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

NOTICE OF ADOPTION

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

I.D. No. ASA-41-17-00001-A
Filing No. 138
Filing Date: 2018-01-26
Effective Date: 2018-02-14

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

Action taken: Amendment of Part 810 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 19.07, 19.09, 19.20, 19.20-a, 19.21, 19.40, 32.01, 32.05, 32.07, 32.09, 32.21, 32.29 and 32.31; Business Corporation Law, section 406; Civil Service Law, section 50; Not-for-Profit Corporation Law, section 404; Executive Law, Protection of People with Special Needs Act, L. 2012, ch. 501; 42 C.F.R. 431.110

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

Purpose: Clarifies the obligation to recognize alcohol/substance abuse programs operated by Indian Health Services facilities.

Text of final rule: 14 NYCRR Part 810 is amended to read as follows:

PART 810

ESTABLISHMENT, INCORPORATION AND CERTIFICATION OF PROVIDERS OF SUBSTANCE USE DISORDER SERVICES

(Statutory Authority: Mental Hygiene Law §§ 19.07, 19.09, 19.20, 19.20-a, 19.21, 19.40, 32.01, 32.05, 32.07, 32.09, 32.21, 32.29, 32.31; Business Corporation Law § 406; Civil Service Law § 50; Not-for-Profit Corporation Law § 404; Executive Law, Protection of People with Special Needs Act, Chapter 501 of the Laws of 2012*; 42 C.F.R. 431.110*)

Sec.
810.1 Background and intent
810.2 Legal base
810.3 Applicability
810.4 Definitions
810.5 Applications requiring full review
810.6 Applications requiring administrative review
810.7 Standards for approval of an application requiring full or administrative review
810.8 Full review process
810.9 Administrative review process
810.10 Actions requiring prior approval
810.11 Coordination with the Department of Health
810.12 Criteria and procedures for approval of management contracts
810.13 Certification
810.14 Inspection and reviews
810.15 Suspension, revocation or limitation of operating certificates
810.16 Voluntary termination of authorized services
810.17 Ownership of operating certificates
810.18 Indian Health Service (IHS) Programs
810.19 [8]Severability

Section 2. Section 810.2 is amended by adding a new subdivision (s) to read as follows:

(s) 42 CFR 431.110 relates to federal requirements that New York State's Medicaid State Plan provide for the acceptance of Indian Health Services facilities as a Medicaid provider on the same basis as any other qualified provider.

Section 3. Part 810 is amended by adding a new section 810.18 to read as follows:

810.18 Indian Health Service (IHS) Programs.

(a) Notwithstanding section 32.05 of the mental hygiene law, a program organized, operated or authorized by the Federal Government to operate as an Indian Health Service facility, with an alcohol/substance abuse program, is not required to obtain Office certification provided such service meets the applicable standards for certification.

(b) An attestation from the facility that such facility is authorized by the federal government shall be recognized by the Office as evidencing the applicable standards for certification for purposes of obtaining an operating certificate. Facilities that do not require an operating certificate need not submit an attestation.

(c) Such facility may not be denied participation as a Medicaid provider on the basis of a lack of certification and shall be afforded the same rights, opportunities and obligations as any other qualified provider.

Section 4. Section 810.18 is renumbered to read as follows:

810.1*9* [8] Severability.

If any provision of this Part of the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Part which can be given effect without the invalid provisions or applications, and to this end the provisions of this Part are declared to be severable.

Final rule as compared with last published rule: Nonsubstantive changes were made in section 810.18.

Text of rule and any required statements and analyses may be obtained from: Carmelita Cruz, NYS OASAS, 1450 Western Avenue, Albany, NY 12203, (518) 485-2312, email: Carmelita.Cruz@oasas.ny.gov

Revised Regulatory Impact Statement

A revised regulatory impact statement is not being submitted because the corrections made to the adopted text constitute a clarification correction in proposed rulemaking. The impact statement for the proposed rulemaking is the same because the intent has not changed. The proposal was published in the October 11, 2017 State Register.

Revised Regulatory Flexibility Analysis
A revised statement in lieu of regulatory flexibility analysis for small businesses and local governments is not being submitted because the corrections made to the adopted text constitute a clarification correction in proposed rulemaking. The statement for the proposed rulemaking is the same because the intent has not changed. The proposal was published in the October 11, 2017 State Register.

