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.

Education Department

NOTICE OF EXPIRATION

The following notice has expired and cannot be reconsidered unless the Education Department publishes a new notice of proposed rule making in the NYS *Register.*

Supplementary Teaching Certificates in Bilingual Education and English to Speakers of Other Languages (ESOL)

I.D. No.	Proposed	Expiration Date
EDU-13-15-00021-P	April 1, 2015	March 31, 2016

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Medical Indemnity Fund

I.D. No. HLT-16-16-00002-P

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

Proposed Action: Amendment of Subpart 69-10 of Title 10 NYCRR.

Statutory authority: Public Health Law, section 2999-j

Subject: Medical Indemnity Fund.

Purpose: To provide additional guidance and clarity to the Fund's requirements and operations.

Substance of proposed rule (Full text is posted at the following State website:www.health.ny.gov): As authorized by section 2999-j(15) of the Public Health Law ("PHL"), the New York State Commissioner of Health, in consultation with the Superintendent of Financial Services, has promulgated these regulatory amendments to provide more detail on the structure within which the New York State Medical Indemnity Fund ("Fund") will operate. These amendments provide the following:

(1) revisions to the definition of "assistive technology" to clarify which items fall within the definition;

(2) revisions to the definition of "environmental modification" to clarify which items do not fall within the definition;

(3) a new definition for "exterior physical adaptation" to clarify which items will be covered as environmental modifications;

(4) revisions to the definition of "qualifying health care costs" to include co-insurance, amounts paid toward a deductible, and services provided in accordance with an Individualized Education Program, and to exclude tuition;

(5) revisions to the definition of the term "respite" to clarify what is covered;

(6) revisions to the enrollment process to clearly set forth the Fund Administrator's responsibilities regarding application review, eligibility determinations and notifications;

(7) revisions to the general prior approval language to provide a six month effective period for such approvals unless a different time period is specified in the approval letter and to make it clear that if prior approval is required but not obtained, the claim will not be paid by the Fund;

(8) revisions to the prior approval requirements for environmental modifications to clearly specify standards for comprehensive evaluations, provide detail on approving repairs or replacements, waive prior approval requirements for repairs or replacements that cost $500 or less, and limit conditional prior approval to environmental modifications needed to ensure the enrollee's safety;

(9) revisions to the prior approval requirements for specialty drugs to require the Fund Administrator to publish a list of specialty drugs on its website and to clarify which documents are needed to approve such requests; and

(10) revisions to the rate regulation to provide rates related to travel costs and services provided outside the United States, allow use of alternate UCR databases, and clarify that the Fund will pay no more than the actual amount billed.

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.

Regulatory Impact Statement

Statutory Authority:

Title 4 of Article 29 of the Public Health Law (PHL) creates the New York State Medical Indemnity Fund (Fund) to provide a source of funding for all future qualifying health care costs of a plaintiff or claimant who sustained birth-related neurological injuries as the result of medical malpractice in order to reduce premium costs for medical malpractice insurance coverage.

Subdivision 3 of section 2999-h of the PHL sets forth a broad definition of "qualifying health care costs" for services and supplies provided to qualified plaintiffs and provides authority for the Commissioner of Health (Commissioner) to further define such qualifying health care costs in regulation.

Section 2999-i of the PHL requires the Superintendent of Insurance (Superintendent) to administer the Fund and the Commissioner of Taxation and Finance to be the custodian of the Fund for which a special account is created pursuant to section 99-t of the State Finance Law. Subdivi-

sion 2 of section 2999-i of the PHL authorizes the Superintendent to enter into a contract to administer the Fund (Administrator) and subdivision 6 requires the Superintendent to conduct actuarial calculations of the estimated liabilities of the Fund and suspend enrollment in the Fund if the estimated liabilities equal or exceed 80% of the Fund's assets.

Section 2999-j of the PHL governs payments from the Fund and includes broad standards for the Fund enrollment process, payment of costs by collateral sources, rates to be paid to providers of qualifying health care services, prior authorization for certain services, and the claims processing requirements for reimbursement of qualifying health care costs. Subdivision 2 of section 2999-j of the PHL requires any applicable prior authorization requirements to be promulgated by the Commissioner in regulation and subdivision 4 of such section requires the Commissioner to define in regulation "the basis of one hundred percent of the usual and customary rates" to be paid for services provided by private physician practices and for all other services, any rates of payment to be paid on a basis other than Medicaid rates.

Lastly, subdivision 15 of section 2999-j of the PHL specifically states that the Commissioner, in consultation with the Superintendent, " shall promulgate. . . all rules and regulations necessary for the proper administration of the fund in accordance with the provisions of this section, including, but not limited to those concerning the payment of claims and concerning the actuarial calculations necessary to determine, annually, the total amount to be paid into the fund as otherwise needed to implement this title."

Legislative Objectives:

The Legislature delegated the details of the Fund's operation to the Department of Financial Services (DFS) and the Department of Health (DOH), the two State agencies that have the appropriate expertise to develop, implement and enforce all aspects of the Fund's operations. These proposed regulations reflect the collaboration of both agencies in providing the administrative details of the manner in which the Fund will operate. Specifically, the regulations provide a clear process for enrollment of plaintiffs or claimants who sustained birth-related neurological injuries as the result of medical malpractice. Additionally, they create standards governing the qualifying health care costs to be paid by the Fund and the rates at which they will be paid, keeping in mind the two Legislative objectives of lifetime coverage for all current and future enrollees and reducing premium costs for medical malpractice insurance coverage.

Needs and Benefits:

These regulations are needed because Title 4 of Article 29 of the PHL provides only broad standards governing operation of the Fund, some of which include a specific requirement to further define criteria in regulation, and to provide the details necessary to make the Fund operationally successful for all parties, including qualified plaintiffs, Fund enrollees, providers of qualifying health care services, the Administrator, and the two agencies charged with operating the Fund. All parties will benefit from specific standards governing their respective roles regarding the Fund by providing: (1) a smooth application and enrollment process, including clearer and more detailed standards regarding the Fund Administrator's responsibilities for processing such applications; (2) clearer definitions of "assistive technology," "environmental modification," "qualifying health care costs," and "respite" and a new definition of "exterior physical adaptation" to provide greater enrollee understanding of the items for which the Fund will pay; (3) revisions to the prior approval requirements for environmental modifications, assistive technology, and treatment with a specialty drug, in order to make each process work more efficiently, including clearer standards for comprehensive evaluations, waiving requirements for repairs and replacements that cost $500 or less, limiting conditional prior approval to environmental modifications needed to ensure an enrollee's safety, and publishing a list of specialty drugs on the Fund Administrator's website; (4) expanded coverage of certain transportation which is medically necessary to relocate an enrollee to a new primary residence, in addition to transportation which may be needed to medical appointments, and including specific rates for travel costs consistent with rates in the Medicaid program as required by PHL Section 2999-j(4) and (5) guidelines for rates related to services provided to enrollees outside the United States.

Costs:

Costs to Regulated Parties:

There are no costs imposed on regulated parties by these regulations. Qualified plaintiffs will not incur any costs in connection with applying for enrollment in the Fund or coverage by the Fund.

Costs to the Administering Agencies, the State, and Local Governments:

Costs to administering agencies and the State associated with the Fund will be covered by applicable appropriations, as provided in subdivisions 3 through 5 of section 2999-i of the PHL. There are no costs imposed on local governments by these regulations.

Local Government Mandates:

The proposed regulations do not impose any new programs, services, duties or responsibilities upon any county, city, town, village, school district, fire district or other special district.

Paperwork:

The proposed regulations impose paperwork requirements on regulated parties by requiring (1) during the enrollment process, the Fund Administrator must notify the applicant if additional information is required, when the applicant is enrolled in the Fund, and provide the name and contact information of the assigned case manager; (2) during the prior approval process for environmental modifications, the Fund Administrator must notify the enrollee that a comprehensive evaluation must be completed after the written statement from the enrollee's physician has been reviewed; and (3) regarding specialty drugs, the Fund Administrator must publish on its website a list of medications that meet the definition of specialty drugs.

