

RULE MAKING ACTIVITIES

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

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

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

Office of Alcoholism and Substance Abuse Services

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

OASAS Treatment Services: General Provisions

I.D. No. ASA-20-16-00002-P

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

Proposed Action: This is a consensus rule making to amend Part 800 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07(e), 19.09(b), 32.01 and 32.07(a)

Subject: OASAS Treatment Services: General Provisions.

Purpose: Include all mental health practitioners as qualified health professionals (QHP).

Text of proposed rule: Section 1. Section 800.3(1) of 14 NYCRR Part 800, as amended December 9, 2015 is amended to read as follows:

(1) "Qualified Health Professional" means any of the professionals listed below, who are in good standing with the appropriate licensing or certifying authority, as applicable, with a minimum of one year of experience or satisfactory completion of a training program in the treatment of substance use disorders:

(1) a credentialed alcoholism and substance abuse counselor (CASAC) who has a current valid credential issued by the Office, or a comparable credential, certificate or license from another recognized certifying body as determined by the Office;

(2) a counselor certified by and currently registered as such with the National Board for Certified Counselors;

(3) a rehabilitation counselor certified by the Commission of Rehabilitation Counselor Certification;

(4) a therapeutic recreation therapist certified by the National Council on Therapeutic Recreation or the American Therapeutic Recreation Association; or a person who holds a baccalaureate degree in a field allied to therapeutic recreation and, either before or after receiving such degree, has five years of full-time, paid work experience in an activities program in a health care setting;

(5) a professional licensed and currently registered as such by the New York State Education Department to include:

(i) a physician who has received the doctor of medicine (M.D.) or doctor of osteopathy (D.O.) degree;

(ii) a physician's assistant (PA);

(iii) a certified nurse practitioner;

(iv) a registered professional nurse (RN);

(v) a psychologist;

(vi) an occupational therapist;

(vii) [a marriage and family therapist (LMFT);

(viii) a creative arts therapist (LCAT);

(ix) a mental health counselor (LMHC), including individuals with a Limited Permit Licensed Mental Health Counselor (LP-LMHC); and

(x)] a social worker (LMSW; LCSW), including an individual with a Limited Permit Licensed Master Social Worker (LP-LMSW) only if such person has a permit which designates the OASAS-certified program as the employer and is under the general supervision of a LMSW or a LCSW; and

(viii) a mental health practitioner including: a licensed mental health counselor (LMHC), a marriage and family therapist (LMFT), a creative arts therapist (LCAT), and licensed psychoanalyst; and any mental health practitioner with a Limited Permit.

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

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

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

Consensus Rule Making Determination A request for verification of approval to adopt the proposed rulemaking as a consensus rule was sent by email on March 2, 2016 to representatives of the NY State Conference of Local Mental Hygiene Directors (Jed Wolkenbreit, Counsel) and to the committee on regulatory review of Alcohol and Substance Abuse Providers (ASAP). Jed Wolkenbreit responded on March 4 via email that a survey of members indicated "no one seems to have any objections or problems with it."

The proposed amendments to Part 800 relating to the definition of a Qualified Health Professional ("QHP") were approved by the Behavioral Health Services Advisory Council on March 24, 2016.

In total, these comments and approvals represent the OASAS provider community and providers of related mental hygiene services that may be interested stakeholders.

Job Impact Statement

OASAS is not submitting a Job Impact Statement for this amendment because OASAS does not anticipate a substantial adverse impact on jobs and employment opportunities. The proposed amendment clarifies that all professions designated in Education Law as mental hygiene professionals (licensed mental health counselor; marriage and family therapist; creative arts therapist, and licensed psychoanalyst) are recognized in OASAS programs as Qualified Health Professionals (QH). The proposal also corrects a typographical error in section numeration.

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

General Facility Requirements

I.D. No. ASA-20-16-00003-P

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

Proposed Action: Repeal of Part 814; and addition of new Part 814 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.09(b), 19.20, 19.20-a, 19.40 and 32.02; Executive Law, section 296(15) and (16); Corrections Law, art. 23-A; Civil Service Law, section 50

Subject: General Facility Requirements.

Purpose: Updates provisions applicable to all certified facilities due to: residential redesign, changes in certification and inspections.

Substance of proposed rule (Full text is posted at the following State website: <http://www.oasas.ny.gov>): The Proposed Rule amends Part 814 (General Facility Requirements) to centralize in one Part basic requirements for all facilities applicable to all OASAS treatment modalities and regulations related to the operations of the Office found in 14 NYCRR Chapter XXI.

Section 814.1 sets forth the legal authorization in the Mental Hygiene Law for promulgation of this Rule.

§ 814.2 includes definitions as used in this Part.

§ 814.3 sites building codes which would be enforced by appropriate localities and municipalities as applicable to all facilities.

§ 814.4 outlines basic requirements for repair and maintenance, fire safety and general facility requirements such as storage, office space, sleeping areas, eating and common areas.

§ 814.5 reviews the specific items that will be verified as part of a facility certification which, if a building is in compliance, will deem the facility to be approved for as part of a certification or recertification review as a treatment facility.

§ 814.6 provides requirements in addition to those of 814.5 which are applicable to inpatient and residential facilities.

§ 814.7 provides requirements in addition to those of 814.5 which are applicable to supportive living facilities or residential reintegration in a scatter-site setting.

§ 814.8 provides requirements in addition to those of 814.5 which are applicable to all outpatient facilities.

§ 814.9 provides requirements in addition to those of 814.5 which are applicable to all shared facilities and integrated outpatient services.

§ 814.10 speaks to notice requirements when service providers propose alterations to previously certified or re-certified facilities.

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

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

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

Regulatory Impact Statement

1. Statutory Authority:

(a) Section 19.07(e) of the Mental Hygiene Law authorizes the Commissioner ("Commissioner") of the Office to adopt standards including necessary rules and regulations pertaining to chemical dependence services.

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

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

(d) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

(f) Section 32.07(a) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations to effectuate the provisions and purposes of Article 32 of the Mental Hygiene Law.

2. Legislative Objectives: The legislature has authorized OASAS to establish facility requirements which are specific to the needs of the treatment programs certified by the Office. In addition to state and local building codes, different treatment modalities may require specific facility needs.

3. Needs and Benefits: OASAS is proposing to repeal/replace this regulation because residential redesign (Part 820 recently adopted), revisions to building codes, and changes in program certification require substantial amendments to facilities requirements.

It is beneficial for providers and local building inspectors to have facilities requirements that are specific to the needs of OASAS treatment programs in one central regulation.

4. Costs: No additional administrative costs to the agency are anticipated; no additional costs to programs/providers are anticipated.

5. Paperwork: The proposed regulation will not require increased paperwork.

6. Local Government Mandates: There are no new local government mandates.

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

8. Alternatives: Continue with an outdated regulation that is not consistent with current standards.

9. Federal Standards: This regulation does not conflict with federal standards.

10. Compliance Schedule: The regulations will be effective upon publication of a Notice of Adoption in the State Register.

Regulatory Flexibility Analysis

OASAS has determined that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This rulemaking proposal has been reviewed by the Behavioral Health Services Advisory Council consisting of affected OASAS providers of all sizes from diverse municipalities, and including local governments. The proposal is supported by providers because it centralizes facility requirements consistent for all treatment modalities and minimizes the detail of some provisions allowing for more provider flexibility.

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in diverse geographic locations. The Office has worked with Department of State Codes Division to ensure appropriate information is available to local inspectors and providers.

Rural Area Flexibility Analysis

OASAS has determined that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This rulemaking proposal has been reviewed by the Behavioral Health Services Advisory Council consisting of affected OASAS providers of all sizes from diverse municipalities, and including local governments. The proposal is supported by providers because it centralizes facility requirements consistent for all treatment modalities and minimizes the detail of some provisions allowing for more provider flexibility.

The proposed rule is posted on the agency website; agency review process involves input from trade organizations representing providers in diverse geographic locations. The Office has worked with Department of State Codes Division to ensure appropriate information is available to local inspectors and providers.

Job Impact Statement

A Job Impact Statement (JIS) is not being submitted with this notice because it is evident from the subject matter of the regulation that it will have no impact on jobs and employment opportunities.

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

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

I.D. No. ASA-20-16-00004-P

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

Proposed Action: Amendment of Part 836 of Title 14 NYCRR.

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

Subject: Incident reporting in OASAS certified, licensed, funded, or operated services.

Purpose: To clarify requirements for reporting patient deaths.

Text of proposed rule: Section 1. Subdivisions (a) and (b) of section 836.4 of Part 836, as adopted December 9, 2015, are amended to read as follows:

(a)(1) "Incident" means an event or happening, accident or injury

during the conduct of any program activity which involves a client, a custodian, or damage to the facility in which the program operates and which has, or may have, an adverse or endangering effect on the life, health or welfare of clients or custodians and is required to be reported, investigated and recorded to designated parties according to Article eleven of the social services law and procedures approved by the Office, reviewed by an Incident Review Committee, and acted upon in an appropriate manner to safeguard the well-being of clients and custodians and to bring the matter to closure.