Revised Rural Area Flexibility Analysis
A revised statement in lieu of rural area flexibility analysis is not being submitted because the corrections made to the adopted text constitute a clarification correction in proposed rulemaking. The statement for the proposed rulemaking is the same because the intent has not changed. The proposal was published in the October 11, 2017 State Register.

Revised Job Impact Statement
A revised job impact statement is not being submitted because the corrections made to the adopted text constitute a clarification correction in proposed rulemaking. The impact statement for the proposed rulemaking is the same because the intent has not changed. The proposal was published in the October 11, 2017 State Register.

Initial Review of Rule
As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment
Notice of Proposed Rule Making was published in the New York State Register on October 11, 2017. The Office of Alcoholism and Substance Abuse Services (OASAS) received one (1) comment during the public comment period associated with the revised rulemaking from The Oneida Indian Nation. A summary of the comment and OASAS response are set forth below.

810.18(b)

Issue/Concern: Concern that OASAS is imposing an additional burden on Indian Health Services (IHS) facilities operating at tribal nations geographically located within the State of New York by requiring submission of an attestation to OASAS to operate such IHS facilities.

Response: OASAS added additional language to the amended text to clarify that only those IHS facilities that want to obtain the OASAS operating certificate are required to submit the attestation and nothing is required of programs that do not want the operating certificate.

New York State Athletic Commission

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Loss of Bodily Function in Mixed Martial Arts Competitions

I.D. No. ATH-07-18-00012-EP

Filing No. 143

Filing Date: 2018-01-29

Effective Date: 2018-01-29

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

Proposed Action: Addition of section 212.12(g)-(k) to Title 19 NYCRR.

Statutory authority: General Business Law, sections 1003(2) and 1014(9)

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

Specific reasons underlying the finding of necessity: The Department of State ("Department") is charged, inter alia, with the enforcement of Part 212 of the Official Compilation of Codes, Rules and Regulations of the State of New York (19 NYCRR Part 212), which relates to professional combative sports in New York State. A principal purpose behind the enactment of Part 212 was to establish rules and regulations which protect the health and safety of combatants and officials who participate in professional mixed martial arts competitions. The adoption of this rule will reduce the risk of a mixed martial artist and/or referee coming into contact with vomit, urine or fecal matter during a mixed martial arts contest or exhibition, and will help protect combatants by requiring the stoppage of a bout when there is a loss of bodily function as prescribed by this rule.

To help ensure that combatants, officials, and the general public are better protected, the Department is adopting this emergency regulation. The enhancement of public safety, health and general welfare necessitates the promulgation of this regulation on an emergency basis. The Department finds that adopting the proposed rule will protect the health and safety of all combatants and officials who participate in professional mixed martial competitions in New York State.

Subject: Loss of Bodily Function in Mixed Martial Arts Competitions.

Purpose: To comply with the rule changes of the Association of Boxing Commissions and Combative Sports.

Text of emergency/proposed rule: Section 212.12 of Title 19 of the NYCRR is amended as follows:

Loss of Bodily Function in Mixed Martial Arts Competitions

(g) If a combatant, during a round, loses control of a bodily function, i.e., vomits, urinates or defecates, due to a legal blow, the referee shall immediately stop the contest or exhibition, and the combatant shall lose by technical knockout (TKO) due to medical stoppage.

(h) If a combatant, during a round, loses control of a bodily function due to an accidental foul, the referee shall immediately stop the contest or exhibition, and:

(1) The contest or exhibition shall be declared a no contest if the foul occurs during:

(i) The first two rounds of a scheduled three-round contest or exhibition; or

(ii) The first three rounds of a scheduled five-round contest or exhibition.

(2) The outcome of the contest or exhibition shall be determined by scoring the completed rounds and the round during which the referee stops the contest or exhibition if the foul occurs after:

(i) The completed second round of a three-round contest or exhibition; or

(ii) The completed third round of a five-round contest or exhibition.

(i) If a combatant, during a round, loses control of a bodily function due to an intentional foul, the referee shall stop the contest or exhibition, and the offending combatant shall lose by disqualification.