Duplication:

There are no other State or Federal requirements that duplicate, overlap, or conflict with the statute and the proposed regulations. Although some of the services to be provided by the Fund are the same as those available under certain Medicaid waivers, the waivers have limited slots and the Fund becomes the primary payer for dually enrolled individuals. Coordination of benefits will be one of the responsibilities of the Fund Administrator. Health care services, equipment, medications or other items that any commercial insurer providing coverage to a qualified plaintiff is legally obligated to provide will not be covered by the Fund (except for copayments and/or deductibles) nor will the Fund cover any health care service, equipment, or other item that is potentially available through another State or Federal program (except Medicaid and Medicare) or similar program in another country, if applicable.

Alternatives:

DFS and DOH have considered multiple alternatives to the proposed regulatory requirements and have made recent changes to the Express Terms to reflect more reasonable approaches to certain situations enrollees might face. For example:

(1) In the case of prior approval requests for environmental modifications, the amendments provide more detail about which items do not fall within the definition. The agencies considered leaving the definition broad but changed the Express Terms to avoid continued enrollee confusion about which items are approvable as qualifying health care costs.

(2) In the case of prior approval for assistive technology (AT), the amendments provide significantly more detail on the prior approval process, including what is required to be provided in an AT assessment. The agencies considered leaving the process more general but changed the Express Terms to avoid continued enrollee confusion regarding what is required when seeking approval for these items.

(3) The prior approval process for repairs or replacement of an environmental modification used to require three acceptable bids for all items or service. The agencies considered this process to be cumbersome for less costly items or service and changed the Express Terms to allow an enrollee to arrange for the repair or replacement of an environmental modification without prior approval if the cost is $500 or less.

Federal Standards:

There are no minimum Federal standards regarding this subject.

Compliance Schedule:

There is no compliance schedule imposed by these amendment and they shall be effective upon publication of a notice of adoption.

Regulatory Flexibility Analysis

No regulatory flexibility analysis is required pursuant to section 202-b(3)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse economic impact on small businesses or local governments, and it does not impose reporting, record keeping or other compliance requirements on small businesses or local governments.

Cure Period:

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

Rural Area Flexibility Analysis

No rural area flexibility analysis is required pursuant to section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose an adverse impact on rural areas, and it does not impose reporting, record keeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

No job impact statement is required pursuant to section 201-a(2)(a) of the State Administrative Procedure Act. It is apparent, from the nature of the proposed amendment, that it will not have an adverse impact on jobs and employment opportunities.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Protection Against Legionella

I.D. No. HLT-16-16-00007-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 4 to Title 10 NYCRR.

Statutory authority: Public Health Law, section 225(5)(a)

Subject: Protection Against Legionella.

Purpose: To protect the public from the immediate threat posed by Legionella.

Substance of proposed rule (Full text is posted at the following State website:www.health.ny.gov): The following summarizes the purpose and impact of each section. The summary is for convenience, and it is not a substitute for the express terms of the regulation.

• 4-1.1 Scope.

o Provides that the regulation applies to all owners of cooling towers.

• 4-1.2 Definitions.

o This section defines key terms.

o In particular, a "cooling tower" is now defined as: "a cooling tower, evaporative condenser, fluid cooler or other wet cooling device that is capable of aerosolizing water, and that is part of, or contains, a recirculated water system and is incorporated into a building's cooling process, an industrial process, a refrigeration system, or an energy production system."

o The definition of "owner" is now defined as follows: "any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of, a cooling tower or the premises where the cooling tower is located. In all instances, the legal owner of the building shall be deemed an owner within the meaning of the Subpart. Further, where a tenant owns a cooling tower that services the tenant's leased premises, the tenant is an "owner" within the meaning of this Subpart. Additionally, if a tenant does not own the cooling tower but has a lease or contractual arrangement to maintain the cooling tower, the tenant shall be deemed an agent having control of the cooling tower, and thus an "owner," for purposes of this Subpart."

• 4-1.3 Electronic registration and reporting.

o Requires owners of cooling towers to register such towers with the Department using a statewide electronic system. Required registration fields have been slightly revised.

o Establishes a schedule for routine Legionella culture sampling and analysis, which includes reporting intervals not exceeding 90 days.

o Requires reporting of certain events, including:

- last bacteriological culture sample collection date and result;
- last Legionella culture sample collection date and result;
- date of any required remedial action;
- last inspection date;
- last certification date;
- date of removal or permanent discontinued use of a cooling tower; and
- cooling tower system volume (including any piping, basin, and sump).

o The proposed regulations generally require reporting of certain events every 90 days. This is a change from the emergency regulations, which required reporting within 10 days.

o Affords public access to the statewide electronic system, as appropriate, and requires such system to be accessible and searchable to local health departments.

o Clarifies that where both a landlord and a tenant are considered "owners" of a cooling tower pursuant to Section 4-1.2, then either the owner or the tenant shall register the cooling tower. Both parties, however, are obligated to ensure that registration and reporting are completed.

• 4-1.4 Maintenance program and plan.

o Requires owners to obtain or update the maintenance program and plan for all operational cooling towers by September 1, 2016, and prior to the startup of newly installed cooling towers. The plan must include the following elements:

- A schedule for routine bacteriological culture sampling and analysis to assess microbiological activity. The proposed regulation establishes a new, minimum sampling requirement, in which such sampling and analysis must be conducted: (1) at intervals not to exceed 30 days while the cooling tower is in use; and (2) at additional times, as needed, to validate process adjustments. The component that specifies a minimum sampling interval is a new requirement.

- The emergency regulation contained a requirement for a schedule of routine Legionella culture sampling and analysis. The new regulation requires sampling within two weeks of seasonal start-up and thereafter at intervals not to exceed 90 days. In addition, the new regulation requires that year-round use towers be sampled at intervals not to exceed 90 days and within two weeks after start-up following maintenance. These are new requirements.

- Provisions for immediate Legionella culture sampling and analysis following specified conditions, such as power failure, loss of biocide of sufficient duration to allow for the growth of bacteria, and if the State or local health department determines that one or more cases of Legionella is or may be associated with the tower. In addition to the conditions above, the proposed regulation describes conditions whereby the department or local health department may require sampling.

- Provisions requiring immediate and appropriate action, including any necessary remedial action, in response to bacteriological and Legionella culture analyses.

- Provisions requiring that any and all Legionella culture analysis must be performed in accordance with Section 4-1.5. This is a new requirement.

- Provisions for shutdown and for removing or permanently discontinuing use of a cooling tower. These are new requirements.

- Provisions requiring appropriate actions during idle conditions. This is a new requirement.

- Provisions requiring cleaning and disinfection of a cooling tower that has been shut down without treatment for more than five days. This is a new requirement.

• 4-1.5 Legionella culture analysis.

o Requires that Legionella culture analysis be performed by a laboratory that is approved to perform such analysis by the New York State Environmental Laboratory Approval Program (ELAP). This is a new requirement.

• 4-1.6 Notification.

o Requires an owner of a cooling tower to notify the local health department within 24 hours of receipt of a Legionella culture sample result that exceeds 1,000 Colony forming units (CFU) per milliliter. The owner must also notify the public of the test result in a manner determined by the local health department or by the department, if the department elects to determine the manner of public notification. This is a new requirement.

• 4-1.7 Disinfection.

o Establishes qualifications of persons who may disinfect a cooling tower.

o Requires that the name and certification number of the applicator or the business name and registration number of the company providing the disinfection be maintained on-site in accordance with Section 4-1.9. This is a new requirement.

o Permits only biocide products registered by the New York State Department of Environmental Conversation to be used in disinfection.

o "Disinfection" is clarified to exclude the cleaning of a cooling tower through application of detergents, penetrants, brushes or other tools, high-powered water, or any other method that does not involve the use of a pesticide, as defined in 6 NYCRR Part 325.