(2) Incidents are either "reportable" to the Justice Center or "non-reportable." [Reportable incidents include incidents of "abuse and neglect" and "significant incidents" as such terms are defined in this section.]

(3) "Non-reportable" incidents need not be reported to the Justice Center, or if they are reported may be determined as not within the jurisdiction of the Justice Center; nevertheless, these incidents may require documentation in a patient's clinical record or as an incident related to the program or facility which must be maintained by the service provider for review by the provider's Incident Review Committee, or by the Office or the Justice Center, upon request.

(b) "Reportable incident" means an incident of "abuse or neglect" or a "significant incident" as defined in subdivision (c) or (d) of this section; *some patient deaths are also a reportable incident.*

Section 2. Paragraph 3 of subdivision (d) of section 836.4 of Part 836, as adopted December 9, 2015, is amended by adding a new subparagraph (vii) to read as follows:

(3) Other significant incidents, including but not limited to:

(i) An event that is, or appears to be, a crime under New York state or federal law involving custodians, clients, or others, including children of service recipients in a residential program, as victims or perpetrators;

(ii) Body cavity search; must be with client consent;

(iii) Any violation of a client's rights to confidentiality pursuant to 42 CFR Part 2 or the Health Insurance Portability and Accountability Act (HIPAA);

(iv) Missing client as defined in subdivision (u) of this section;

(v) Suicide attempt whether or not preceded by statements of intent; statement of intent alone is not a suicide attempt; statements of intent should be recorded in a patient's clinical record;

(vi) Death of a custodian or mandated reporter during the course of his/her job duties related to the provider facility; shall also be reported to any other appropriate entity[.];

(vii) *Death of an outpatient client if death occurs on program premises or during the course of program activities. Notification must also be made to the local coroner or medical examiner, or any other state or local agency identified under state laws requiring the collection of health or other vital statistics.*

Section 3. Subdivision (c) of section 836.8 of Part 836, as adopted December 9, 2015, is amended to read as follows:

(c) In the [case of a client's death] *event of a client's death in an inpatient or residential program* under any circumstances or within 30 days of *such client's* discharge, immediate notification must be made to the VPCR (subject to the provisions of 42 CFR Part 2), the local coroner or medical examiner, or any other state or local agency identified under state laws requiring the collection of health or other vital statistics.

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

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

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

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

(d) Section 32.01 of the Mental Hygiene Law authorizes the Commissioner to adopt any regulation reasonably necessary to implement and effectively exercise the powers and perform the duties conferred by Article 32 of the Mental Hygiene Law.

(e) Section 32.07(a) of the Mental Hygiene Law authorizes the Commissioner to adopt regulations to effectuate the provisions and purposes of Article 32 of the Mental Hygiene Law.

2. Legislative Objectives:

The legislature created the Justice Center to establish comprehensive protections for vulnerable persons against abuse, neglect and other harmful conduct. The Act created a system for incident and patient death reporting and investigation. The Justice Center operates a 24/7 hotline for reporting patient deaths, centralizing independent reporting systems in separate agencies and focusing investigative efforts patient deaths which may have been the result of custodian action or inaction.

3. Needs and Benefits:

OASAS is proposing to adopt the amendments to Part 836 relating to reporting deaths of patients to the Justice Center based on a recent directive from the Justice Center intended to clarify patient deaths under their jurisdiction. Amending this rule will bring OASAS regulations into compliance with Justice Center requirements and will also minimize the number of reports OASAS programs submit to the JC and JC has been returning to OASAS as beyond their jurisdiction.

Data regarding certain deaths (patients deceased within 30 days of discharge from an outpatient program) may be collected via other sources. OASAS does not need this information and Justice Center does not want to process it.

This amendment will limit reports of deaths to the Justice Center to those of patients in a residential or inpatient program and within 30 days of such patients' discharge from that program. It will also relieve outpatient programs of the obligation to report a patient death within 30 days of discharge or death of a client which does not occur on the program site/facility or during the conduct of program activities.

4. Costs:

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

5. Paperwork:

The proposed regulatory amendments will not require additional information to be reported to the Justice Center.

6. Local Government Mandates:

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

7. Duplication:

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

8. Alternatives:

The Protection of People with Special Needs Act (Chapter 501 of the Laws of 2012) requires the adoption of this proposed regulation to be consistent with their guidance, regulations and directives.

9. Federal Standards:

These amendments do not conflict with federal standards.

10. Compliance Schedule:

The amendment will be effective upon submission as an Emergency Adoption. Formal adoption will be subsequent to the 45 day comment period.

Regulatory Flexibility Analysis

OASAS has determined that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments. This rulemaking proposal has been reviewed by the Behavioral Health Services Advisory Council consisting of affected OASAS providers of all sizes from diverse municipalities, and including local governments. The proposal is supported by providers because it will minimize reporting requirements, requires no new staff, cost or regulatory requirements.

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

Rural Area Flexibility Analysis

OASAS has determined that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas. This rulemaking proposal has been reviewed by the Behavioral Health Services Advisory Council consisting of affected OASAS providers. The proposal is supported by providers because it will minimize reporting requirements, requires no new staff, cost or regulatory requirements.

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

Job Impact Statement

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

These amendments to a recently adopted regulation (December 9, 2015) are necessary to comply with Justice Center directives clarifying the types

of death reports they must receive and those that are not subject to their jurisdiction. These amendments will bring OASAS regulations into compliance with those directives. OASAS providers are already required to report deaths under certain conditions; this Rule clarifies those conditions. The new rule will not require any new staff or any reductions in staff. The proposed rule will not affect the number of persons applying for employment within the OASAS system.

Office of Children and Family Services

NOTICE OF ADOPTION

Casework Contacts for Foster Children

I.D. No. CFS-07-16-00014-A

Filing No. 442

Filing Date: 2016-05-03

Effective Date: 2016-05-18

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

Action taken: Amendment of sections 428.3, 430.11, 430.12 and 441.21 of Title 18 NYCRR.

Statutory authority: Social Services Law, sections 20(3)(d), 34(3)(f) and 398(6)(a)

Subject: Casework contacts for foster children.

Purpose: To implement federal standards which require monthly face-to-face, in-person casework contact with foster children.

Text or summary was published in the February 17, 2016 issue of the Register, I.D. No. CFS-07-16-00014-P.

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

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

Initial Review of Rule

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

Assessment of Public Comment

The Office of Children and Family Services (OCFS) received comments from one local department of social services on the casework contact regulations for foster children.

1. Out-of State Placements

The commenter expressed concerns in regard to conducting face-to-face contacts with foster children between the ages of 18 and 21 who are out-of-state and who are in college, incarcerated, in substance abuse programs or outside of the United States.

The proposed regulations refer to a foster child who is placed in a home or facility outside of New York State. Such placements involve where the foster child has been placed in a foster boarding home or a child care facility. Accordingly, the out-of-state placements over which the commenter is concerned would not be subject to the regulatory monthly face-to-face contact requirement. This will be clarified in a release OCFS will issue after the proposed regulations are filed for adoption.

The regulation was not changed.

2. Compelling Reasons

The commenter raised the issue of the application of the face-to-face casework contact requirement where the foster child is ill and it is the advice of a medical professional that the face-to-face contact may be dangerous to the youth 's or another person's health. The commenter recommended that a compelling reason exception be added to the regulations for why monthly face-to-face casework contacts casework are not possible.

The proposed regulations reflect the federal mandate under Title IV-B of the Social Security Act of monthly casework contact of children in foster care. The federal standards do not include a compelling reason exception. To the extent there are any specific exceptions authorized by the federal government, OCFS will so advise local departments of social services in policy releases.

The regulation was not changed.

3. Department of Corrections

The commenter questioned whether casework contacts with an incarcerated foster child by staff of the New York State Department of Corrections and Community Supervision would count towards the monthly foster care face-to-face contact requirement. The answer is no. In regard to contacts involving foster children cared for in other than foster care placements, the regulations only recognize foster children who are residing in facilities operated or supervised by the Office of Mental Health, Office of People With Developmental Disabilities or the Office of Alcoholism and Substance Abuse Services.

The regulation was not changed.

Department of Civil Service

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-20-16-00005-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Office for the Aging," by deleting therefrom the positions of Affirmative Action Administrator 1 (2); and, in the Executive Department under the subheading "Office of General Services," by adding thereto the positions of Affirmative Action Administrator 1 (2).

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Jurisdictional Classification

I.D. No. CVS-20-16-00006-P

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

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

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

Subject: Jurisdictional Classification.

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

Text of proposed rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Department of Mental Hygiene under the subheading "Office of Mental Health," by increasing the number of positions of Mental Health Program Manager 1 from 9 to 11.