(j) If a combatant, during the rest period between rounds, loses control of a bodily function, the ringside physician shall examine the combatant and determine his/her medical fitness to continue competing. If the ringside physician determines that the combatant is not medically fit to continue, the combatant shall lose by technical knockout (TKO) due to medical stoppage.

(k) If, at any time during the bout and in circumstances other than those described in (g) through (j) above, in the determination of the referee, there is a risk that a combatant may come into contact the vomit, urine or fecal matter of an opponent who lost control of a bodily function, the referee shall immediately stop the contest or exhibition, and the opponent who lost control of a bodily function shall lose by TKO due to medical stoppage.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire April 29, 2018.

Text of rule and any required statements and analyses may be obtained from: Ryan Sakacs, Athletic Commission, New York State, 123 William Street, New York, NY 10038, (212) 417-2149, email: ryan.sakacs@dos.ny.gov

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

Public comment will be received until: April 16, 2018.

Regulatory Impact Statement

1. Statutory Authority

Article 41 of the General Business Law authorizes the New York State Athletic Commission to promulgate regulations governing the conduct of authorized professional combative sports.

2. Legislative Objectives

The New York State Athletic Commission was enacted to protect the health, safety and general welfare of all participants in combative sports. The proposal accords with this public policy and legislative intent by reducing the risk that a mixed martial artist and/or referee will come into contact with the vomit, urine and/or fecal matter of a combatant during a mixed martial arts contest or exhibition.

3. Needs and Benefits

The purpose of the proposal is to protect the health and safety of combatants and officials during a mixed martial arts contest or exhibition. The proposal is necessary because it mandates that a mixed martial arts contest or exhibition will terminate under specified circumstances when there is a risk that a combatant and/or referee will come into contact with the vomit, urine and/or fecal matter of a combatant.

4. Costs

There are no costs to regulated parties for the implementation of and

continuing compliance with the rule. There are also no costs to the agency, state or local governments for the implementation of and continuing compliance with the rule.

5. Local Government Mandates

There is no program, service, duty or responsibility imposed by the rule upon any county, city, town, village, school district or other special district.

6. Paperwork

The rule will not create any new reporting requirements and will therefore not establish a need for forms and other paperwork.

7. Duplication

There are no relevant rules and other legal requirements of the state and federal governments that may duplicate, overlap or conflict with the rule.

8. Alternatives

There were no significant alternatives to be considered.

9. Federal Standards

There are no minimum standards of the federal government for the same or similar subject area.

10. Compliance Schedule

Regulated persons can achieve compliance with the rule immediately upon the filing of the emergency regulation and upon final adoption of the permanent regulation.

Regulatory Flexibility Analysis

The rule imposes neither an adverse economic impact on small businesses or local governments; nor reporting, record keeping or other compliance requirement on small businesses or local governments.

The proposed rule will reduce the risk of a mixed martial artist and/or official coming into contact with vomit, urine or fecal matter during a mixed martial arts contest or exhibition, and will help protect combatants by requiring the stoppage of a bout when there is a loss of bodily function as prescribed by this rule.

Comments will be received and entertained during the public comment period associated with the Proposed Rulemaking portion of this Notice.

Rural Area Flexibility Analysis

This rule imposes neither an adverse impact on rural areas; nor reporting, recordkeeping or other compliance requirements on public or private entities in rural areas.

The proposed rule will reduce the risk of a mixed martial artist and/or official coming into contact with vomit, urine or fecal matter during a mixed martial arts contest or exhibition, and will help protect combatants by requiring the stoppage of a bout when there is a loss of bodily function as prescribed by this rule.

Comments will be received and entertained during the public comment period associated with the Proposed Rulemaking portion of this Notice.

Job Impact Statement

A Job Impact Statement (JIS) is not required because it is evident from the subject matter of this proposal that it will have no impact on jobs and employment opportunities. All persons and entities who participate in authorized combative sports, including boxers, mixed martial artists, and officials, are currently subject to Article 41 of the General Business Law and 19 NYCRR §§ 206-214. This proposal will amend Title 19 of the NYCRR by adding new Subdivisions (g)-(k) to Section 212.12. The adoption of this rule will reduce the risk of a mixed martial artist and/or referee coming into contact with vomit, urine or fecal matter during a mixed martial arts contest or exhibition, and will help protect combatants by requiring the stoppage of a bout when there is a loss of bodily function as prescribed by this rule. Additionally, the rule will only apply to those already licensed by the Commission and those actually engaged in a combative contest. Accordingly, the New York State Athletic Commission does not believe this rule will have an impact on jobs and employment opportunities.