• 4-1.8 Inspection and certification.

o Inspection.

- Requires that all owners of cooling towers ensure that such towers are inspected prior to seasonal start up and at intervals not exceeding every 90 days while in use. Year-round towers shall be inspected at intervals not exceeding every 90 days and prior to start up following maintenance. The inspection requirement prior to start up is new.

o Certification.

- By November 1, 2016, and by November 1st of each year thereafter, the owner of a cooling tower must obtain a certification that the cooling tower has a maintenance program and plan, and that all activities within that plan or required by this Subpart were implemented.

o Reporting.

- All inspection findings, deficiencies, and corrective actions, and all certifications, must be reported to the owner. This section is new to the regulation.

• 4-1.9 Recordkeeping.

o Describes the records and documentation that the owner must maintain onsite for at least three years. Such records must be made available to the department or local health department upon request.

• 4-1.10 Enforcement.

o Provides that the department or local health department may require any owner to conduct Legionella culture sampling and analysis, following a determination, based upon epidemiologic or laboratory testing, that one or more cases of legionellosis are or may be associated with a cooling tower. This is a new provision.

o Permits an officer or employee of the department or local health department to enter onto any property to inspect a cooling tower for compliance with the requirements of this Subpart. The proposed regulation clarifies that such officers or employees may take water samples.

o Provides that a violation of any provision in this Subpart is subject to all civil and criminal penalties as provided for by law. Further, every day that an owner remains in violation of any provision constitutes a separate and distinct violation of such provision.

• 4-1.11 Variances and waivers.

o Grants local health departments authority to issue variances from this regulation, upon approval of the New York State Department of Health. The local and State health department must be satisfied that the variance will not present a danger to public health.

o The department may also grant general or specific waivers where it is satisfied that a waiver will not present a danger to public health.

• 4-1.12 Severability.

o Standard severability clause is included.

• Appendix 4-A

o This Appendix describes required responsive actions for Legionella culture test results. As compared to the emergency regulations, these regulations raise the threshold level for detecting Legionella in laboratory culture analyses, from ≥ 10 colony forming units per milliliter (CFU/mL) to ≥ 20 CFU/mL.

o Responsive actions have been updated and clarified. The term "acceptable improvement" was changed to an actual quantitative target of "< 20 CFU/mL." Also, where an owner receives a laboratory Legionella culture analyses result ≥ 1000 CFU /mL, the owner must provide appropriate notifications per section 4-1.6.

o The footnotes for on-line decontamination and system decontamination were modified to allow the use of a halogen-based compounds (chlorine or bromine).

SUBPART 4-2 Covered Facilities

• 4-2.1 Scope.

o This Subpart addresses Legionella exposure in general hospitals and residential health care facilities (collectively, "covered facilities"). This area was addressed through section 4.11 of the emergency regulation.

• 4-2.2 Definitions.

o Defines key terms.

• 4-2.3 Environmental assessment.

o Requires covered facilities to perform an environmental assessment of the facility, using forms provided or approved by the department, no later than September 1, 2016, unless an environmental assessment was performed on or after September 1, 2015.

o Requires an annual update of the environmental assessment, and in specified conditions.

o Requires that copies of the completed environmental assessment form be retained in accordance with Section 4-2.6.

• 4-2.4 Sampling Plan.

o Requires that all covered facilities adopt and implement a sampling plan for their potable water systems by December 1, 2016, and that new covered facilities must adopt such plan prior to providing services.

o In addition to any sampling required by the sampling plan, Legionella culture sampling and analysis of the potable water system must occur immediately, as directed by the department, where (1) the department determines that one or more cases of legionellosis are, or may be, associated with the facility; and (2) under any other condition specified by the department.

o The sampling plan must be reviewed and updated annually, and in specified conditions.

o The proposed regulation requires that the sampling plan and sampling results be retained in accordance with Section 4-2.6 of this Subpart.

• 4-2.5 Legionella culture analysis.

o Legionella culture analyses must be performed by a laboratory approved to perform such analyses by the New York State Environmental Laboratory Program (ELAP).

• 4-2.6 Recordkeeping.

o Specifies that all records related to the environmental assessment, sampling plan, and associated sampling results must be retained for three years and must be made available immediately to the department upon request.

• 4-2.7 Enforcement.

o Authorizes the department to conduct an assessment and/or a Legionella culture sampling and analysis of the potable water system at any time.

o Provides that where an owner of a covered facility does not comply with any provision contained within this Subpart, the department may determine that such condition constitutes a violation and may take such action as authorized by law. Further, each day an owner is in violation of a provision constitutes a separate and distinct violation.

• 4-2.8 Variances and waivers.

o Grants the department authority to issue variances and waivers from this regulation, subject to specified conditions.

• 4-2.9 Severability.

o Standard severability clause is included.

• Appendix 4-B.

o This new appendix contains a table with comparison thresholds for routine Legionella culture sampling results. However, in the event that one or more cases of legionellosis are, or may be, associated with the facility, the sampling interpretation shall be in accordance with the direction of a qualified professional and the department.

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.state.ny.us

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

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

Summary of Regulatory Impact Statement

Needs and Benefits:

Legionellosis describes any illness caused by exposure to Legionella bacteria, including Legionnaire's Disease and Pontiac Fever. Potential sources of exposure to Legionella bacteria include water in the home, workplace, healthcare facilities or aerosol-producing devices in public places. Improper maintenance of cooling towers can contribute to the growth and dissemination of Legionella bacteria. Inadequate surveillance for Legionella bacteria in the potable water systems at general hospitals and residential health care facilities can also increase the risk of legionellosis.

Symptoms of legionellosis may include cough, shortness of breath, high fever, muscle aches, and headaches, and can result in pneumonia. Hospitalization is often required, and between 5 and 30% of cases are fatal. People at highest risk are those 50 years of age or older; current or former smokers; those with chronic lung diseases; those with weakened immune systems from diseases like cancer, diabetes, or kidney failure; and those who take drugs to suppress the immune system during chemotherapy or after an organ transplant. The number of cases of legionellosis reported in New York State between 2005 and 2014 increased 323%, compared to those reported in the previous ten-year period.

Outbreaks of legionellosis have been associated with cooling towers, as well as with the potable water systems of general hospitals and residential health care facilities. Subpart 4-1 of these regulations establish requirements for cooling towers relating to: registration, reporting and recordkeeping; testing; disinfection; maintenance; inspection; and certification of compliance. Subpart 4-2 of these regulations require general hospitals and residential health care facilities to implement an environmental assessment and Legionella sampling plan for their potable water systems and take necessary responsive actions.

These proposed regulations incorporate important clarifications and revisions from the emergency regulations initially adopted by the Public Health and Health Planning Council on August 17, 2015. In general, the Department organized and streamlined the language for concision and clarity. Certain sections were renumbered and related provisions consolidated. Further, the proposed regulations have been divided into two Subparts.

Costs:

Subpart 4-1

Building owners already incur costs for routine operation and maintenance of cooling towers. There will be some increased costs associated with sampling, inspection, and certification of cooling towers. These costs are detailed in the Regulatory Impact Statement.

State and local governments will incur costs for administration, implementation, and enforcement. Exact costs cannot be predicted at this time. However, some local costs may be offset through the collection of fees, fines and penalties authorized pursuant to this Part. Costs to State and local governments may be offset further by a reduction in the need to respond to community legionellosis outbreaks.

Subpart 4-2

General hospitals and residential healthcare facilities already incur costs associated with running infection control programs. The regulations would incur new costs for those facilities that are not already conducting annual environmental assessments, and would require all such facilities to adopt and implement a Legionella sampling plan. In many instances, facilities can complete the environmental assessment using existing hospital staff (maintenance, operations, and nursing staff). The cost of these requirements is expected to be offset by the reduced risk of Legionellosis in such facilities.

