, providers may make a request to OPWDD for additional funding.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act (SAPA). However, since the documentation, quality standards and other compliance provisions in the amendments are needed to ensure the proper use of federal and state public funds, OPWDD did not establish different compliance, reporting requirements or timetables on providers in rural areas or local governments or exempt providers in rural areas or local governments from these requirements and timetables.

6. Participation of public and private interests in rural areas: The proposed regulations were discussed with representatives of providers, including providers in rural areas, on December 14, 2015. The regulations were also discussed with providers on two conference calls that occurred on December 14 and 15 of 2015. OPWDD also plans to inform all providers, including providers in rural areas, of the proposed amendments approximately three months in advance of their scheduled effective date.

***Job Impact Statement***

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

The proposed amendments apply existing physical plant, environmental and certification requirements in OPWDD regulations to site based prevocational services. Providers may incur nominal costs to comply with existing Certification of Need (CON) process requirements in Part 620 of OPWDD regulations or to adapt new space designated for site based prevocational services to be in compliance with the new requirements. However, OPWDD does not anticipate that additional staff will be needed to implement the amendments as the amendments are primarily concerning requirements for the physical setting in which the service is provided. Further, the additional workload to comply with the CON process will likely be absorbed by existing staff. Consequently, these amendments will not have an adverse impact on jobs or employment opportunities. Conversely, if new staff are needed to implement the proposed amendments then the amendments will have a positive impact on jobs or employment opportunities.

# Power Authority of the State of New York

## NOTICE OF ADOPTION

**Rates for the Sale of Power and Energy**

**I.D. No.** PAS-42-15-00004-A

**Filing Date:** 2016-03-29

**Effective Date:** 2016-03-29

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

***Action taken:*** Decrease in the Fixed Costs Component of the Production Rates.

***Statutory authority:*** Public Authorities Law, sections 1005, 3rd undesignated paragraph and 1005(6)

***Subject:*** Rates for the Sale of Power and Energy.

***Purpose:*** To Recover the Authority's Fixed Costs.

***Substance of final rule:*** The Power Authority's Notice of Proposed Rulemaking published October 21, 2015, proposed to decrease the Fixed Costs component of the production rates by 2.8% to be charged to the New York City Governmental Customers ("Customers"). Comments on the proposal were received from the Customers. Based on those comments and further analysis by staff, the Authority determined that the Fixed Costs component of the production rates should be decreased by 3.6%. This decrease is greater than that proposed in the Notice of Proposed Rulemaking. The new rates will be effective commencing with the March 2016 billing period.

***Final rule as compared with last published rule:*** Substantive revisions were made in First Part.

***Text of rule and any required statements and analyses may be obtained from:*** Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street - 11-P, White Plains, New York 10601, (914) 390-8085, email: karen.delince@nypa.gov

***Revised Regulatory Impact Statement***

A revised regulatory impact statement 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.

***Revised Regulatory Flexibility Analysis***

A revised regulatory flexibility analysis 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.

***Revised Rural Area Flexibility Analysis***

A revised rural area flexibility analysis 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.

***Revised Job Impact Statement***

A revised job impact statement 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.

***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.

## NOTICE OF ADOPTION

**Rates for the Sale of Power and Energy**

**I.D. No.** PAS-42-15-00005-A

**Filing Date:** 2016-03-29

**Effective Date:** 2016-03-29

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

***Action taken:*** Decrease in Production Rates.

***Statutory authority:*** Public Authorities Law, sections 1005, 3rd undesignated paragraph and 1005(6)

***Subject:*** Rates for the Sale of Power and Energy.

***Purpose:*** To Align Rates and Costs.

***Substance of final rule:*** The Power Authority's Notice of Proposed Rulemaking published October 21, 2015, proposed to increase the production rates of its Westchester County Governmental Customers by 10.64%. Based on further analysis by staff, the Authority determined that the production rates should be decreased by 2.37%. The new production rates will be effective commencing with the March 2016 billing period.