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

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

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

Regulatory Impact Statement

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

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

Department of Health

NOTICE OF ADOPTION

Sexually Transmitted Diseases (STDs)

I.D. No. HLT-47-15-00003-A

Filing No. 445

Filing Date: 2016-05-03

Effective Date: 2016-05-18

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

Action taken: Amendment of Part 23 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 225(4), 2304, 2311 and 2312

Subject: Sexually Transmitted Diseases (STDs).

Purpose: Control of Sexually Transmitted Diseases (STDs); Expedited Partner Therapy for Chlamydia Trachomatis Infection.

Text of final rule: Section 23.1 is amended as follows:

23.1 List of sexually [transmissible] transmitted diseases.
The following are groups of sexually [transmissible] transmitted diseases (STDs) and shall constitute the definition of sexually [transmissible] transmitted diseases for the purpose of this Part and Section 2311 of the Public Health Law:

- Group A
[Treatment] Facilities referred to in section 23.2 of this [p]Part must provide diagnosis and treatment [free of charge] as provided in section 23.2(c) of this Part for the following STDs:
 - Chlamydia trachomatis infection
 - Gonorrhea

- Syphilis
- Non-gonococcal Urethritis (NGU)
- Non-gonococcal (mucopurulent) Cervicitis
- Trichomoniasis
- Lymphogranuloma Venereum
- Chancroid
- Granuloma Inguinale
- Group B
[Treatment facilities] Facilities referred to in section 23.2 of this Part must provide diagnosis [free of charge] and [must provide] treatment as provided in section 23.2(d) of this Part for the following STDs:
 - [Ano-genital warts]
 - Human Papilloma Virus (HPV)
 - Genital Herpes Simplex
- Group C
[Treatment facilities] Facilities referred to in section 23.2 of this Part must provide diagnosis [free of charge] and [must provide] treatment as provided in section 23.2(e) of this Part for the following STD:
 - Pelvic Inflammatory Disease (PID) Gonococcal/Non-gonococcal
- Group D
[Treatment facilities] Facilities referred to in section 23.2 of this Part must provide diagnosis [free of charge] and [must provide] treatment as provided in section 23.2(f) of this Part for the following STDs:
 - Yeast (Candida) Vaginitis
 - Bacterial Vaginosis
 - Pediculosis Pubis
 - Scabies

Section 23.2 is amended as follows:
Section 23.2 [Treatment facilities] Facilities.
Each health district shall provide adequate facilities either directly or through contract for the diagnosis and treatment of persons living within its jurisdiction who are infected or are suspected of being infected with STD as specified in section 23.1 of this Part.

(a) Such persons shall be examined and shall have appropriate laboratory specimens taken and laboratory tests performed for those diseases designated in this Part as STDs for which such person exhibits symptoms or is otherwise suspected of being infected.

(b) The examinations and laboratory tests shall be conducted in accordance with accepted medical procedures as described in the most recent evidence-based STD [clinical guidelines and laboratory] guidelines distributed by the New York State Department of Health.

(c) Any persons diagnosed as having any of the STDs in Group A in section 23.1 of this Part shall be treated directly in the facility with appropriate medication in accordance with accepted medical procedures as described in the most recent [treatment] evidence-based STD guidelines distributed by the department.

(d) Any persons diagnosed as having any of the STDs in Group B in section 23.1 of this Part must be provided treatment either directly in the [treatment] facility referred to in this section or through a written or electronic prescription or referral. [If treatment is provided directly, it must be provided free of charge.]

(e) Any person diagnosed as having the STD in Group C in section 23.1 of this Part may be managed by immediate referral or if outpatient treatment is appropriate as indicated by evidence-based STD guidelines, the person may be treated directly in the facility. [If outpatient treatment is appropriate as indicated by accepted clinical guidelines and is provided directly in the treatment facility referred to in this section, it must be provided free of charge.]

(f) Any person diagnosed as having any of the STDs in Group D in section 23.1 of this Part may be provided treatment directly within the [treatment] facility referred to in this section or through a written or electronic prescription. [If treatment is provided directly, it must be provided free of charge.]

(g) Health districts shall seek third party reimbursement for these services to the greatest extent practicable; provided, however, that no board of health, local health officer, or other municipal health officer shall request or require that such coverage or indemnification be utilized as a condition of providing diagnosis or treatment services. Health care providers that are permitted by the patient to utilize such coverage or indemnification may disclose information to third party reimbursers or their agents to the extent necessary to reimburse health care providers for health services.

Section 23.3 is amended as follows:
23.3 Cases treated by other providers.

(a) Every physician, physician assistant, licensed midwife or nurse practitioner providing (as authorized by their scope of practice) gynecological, obstetrical, genito-urological, contraceptive, sterilization, or termination of pregnancy services or treatment, shall offer to administer to every patient treated by such physician, physician assistant, licensed midwife or nurse practitioner, appropriate examinations or tests for STD as defined in this Part.

(b) The administrative officer or other person in charge of a clinic or other facility providing gynecological, obstetrical, genito-urological, contraceptive, sterilization or termination of pregnancy services or treatment shall require staff of such clinic or facility to offer to administer to every resident of the State of New York coming to such clinic or facility for such services or treatment, appropriate examinations or tests [or] for the detection of sexually [transmissible] *transmitted* diseases.

A new section 23.4 is added as follows:

23.4 Minors.

When a health care provider diagnoses, treats or prescribes for a minor, without the consent or knowledge of a parent or guardian as permitted by section 2305 of the Public Health Law, neither medical nor billing records shall be released or in any manner be made available to the parent or guardian of such minor without the minor patient's permission. In addition to being authorized in accordance with section 2305 of the Public Health Law to diagnose, treat or prescribe for a person under the age of eighteen years without the consent or knowledge of the parent or guardian of such person where the individual is infected with a sexually transmitted disease, or has been exposed to infection with a sexually transmitted disease, health care practitioners may (as authorized by their scope of practice) render medical care related to other sexually transmitted diseases without the consent or knowledge of the parent or guardian.

Paragraph (2) of subdivision (c) of section 23.5 is amended as follows:

(2) not be provided for any partner or partners, when the patient with chlamydia trachomatis infection seen by the health care practitioner is found to be concurrently infected with gonorrhea [or], syphilis or HIV.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 23.2(b), (c) and (e).

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

Revised Regulatory Impact Statement

Statutory Authority:

To be consistent with and in conjunction with amendments contained in the 2013-14 enacted State budget which became effective on April 1, 2013 (L. 2013, ch. 56, Part E, §§ 32-41), modifications are needed to relevant sections of 10 NYCRR Part 23 (Sexually Transmissible Diseases). Under sections 225(4), 2311 and 2312 of the Public Health Law, the Commissioner of Health and the Public Health and Health Planning Council have the authority to amend the State Sanitary Code (10 NYCRR Parts 1-24), list the sexually transmitted diseases for which Public Health Law Article 23 is applicable and promulgate rules and regulations concerning expedited partner therapy for chlamydia.

Legislative Objectives:

Laws of 2013, Chapter 56 amended PHL section 2304 to clarify that counties may provide STD diagnosis and treatment not only directly but also "through contract." The Legislature removed the requirement that services must be provided "free" and, further, required municipalities to seek third party coverage (generally Medicaid) reimbursement for such services where appropriate. As amended, PHL section 2304 states that counties must "to the greatest extent possible" seek indemnification from insurance for STD services but shall not "request or require that such coverage or indemnification be utilized as a condition of providing" STD services. This provision allows the counties to bill a third party (usually Medicaid) for the Article 23-required STD services. Counties must seek third party coverage or indemnification if the patient provides evidence of insurance coverage, but patients can always receive diagnosis and treatment as specified in Part 23 of the health regulations even if they do not provide such evidence.

Laws of 1972, Chapter 244 amended PHL section 2305 to clarify that STD treatment is to be provided not only for an STD "case" but also for any person "exposed to" any STD.

Needs and Benefits:

Changing the word "transmissible" to "transmitted" throughout will conform the regulation to the Public Health Law, as amended, and is consistent with current terminology. Allowing local health departments to provide services through contract, as opposed to only direct provision of these services, gives counties greater flexibility without reducing the level or quality of services provided. Allowing for third party reimbursement will reduce the costs for counties and for the State.

The provisions regarding minors will increase the number of minors who receive treatment for STDs and will prevent the spread of STDs. These provisions will also decrease the number of children who get cancer. National guidelines for adolescent clinical preventive care include immunizations as a key preventive service with a strong evidence basis for effectiveness and safety. Human Papilloma Virus (HPV) represents the first vaccine-preventable sexually transmitted disease with vaccination protecting adolescents from future morbidity and mortality, including

from cancer, associated with HPV infection. Section 23.4 permits health care providers to prescribe and administer HPV vaccine to sexually active minors during confidential sexual and reproductive health care visits without consent or knowledge of the parent or guardian.

HPV is the most common sexually transmitted virus accounting for 79 million infections nationally and 14 million new infections each year. Up to 70 percent of sexually active persons will acquire genital HPV infection at some point in their lives. On an annual basis, young people ages 15-24 who make up 25 percent of the sexually active population, account for 49 percent of new infections.