Regulatory Flexibility Analysis

Effect of Rule:

The rule will affect the owner of any building with a cooling tower, as those terms are defined in the regulation, which could include small businesses and local governments. Any general hospitals and residential health care facilities owned or operated by a local government or that qualifies as a small business will be required to complete an environmental assessment, adopt and implement a Legionella sampling plan for the facilities' potable water system, and take appropriate responsive actions. At this time, it is not possible to determine the number of small businesses or local governments affected.

Local governments must also enforce Subpart 4-1, relating to regulation of cooling towers. Local governments have the power to enforce the provisions of the State Sanitary Code, including this new Part. PHL §§ 228, 229, 309(1)(f) and 324(1)(e).

Compliance Requirements:

Compliance requirement for small businesses and local governments are the same as those requirements set forth in the Regulatory Impact Statement.

Professional Services:

To comply with inspection and certification requirements with respect to cooling towers, small businesses and local governments will need to obtain services of a P.E., C.I.H., certified water technologist, or environmental consultant with training and experience performing inspections in accordance with current standard industry protocols including, but not limited to ASHRAE 188-2015. Small businesses and local governments will need to secure laboratory services for Legionella culture analysis. To comply with disinfection requirements with respect to cooling towers, small businesses and local governments will need to obtain the services of a commercial pesticide applicator or pesticide technician, or pesticide apprentice under supervision of a commercial pesticide applicator.

Compliance with the provisions that apply to general hospitals and healthcare facilities may require expertise in areas such engineering, physical facility management, water treatment methods, and monitoring of the environmental conditions of their potable water distribution systems.

Compliance Costs:

Compliance costs for small business and local government are consistent with the costs outlined in the Regulatory Impact Statement.

Economic and Technological Feasibility:

Although there will be an impact on building owners, including small businesses and local governments, compliance with the regulation is considered economically and technologically feasible, in part because the requirements are consistent industry best practices. This regulation is also necessary to protect public health, and it is expected to reduce cases of legionellosis in communities around cooling towers, as well as for patients and residents in general hospitals and residential healthcare facilities. Accordingly, the benefits to public health are anticipated to outweigh any costs.

Minimizing Adverse Impact:

The Department provides a cooling tower registry, technical consultation, coordination, and information and updates. In addition, the Department has issued guidance for general hospitals and cooling towers, which is consistent with the proposed regulations. Covered facilities that have followed the guidance will already be in compliance with most of the new regulations.

Small Business and Local Government Participation:

Development of the emergency regulations, upon which these regulations were based, was coordinated with New York City.

Cure Period:

Violation of this regulation can result in civil and criminal penalties. However, the regulations allow for time to adopt plans and performed required actions. Accordingly, and in light of the magnitude of the public health threat posed by Legionella, no cure period is warranted.

Rural Area Flexibility Analysis

Pursuant to Section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas. The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any disproportionate reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

Job Impact Statement

Nature of the Impact:

The New York State Department of Health (NYSDOH) expects there to be a positive impact on jobs or employment opportunities. The requirements in the regulation generally coincide with industry standards and manufacturers specification for the operation and maintenance of cooling towers. However, it is expected that a subset of owners have not adequately followed industry standards and will hire firms or individuals to assist them with compliance and to perform inspections and certifications.

Categories and Numbers Affected:

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

Regions of Adverse Impact:

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

Minimizing Adverse Impact:

Not applicable.

Office for People with Developmental Disabilities

AMENDED NOTICE OF ADOPTION

Article 16 Clinic Services and Independent Practitioner Services for Individuals with Developmental Disabilities (IPSIDD)

I.D. No. PDD-42-15-00002-AA

Filing No. 358

Filing Date: 2016-03-30

Effective Date: 2016-04-20

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

Action taken: Amendment of Parts 635, 671 and 679; and addition of Subpart 635-13 to Title 14 NYCRR.

Amended action: This action amends the rule that was filed with the Secretary of State on March 11, 2016, to be effective April 1, 2016, File No. 00280. The notice of adoption, I.D. No. PDD-42-15-00002-A, was published in the March 30, 2016 issue of the *State Register*.

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

Subject: Article 16 Clinic Services and Independent Practitioner Services for Individuals with Developmental Disabilities (IPSIDD).

Purpose: To discontinue off-site article 16 clinic services and add requirements for IPSIDD.

Substance of amended rule: The final regulations amend requirements in 14 NYCRR Part 679 pertaining to Article 16 clinic services, and add a new 14 NYCRR Subpart 635-13 to identify new requirements pertaining to a new Medicaid State plan service, Independent Practitioner Services for Individuals with Developmental Disabilities (IPSIDD).

The regulations eliminate provision of previously allowed off-site delivery of OPWDD certified Article 16 clinic services to individuals with developmental disabilities effective April 1, 2016. The off-site locations included OPWDD certified residential and day programs and other, non-certified, sites in the community.

The regulations specify that Article 16 clinic services must only be delivered at sites that are specifically certified to provide those services. The regulations clarify requirements pertaining to satellite sites where on-site clinic services may be provided. The regulations clarify that the satellite sites can occupy dedicated or designated spaces and can be co-located with another OPWDD certified or funded non-residential program or services under certain conditions.

The regulations also include requirements pertaining to the provision of IPSIDD on and after the effective date of the regulations. IPSIDD services are limited to physical, occupational, and speech therapy; social work; and psychology services that may be provided to individuals in service arrangements subject to prior authorization from OPWDD. The regulations identify requirements on applicability and service definition; eligibility and enrollment of individuals; qualifications for independent practitioners to provide the service; and general provisions for service delivery.

The regulations include amendments to update the name of OPWDD (from OMRDD) and to update the definition of developmental disability in accordance with the updated definition in Mental Hygiene Law section 1.03. The regulations also include corrections to a number of cross references and minor grammar and punctuation edits.

The regulations are being revised to accommodate a later effective date and to clarify the intent of certain requirements in response to public comments. The revisions clarify requirements concerning 1) the prohibition of duplicative services; 2) the coordination of the provision of clinical services funded through IPSIDD; and 3) the provision of behavioral intervention and support services that are directly related to the residential habilitation plan.

Amended rule as compared with adopted rule: Nonsubstantive revisions were made in Subpart 635-13 and Part 679.

Text of amended 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, 44 Holland Avenue, Albany, NY 12229, (518) 474-7700, email: RAU.Unit@opwdd.ny.gov

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

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

The only changes made to the rule text are as follows: Throughout the rule, the references to the effective date of the regulations are replaced with "April 1, 2016."

This change does not necessitate revisions to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis for Small Business and Local Governments, Rural Area Flexibility Analysis or Job Impact Statement.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Cost Report Submission and Penalty Changes

I.D. No. PDD-16-16-00001-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 635-4.4 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, section 13.09(b)

Subject: Cost Report Submission and Penalty Changes.

Purpose: To amend requirements for submission of cost reports and penalties for failure to submit cost reports to OPWDD.

Text of proposed rule: 635-4.4 Failure to file required financial and statistical reports.

(a) Each provider shall submit all cost reports *in the form and format and by the method specified by OPWDD* [to OPWDD] so that OPWDD receives them no later than [120 days after the last day of the reporting period] *June 1st for providers reporting on the January 1st through December 31st period or December 1st for providers reporting on the July 1st through June 30th period*.

(b) [A provider may apply for one 30 day extension for filing a cost report. An application for extension shall document in writing that the provider cannot file the cost report by the original due date specified in subdivision (a) of this section. In the event that the provider applies for an extension, the revised due date for filing a cost report shall be 150 days after the last day of the reporting period.]