Department of Health

EMERGENCY RULE MAKING

Lead Testing in School Drinking Water

I.D. No. HLT-20-17-00013-E
Filing No. 137
Filing Date: 2018-01-26
Effective Date: 2018-01-26

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

Action taken: Addition of Subpart 67-4 to Title 10 NYCRR.

Statutory authority: Public Health Law, sections 1370-a and 1110

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

Specific reasons underlying the finding of necessity: Lead exposure is associated with impaired cognitive development in children. The known adverse health effects for children from lead exposure include reduced IQ and attention span, learning disabilities, poor classroom performance, hyperactivity, behavioral problems, and impaired growth. Although measures can be taken to help children overcome any potential impairments on cognition, the effects are considered irreversible.

Lead can enter drinking water from the corrosion of plumbing materials. Facilities such as schools, which have intermittent water use patterns, may have elevated lead concentration due to prolonged water contact with plumbing material. This source is increasingly being recognized as an important relative contribution to a child's overall lead exposure. Recent voluntary testing by school districts in New York State and other jurisdictions demonstrate the need to provide clear direction to schools on the requirements and procedures to sample drinking water for lead.

Every school should supply drinking water to students that meets or exceeds federal and state standards and guidelines. Although the federal Environmental Protection Agency ("EPA") has established a voluntary testing program—known as the "3Ts for Reducing Lead in Drinking Water in Schools"—there is no federal law that requires schools to test their drinking water for lead or that requires an appropriate response, if lead is determined to be present in school drinking water.

To help ensure that children are protected from lead exposure while in school, the Commissioner of Health has determined it necessary to file these regulations on an emergency basis. State Administrative Procedure Act § 202(6) empowers the Commissioner to adopt emergency regulations when necessary for the preservation of the public health, safety or general welfare and that compliance with routine administrative procedures would be contrary to the public interest.

Subject: Lead Testing in School Drinking Water.

Purpose: Requires lead testing and remediation of potable drinking water in schools.

Text of emergency rule: Pursuant to the authority vested in the Commissioner of Health by Public Health Law sections 1370-a and 1110, Subpart 67-4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is added, to be effective upon filing with the Secretary of State, to read as follows:

SUBPART 67-4: Lead Testing in School Drinking Water

Section 67-4.1 Purpose.

This Subpart requires all school districts and boards of cooperative educational services, including those already classified as a public water system under 10 NYCRR Subpart 5-1, to test potable water for lead contamination and to develop and implement a lead remediation plan, where applicable.

Section 67-4.2 Definitions.

As used in this Subpart, the following terms shall have the stated meanings:

(a) Action level means 15 micrograms per liter (μg/L) or parts per billion (ppb). Exceedance of the action level requires a response, as set forth in this Subpart.

(b) Building means any structure, facility, addition, or wing of a school that may be occupied by children or students. The terms shall not include any structure, facility, addition, or wing of a school that is lead-free, as defined in section 1417 of the Federal Safe Drinking Water Act.

(c) Commissioner means the State Commissioner of Health.

(d) Department means the New York State Department of Health.

(e) Outlet means a potable water fixture currently or potentially used for drinking or cooking purposes, including but not limited to a bubbler, drinking fountain, or faucets.

(f) Potable water means water that meets the requirements of 10 NYCRR Subpart 5-1.

(g) School means any school district or board of cooperative educational services (BOCES).

Section 67-4.3 Monitoring.

(a) All schools shall test potable water for lead contamination as required in this Subpart.

(b) First-draw samples shall be collected from all outlets, as defined in this Subpart. A first-draw sample volume shall be 250 milliliters (mL), collected from a cold water outlet before any water is used. The water shall be motionless in the pipes for a minimum of 8 hours, but not more than 18 hours, before sample collection. First-draw samples shall be collected pursuant to such other specifications as the Department may determine appropriate.