HPV vaccination prevents 70 percent of cervical cancers, other anogenital and oropharyngeal cancers and over 86 percent of non-cancerous anogenital warts caused by HPV infection. Since HPV vaccine introduction, vaccine-type HPV prevalence has decreased 56 percent among a nationally representative sample of 14-19 year olds in the vaccine era (2007-2010) compared with the pre-vaccine era. A separate study documented a 35 percent decrease in anogenital warts among females younger than 21. Post-licensure monitoring of the HPV vaccine shows that the vaccine continues to be safe and recent data indicates that one dose of vaccine provides 82 percent effectiveness against vaccine type infection.

Finally, contraindication for expedited partner therapy for chlamydia is noted for people who are co-infected with HIV in order to ensure that expedited partner therapy is only provided in appropriate cases consistent with current clinical guidelines.

Costs:

The amendments are intended to ease the cost to local health departments. For those local health departments that do implement a billing system, some may experience associated costs with implementation of the system, however it is anticipated that the ability to bill for rendered services will off-set any up front expense. It is estimated that any county that elects to implement an electronic billing system will incur an estimated cost of \$5,000 - \$10,000. Costs will vary depending on type of EMR (if used), staffing and whether or not LHDs can leverage existing billing systems for other public health programs. It is noted within the Regulation that the administrative burden of implementing a billing system should not cost the county more than the revenue to be generated by third party payer reimbursement and co-pay. The law only requires billing be pursued in cases where it is practicable.

Local Government Mandates:

Each board of health and local health officer shall ensure that diagnosis and treatment services are available and, to the greatest extent practicable, seek third party coverage or indemnification for such services; provided, however, that no board of health, local health officer, or other municipal officer or entity shall request or require that such coverage or indemnification be utilized as a condition of providing diagnosis or treatments services.

Paperwork:

This rule imposes no new reporting requirements. In order to manage billing operations, forms and paperwork may be necessary for individual local health departments to implement billing systems and contracts with vendors, if any.

Duplication:

There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

Alternatives:

The regulations were developed with considerable input from the community, provider groups, and regulated parties, particularly local governments. Input was elicited from the New York State Association of County Health Officials on repeated occasions through in-person meetings as well as telephone conference calls. Existing practices of local health departments that support billing are acceptable. This includes local health departments contracting with local providers and utilizing the contractor's billing infrastructure. Further, the Regulation states that the administrative burden of implementing a billing system should not cost the county more than the revenue to be generated by third party payer reimbursement and co-pay. The law only requires billing be pursued in cases where it is practicable.

Federal Standards:

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

Compliance Schedule:

The amendments will be effective upon publication of a Notice of Adoption in the New York State Register. The Department has continued to assist affected entities in compliance efforts.

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

Changes made to the last published rule do not necessitate revision to the previously published Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

The public comment period for this regulation ended on January 11, 2016. The Department received a total of fourteen comments, which all expressed support of the proposed amendments to Part 23 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York. Comments were received from the New York City Department of Health and Mental Hygiene (NYCDOHMH), the New York Civil Liberties Union (NYCLU), Family Planning Advocates of New York State (FPA), ACT UP, Physicians for Reproductive Health, New York State Senator Liz Krugger, eight adolescent medicine providers, and the HPV Research Team at the Mount Sinai School of Medicine Adolescent Health Center. In addition, the Department received comments on specific aspects of the regulations which are summarized below, followed by the Department's response.

Comment #1

NYCDOHMH, NYCLU and FPA strongly supported the proposed rules regarding minors consent, in particular, with regard to HPV vaccination. However, each noted that language in the Regulatory Impact Statement specifying that "Section 23.4 permits health care providers to prescribe HPV vaccine to sexually active minors during a visit to diagnose and treat other STDs without the consent of knowledge of the parent or guardian" was inconsistent with the language and purpose of Public Health Law Section 2305. Each commenter requested that the Regulatory Impact Statement be amended to clarify that HPV vaccine may be provided to sexually active minors during all confidential sexual and reproductive health care visits. Furthermore, the Regulatory Impact Statement states that health care providers may "prescribe" the HPV vaccine while the proposed language in 23.4 permits health care providers to "administer" the HPV vaccine. To avoid confusion among providers, they suggested that the language in the Regulatory Impact Statement be clarified to indicate that providers may both prescribe and administer.

Response:

The Department modified the Needs and Benefits section of the regulatory Impact Statement to state "Section 23.4 permits health care providers to prescribe and administer HPV vaccine to sexually active minors during confidential sexual and reproductive health care visits without consent or knowledge of the parent or guardian."

Comment #2

Section 23.1 groups the list of sexually transmitted diseases that local health departments have responsibility for diagnosing and treating. The distinction between groups B, C and D is unclear since these diseases can be managed directly by the treatment facility or referred elsewhere for treatment. The recommendation is to consolidate the three groups or make the distinctions clearer.

Response:

In 2011, proposed revisions to Section 23.1 were adopted which established the four groups of STDs for purposes of diagnosis and treatment. No additional revisions are being proposed at this time. Section 23.1 presents the minimum requirements for public health clinics, and the groupings allow flexibility in managing those sexually transmitted diseases that may require the additional expertise available through a routine or urgent referral to manage more severe symptoms or sequelae.

For example, facilities may choose to treat those infections in Groups B and D either directly or through a prescription, but the referral option is only available for Group B. In Group B, Human Papilloma Virus and Herpes Simplex Virus infections may be severe and thus, require referral by the facility to another provider. In Group C, for example, pelvic inflammatory disease is a potentially severe infection with serious complications that may require inpatient therapy and management. As stated in Section 23.2(e), management may be by "immediate referral" which recognizes the severity of PID infection and the need for active referral to another provider. For those patients whose PID infection can be managed on an outpatient basis, the facility has the option to treat directly. In Group D, management of the infections does not include a referral option, as these conditions can be managed appropriately with readily available medications and, thus, the facility should be responsible for ensuring treatment of infected patients. Given these important differences in treatment requirements, the Department is maintaining Groups B, C and D as set forth in the current regulations.

Comment #3

There are references in provisions of Sections 23.2 and 23.3 to "STD clinical guidelines," "most recent treatment guidelines" and "appropriate examinations or tests." It is recommended that applicable sections of Part 23 be modified to refer to an evidence-based set of treatment guidelines.

Response:

The Department agrees that any guidelines required to be used by health departments should be based on scientific evidence and expert opinion. In response, the Department modified the applicable parts of Part 23 to consistently refer to the required use of evidence-based guidelines by health departments for sexually transmitted diseases.

Comment #4

The proposed rules permit local health departments to seek reimbursement for STD services but do not require patients to use insurance in order to receive services. It is recommended that the Department require facilities to clearly communicate their billing policies to patients so as to prevent any possibility of discouraging patients from accessing sexual health services. Communication channels should include print and digital advertisements, clinic brochures, and clinic staff-patient discussions during the clinic visit.

Response:

The Department recognizes the need to educate patients about health department billing practices and has already issued guidance to health departments, which includes messaging for websites and print material, as well as scripts for clinic staff communication with clients around billing. This guidance was disseminated to health departments in May 2014 and is posted on the Department's public website.

Comment #5

Younger adults who are covered by their parents' health insurance need the confidentiality provisions specified in Section 23.4. The comment includes a recommendation to further amend the language in Section 23.4 to state: "Neither medical nor billing records shall be released or in any manner be made available to the parent or guardian of younger people covered by their family health insurance without the patient's permission."

Response:

The first sentence of the proposed section 23.4 is intended to implement the provisions of Public Health Law § 17 that apply to patients under the age of 18. The Department agrees that there may be cases in which a young adult child or spouse of the policy holder does not want to disclose health information to the policy holder. However, the Department believes that existing confidentiality laws, including HIPAA, provide sufficient confidentiality protection to adults. In addition, the provisions of Insurance Law § 2612 and 11 NYCRR Part 244, where applicable, prevent an explanation of benefits from being sent to the policy holder. The Department believes the first sentence of the proposed section 23.4 is appropriate, and the language remains unchanged in the adopted regulation.

NOTICE OF ADOPTION**Extended Mammography Hours for General Hospitals and Hospital Extension Clinics**

I.D. No. HLT-06-16-00017-A

Filing No. 443

Filing Date: 2016-05-03

Effective Date: 2016-05-18

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

Action taken: Addition of section 405.33 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2800 and 2803

Subject: Extended Mammography Hours for General Hospitals and Hospital Extension Clinics.

Purpose: Requires those general hospitals and hospital extension clinics that offer mammography services to have extended hours.

Text of final rule: A new section 405.33 is added as follows:

405.33 Screening mammography services

(a) Applicability.

This section shall apply to any general hospital or extension clinic that is certified as a mammography facility pursuant to the Mammography Quality Standards Act (MQSA).

(b) Extended service hours.