***Final rule as compared with last published rule:*** Substantive revisions were made in First Part.

***Text of rule and any required statements and analyses may be obtained from:*** Karen Delince, Corporate Secretary, Power Authority of the State of New York, 123 Main Street - 11P, White Plains, New York 10601, (914) 390-8085, email: karen.delince@nypa.gov

***Revised Regulatory Impact Statement***

A revised regulatory impact statement 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.

***Revised Regulatory Flexibility Analysis***

A revised regulatory flexibility analysis 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.

***Revised Rural Area Flexibility Analysis***

A revised rural area flexibility analysis 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.

***Revised Job Impact Statement***
A revised job impact statement 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.

***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.

# Public Service Commission

## NOTICE OF ADOPTION

**Submetering of Electricity**

**I.D. No.** PSC-19-15-00015-A
**Filing Date:** 2016-03-24
**Effective Date:** 2016-03-24

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

***Action taken:*** On 3/17/16, the PSC adopted an order approving Hudson CBD Flatbush LLC (Hudson CBD) to submeter electricity at 626 Flatbush Avenue, Brooklyn, New York.

***Statutory authority:*** Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

***Subject:*** Submetering of electricity.

***Purpose:*** To approve Hudson CBD to submeter electricity at 626 Flatbush Avenue, Brooklyn, New York.

***Substance of final rule:*** The Commission, on March 17, 2016, adopted an order approving Hudson CBD Flatbush LLC to submeter electricity at 626 Flatbush Avenue, Brooklyn, New York, 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:*** John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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.
(15-E-0234SA1)

## NOTICE OF ADOPTION

**Submetering of Electricity**

**I.D. No.** PSC-29-15-00022-A
**Filing Date:** 2016-03-24
**Effective Date:** 2016-03-24

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

***Action taken:*** On 3/17/16, the PSC adopted an order approving 92nd and 3rd Associates, LLC (92nd and 3rd Associates) to submeter electricity at 205 E. 92nd Street, New York, New York.

***Statutory authority:*** Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

***Subject:*** Submetering of electricity.

***Purpose:*** To approve 92nd and 3rd Associates to submeter electricity at 205 E. 92nd Street, New York, New York.

***Substance of final rule:*** The Commission, on March 17, 2016, adopted an order approving 92nd and 3rd Associates, LLC to submeter electricity at 205 E. 92nd Street, New York, New York, 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:*** John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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.
(15-E-0378SA1)

## NOTICE OF ADOPTION

**Submetering of Electricity**

**I.D. No.** PSC-34-15-00014-A
**Filing Date:** 2016-03-24
**Effective Date:** 2016-03-24

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

***Action taken:*** On 3/17/16, the PSC adopted an order approving Herkimer Street Residence, L.P. (Herkimer) to submeter electricity at 437 Herkimer Street, Brooklyn, New York.

***Statutory authority:*** Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

***Subject:*** Submetering of electricity.

***Purpose:*** To approve Herkimer to submeter electricity at 437 Herkimer Street, Brooklyn, New York.

***Substance of final rule:*** The Commission, on March 17, 2016, adopted an order approving Herkimer Street Residence, L.P. to submeter electricity at 437 Herkimer Street, Brooklyn, New York, 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:*** John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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.
(15-E-0438SA1)

## NOTICE OF ADOPTION

**Tariff Amendments to Establish a Financing Option for Its Programs Contained in P.S.C. No. 8 — Gas**

**I.D. No.** PSC-52-15-00013-A
**Filing Date:** 2016-03-23
**Effective Date:** 2016-03-23

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

***Action taken:*** On 3/17/16, the PSC adopted an order approving National Fuel Gas Distribution Corporation's (National Fuel) tariff amendments to establish a third-party financing option for its programs contained in P.S.C. No. 8 — Gas.