(c) Initial first-draw samples.

(1) For existing buildings in service as of the effective date of this

regulation, schools shall complete collection of initial first-draw samples according to the following schedule:

(i) for any school serving children in any of the levels prekindergarten through grade five, collection of samples is to be completed by September 30, 2016;

(ii) for any school serving children in any of the levels grades six through twelve that are not also serving students in any of the levels prekindergarten through grade five, and all other applicable buildings, collection of samples is to be completed by October 31, 2016.

(2) For buildings put into service after the effective date of this regulation, initial first-draw samples shall be performed prior to occupancy; provided that if the building is put into service between the effective date of this regulation but before October 31, 2016, the school shall have 30 days to perform first-draw sampling.

(3) Any first-draw sampling conducted consistent with this Subpart that occurred after January 1, 2015 shall satisfy the initial first-draw sampling requirement.

(d) Continued monitoring. Schools shall collect first-draw samples in accordance with subdivision (b) of this section again in 2020 or at an earlier time as determined by the commissioner. Schools shall continue to collect first-draw samples at least every 5 years thereafter or at an earlier time as determined by the commissioner.

(e) All first-draw samples shall be analyzed by a laboratory approved to perform such analyses by the Department's Environmental Laboratory Approval Program (ELAP).

Section 67-4.4 Response.

If the lead concentration of water at an outlet exceeds the action level, the school shall:

(a) prohibit use of the outlet until:

(1) a lead remediation plan is implemented to mitigate the lead level of such outlet; and

(2) test results indicate that the lead levels are at or below the action level;

(b) provide building occupants with an adequate supply of potable water for drinking and cooking until remediation is performed;

(c) report the test results to the local health department as soon as practicable, but no more than 1 business day after the school received the laboratory report; and

(d) notify all staff and all persons in parental relation to students of the test results, in writing, as soon as practicable but no more than 10 business days after the school received the laboratory report; and, for results of tests performed prior to the effective date of this Subpart, within 10 business days of this regulation's effective date, unless such written notification has already occurred.

Section 67-4.5 Public Notification.

(a) List of lead-free buildings. By October 31, 2016, the school shall make available on its website a list of all buildings that are determined to be lead-free, as defined in section 1417 of the Federal Safe Drinking Water Act.

(b) Public notification of testing results and remediation plans.

(1) The school shall make available, on the school's website, the results of all lead testing performed and lead remediation plans implemented pursuant to this Subpart, as soon as practicable, but no more than 6 weeks after the school received the laboratory reports.

(2) For schools that received lead testing results and implemented lead remediation plans in a manner consistent with this Subpart, but prior to the effective date of this Subpart, the school shall make available such information, on the school's website, as soon as practicable, but no more than 6 weeks after the effective date of this Subpart.

Section 67-4.6 Reporting.

(a) As soon as practicable but no later than November 11, 2016, the school shall report to the Department, local health department, and State Education Department, through the Department's designated statewide electronic reporting system:

(1) completion of all required first-draw sampling;

(2) for any outlets that were tested prior to the effective date of this regulation, and for which the school wishes to assert that such testing was in substantial compliance with this Subpart, an attestation that:

(i) the school conducted testing that substantially complied with the testing requirements of this Subpart, consistent with guidance issued by the Department;

(ii) any needed remediation, including re-testing, has been performed;

(iii) the lead level in the potable water of the applicable building(s) is currently below the action level; and

(iv) the school has submitted a waiver request to the local health department, in accordance with Section 67-4.8 of this Subpart; and

(3) a list of all buildings that are determined to be lead-free, as defined in section 1417 of the Federal Safe Drinking Water Act.

(b) As soon as practicable, but no more than 10 business days after the school received the laboratory reports, the school shall report data relating to test results to the Department, local health department, and State Education Department, through the Department's designated statewide electronic reporting system.

Section 67-4.7 Recordkeeping.

The school shall retain all records of test results, lead remediation plans, determinations that a building is lead-free, and waiver requests, for ten years following the creation of such documentation. Copies of such documentation shall be immediately provided to the Department, local health department, or State Education Department, upon request.

Section 67-4.8 Waivers.