Any general hospital or extension clinic certified as a mammography facility pursuant to the MQSA shall provide extended hours, i.e. in the early morning, evening, or weekend hours, for screening mammography services. Extended hours for screening mammography services shall be provided on at least two days each week, for at least two hours each day offered, for a total of at least four hours each week, including but not limited to the following times:

(1) Monday through Friday, between the hours of 7:00 a.m. and 9:00 a.m.;

(2) Monday through Friday, between the hours of 5:00 p.m. and 7:00 p.m.; or

(3) Saturday or Sunday, between the hours of 9:00 a.m. and 5:00 p.m.

(c) Waiver.

(1) A facility may submit an application for a waiver from the requirements of this section, in whole or in part, if it can demonstrate, to the Department's satisfaction, that the facility:

(i) does not have sufficient staff to provide extended hours for screening mammography services in accordance with this section, and that it is making diligent efforts to obtain staffing such that it can provide extended hours;

(ii) is in the process of discontinuing screening mammography services, as part of a consolidation or similar change; or

(iii) is subject to such other hardships as the Department deems appropriate.

(2) The Department may deny, grant or extend a waiver for 90 days, or more if the Department determines appropriate, in its sole discretion.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 405.33(b) and (c).

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

Revised Regulatory Impact Statement

Statutory Authority:

Public Health Law (“PHL”) Section 2800 provides that “hospital and related services including health-related service of the highest quality, efficiently provided and properly utilized at a reasonable cost, are of vital concern to the public health. In order to provide for the protection and promotion of the health of the inhabitants of the state. . . , the department of health shall have the central, comprehensive responsibility for the development and administration of the state’s policy with respect to hospital related services. . . .”

PHL Section 2803 authorizes the Public Health and Health Planning Council (“PHHPC”) to adopt rules and regulations to implement the purposes and provisions of PHL Article 28, and to establish minimum standards governing the operation of health care facilities.

Legislative Objectives:

The legislative objectives of PHL Article 28 include the protection of the health of the residents of the State, by promoting the availability of high quality health services at a reasonable cost.

Needs and Benefits:

In 2014, nearly 22% of women in New York State (NYS) aged 50-74 reported not receiving mammograms at least every other year. Breast cancer is the most commonly diagnosed cancer and the second leading cause of cancer death among women in New York State. Each year, approximately 15,000 women in New York State are newly diagnosed with breast cancer, and approximately 2,640 die from the disease. Some subpopulations who are less likely to have been screened include women without health insurance (61.7% screened) and women without a regular health care provider (63.0% screened). Screening for breast cancer can increase the likelihood of identifying cancer at an early stage, when treatment is most successful. Once screened, follow-up diagnostic testing is critical to ensuring women receive necessary, potentially life-saving treatment.

Women may not get screened because they are afraid that mammography may be painful, they do not know what screening guidelines are, they do not know where to go for screening, they may have transportation barriers, or they may think screening is unaffordable. When women need follow-up testing and treatment, they can be overwhelmed. They may need help with accessing services, navigating complex health systems, and managing treatment decisions. The Community Preventive Services Task Force, an independent panel of experts appointed by the Centers for Disease Control and Prevention (CDC), has recommended reducing structural barriers as an intervention to improve breast cancer screening. Reducing structural barriers includes modifying hours of service to meet client needs.

There are approximately 600 certified mammography facilities in New York State: 210 are hospital-based (152 hospital locations, plus 58 hospital extension clinic sites); 18 free-standing diagnostic and treatment center; and 372 other non-hospital based mammography facilities. A survey of 36 contractors in the Cancer Services Program, which provides cancer screening for the uninsured, found that the majority (95%) had at least one mammography provider (either hospital or nonhospital based) that offered extended hours. A recent review of 160 of 210 hospital-based mammography facilities in NYS found that 70% offer one or a combination of alternative hours of services (early morning, evening, or weekend), and 30% do not.

Costs:

Costs to the State Government:

The proposed rule does not impose any new costs on state government.

Costs to Local Government:

The proposed rule does not impose any new costs on local governments, with the exception of four general hospitals that are operated by local governments. The cost to local governments that operate general hospitals are the same as the costs to private regulated parties, as described below.

Costs to Private Regulated Parties:

Both the Affordable Care Act and the NYS Insurance Law require insurers to cover mammography. Facilities already obtain third-party payment for mammograms through Medicaid and other insurers, thereby reducing the cost to regulated parties. Further, these proposed rules are not expected to impose any additional costs on those hospitals that are already in compliance, and the 70% of hospital-based facilities that already offer some form of extended hours.

The primary cost for those facilities that will be required to extend or change their hours for screening mammography services, assuming they are not already offering such hours, is the cost of ensuring staff, such as technicians, radiologists, and intake and support staff, are available to satisfy the extended hour requirement. The Department expects that most hospitals and hospital extension clinics that currently offer extended hours can modify the work hours of existing staff or use flex time to avoid incurring additional staff costs. Those facilities that need to modify their appointment hours to comply with these regulations may be able to use similar scheduling strategies to avoid incurring any new costs.

Costs to the Regulatory Agency:

The proposed rule does not impose any new costs on any regulatory agency.

Local Government Mandates:

The four general hospitals that are operated by local governments will be required to comply with this regulations, as discussed above.

Paperwork:

The proposed rule imposes no new reporting requirements, forms, or other paperwork upon regulated parties.

Duplication:

There are no relevant rules or other legal requirements of the Federal or State governments that duplicate, overlap, or conflict with this rule.

Alternatives:

There were no significant alternatives to be considered during the regulatory process. The serious risk that breast cancer presents justifies requiring extended hours for screening mammography services.

Federal Standards:

The proposed rule does not exceed any minimum standards of the federal government for the same or similar subject area. Although the Mammography Quality Standards Act (MQSA) governs certain aspects of mammography services, it does not govern the hours at which such services must be available.

Compliance Schedule:

The proposal will go into effect upon publication of the Notice of Adoption in the New York State Register.

Revised Regulatory Flexibility Analysis

Effect of Rule:

The proposed rule will apply to the 152 hospitals and 58 hospital extension clinics providing screening mammography services in New York State. Of these, there are four hospitals run by a local government (county) and one hospital that qualifies as a small business. Facilities that are small businesses or operated by local governments will not be affected differently from other facilities.

Compliance Requirements:

Compliance requirements are applicable to the one hospital considered a small business as well as the four hospitals operated by local governments. Compliance requires providing extended hours for screening mammography services.

Professional Services:

As noted in the Regulatory Impact Statement, this regulation will require additional staffing or staffing adjustment to ensure that screening mammography services are available at the required hours.

Compliance Costs:

Compliance costs for small businesses and local governments would be the same as those described in the Regulatory Impact Statement.

Economic and Technological Feasibility:

It is economically and technologically feasible for facilities that are small businesses or operated by local governments to comply with this amended rule.

Minimizing Adverse Impact:

Approximately 70% of hospital-based mammography facilities already offer some form of extended hours. By adopting a regulatory standard for which this is already a significant level of compliance, the Department has minimized the impact on regulated facilities. Additionally, the regulation includes a waiver provision for those facilities that can demonstrate hardship.

Small Business and Local Government Participation:

A copy of this notice of proposed rulemaking will be posted on the Department’s website. The notice will invite public comments on the proposal and include instructions for anyone interested in submitting comments, including small businesses and 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 required.

Revised Rural Area Flexibility Analysis

Types and Estimated Numbers of Rural Areas:

The proposed rule will apply to the 152 hospitals and 58 hospital extension clinics providing screening mammography services in New York State. The Department identified 57 hospitals and 13 hospital extension clinics providing mammography facilities located in rural areas of the State, defined as counties with less than a population of 200,000. A review of the hospital screening mammography services determined that 67% already offer some form of extended hours. Since this percentage is similar to the statewide percentage of approximately 70% of facilities already offering some form extended hours, this proposed rule is not expected to have a disproportionate impact on rural areas.

Reporting, Recordkeeping, Other Compliance Requirements and Professional Services:

This regulation will require additional staffing or staffing adjustment to ensure that extended screening mammography services are available.

Costs:

Compliance costs for entities in rural areas would be the same as those described in the Regulatory Impact Statement.

Minimizing Adverse Impact:

Approximately 67% of facilities in rural areas are already offering some form of extended hours. By adopting a regulatory standard for which this is already a significant level of compliance, the Department has minimized the impact on facilities. Additionally, the regulation includes a waiver provision for those facilities that can demonstrate hardship.

Rural Area Participation:

A copy of this notice of proposed rulemaking will be posted on the Department’s website. The notice will invite public comments on the proposal and include instructions for anyone interested in submitting comments, including those from rural areas.

Revised Job Impact Statement

No Job Impact Statement is included because the Department has concluded that the proposed regulatory amendments will not have a substantial adverse effect on jobs and employment opportunities. The basis for this conclusion is that requiring extended hours for screening mammography services does not reduce employment opportunities, and may create employment opportunities.