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

***Subject:*** Tariff amendments to establish a financing option for its programs contained in P.S.C. No. 8 — Gas.

***Purpose:*** To approve National Fuel's tariff amendments to P.S.C. No. 8 — Gas.

***Substance of final rule:*** The Commission, on March 17, 2016, adopted an order approving National Fuel Gas Distribution Corporation's tariff amendments to establish a third-party financing option for its Distributed Generations, Natural Gas Vehicle and Partnership to Revitalize the Industrial Manufacturing Economy of Western New York Programs contained in P.S.C. No. 8 — Gas, 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:*** John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social

security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

***Assessment of Public Comment***

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

(14-G-0551SA2)

## NOTICE OF ADOPTION

### Tariff Amendments to P.S.C. No. 3 — Electricity, General Information Section 7

**I.D. No.** PSC-02-16-00011-A

**Filing Date:** 2016-03-23

**Effective Date:** 2016-03-23

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

***Action taken:*** On 3/17/16, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s (O&R) tariff amendments to modify P.S.C. No. 3 — Electricity, General Information Section 7 — Metering and Billing to clarify Home Energy Fair Practices Act (HEFPA).

***Statutory authority:*** Public Service Law, sections 39, 47 and 66(12)

***Subject:*** Tariff amendments to P.S.C. No. 3 — Electricity, General Information Section 7.

***Purpose:*** To approve O&R's tariff amendments to P.S.C. No. 3 — Electricity, General Information Section 7.

***Substance of final rule:*** The Commission, on March 17, 2016, adopted an order approving Orange and Rockland Utilities, Inc.'s tariff amendments to modify P.S.C. No. 3 — Electricity, General Information Section 7 — Metering and Billing to clarify Home Energy Fair Practices Act requirements related to court orders for gaining access to meters, 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:*** John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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.

(15-E-0754SA1)

## NOTICE OF ADOPTION

### Tariff Amendments to P.S.C. No. 4 — Gas, General Information Section 6

**I.D. No.** PSC-02-16-00013-A

**Filing Date:** 2016-03-23

**Effective Date:** 2016-03-23

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

***Action taken:*** On 3/17/16, the PSC adopted an order approving Orange and Rockland Utilities, Inc.'s (O&R) tariff amendments to modify P.S.C. No. 4 — Gas, General Information Section 6 — Metering and Billing to clarify Home Energy Fair Practices Act (HEFPA).

***Statutory authority:*** Public Service Law, sections 39, 47 and 66(12)

***Subject:*** Tariff amendments to P.S.C. No. 4 — Gas, General Information Section 6.

***Purpose:*** To approve O&R's tariff amendments to P.S.C. No. 4 — Gas, General Information Section 6.

***Substance of final rule:*** The Commission, on March 17, 2016, adopted an order approving Orange and Rockland Utilities, Inc.'s tariff amendments to modify P.S.C. No. 4 — Gas, General Information Section 6 — Metering and Billing to clarify Home Energy Fair Practices Act requirements related to court orders for gaining access to meters, 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:*** John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@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.

(15-G-0755SA1)

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

### Proposed Financial Incentives for Projects Undertaken Through the Targeted Demand Management Program

**I.D. No.** PSC-15-16-00010-P

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

***Proposed Action:*** The Commission is considering a proposal by Consolidated Edison Company of New York, Inc. to establish a financial incentive for projects undertaken through its Targeted Demand Management program.

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

***Subject:*** Proposed financial incentives for projects undertaken through the Targeted Demand Management program.

***Purpose:*** To consider financial incentives for projects undertaken through the Targeted Demand Management program.

***Substance of proposed rule:*** The Public Service Commission is considering a proposal by Consolidated Edison Company of New York, Inc. (Company) to establish financial incentives for projects undertaken through the Targeted Demand Management program, in compliance with the Commission's Order Implementing with Modification the Targeted Demand Management Program, Cost Recovery, and Incentives, issued December 17, 2015 in Case 15-E-0229. The Company proposes similar, but separate, financial incentives for projects undertaken at or above 69 kilovolts and projects below such voltage level, based on retaining a share of the net savings of deferring traditional utility infrastructure using a portfolio of customer-sided solutions. The proposed filing does not have an effective date. The Commission may approve, modify or reject, in whole or in part, the Company's petition 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:*** John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@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-0229SP2)

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

### Transfer of Certain Cable Television Facilities and Franchises from SCCC to Zito New York, LLC

**I.D. No.** PSC-15-16-00011-P

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

***Proposed Action:*** The Commission is considering a joint petition filed by Zito New York, LLC to acquire certain cable television facilities and franchises from Southern Cayuga County Cablevision, LLC (SCCC).