[(c)] If the provider fails to file a cost report*, in the form and format and by the method specified by OPWDD,* on or before the [original or revised] due date, the provider shall be subject to a reduction in reimbursement under subdivision [(e)] *(d)* of this section.

[(d)]*(c)* [If a] *A* provider [has applied for an extension, it] may make a written request for a waiver of reduction in reimbursement due to *extraordinary and/or* unforeseeable circumstances beyond its control*, such as a natural disaster,* which will prevent it from filing the cost report by the [revised] due date. The application must contain detailed facts supporting the request, describe the extraordinary and/or unforeseeable circumstances and explain why the provider believes such circumstances will prevent it from filing the cost report by the [revised] due date.

(1) Written requests for a waiver of the reduction in reimbursement must be received by OPWDD [within the timeframes specified in subparagraphs (i) and (ii) of this paragraph] *no later than June 1st for providers reporting on the January 1st through December 31st period or December 1st for providers reporting on the July 1st through June 30th period*.

[(i) For circumstances that occur prior to the original due date specified in subdivision (a) of this section (120 days after the last day of the reporting period), the request must be received prior to the original due date.]

[(ii) For circumstances that occur during the 30 day extension period, the request must be received no later than the revised due date specified in subdivision (b) of this section (150 days after the last day of the reporting period). In order to demonstrate that such circumstances occurred during the 30 day extension period, the written request must include the date of occurrence of the circumstances.]

(2) *If the request is received on or before the due date specified in subdivision (a) of this section,* OPWDD shall review the request and approve or deny the request based upon the facts and circumstances described in the application and any other relevant facts and circumstances. OPWDD shall approve the request if OPWDD determines that there are *extraordinary and/or* unforeseeable circumstances beyond the provider's control that will prevent the provider from filing the cost report by the [revised] due date. OPWDD shall deny the request if OPWDD determines that there are not *extraordinary and/or* unforeseeable circumstances beyond the provider's control or that such circumstances should not prevent the provider from filing the cost report by the [revised] due date. OPWDD shall notify the provider in writing of its approval or denial of the request. OPWDD's determination shall be final.

(3) If OPWDD denies the request for a waiver of the reduction *in reimbursement*, the provider shall be subject to a reduction in reimbursement under subdivision [(e)] *(d)* of this section.

(4) If OPWDD approves the request for a waiver of the reduction *in reimbursement*, OPWDD shall determine a revised due date [(that is beyond the 30 day extension period)] and shall notify the provider in writing of the revised due date. If the provider does not submit the cost report by the revised due date, the provider shall be subject to a reduction in reimbursement under subdivision [(e)] *(d)* of this section.

[(e)]*(d)* The reduction in reimbursement shall equal two percent of the total billed [but unremitted] price(s), rate(s) and/or fee(s) in the payment systems beginning on [the first day of the month following] the due date of the cost report*,* or the revised due date *of the cost report if OPWDD has approved the provider's request for a waiver of the reduction in reimbursement in accordance with subdivision (c)(4) of this section,* and continuing until the next regularly scheduled payment cycle following the last day of the month in which the cost report is received. For a provider subject to this sanction, the reduction shall apply to reimbursements for the following services: Intermediate Care Facilities for Persons with Developmental Disabilities, Medicaid Service Coordination, Day Treatment, Clinic Treatment Facilities, *residential habilitation in individualized residential alternatives (IRAs) and community residences (CRs),* and *all other* HCBS waiver services.

(e) Additional penalty applicable to providers of HCBS waiver services. If the cost report is still outstanding on the first day of the second month following the due date, the two percent penalty will be replaced by a 50 percent penalty on the first day of the eighth month following the due date. This penalty will continue until the next regularly scheduled payment cycle following the due date of the providers' cost report for the subsequent cost reporting period or the last day of the month in which the cost report is received, whichever is later. If OPWDD determines that a provider will likely be unable to meet its financial obligations with the imposition of the 50 percent penalty or if the provider fails to file the overdue cost report by the end of the provider's next cost report period, OPWDD may request that the provider voluntarily surrender its operating certificate for the HCBS services(s) and/or take action to revoke the provider's operating certificate in accordance with Article 16 of the Mental Hygiene Law.

(f) The following chart provides the dates described in subdivisions (d) and (e) of this section:

	January 1st through December 31st Filers	*July 1st through June 30th Filers*
Cost Report Due Date	*June 1st*	*December 1st*
2 Percent Penalty Starts	*June 1st*	*December 1st*
Due Date to Avoid 50 Percent Penalty	*August 1st*	*February 1st **
50 Percent Penalty Starts	*February 1st **	*August 1st **
Due Date of Cost Report for Next Cost Report Period	*June 1st**	*December 1st*

** These dates apply to the year subsequent to the year the cost report is due.*

[(f)] *(g)* If the provider discovers that a cost report submitted to OPWDD is incomplete, inaccurate or incorrect, the provider must submit a revised cost report.

[(g)] *(h) Upon OPWDD's review of a provider's cost report that has been submitted in accordance with the form and format specified in this subpart,* [I]*i*f OPWDD determines that a cost report is incomplete, inaccurate, incorrect or otherwise unacceptable, OPWDD shall send the provider a written notice. Such notice shall give the provider an opportunity to submit, within a 30 day period from receipt of such notice, a revised cost report or additional data, or a request for a waiver of reduction in reimbursement due to *extraordinary and/or* unforeseeable circumstances beyond the provider's control that prevent it from filing a revised cost report or submitting additional data within the 30 day period. A request must contain detailed facts supporting it, describe the *extraordinary and/or* unforeseeable circumstances and explain why the provider believes such circumstances will prevent it from filing a revised cost report or *submitting* additional data within 30 days.

(1) If the provider files a revised cost report or submits additional data within the 30 day period, the provider shall not be subject to [a reduction in reimbursement] *the penalties* described under this subdivision.

(2) If the provider submits a written request within the 30 day period, OPWDD shall review the request and approve or deny the request based upon the facts and circumstances described in the application and any other relevant facts and circumstances. OPWDD shall approve the request if OPWDD determines that there are *extraordinary and/or* unforeseeable circumstances beyond the provider's control that will prevent the provider from filing a revised cost report or *submitting* additional data within 30 days. OPWDD shall deny the request if OPWDD determines that there are not *extraordinary and/or* unforeseeable circumstances beyond the provider's control or that such circumstances should not prevent the provider from filing a revised cost report or *submitting* additional data within 30 days. OPWDD shall notify the provider in writing of its approval or denial of the request. OPWDD's determination shall be final. If OPWDD approves the request, OPWDD shall set a revised due date for the revised cost report or additional data and give the provider written notice of the revised due date.

(3) The provider shall be subject to a reduction in reimbursement if:

(i) it fails to submit, within the 30 day period, a revised cost report or additional data, or a written request; or

(ii) OPWDD denies the written request; or

(iii) OPWDD approves the written request and the provider does not submit a revised cost report or additional data by the revised due date.

(4) A reduction in reimbursement under paragraph (3) of this subdivision shall be in accordance with subdivision [(e)] *(d)* of this section, except that it shall begin on the applicable date specified in subparagraphs (i) - (iii) of this paragraph and continue until the next regularly scheduled payment cycle following the last day of the month in which OPWDD receives the revised cost report or additional data.

(i) If the provider fails to submit a revised cost report, additional data or a written request within the 30 day period, the reduction shall begin on the first day of the month following the end of the 30 day period.

(ii) If OPWDD denies the written request, the reduction shall begin on the first day of the month following the end of the 30 day period.

(iii) If OPWDD approves the written request and the provider does not submit a revised cost report or data by the revised due date, the reduction shall begin on the first day of the month following the revised due date.

[(h)] *(i)* Revised cost reports submitted under this section must be certified by the provider's chief executive officer and, if requested by OPWDD, a public accountant who meets all the requirements specified in section 635-4.3(c)(2) of this Subpart.