Assessment of Public Comment

Public comments were submitted to the NYS Department of Health (Department) in response to the proposed regulation. The public comment period for this regulation ended on March 28, 2016. The Department received comments from the New York State Radiological Society, the Healthcare Association of New York State, the New York City Health and Hospitals Corporation, the Greater New York Hospital Association, and Memorial Sloan Kettering Cancer Center. The Healthcare Association of New York State and other commenters appreciate the existence of an exemption process. Supportive comments were also submitted by numerous American Cancer Society-Cancer Action Network volunteers and the American Cancer Society-Cancer Action Network. These comments and the Department’s responses are summarized below:

COMMENT: The New York State Radiological Society (NYSRS) and Memorial Sloan Kettering Cancer Center (MSK) requested the replacement of the term “mammography services” with “screening mammography services,” expressing concern over staffing challenges presented by offering more complex procedures during extended hours.

RESPONSE: The intent of the proposed regulation is to increase screening rates by removing structural barriers to screening, and the term “mammography services” in the proposed rule was intended to refer only to screening mammography services. The Department agrees with the comment and has changed the term to “screening mammography services” in the final rule adoption.

COMMENT: NYSRS, MSK, the Healthcare Association of New York State (HANY), the Greater New York Hospital Association (GNYHA), and the American Cancer Society-Cancer Action Network (ACSCAN) and other commenters requested flexibility in the hours and days appointments must be offered by eliminating the consecutive hours mandate.

RESPONSE: The intent of the proposed regulation is to increase screening rates by increasing the availability of convenient appointment times for screening mammography services. The regulation achieves this by ensuring that at least four hours of extended hours are provided, on two separate days. For example, an 8:00 a.m. to 6:00 p.m. offering would meet the requirement of the regulation, for one of the required days. In addition, the extended hours do not need to be in addition to a full 9:00 a.m. to 5:00

p.m. offering; facilities can adjust staffing and appointment schedules to allow for early or late hour appointments, to avoid incurring additional staff costs. For example, a 10:00 a.m. to 7:00 p.m. offering would meet the requirements of the regulation, for one of the required days. Additionally, facilities that are not able to meet this requirement may submit an application for a waiver for the Department’s consideration. The Department believes that, in this way, the regulation provides the appropriate degree of flexibility.

COMMENT: NYSRS requested that the regulations be changed to instead require 10 additional hours per month that are outside of the standard work week.

RESPONSE: The proposed rule sets the expectation of at least four hours a week outside the standard work day with the option of offering at least two of those hours on the weekend. Limiting extended hours to only 10 hours per month does not address the intent of the proposed rule.

COMMENT: GNYHA proposes that the rule reflect that the four-hour requirement can fully be met by offering weekend hours.

RESPONSE: The regulation requires that extended hours be provided on at least two days each week. Hence, a facility could meet this requirement by offering extended hours on both Saturday and Sunday. However, if extended hours are offered on only one weekend day, then extended hours must be offered on at least one weekday as well.

COMMENT: HANY proposed that the regulation allow each facility to evaluate the outcomes and benefits of the extended service hours provision after a specific time period to validate the extent of the need in all areas.

RESPONSE: The proposed rule does not limit a facility from conducting a utilization assessment to evaluate the outcomes and benefits of the extended hours being offered. If a facility determines that extended hours are not being utilized in a particular community and the provision of extended hours is causing an undue hardship to continue, a facility may submit an application for a waiver for the Department’s consideration.

COMMENT: GNYHA notes that the 90 day waiver may not allow enough time for an issue to be resolved. Further, GNYHA proposes an additional waiver criteria be added if a provider can demonstrate a lack of demand for alternate hours services.

RESPONSE: The proposed rule does not limit a facility from conducting a utilization assessment to evaluate the outcomes and benefits of the extended hours being offered. If a facility determines that extended hours are not being utilized in a particular community and the provision of extended hours is causing an undue hardship to continue, a facility may submit an application for a waiver for the Department’s consideration. The Department also has discretion to issue waivers for more than 90 days, where appropriate.

COMMENT: MSK and NYSRS recommended that the proposed rule be applicable across an entire health care system or multi-site institution rather than each individual location within these types of systems.

RESPONSE: This proposed rule addresses an important structural barrier to the receipt of screening mammography services – the availability of convenient appointment times. The proposed rule applies to any general hospital or extension clinic certified as a mammography facility in accordance with the Mammography Quality Standards Act. Health systems with multiple mammography facilities may have such facilities located in various regions. To limit the rule to only an individual location within a health system would limit the geographical reach of the extended hours in some areas. Because transportation is an additional barrier to the receipt of screening mammography services, it is important that all relevant mammography facilities offer extended hours. If a facility determines that extended hours are not being utilized in a particular community and is causing an undue hardship to continue, or determines that it is unable to offer extended hours at a particular location due to a specific reason, a facility may submit an application for a waiver for the Department’s consideration.

COMMENT: A commenter noted that evening and weekend hours offered at that facility were not well utilized by patients and are thus not necessary. Early morning and late afternoon hours were more successful.

RESPONSE: The proposed rule allows facilities to consider their extended hour offerings as early morning, evening, or on the weekends. If a facility determines that extended hours are not being utilized in a particular community and the requirement is causing an undue hardship, a facility may submit an application for a waiver for the Department’s consideration.

COMMENT: A commenter noted that the rule may place an undue staffing burden on a small, rural hospital.

RESPONSE: The proposed rule includes a waiver process in the instance that a facility either does not have sufficient staff to provide the extended hours or does not have the resources to hire additional staff.

COMMENT: NYSRS and other commenters requested clarification that the proposed rule does not require a facility to expand their hours of operation beyond a 40 hour work week.

RESPONSE: The proposed rule does not require a facility to expand the work week for its employees. A facility may adjust its current hours for screening mammography services to ensure that it is satisfying this new requirement; facilities may be able to meet this requirement by providing different hours of service availability than they are currently providing, rather than increasing the total hours of service availability. The Department expects that most hospitals and hospital extension clinics that currently offer extended hours can modify the work hours of existing staff or use flex time to avoid incurring additional staff costs. The proposed rule includes a waiver process in the instance that a facility either does not have sufficient staff to provide the extended hours or does not have the resources to hire additional staff.

COMMENT: NYSRS recommended amending Insurance Law to require all insurance companies cover annual mammography for women 40 years of age and over without cost sharing.

RESPONSE: The Department does not have the authority to amend the Insurance Law. Accordingly, no change is made to the regulation.

COMMENT: ASCAN suggests that additional interventions such as education, patient reminders and mobile mammography could further improve New York's breast cancer screening rates.

RESPONSE: The Department takes this comment under advisement. Because the suggestion is outside the scope of the proposed regulation, the Department has not made changes to the final regulation.

Division of Human Rights

NOTICE OF ADOPTION

Discrimination Based on Relationship or Association

I.D. No. HRT-10-16-00019-A

Filing No. 444

Filing Date: 2016-05-03

Effective Date: 2016-05-18

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

Action taken: Addition of section 466.14 to Title 9 NYCRR.

Statutory authority: Executive Law, section 295.5

Subject: Discrimination based on relationship or association.

Purpose: To clarify it is unlawful to discriminate because of relationship or association with members of a protected class.

Text or summary was published in the March 9, 2016 issue of the Register, I.D. No. HRT-10-16-00019-P.

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

Text of rule and any required statements and analyses may be obtained from: Edith Allen, Administrative Aide, Division of Human Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458, (718) 741-8398, email: edith.allen@dhr.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

Long Island Power Authority

PROPOSED RULE MAKING HEARING(S) SCHEDULED

Proposed Feed-In Tariffs for New Commercial Solar and Fuel Cell Generation

I.D. No. LPA-20-16-00001-P

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

Proposed Action: The Long Island Power Authority ("LIPA") is considering a proposal to modify its Tariff for Electric Service ("Tariff") to establish a Commercial Solar Feed-in Tariff and a Fuel Cell Feed-in Tariff.

Statutory authority: Public Authorities Law, section 1020-f(z), (u) and (gg)

Subject: Proposed Feed-in Tariffs for new commercial solar and fuel cell generation.

Purpose: To authorize development of up to 20MW of new solar generation and 40MW of new fuel cell generation through feed-in tariffs.

Public hearing(s) will be held at: 10:00 a.m., July 5, 2016 at H. Lee Denison Bldg., 100 Veterans Memorial Hwy., Hauppauge, NY; 2:00 p.m., July 5, 2016 at 333 Earle Ovington Blvd., 4th Fl., Uniondale, NY.

Interpreter Service: Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

Accessibility: All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Substance of proposed rule: The Long Island Power Authority Staff proposes to modify the Tariff for Electric Service, effective August 1, 2016, to authorize an additional Commercial Solar Feed-In Tariff for up to 20 MW and an additional Fuel Cell Feed-In Tariff for up to 40 MW, at prices to be set by competitive auctions.