(a) A school may apply to the local health department for a waiver from the testing requirements of this Subpart, for a specific school, building, or buildings, by demonstrating in a manner and pursuant to standards determined by the Department, that:

(1) prior to the publication date of these regulations, the school conducted testing that substantially complied with the testing requirements of this Subpart;

(2) any needed remediation, including re-testing, has been performed; and

(3) the lead level in the potable water of the applicable building(s) is currently below the action level.

(b) Local health departments shall review applications for waivers for compliance with the standards determined by the Department. If the local health department recommends approval of the waiver, the local health department shall send its recommendation to the Department, and the Department shall determine whether the waiver shall be issued.

Section 67-4.9 Enforcement.

(a) Upon reasonable notice to the school, an officer or employee of the Department or local health department may enter any building for the purposes of determining compliance with this Subpart.

(b) Where a school does not comply with the requirements of this Subpart, the Department or local health department may take any action authorized by law, including but not limited to assessment of civil penalties as provided by law.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. HLT-20-17-00013-P, Issue of May 17, 2017. The emergency rule will expire March 26, 2018.

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

Regulatory Impact Statement

Statutory Authority:

The statutory authorities for the proposed regulation are set forth in Public Health Law (PHL) §§ 1110 and 1370-a. Section 1110 of the PHL directs the Department of Health (Department) to promulgate regulations regarding the testing of potable water provided by school districts and boards of cooperative education services (BOCES) (collectively, "schools") for lead contamination. Section 1370-a of the PHL authorizes the Department to establish programs and coordinate activities to prevent lead poisoning and to minimize the risk of exposure to lead.

Legislative Objective:

The legislative objective of PHL § 1110 is to protect children by requiring schools to test their potable water systems for lead contamination. Similarly, PHL § 1370-a authorizes the Department to establish programs and coordinate activities to prevent lead poisoning and to minimize the risk of exposure to lead. Consistent with these objectives, this regulation adds a new Subpart 67-4 to Title 10 of the New York Codes, Rules, and Regulations, establishing requirements for schools to test their potable water outlets for lead contamination.

Needs and Benefits:

Lead is a toxic material that is harmful to human health if ingested or inhaled.

Children and pregnant women are at the greatest risk from lead exposure. Scientists have linked lead exposure with lowered IQ and behavior problems in children. It is also possible for lead to be stored in bones and it can be released into the bloodstream later in life, including during pregnancy. Further, during pregnancy, lead in the mother's bloodstream can cross the placenta, which can result in premature birth and low birth weight, as well as problems with brain, kidney, or nervous system development, and learning and behavior problems. Studies have also shown that low levels of lead can negatively affect adults, leading to heart and kidney problems, as well as high blood pressure and nervous system disorders.

Lead is a common metal found in the environment. The primary source of lead exposure for most children is lead-based paint. However, drinking

water is another source of lead exposure due to the lead content of certain plumbing materials and source water.

Laws now limit the amount of lead in new plumbing materials. However, plumbing materials installed prior to 1986 may contain significant amounts of lead. In 1986, the federal government required that only "lead-free" materials be used in new plumbing and plumbing fixtures. Although this was a vast improvement, the law still allowed certain fixtures with up to 8 percent lead to be labeled as "lead free." In 2011, amendments to the Safe Drinking Water Act appropriately re-defined the definition of "lead-free." Although federal law now appropriately defines "lead-free," some older fixtures can still leach lead into drinking water.

Elevated lead levels are commonly found in the drinking water of school buildings, due to older plumbing and fixtures and intermittent water use patterns. Currently, only schools that have their own public water systems are required to test for lead contamination in drinking water.

In the absence of federal regulations governing all schools, the Department's regulations require all schools to monitor their potable drinking water for lead. The new regulations: establish an action level of 15 micrograms per liter (equivalent to parts per billion, or ppb) for lead in the drinking water of school buildings; establish initial and future monitoring requirements; require schools to develop remedial action plans if the action level is exceeded at any potable water outlet; conduct public notification of results to the school community; and report results to the Department. The Environmental Protection Agency's "3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance" will be used as a technical reference for implementation of the regulation.

Compliance Costs:

Costs to Private Regulated Parties:

These regulations only applies to public schools. No private schools are affected.