[(i)] *(j)* Calendar year 2014 cost reports.

(1) Any provider that requests an extension and fails to submit a complete calendar year 2014 cost report by May 30, 2015, shall be subject to a penalty under this section effective June 1, 2015.

(2) Any provider that would otherwise be subject to a penalty in accordance with the regulations that were immediately in effect prior to June 1, 2015, shall be subject to such penalty.

(k) Any penalty imposed pursuant to this section because of a delinquent cost report for the periods specified in paragraphs (1) and (2) of this subdivision, shall cease as of the effective date of these regulations.

(1) For providers reporting on the July 1st through June 30th period, delinquent cost reports for any periods prior to July 1, 2012 through June 30, 2013.

(2) For providers reporting on the calendar period, delinquent cost reports for any periods prior to January 1, 2013 through December 31, 2013.

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

2. Legislative Objectives: The proposed amendments further the legislative objectives embodied in Section 13.09(b) of the Mental Hygiene Law. The proposed amendments are concerning changes to requirements for submission of annual cost reports and the imposition of penalties on providers that fail to submit cost reports in accordance with such requirements.

3. Needs and Benefits: The submission of cost reports in a timely manner is imperative so that the Department of Health (DOH) can calculate rates of reimbursement for providers for future years and so that OPWDD can properly monitor the fiscal health of providers and be made aware of situations where providers may be unable to continue to provide essential services. Consequently, access to information contained in the cost reports will result in increased protection of individuals receiving services.

The proposed amendments make changes to the requirements for the submission of cost reports to OPWDD. The amendments require providers to submit their cost reports in the form and format prescribed by OPWDD on or before the specified date in the regulations and replace the time period requirements (e.g. 120 days to submit cost reports) in existing regulations with specific due dates. The amendments also extend the due date to incorporate the 30 day extension period in the current regulations and eliminate the requirements associated with making requests for an extension. The amendments also add a table that outlines the respective deadlines for cost report filers. OPWDD expects that this will reduce confusion among providers about due dates.

The proposed amendments add new penalties applicable to providers of Home and Community Based Services (HCBS) waiver services for failure to submit cost reports in accordance with the specified deadlines. If the cost report is still outstanding at the time specified in the regulations, the existing two percent penalty will be replaced by a 50 percent penalty. If a provider is unable to meet its fiscal obligations with such a penalty, the amendments allow OPWDD to request that the provider voluntarily surrender its operating certificate and/or revoke the operating certificate in accordance with Article 16 of the Mental Hygiene Law. OPWDD expects that the addition of these penalties will facilitate increased compliance with the regulations, thereby increasing protections for individuals receiving services. Further, OPWDD's HCBS waiver, as approved by the federal government, eliminates federal funding for providers that fail to meet the required deadlines. Since the federal funding equates to 50 percent, this penalty is, in effect, an elimination of federal funding for the HCBS waiver services.

The proposed amendments also eliminate penalties for delinquent cost reports associated with time periods prior to those specified in the amendments. For providers filing on the July 1st through June 30th period, the specified time period is prior to July 1, 2012 through June 30, 2013. For providers filing on the calendar period, the specified time period is prior to January 1, 2013 through December 31, 2013. This new provision will protect providers from excessive penalties and undue hardship, and facilitate recovery from past penalties.

4. Costs:

a. Costs to the Agency and to the State and its local governments: The proposed amendments may result in costs to the State or OPWDD in its role in paying for Medicaid expenditures. The new penalties in the proposed amendments subject providers of HCBS waiver services that fail to submit cost reports to a 50 percent reduction in revenue and revocation of their operating certificate. OPWDD will incur administrative costs related to coordinating the surrender or revocation of an operating certificate. OPWDD cannot quantify such costs as it is uncertain as to how many providers will receive this penalty as a result of non-compliance with the required deadlines. OPWDD expects that in the long term the proposed amendments will result in better fiscal health and increased protections for individuals receiving services, which will ultimately result in savings to the State.

Local governments should incur no costs as a result of these amendments.

b. Costs to private regulated parties: There are no initial capital investment costs. The proposed amendments may result in a reduction in revenue for providers of HCBS waiver services that fail to submit cost reports as these providers could face a 50 percent reduction in revenue and revocation of their operating certificate. OPWDD expects that the potential for these penalties will motivate providers to minimize or eliminate noncompliance, which in turn would result in negligible penalties, if any. Additionally, the amendments eliminate penalties for past delinquent cost reports, which will increase revenue for providers.

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: There may be additional paperwork requirements imposed as a result of these amendments if providers do not submit their cost reports and there is a change of auspice from one provider to another. Such a change in auspice will require additional paperwork related to transferring property, operations, and staff to the new provider. However, OPWDD expects that the amendments will facilitate increased compli-

ance with cost reporting requirements and, in turn, the new penalties and associated paperwork would not be imposed.

7. Duplication: The proposed amendments do not duplicate any existing State or Federal requirements that are applicable to services for persons with developmental disabilities.

8. Alternatives: OPWDD did not consider any other alternatives to the proposed regulations since such changes were required by the Center for Medicare and Medicaid Services (CMS) and failure to adhere to the requirements could jeopardize federal funding for all HCBS waiver services.

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

10. Compliance Schedule: OPWDD is planning to adopt the proposed amendments on July 1, 2016. OPWDD will be mailing a notice of the proposed amendments to providers approximately three months in advance of their effective date.

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 approximately 700 agencies providing services which are certified, authorized or funded by OPWDD. OPWDD is unable to estimate the portion of these providers that may be considered small businesses.

The proposed amendments have been reviewed by OPWDD in light of their impact on small businesses.

2. Compliance requirements: There are no additional compliance activities associated with these amendments. Providers are already required by regulation to submit cost reports by the specified due date, and compliance activities associated with submitting cost reports will not change as a result of the proposed amendments. The amendments merely provide specific due dates for cost report filers, require submission of cost reports in the form and format specified by OPWDD, add new penalties for providers of Home and Community Based Services (HCBS) waiver services for failure to submit cost reports by the respective deadlines, and eliminate the requirements associated with making requests for a cost report filing extension.

3. Professional services: Providers have to engage the services of public accountants to certify cost reports. However, there are no additional professional services required for providers as a result of these amendments. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: While the proposed amendments will not impose any new compliance activities, there may a reduction in revenue for providers of HCBS waiver services who fail to submit cost reports as these providers could face a 50 percent penalty and revocation of their operating certificate. OPWDD expects that the potential for this penalty will motivate providers of HCBS waiver services to increase compliance, which in turn would result in the reduction or elimination of penalties. Additionally, the amendments eliminate penalties for past delinquent cost reports, which increases revenue for providers.

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

6. Minimizing adverse economic impact: As stated above in the section on compliance costs, the proposed amendments may result in an adverse economic impact on providers subject to a 50 percent penalty and revocation of their operating certificate when they fail to submit a cost report. However, as stated earlier, OPWDD expects that the potential for this penalty will motivate providers to increase compliance, and therefore reduce or eliminate penalties for providers.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-b(1) of the State Administrative Procedure Act. OPWDD did not consider the exemption of small businesses from the proposed regulations, as the amendments were required by the Centers for Medicare and Medicaid (CMS) and were not intended to exclude any regulated parties. Further, OPWDD's HCBS waiver does not allow for exemptions for small providers. Timely submission of cost reports is imperative so that the Department of Health (DOH) can calculate rates of reimbursement for providers for future years and so that OPWDD can properly monitor the fiscal health of providers in order to be aware of situations where providers may be unable to continue to provide essential services. Consequently, the amendments are necessary for the increased protection of individuals receiving services.