Text of proposed rule and any required statements and analyses may be obtained from: Justin Bell, Long Island Power Authority, 333 Earle Ovington Blvd., Suite 403, Uniondale, NY 11553, (516) 719-9886, email: jbell@lipower.org

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

Public comment will be received until: Five days after the last scheduled public hearing.

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.

Public Service Commission

NOTICE OF ADOPTION

Submetering of Electricity

I.D. No. PSC-29-09-00006-A

Filing Date: 2016-04-28

Effective Date: 2016-04-28

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

Action taken: On 4/20/16, the PSC adopted an order approving Shinda Management Corporation (Shinda) on behalf of Greater Allen Cathedral of New York Housing Development Fund Corporation (Greater Allen) to submeter electricity at 107-37 166th Street, Jamaica, New York.

Statutory authority: Public Service Law, sections 2, 4(1), 65(1), 66(1), (2), (3), (4), (12) and (14)

Subject: Submetering of electricity.

Purpose: To approve Shinda on behalf of Greater Allen to submeter electricity at 107-37 166th Street, Jamaica, New York.

Substance of final rule: The Commission, on April 20, 2016, adopted an order approving Shinda Management Corporation on behalf of Greater Allen Cathedral of New York Housing Development Fund Corporation to submeter electricity at 107-37 166th Street, Jamaica, New York.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(09-E-0011SA1)

NOTICE OF ADOPTION**Submetering of Electricity****I.D. No.** PSC-45-14-00003-A**Filing Date:** 2016-04-28**Effective Date:** 2016-04-28

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

Action taken: On 4/20/16, the PSC adopted an order approving Bedford-Stuyvesant South One LLC (Bedford) to submeter electricity at 27 Albany Avenue, Brooklyn, New York.

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

Subject: Submetering of electricity.

Purpose: To approve Bedford to submeter electricity at 27 Albany Avenue, Brooklyn, New York.

Substance of final rule: The Commission, on April 20, 2016, adopted an order approving Bedford-Stuyvesant South One LLC to submeter electricity at 27 Albany Avenue, Brooklyn, New York, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(14-E-0457SA1)

NOTICE OF ADOPTION**Submetering of Electricity****I.D. No.** PSC-29-15-00023-A**Filing Date:** 2016-04-28**Effective Date:** 2016-04-28

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

Action taken: On 4/20/16, the PSC adopted an order approving Bridge Land Hudson LLC (Bridge Land Hudson) to submeter electricity at 261 Hudson Street, New York, New York.

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

Subject: Submetering of electricity.

Purpose: To approve Bridge Land Hudson to submeter electricity at 261 Hudson Street, New York, New York.

Substance of final rule: The Commission, on April 20, 2016, adopted an order approving Bridge Land Hudson LLC to submeter electricity at 261 Hudson Street, New York, New York, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(15-E-0379SA1)

NOTICE OF ADOPTION**LD-1110 NILM Device****I.D. No.** PSC-41-15-00004-A**Filing Date:** 2016-04-28**Effective Date:** 2016-04-28

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

Action taken: On 4/20/16, the PSC adopted an order approving Enetics, Inc.'s (Enetics) LD-1110 Non-Intrusive Appliance Load Monitoring (NILM) device for use in single phase and network residential applications in New York State.

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

Subject: LD-1110 NILM device.

Purpose: To approve Enetics LD-1110 NILM device for use in New York State.

Substance of final rule: The Commission, on April 20, 2016, adopted an order approving Enetics, Inc.'s LD-1110 Non-Intrusive Appliance Load Monitoring device for use in single phase and network residential applications in New York State, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(15-E-0564SA1)

NOTICE OF ADOPTION**Transfer of Water Supply Assets****I.D. No.** PSC-44-15-00026-A**Filing Date:** 2016-04-27**Effective Date:** 2016-04-27

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

Action taken: On 4/20/16, the PSC adopted an order approving the joint petition for the Town of East Fishkill (East Fishkill) to acquire all of the water supply assets transferred from Beekman Water Company, Inc. (Beekman).

Statutory authority: Public Service Law, sections 4(1), 5(1)(f), 89-c(1), (10) and 89-h(1)

Subject: Transfer of water supply assets.

Purpose: To approve the transfer of water supply assets from Beekman to East Fishkill.

Substance of final rule: The Commission, on April 20, 2016, adopted an order approving the joint petition of Beekman Water Company, Inc. (Beekman) and the Town of East Fishkill (East Fishkill) to transfer all of the water supply assets from Beekman to East Fishkill, and the dissolution of Beekman, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(15-W-0599SA1)

NOTICE OF ADOPTION

Petition for Extension of Monetary Crediting Period

I.D. No. PSC-04-16-00014-A

Filing Date: 2016-04-27

Effective Date: 2016-04-27

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

Action taken: On 4/20/16, the PSC adopted an order approving Distributed Sun LLC (Distributed Sun), et. al's. petition for an extension of the monetary crediting period to 30 years for the four solar photovoltaic projects.

Statutory authority: Public Service Law, sections 66-j and 66-l

Subject: Petition for extension of monetary crediting period.

Purpose: To approve Distributed Sun, et. al's. petition for extension of monetary crediting period.

Substance of final rule: The Commission, on April 20, 2016, adopted an order approving Distributed Sun LLC, Building Energy Development US, LLC, and Cornell University's petition for an extension of the monetary crediting period to 30 years for the Snyder Road Project, Geneva Project, Harford Project, Musgrave East Project and the Musgrave West Project, measured from the in-service date of each project that complies with the requirements of the New York State Research and Development Authority, subject to the terms and conditions set forth in the order.

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

Text of rule may be obtained from: John Pitucci, Public Service Commission, Three Empire State Plaza, Albany, New York 12223, (518) 486-2655, email: john.pitucci@dps.ny.gov An IRS employer ID no. or social security no. is required from firms or persons to be billed 25 cents per page. Please use tracking number found on last line of notice in requests.

Assessment of Public Comment

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

(16-E-0007SA1)

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

Notice of Intent to Submeter Electricity

I.D. No. PSC-20-16-00007-P

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

Proposed Action: The Public Service Commission is considering the Notice of Intent, filed by BAM GO Developers, LLC, to submeter electricity at 250 Ashland Place, Brooklyn, New York, and the request for a waiver of 16 NYCRR section 96.5(k)(3), requiring an energy audit.

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

Subject: Notice of Intent to submeter electricity.

Purpose: To consider the Notice of Intent of BAM GO Developers, LLC to submeter electricity at 250 Ashland Place, Brooklyn, New York.

Substance of proposed rule: The Commission is considering the Notice of Intent, filed by BAM GO Developers, LLC (Petitioner) on February 23, 2016, to submeter electricity at 250 Ashland Place, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc. The Commission is also considering Petitioner's request, filed April 26, 2016, for a waiver of 16 NYCRR § 96.5(k)(3), which requires proof that an energy audit has been conducted when 20 percent of the tenants receive income-based housing assistance. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(16-E-0120SP1)

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

Consideration of Consequences Against Global Energy Group, LLC for Violations of the Uniform Business Practices (UBP)

I.D. No. PSC-20-16-00008-P

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

Proposed Action: The Commission is considering consequences against Global Energy Group, LLC d/b/a Jean Energy Group, LLC for violations of the Uniform Business Practices (UBP).

Statutory authority: Public Service Law, sections 4 and 66

Subject: Consideration of consequences against Global Energy Group, LLC for violations of the Uniform Business Practices (UBP).

Purpose: To consider consequences against Global Energy Group, LLC for violations of the Uniform Business Practices (UBP).

Substance of proposed rule: The Public Service Commission is considering consequences against Global Energy Group, LLC d/b/a Jean Energy Group, LLC for violations of the Uniform Business Practices, which include failure to submit required filings to the Secretary to maintain ESCO eligibility status. The Commission issued an Order to Show Cause in Case 16-G-0142 on April 26, 2016, setting forth possible consequences that may be imposed upon ESCO's for violations of the UBP. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(16-G-0142SP1)

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

Standards for Affiliate Relationships

I.D. No. PSC-20-16-00009-P

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

Proposed Action: The Commission is considering a petition from Corning Natural Gas Corporation requesting modifications to the Affiliate Standards applicable to the Company.

Statutory authority: Public Service Law, sections 5, 65, 66 and 110

Subject: Standards for affiliate relationships.

Purpose: To consider whether to permit the expansion of employees who are permitted to perform services on behalf of affiliates.

Substance of proposed rule: The Public Service Commission is considering a petition by Corning Natural Gas Corporation dated November 11, 2015, which proposes to modify certain limitations on the sharing of Company employees by affiliates that were adopted in prior Commission proceedings. If granted, the request would enable Corning to expand the

categories of Company employees who are permitted to perform services on behalf of affiliates. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(11-G-0280SP8)

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

Deferral and Recovery of Incremental Expense

I.D. No. PSC-20-16-00010-P

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

Proposed Action: The Commission is considering a petition from Corning Natural Gas Corporation to defer approximately \$349,547 of incremental expenses related to conducting leak surveys and leak repairs.