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

***Subject:*** Transfer of certain cable television facilities and franchises from SCCC to Zito New York, LLC.

***Purpose:*** To consider the transfer of certain cable television facilities and franchises from SCCC to Zito New York, LLC.

***Substance of proposed rule:*** The Public Service Commission is considering a joint petition filed by Zito New York, LLC (DE) and Southern Cayuga County Cablevision, LLC (NY) for approval of transfer of control of cable television system franchises, certificates and facilities in the Towns of Moravia, Genoa, and Locke, and the Village of Moravia, in Cayuga County, New York pursuant to Public Service Law § 222. The Commission may approve, modify or reject, in whole or in part, the relief proposed and may resolved 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:*** John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@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.

(16-V-0185SP1)

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

### Adequate Service of Verizon New York, Inc.

**I.D. No.** PSC-15-16-00012-P

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

***Proposed Action:*** The Commission is considering the adequacy of Verizon New York Inc.'s service quality and may take necessary actions as warranted.

***Statutory authority:*** Public Service Law, sections 96(1) and 98

***Subject:*** Adequate service of Verizon New York, Inc.

***Purpose:*** To consider the adequacy of Verizon New York Inc.'s service quality.

***Substance of proposed rule:*** The Commission is considering, pursuant to Public Service Law (PSL) § 96(1) whether the service quality provided by Verizon New York Inc. to customers is adequate, and if it is not, whether remedial action should be ordered to improve the company's service quality pursuant to PSL § 98. The Commission may take other such related actions as 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:*** John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: John.Pitucci@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.

(16-C-0122SP1)

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

### Waiver of Certain Commission Requirements Related to the Distribution of Telephone Directories

**I.D. No.** PSC-15-16-00013-P

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

***Proposed Action:*** The Commission is considering a petition by Verizon New York Inc. for an additional waiver of 16 NYCRR 602.10(b) pertaining to distribution of telephone directories.

***Statutory authority:*** Public Service Law, section 94(2)

***Subject:*** Waiver of certain Commission requirements related to the distribution of telephone directories.

***Purpose:*** To consider a waiver of certain Commission requirements related to the distribution of telephone directories.

***Substance of proposed rule:*** The Public Service Commission is considering a petition filed by Verizon New York Inc. for an additional waiver of 16 NYCRR § 602.10(b) pertaining to the distribution of telephone directories to all customers. This request would extend the waiver granted by the Commission in 2010 with respect to residential white pages directories. If granted, Verizon would distribute directories "on demand" to customers who request one. The Commission may approve, modify or reject, in whole or in part, the relief proposed and may resolved related matters. The Commission may, in its discretion, extend such waiver to other telephone corporations in New York.

***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:*** John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@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.

(16-C-0186SP1)

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

### Establishment of SC No. 7—Purchase of Renewable Energy from New Distributed Generators

**I.D. No.** PSC-15-16-00014-P

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

***Proposed Action:*** The Commission is considering a proposal by the Village of Westfield to establish Service Classification (SC) No. 7—Purchase of Renewable Energy from New Distributed Generators in its tariff schedule, P.S.C. No. 1—Electricity.

***Statutory authority:*** Public Service Law, sections 5(b), 65 and 66

***Subject:*** Establishment of SC No. 7—Purchase of Renewable Energy from New Distributed Generators.

***Purpose:*** To consider the establishment of SC No. 7—Purchase of Renewable Energy from New Distributed Generators.

***Substance of proposed rule:*** The Public Service Commission is considering a proposal filed by the Village of Westfield (Westfield) to amend its tariff schedule, P.S.C. No. 1 – Electricity. Westfield proposes to establish Service Classification (SC) No. 7 – Purchase of Renewable Energy from New Distributed Generators, to set the rates, terms, and conditions under which Westfield will purchase the output from customer owned solar and wind generating equipment. Westfield also proposes an Interconnection Agreement that relates solely to the conditions under which Westfield and the customer agree that the generating unit may be considered for grant funding pursuant to the New York Power Authority's Municipal or Rural Electric System Cooperative Solar PV Incentive Program. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed herein 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:*** John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@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.