The proposed amendments still allow a provider to avoid penalties if it cannot meet a cost report deadline due to extraordinary and/or unforeseeable circumstances beyond its control. If the provider cannot meet its respective due date because of such circumstances, the provider can explain these circumstances to OPWDD. If OPWDD agrees with the provider, OPWDD will set a new due date for the cost report and the provider will not be subject to any penalties as long as it submits the report by the new due date.

7. Small business participation: The proposed regulations were discussed with representatives of providers, including the New York State Association of Community and Residential Agencies (NYSACRA), on March 21, 2016. Some of the members of NYSACRA have fewer than 100 employees. OPWDD will also be mailing these proposed amendments to all providers, including providers that are small businesses, three months in advance of the effective date.

8. For rules that either establish or modify a violation or penalties associated with a violation: The proposed amendments will modify penalties for failure to submit a cost report by adding a 50 percent reduction in revenue, subjecting providers to revocation of their operating certificate, and eliminating penalties for certain past delinquent cost reports. Requirements in existing regulations in 14 NYCRR Section 635-4.4 give providers the opportunity to take ameliorative action by requesting a waiver of penalties if extraordinary and/or unforeseeable circumstances beyond the provider's control will prevent the provider from complying with the deadlines in the proposed regulations. If OPWDD accepts the provider's reasons, OPWDD will determine a revised due date, and the provider will not be subject to any penalties as long as it submits the report by the revised due date.

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

The proposed amendments have been reviewed by OPWDD in light of their impact on entities in rural areas.

2. Compliance requirements: There are no additional compliance activities associated with these amendments. Providers are already required by regulation to submit cost reports by the specified due date, and compliance activities associated with submitting cost reports will not change as a result of the proposed amendments. The amendments merely provide specific due dates for cost report filers, require submission of cost reports in the form and format specified by OPWDD, add new penalties for providers of Home and Community Based Services (HCBS) waiver services for failure to submit cost reports by the respective deadlines, and eliminate the requirements associated with making requests for a cost report filing extension.

3. Professional services: Providers have to engage the services of public accountants to certify cost reports. However, there are no additional professional services required for providers as a result of these amendments. The amendments will not add to the professional service needs of local governments.

4. Compliance costs: While the proposed amendments will not impose any new compliance activities, there may a reduction in revenue for providers of HCBS waiver services who fail to submit cost reports as these providers could face a 50 percent penalty and revocation of their operating certificate. OPWDD expects that the potential for this penalty will motivate providers of HCBS waiver services to increase compliance, which in turn would result in the reduction or elimination of penalties. Additionally, the amendments eliminate penalties for past delinquent cost reports, which increases revenue for providers.

5. Minimizing adverse impact: As stated above in the section on compliance costs, the proposed amendments may result in an adverse economic impact on providers subject to a 50 percent penalty and revocation of their operating certificate when they fail to submit a cost report. However, as stated earlier, OPWDD expects that the potential for this penalty will motivate providers to increase compliance, and therefore reduce or eliminate penalties for providers.

OPWDD has reviewed and considered the approaches for minimizing adverse economic impact as suggested in section 202-bb(2)(b) of the State Administrative Procedure Act. OPWDD did not consider the exemption of providers in rural areas from the proposed regulations, as the amendments were required by the Centers for Medicare and Medicaid (CMS) and were not intended to exclude any regulated parties. Further, OPWDD's HCBS waiver does not allow for exemptions for providers in rural areas. Timely submission of cost reports is imperative so that the Department of

Health (DOH) can calculate rates of reimbursement for providers for future years and so that OPWDD can properly monitor the fiscal health of providers in order to be aware of situations where providers may be unable to continue to provide essential services. Consequently, the amendments are necessary for the increased protection of individuals receiving services.

The proposed amendments still allow a provider to avoid penalties if it cannot meet a cost report deadline due to extraordinary and/or unforeseeable circumstances beyond its control. If the provider cannot meet its respective due date because of such circumstances, the provider can explain these circumstances to OPWDD. If OPWDD agrees with the provider, OPWDD will set a new due date for the cost report and the provider will not be subject to any penalties as long as it submits the report by the new due date.

6. Participation of public and private interests in rural areas: The proposed regulations were discussed with representatives of providers, including NYSARC, NYS Catholic Conference, and Cerebral Palsy Associations of NYS, which represent providers in rural areas, on March 21, 2016. OPWDD will also be mailing these proposed amendments to all providers, including providers in rural areas, three months in advance of their effective date.

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.

The proposed amendments provide specific due dates for cost report filers, require submission of cost reports in the form and format specified by OPWDD, add new penalties for providers of Home and Community Based Services (HCBS) waiver services for failure to submit cost reports by the respective deadlines, and eliminate penalties for delinquent cost reports. There are no additional compliance activities or staffing costs imposed by the proposed regulations since providers are already required by regulation to submit cost reports by the specified due date, and compliance activities associated with submitting cost reports will not change as a result of the proposed amendments. OPWDD expects that, in the event that there is an auspice change from one provider to another as a result of the proposed amendments, staff will be transferred to the new provider to ensure continuity of care for individuals receiving services. Consequently, OPWDD expects that there will be no adverse effect on jobs or employment opportunities as a result of the proposed regulations.

Public Service Commission

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Waiver and/or Clarification of Certain Commission Requirements Related to Distribution of Telephone Directories

I.D. No. PSC-16-16-00003-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 Dex Media Inc. for an additional waiver and/or clarification of 16 NYCRR 602.10(b) pertaining to distribution of telephone directories.

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

Subject: Waiver and/or clarification of certain Commission requirements related to distribution of telephone directories.

Purpose: To consider a waiver and/or clarification of certain Commission requirements related to distribution of telephone directories.

Substance of proposed rule: The Public Service Commission is considering whether to approve, modify or reject, in whole or in part a petition of Dex Media Inc. (Dex) for a waiver and/or clarification of 16 NYCRR § 602.10(b) and other rules relating to contents and distribution of telephone directories. Dex seeks to discontinue delivery of business white and yellow pages to some households, to be implemented on a market-by-market basis as Dex determines the needs in a particular market. Dex states there would not be a "flash cut" throughout the Verizon New York Inc. (Verizon) territories in the State. Over time, for a given market, Dex would make a market-specific determination to curtail the extent of distribution of paper telephone directories. Thereafter, in year one, on or about the date that Dex would otherwise have conducted a saturation delivery, Verizon would include a bill message or insert advising its customers that paper copies of that market's affected directories are available upon request made to Dex. The notice would include a toll-free number to make a request. Dex seeks a Commission ruling allowing it to make directories containing the listings and required front book information online, by waiving and clarifying the Rules to the extent necessary to transition to digital and online services. Dex requests that its petition be considered along with Verizon's petition in Case 16-C-0186. Dex asks that it be allowed sufficiently broad flexibility to permit a full transition from paper to digital directories that is driven by consumer demand and usage, rather than out of date regulations. Dex states that consumers seek environmentally-sound options that minimize potential harms to the public interest. The Commission may approve, modify or reject, 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-C-0190SP1)

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Utility Codes of Conduct for Affiliate Interactions

I.D. No. PSC-16-16-00004-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 Department of Public Service Staff proposal concerning utility codes of conduct revisions.

Statutory authority: Public Service Law, sections 2, 3, 8, 65, 66, 69, 69-a and 70

Subject: Utility Codes of Conduct for affiliate interactions.

Purpose: To update and/or modify utility codes of conduct in anticipation of changes related to evolving Commission policies.