Statutory authority: Public Service Law, sections 5, 65, 66 and 110

Subject: Deferral and recovery of incremental expense.

Purpose: To consider deferring costs of conducting leak survey and repairs for subsequent recovery.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Corning Natural Gas Corporation on April 13, 2016 to defer, for later recovery in rates, the costs of surveying for and repairing leaks that are in excess of the amount provided for in current rates. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(16-G-0204SP1)

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

Enetics LD-1120 Non-Intrusive Load Monitoring Device in the Statewide Residential Appliance Metering Study

I.D. No. PSC-20-16-00011-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Enetics Corporation on April 8, 2016, to use the Enetics LD-1120 Non-Intrusive Load Monitoring Device in the Statewide Residential Appliance Metering Study.

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

Subject: Enetics LD-1120 Non-Intrusive Load Monitoring Device in the Statewide Residential Appliance Metering Study.

Purpose: To consider the use of the Enetics LD-1120 Non-Intrusive Load Monitoring Device.

Substance of proposed rule: The Public Service Commission is considering the petition filed by Enetics Corporation on April 8, 2016, to use the Enetics LD-1120 Non-Intrusive Appliance Load Monitoring Device in the Statewide Residential Appliance Metering Study. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(16-E-0206SP1)

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

Accounting Changes Related to Residual Unbilled Revenue for Financial Accounting and Regulatory Purposes

I.D. No. PSC-20-16-00012-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Central Hudson Gas & Electric Corporation to change its accounting related to residual unbilled revenue for financial accounting and regulatory purposes.

Statutory authority: Public Service Law, section 66

Subject: Accounting changes related to residual unbilled revenue for financial accounting and regulatory purposes.

Purpose: To consider accounting changes related to residual unbilled revenue for financial accounting and regulatory purposes.

Substance of proposed rule: On April 28, 2016, Central Hudson Gas & Electric Corporation filed a petition requesting a change in its accounting related to residual unbilled revenue for financial accounting and regulatory purposes. The Company is proposing the accounting change to address an unintended accounting consequence from the conversion to monthly billing that was required in Rate Year 2 of the Joint Proposal. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(14-E-0318SP5)

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

Accounting Changes Related to Residual Unbilled Revenue for Financial Accounting and Regulatory Purposes

I.D. No. PSC-20-16-00013-P

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

Proposed Action: The Public Service Commission is considering a petition filed by Central Hudson Gas & Electric Corporation to change its accounting related to residual unbilled revenue for financial accounting and regulatory purposes.

Statutory authority: Public Service Law, section 66

Subject: Accounting changes related to residual unbilled revenue for financial accounting and regulatory purposes.

Purpose: To consider accounting changes related to residual unbilled revenue for financial accounting and regulatory purposes.

Substance of proposed rule: On April 28, 2016, Central Hudson Gas & Electric Corporation filed a petition requesting a change in its accounting related to residual unbilled revenue for financial accounting and regulatory purposes. The Company is proposing the accounting change to address an unintended accounting consequence from the conversion to monthly billing that was required in Rate Year 2 of the Joint Proposal. The Commission may adopt, reject or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

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

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

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

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

(14-G-0319SP2)

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

Transfer of Ownership Interests from CEC to Fortistar, and Lightened Regulation

I.D. No. PSC-20-16-00014-P

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

Proposed Action: The Public Service Commission is considering a petition from Castleton Energy Center LLC (CEC) requesting a transfer of its ownership interests in Castleton Power to Fortistar Castleton.

Statutory authority: Public Service Law, sections 4(1), 5(1) and 70

Subject: Transfer of ownership interests from CEC to Fortistar, and lightened regulation.

Purpose: To consider the transfer of ownership interests from CEC to Fortistar, and lightened regulation.

Substance of proposed rule: By joint petition filed April 26, 2016, Castleton Energy Center, LLC (CED), Castleton Power, LLC (CP) and Fortistar Castleton LLC (FC) request the transfer of 100% of the ownership interests held by CEC in CP to FC, as well as continuing lightened regulation of CP. CP now operates a 72 megawatt electric generating facility in Castleton-On-Hudson, New York. The Commission may adopt, reject, or modify, in whole or in part, the relief proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: John.Pitucci@dps.ny.gov

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

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

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

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

(16-E-0244SP1)

Department of State

NOTICE OF ADOPTION

Unlawful Discriminatory Practice by Brokers and Salespersons

I.D. No. DOS-10-16-00020-A

Filing No. 446

Filing Date: 2016-05-03

Effective Date: 2016-05-18

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

Action taken: Amendment of section 175.17 of Title 19 NYCRR.

Statutory authority: Executive Law, section 91; Real Property Law, section 442(k)(1)

Subject: Unlawful discriminatory practice by brokers and salespersons.

Purpose: To discourage invidious discrimination in making housing accommodations available to the public.

Text or summary was published in the March 9, 2016 issue of the Register, I.D. No. DOS-10-16-00020-P.

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

Text of rule and any required statements and analyses may be obtained from: David Mossberg, NYS Dept. of State, 123 William St., 20th Fl., New York, NY 10038, (212) 417-2063, email: david.mossberg@dos.ny.gov

Initial Review of Rule

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

Assessment of Public Comment

The agency received no public comment.

Workers' Compensation Board

NOTICE OF ADOPTION

Meetings of the Workers' Compensation Board

I.D. No. WCB-45-15-00021-A

Filing No. 441

Filing Date: 2016-05-02

Effective Date: 2016-05-18

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

Action taken: Amendment of section 300.27 of Title 12 NYCRR.

Statutory authority: Workers' Compensation Law, sections 141 and 117

Subject: Meetings of the Workers' Compensation Board.

Purpose: Permit the Chair to prescribe the format of meeting notices and the method of appearance.

Text of final rule: Section 300.27 of Title 12 of the New York Codes Rules and Regulations is amended as follows:

(a) Regular meetings of the Board shall be held monthly, except in the

month of August, at the office of the Board [in Albany] *in Schenectady*, beginning at 10 o'clock in the forenoon on the third Tuesday of the month unless the third Tuesday is a legal holiday, in which event the regular meeting for that month shall be held on the Tuesday next following which is not a legal holiday. Notwithstanding the foregoing, the Board, at a regular meeting, or the Chair, in writing filed with the secretary, may provide that a particular subsequent regular meeting or meetings of the board may be held at any office of the Board at a time and day or days other than as above specified.

(b) In addition to the regular meetings, special meetings of the board may be called by the chair or by not less than five members. Each such call, whether by the chair or by five or more board members, shall be in writing, filed with the secretary, and shall state the business for which the special meeting is called. A copy of the call, together with notice of the place, date and hour of the meeting, shall be delivered [personally or mailed] *as prescribed by the Chair* to each board member not less than five business days prior to the date fixed for the special meeting.

(c) Notice of regular meetings shall not be required, except that if the place, date or hour of a regular meeting is changed by the chair as provided in subdivision (a) of this section, notice of the place, date or hour of the meeting shall be delivered [personally or mailed] *as prescribed by the Chair* to each board member not less than five business days prior to the date fixed for the regular meeting.

(d) The chair or, in his or her absence, the vice-chair shall preside at all board meetings. If at any board meeting neither the chair nor vice-chair shall be present, the members present shall designate one of the members to preside at such meeting.

(e) Business transacted at special meetings shall be confined to the business stated in the call, unless all board members shall consent to the transaction of additional or further items of business.

(f) At each regular meeting of the Board, the attorney responsible for overseeing adjudication, or his or her designee, shall report, orally or in writing, on the conduct and the status of the adjudication of claims by the Board, as the Board may require.

(g) Seven members present at any regular or special meeting shall constitute a quorum for the transaction of business, and no action shall be taken except by the assent of not less than seven members. Each member present at a meeting of the board shall vote on each question duly presented for action unless excused by the board, or unless he or she has a direct personal or pecuniary interest in the outcome of such question. An absent member may not be recorded as voting.

(h) The secretary shall keep minutes of all board meetings and provide the members with copies thereof.

(i) At any regular or special meeting of the Board, Board members, the Chair and Vice Chair may, at the discretion of the Chair, convene by electronic means, including but not limited to, teleconferencing and videoconferencing. The means of attendance shall be duly recorded in the minutes of the meeting by the secretary.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 300.27(i).

Text of rule and any required statements and analyses may be obtained from: Heather MacMaster, Workers' Compensation Board, 328 State Street, Schenectady, NY 12305-2318, (518) 486-9564, email: regulations@wcb.ny.gov

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

A revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement is not required because the changes made to the last published rule do not necessitate revision to the previously published document. Only one change was made to the text and it is not substantial, does not change the meaning of any provision and therefore does not change any statements in the document. Specifically, the change clarifies that the decision as to the manner of conducting a meeting of the Board is at the discretion of the Chair.

Assessment of Public Comment

The agency received no public comment.