(16-E-0178SP1)

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

**Notice of Intent to Submeter Electricity**

**I.D. No.** PSC-15-16-00015-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 the Notice of Intent, filed by IGI-GGP Renwick LLC, to submeter electricity at 15 Renwick Street, New York, New York.

***Statutory authority:*** Public Service Law, sections 2, 4(1), 30, 32-48, 52, 53, 65(1), 66(1), (2), (3), (4), (12) and (14)

***Subject:*** Notice of Intent to submeter electricity.

***Purpose:*** To consider the Notice of Intent of IGI-GGP Renwick LLC to submeter electricity at 15 Renwick Street, New York, New York.

***Substance of proposed rule:*** The Commission is considering the Notice of Intent, filed by IGI-GGP Renwick LLC on March 9, 2016, to submeter electricity at 15 Renwick Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. 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:*** John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@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.

(16-E-0136SP1)

# Department of State

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

**Educational Standards and Requirements for Nail Trainees**

**I.D. No.** DOS-15-16-00017-EP

**Filing No.** 356

**Filing Date:** 2016-03-29

**Effective Date:** 2016-03-29

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

***Proposed Action:*** Addition of section 162.6 and Part 163 to Title 19 NYCRR.

***Statutory authority:*** General Business Law, sections 402(5) and 404; Executive Law, section 91

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

***Specific reasons underlying the finding of necessity:*** The Department of State ("Department") is charged with, among other things, the enforcement of General Business Law (GBL) Article 27, which relates to the appearance enhancement industry. A principal purpose behind the enactment of Article 27 was to provide a system of licensure of appearance enhancement businesses and operators that would allow for the flexibility in the establishment of regulated services and while establishing measures to protect both appearance enhancement practitioners and consumers of appearance enhancement services. The Department is generally empowered to issue regulations to achieve such intent by GBL § 402(5). Moreover, GBL § 404 explicitly provides that in order to ensure the health, safety and welfare of the public, the Secretary of State must promulgate rules establishing a minimum standard of training, inclusive of education, for appearance enhancement practitioners.

Chapter 80 of the Laws of 2015, which became effective in pertinent part on July 16, 2015, amended the article to include the new registration status of "nail specialist trainee." A nail specialist trainee is authorized to engage in the practice of nail specialty under the direct supervision and tutelage of a licensed nail practitioner. Nail trainees come into direct contact with members of the public immediately upon the commencement of their training period. It is critical that they have access to education in order to ensure safe practice. The immediate adoption of regulations to establish a course of study to be made available by sanctioned education entities is thus necessitated as a matter of public health, safety and welfare.

***Subject:*** Educational standards and requirements for nail trainees.

***Purpose:*** To expeditiously make available a course of study for nail trainees.

***Substance of emergency/proposed rule (Full text is posted at the following State website:http://www.dos.state.ny.us/licensing/nails/traineeschools.pdf):*** Article 27 of the General Business Law (GBL) generally provides for the licensure and regulation of appearance enhancement businesses and practitioners, including nail specialists, natural hair stylists, estheticians and cosmetologists. Chapter 80 of the Laws of 2015, effective in pertinent part on July 16, 2015, amended the article to include the new registration status of "nail specialist trainee." A nail specialist trainee is authorized to engage in the practice of nail specialty under the direct supervision and tutelage of a licensed nail practitioner. A registered trainee may acquire licensure as a nail specialist upon demonstrating that he or she has been actively engaged in a traineeship for a period of one year and has completed a course of study set forth by the secretary.

As required by GBL § 404, in order to ensure the health, safety and welfare of the public, the Secretary of State must promulgate rules establishing a minimum standard of training for nail trainees inclusive of educational requirements. This rule sets forth a course of study to be provided by sanctioned entities. A substantial number of trainees have been registered and are engaged in the practice of nail specialty. Access to a course of study sanctioned by the Department will afford them and new trainees immediate access to critical information regarding safe and sanitary practice and facilitate licensure.