Substance of proposed rule: In its Order Adopting Regulatory Policy Framework and Implementation Plan, issued February 26, 2015, the Commission, inter alia, presented a framework that would establish a distributed system platform (DSP) operator to facilitate the creation of new markets for distributed energy resources (DER), and to coordinate those DER resources when and where implemented. The Commission agreed with the recommendation of Department of Public Service Staff (Staff) that New York's existing electric distribution utilities are best suited to act as the DSP operator to administer the DSP functions. Additionally, the Commission decided that utility affiliates could own DER and, under certain circumstances, utility DSP operators could also own DER. To address potential concerns with such affiliate or DSP operator ownership, the Commission noted that codes of conduct by the utilities would be required. Accordingly, the Commission directed Staff to initiate a process to address and refine utility codes. Thereafter, Staff developed a proposal for establishing principles related to such codes. The Commission can approve, deny or modify, in whole or in part, Staff's proposal, and may consider and resolve other related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website http://www.dps.ny.gov/f96dir.htm. For questions, contact: 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-M-0501SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

A Clean Energy Standard — Tier 3

I.D. No. PSC-16-16-00005-P

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

Proposed Action: The Commission is considering a Clean Energy Standard to require Load Serving Entities to purchase credits to maintain the zero-emissions benefits of certain nuclear power plants.

Statutory authority: Public Service Law, sections 5(2), 65(1), 66(1), (2), (3), (4), (5) and (12)

Subject: A Clean Energy Standard — Tier 3.

Purpose: To avoid adverse air emissions related to fossil fuel fired electricity generation and support upstate nuclear facilities.

Substance of proposed rule: The Public Service Commission is considering a Department of Public Service Staff's (Staff) White Paper on Clean Energy Standard, a proposal for a Clean Energy Standard to provide funding for the construction of new and continuing support for existing renewable and other non-emitting electric generating facilities. The proposal includes a program design for a new Clean Energy Standard to support the State's environmental and clean energy goals, specifically: 40% reduction in greenhouse gas emissions from 1990 levels; 50% of electricity generation coming from carbon-free renewables; and 600 trillion Btu in energy efficiency gains, which equates to a 23% reduction from 2012 in energy consumption in buildings. Staff's proposal would provide funding to support renewable energy resources as well as nuclear and other types of facilities that do not emit greenhouse gases or other pollutants while generating electricity. Staff proposes that all electric retail load serving entities (LSEs) share the obligation of the CES mandate related to nuclear generation (Tier 3) in proportion to each entities' annual retail electricity sales, including those LSEs subject to the Commission's authority, as well as "non-jurisdictional" LSEs including the New York Power Authority (NYPA) and the Long Island Power Authority (LIPA). Staff recommends the establishment of a tiered CES to support a growing quantity of new renewable generation, as well as continuing contributions from existing renewable and zero emission resources. The proposal includes specifications for eligibility requirements for resources within each tier (resource type, vintage, geographic etc.). For each tier, Staff proposes firm requirements through 2020, with targets through 2030 to be developed in an implementation plan and triennial program assessments. LSE's would demonstrate compliance through the use of tradable renewable energy credits (RECs) for renewable energy purchases. RECs would be created and tracked with a newly designed New York Generation Attribute Tracking System (NYGATS). In order to increase program flexibility, Staff proposes use of an alternative compliance payment mechanism for the CES tiers to act as a cap for REC prices. Staff recommends that the CES framework include competitive long-term procurements by the New York State Energy Research Authority (NYSERDA) and utilities as may be appropriate in order to ensure necessary project financing, reduce procurement costs and provide price stability within the market. Staff further proposes to develop and issue for review and comment an Implementation Plan that would address a number of necessary details for the program.

As part of its CES proposal, Staff also prepared and submitted a Clean Energy Standard White Paper - Cost Study. The Commission is considering the Cost Study as part of its analysis of the CES proposal in regard to how the CES could be designed and implemented in the most cost-effective way to meet its statutory obligations. The Cost Study examines the impact that key cost drivers of the CES Proposal can have on overall consumer bills. For proposed Tier 3 - maintenance of nuclear facilities - the Cost Study analyses the likely costs associated with "Zero Emission Credit" (ZEC) payments for nuclear installations based on low and high assumptions of the cost of generation of nuclear power and future energy prices.

The Commission may adopt, reject, or modify, in whole or in part, the proposal 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, NY 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Katheen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223, (518) 474-6530, email: kathleen.burgess@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-0302SP4)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

A Clean Energy Standard — Tier 1 and Tier 2

I.D. No. PSC-16-16-00006-P

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

Proposed Action: The Commission is considering a Clean Energy Standard to support and encourage new incremental renewable generation (Tier 1) and certain existing renewable generation (Tier 2).

Statutory authority: Public Service Law, sections 5(2), 65(1), 66(1), (2), (3), (4), (5) and (12)

Subject: A Clean Energy Standard — Tier 1 and Tier 2.

Purpose: To avoid adverse air emissions related to fossil fuel fired electricity generation and promote renewable sources of electricity.

Substance of proposed rule: The Public Service Commission is considering a Department of Public Service Staff's (Staff) White Paper on Clean Energy Standard, a proposal for a Clean Energy Standard to provide funding for the construction of new and continuing support for existing renewable and other non-emitting electric generating facilities. The proposal includes a program design for a new Clean Energy Standard to support the State's environmental and clean energy goals, specifically: 40% reduction in greenhouse gas emissions from 1990 levels; 50% of electricity generation coming from carbon-free renewables; and 600 trillion Btu in energy efficiency gains, which equates to a 23% reduction from 2012 in energy consumption in buildings. Staff's proposal would provide funding to support renewable energy resources as well as nuclear and other types of facilities that do not emit greenhouse gases or other pollutants while generating electricity. Staff proposes that all electric retail load serving entities (LSEs) share the obligation of the CES mandate related to new and existing renewable generation (Tiers 1 and 2) in proportion to each entities' annual retail electricity sales, including those LSEs subject to the Commission's authority, as well as "non-jurisdictional" LSEs including the New York Power Authority (NYPA) and the Long Island Power Authority (LIPA). Staff recommends the establishment of a tiered CES to support a growing quantity of new renewable generation, as well as continuing contributions from existing renewable and zero emission resources. The proposal includes specifications for eligibility requirements for resources within each tier (resource type, vintage, geographic etc.). For each tier, Staff proposes firm requirements through 2020, with targets through 2030 to be developed in an implementation plan and triennial program assessments. LSE's would demonstrate compliance through the use of tradable renewable energy credits (RECs) for renewable energy purchases. RECs would be created and tracked with a newly designed New York Generation Attribute Tracking System (NYGATS). In order to increase program flexibility, Staff proposes use of an alternative compliance payment mechanism for the CES tiers to act as a cap for REC prices. Staff recommends that the CES framework include competitive long-term procurements by the New York State Energy Research Authority (NYSERDA) and utilities as may be appropriate in order to ensure necessary project financing, reduce procurement costs and provide price stability within the market. Staff further proposes to develop and issue for review and comment an Implementation Plan that would address a number of necessary details for the program.

As part of its CES proposal, Staff also prepared and submitted a Clean Energy Standard White Paper - Cost Study. The Commission is considering the Cost Study as part of its analysis of the CES proposal in regard to how the CES could be designed and implemented in the most cost-effective way to meet its statutory obligations. The Cost Study examines the impact that key cost drivers of the CES Proposal can have on overall consumer bills. For proposed Tier 1 - increasing targets for new renewable supply sources, aimed at bringing forward the growth in renewable electricity needed to achieve the 2030 50% renewable electricity target -

the Cost Study analyses procurement structures for new renewables, in particular solicitation mechanisms; energy prices; interest rates, and their impact on the finance costs experienced by renewable energy projects; future installation costs and cost reductions of key renewable energy technologies; system load, the overall level of electricity consumption in New York; and federal tax credits and their impact on reducing the costs to New York State. For Tier 2 - targets to maintain the supply of existing renewable supply sources to New York - the Cost Study analyses the costs of renewable energy generation that would be eligible towards RPS mandates outside New York State and generation that may not be eligible in other territories or otherwise has limited export opportunities.

The Commission may adopt, reject, or modify, in whole or in part, the proposal 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, NY 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Katheen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, NY 12223, (518) 474-6530, email: kathleen.burgess@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-0302SP3)