***This notice is intended:*** to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire June 26, 2016.

***Text of rule and any required statements and analyses may be obtained from:*** David Mossberg, Esq., NYS Department of State, 123 William Street, 20th Fl., New York, NY 10038, (212) 407-2063, email: david.mossberg@dos.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:

Article 27 of the General Business Law (GBL) generally provides for the licensure and regulation of appearance enhancement practitioners, including nail specialists, natural hair stylists, estheticians and cosmetologists. Chapter 80 of the Laws of 2015, which became effective in pertinent part on July 16, 2015, amended Article 27 to include the new registration status of "nail specialist trainee." A nail specialist trainee is authorized to engage in the practice of nail specialty under the direct supervision and tutelage of a licensed nail practitioner. A registered trainee may acquire licensure as a nail specialist upon demonstrating that he or she has been actively engaged in a traineeship for a period of one year and has completed a course of study set forth by the secretary.

As required by GBL § 404, in order to ensure the health, safety and welfare of the public, the Secretary of State must promulgate rules establishing a minimum standard of training for nail trainees, including educational requirements. This rule sets forth a course of study to be provided by sanctioned entities. A substantial number of trainees have

been registered and are engaged in the practice of nail specialty. Access to a course of study sanctioned by the Department will afford all trainees immediate access to critical information regarding safe and sanitary practice and will facilitate licensure.

2. Legislative objectives:

The training of nail trainees, and of appearance enhancement practitioners generally, has been declared by the legislature to be a matter of public health and safety. Accordingly, the Secretary of State is required to promulgate rules establishing a minimum standard of training and education. This rule is consistent with such mandate.

3. Needs and benefits:

The delivery of competent nail services to consumers is a matter of public health and safety. Education plays a critical role in the development of a nail trainee's competency and skillsets. This rule provides access to such education by setting forth a required course of study and providing a means for its delivery by educational entities. Moreover, the availability of the education required for licensure of trainees as nail practitioners will provide economic opportunities for both individuals and businesses.

4. Costs:

a. Costs to regulated parties:

Some students may incur tuition costs for the required course. The Department has been advised that there are several trade organizations, public advocacy organizations and public institutions which will seek approval to provide instruction for little or no cost to students. Traditional providers seeking approval may charge between $260.00 and $300.00 for the full 26 hours or approximately $10.00 per credit hour based on industry standards.

Entities seeking approval to provide the nail trainee curriculum, subject to an exemption, will pay an annual registration fee and possible location fee.

Instructors seeking approval will be required to pay a one-time fee of $25.00.

b. Costs to the state and local governments:

The rule does not impose any costs to the agency, the state or local governments.

c. Methodoloy:

The estimate of costs was derived following a survey of the existing and likely educational entities.

5. Local government mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

Nail trainee applicants for the nail practitioner license will be required to complete the required curriculum at an approved school. The rule does not impose any reporting, record keeping or other compliance requirement on applicants.

Entities that wish to provide the nail trainee curriculum must complete applications, obtain approval from the Department, and maintain records associated with the delivery of course content to students.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The proposal is for the establishment of a curriculum totaling 26 hours. The Department of State, the Appearance Enhancement Advisory Committee and the Education Department considered whether additional hours were required. However, in light of the direct supervision and tutelage afforded by licensed practitioners to trainees, it was determined that 26 hours would be sufficient.

9. Federal standards:

There are no federal standards relating to this rule.

10. Compliance schedule:

The rule will be effective immediately; it is anticipated that schools will provide courses shortly thereafter.

***Regulatory Flexibility Analysis***

1. Effect of rule:

The rule sets forth a course of study to be provided by sanctioned entities to nail trainees. The availability of the education required for licensure of trainees as nail practitioners will provide economic opportunities for both individuals and education providers.

The rule does not impact local government.

2. Compliance requirements:

Nail trainee applicants for the nail practitioner license will be required to complete the required curriculum at an approved school. The rule does not impose any reporting, record keeping or other compliance requirement on applicants.

Entities that wish to provide the nail trainee curriculum must complete applications, obtain approval from the Department, and maintain records associated with the delivery of course content to students.

The rule does not impose any compliance requirements on local governments.

3. Professional services:

Educational providers will require instructors to deliver course content.

4. Compliance costs:

Some students may incur tuition costs for the required course. The Department has been advised that there are several trade organizations, public advocacy organizations and public institutions which will seek approval to provide instruction for little or no cost to students. Traditional providers seeking approval may charge between $260.00 and $300.00 for the full 26 hours or approximately $10.00 per credit hour based on industry standards.

Entities seeking approval to provide the nail trainee curriculum, subject to an exemption, will pay an annual registration fee and possible location fee.

Instructors seeking approval will be required to pay a one-time fee of $25.00.

5. Economic and technological feasibility:

Nail trainees seeking licensure as nail specialists must complete the 26-hour curriculum. The estimated compliance costs suggest that it will be economically feasible for applicants to comply with this rule. The rule does not impose any technology requirements on applicants or local governments.

6. Minimizing adverse economic impact:

The rule does not adversely impact small businesses or local governments.

7. Small business participation:

The members of the Department's Appearance Enhancement Advisory Committee, many of whom operate small businesses, participated in the development of the curriculum.

***Rural Area Flexibility Analysis***

1. Types and estimated numbers of rural areas:

This rule will apply uniformly throughout the state.

2. Reporting, recordkeeping and other compliance requirements:

Applicants who live in rural areas, like all other nail trainee applicants for the nail practitioner license, will be required to complete the required curriculum at an approved school. The rule does not impose any reporting, record keeping or other compliance requirements on applicants.

Entities that wish to provide the nail trainee curriculum must complete applications, obtain approval from the Department, and maintain records associated with the delivery of course content to students.

3. Costs:

Some students may incur tuition costs for the required course. The Department has been advised that there are several trade organizations, public advocacy organizations and public institutions which will seek approval to provide instruction for little or no cost to students. Traditional providers seeking approval may charge between $260.00 and $300.00 for the full 26 hours, or approximately $10.00 per credit hour based on industry standards.

Entities seeking approval to provide the nail trainee curriculum, subject to an exemption, will pay an annual registration fee and a possible location fee.

Instructors seeking approval will be required to pay a 1 time fee of $25.00.

4. Minimizing adverse economic impacts:

The rule does not adversely impact any rural area.

5. Rural area participation:

Comments have been solicited from trade associations and schools, including those from rural areas.

***Job Impact Statement***

1. Impact of the rule

The rule will facilitate the progression of a nail trainee into a nail practitioner with fully licensed occupational status. Access to a larger population of competent practitioners should spur growth in the nail salon industry. Finally, motivated, entrepreneurial nail practitioners may seek to open new businesses.

2. Categories and numbers affected

This rule will lead to increased lawful employment of nail practitioners. Since July 16, 2015, when Chapter 80 of the Laws of 2015 became effective, the Department has registered approximately 1886 nail trainees. It is anticipated that a substantial majority of these trainees will progress to full licensed status and be absorbed into the industry.

3. Regions of adverse impact

The Department has not identified any region of the state where the rule would have a disproportionate adverse impact on jobs or employment opportunities. Licensees work in all areas of the state.

4. Minimizing adverse impact

The Department has not identified any adverse impacts of this rule on employment or employment opportunities.

# State University of New York

## NOTICE OF ADOPTION

**University Faculty Senate**

**I.D. No.** SUN-05-16-00001-A
**Filing No.** 354
**Filing Date:** 2016-03-28
**Effective Date:** 2016-04-13

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

***Action taken:*** Amendment of sections 331.8 and 331.9 of Title 8 NYCRR.

***Statutory authority:*** Education Law, sections 353 and 355(2)(b)

***Subject:*** University Faculty Senate.

***Purpose:*** To amend the Policies of the Board of Trustees regarding the University Faculty Senate.

***Text or summary was published*** in the February 3, 2016 issue of the Register, I.D. No. SUN-05-16-00001-P.

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

***Text of rule and any required statements and analyses may be obtained from:*** Lisa S. Campo, State University of New York, State University Plaza, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

***Assessment of Public Comment***

The agency received no public comment.