Costs to State Government and Local Government:

These regulations applies to schools, which are a form of local government. There are approximately 733 school districts and 37 BOCES in New York State, which include over 5,000 school buildings that will be subject to this regulation.

The regulations require schools to test each potable water outlet for lead, in each school building occupied by children, unless the building is determined to be lead-free pursuant to federal standards. The cost for a single lead analysis ranges from $20 - $75 per sample. Initial monitoring requires one sample per outlet. The number of outlets will vary from building to building.

If lead is detected above 15 ppb at any potable water outlet, the outlet must be taken out of service and a remedial action plan must be developed to mitigate the lead contamination, at the school's initial expense. Remediation costs can vary significantly depending on the plumbing configuration and source of lead. The school will also incur minor costs for notification of the school community and local health department, posting the information on their website, and reporting electronically to the Department. Recently enacted legislation authorizes schools to receive State Aid through the State Education Department ("SED") to defray these costs.

Local health departments will also incur some administrative costs related to tracking local implementation, reviewing waiver applications, and compliance oversight. These activities will be eligible for State Aid through the Department's General Public Health Work program.

Local Government Mandates:

Schools, as a form of local government, are required to comply with the regulations, as detailed above.

Paperwork:

The regulation imposes recordkeeping requirements related to: monitoring of potable water outlets; notifications to the public and local health department; and electronic reporting to the Department.

Duplication:

There will be no duplication of existing State or Federal regulations.

Alternatives:

There are no significant alternatives to these regulations, which are being promulgated pursuant to recent legislation.

Federal Standards:

There are no federal statutes or regulations pertaining to this matter. However, the Department's regulations are consistent with the Unites States Environmental Protection Agency's guidance document titled 3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance (available at: www.epa.gov/sites/production/files/2015-09/documents/toolkit_leadschools_guide_3ts_leadschools.pdf). EPA's document will serve as guidance to schools for implementing the program.

Compliance Schedule:

For existing buildings put into service as of the effective date of this regulation, all sampling shall be performed according to the following schedule:

(i) for any school serving children in any of the levels prekindergarten through grade five, collection of samples is to be completed by September 30, 2016;

(ii) for any school serving children in any of the levels grades six through twelve that are not also serving students in any of the levels prekindergarten through grade five, and all other applicable buildings, collection of samples is to be completed by October 31, 2016.

For buildings put into service after the effective date of this regulation, sampling shall be performed prior to occupancy.

Regulatory Flexibility Analysis

Effect on Small Business and Local Governments:

This regulation applies to schools, which are a form of local government. As explained in the Regulatory Impact Statement, the new regulations: establish an action level of 15 micrograms per liter (equivalent to parts per billion, or ppb) for lead in the drinking water of school buildings; establish initial and future monitoring requirements; require schools to develop remedial action plans if the action level is exceeded at any potable water outlet; conduct public notification of results to the school community; and report results to the Department. The Environmental Protection Agency's 3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance will be used as a technical reference for implementation of the regulation. Local health departments will also incur some administrative costs related to tracking local implementation and oversight of the regulation.

Additionally, the regulations require the services of a laboratory certified by the Department under its Environmental Laboratory Approval Program (ELAP). Some schools may also wish to hire environmental consultants to assist with compliance. Some labs and environmental consultants qualify as small businesses and, at least initially, their services will be in greater demand due to the new regulation.

Compliance Requirements:

As noted above, the new regulations: establish an action level of 15 micrograms per liter (equivalent to parts per billion, or ppb) for lead in the drinking water in school buildings; establish initial and future monitoring requirements; require schools to develop remedial action plans if the action level is exceeded at any potable water outlet; conduct public notification of results to the school community; and requiring reporting of results to the Department.

Reporting and Recordkeeping:

The regulation will impose new monitoring, reporting, and public notification requirements for schools.

Professional Services:

As noted above, the regulations require the services of a laboratory certified by the Department under its Environmental Laboratory Approval Program (ELAP). Some schools may also wish to hire environmental consultants to assist with compliance.

Compliance Costs:

The regulation will require schools to test each potable water outlet for lead, in each school building occupied by children. The cost for a single lead analysis ranges from $20 - $75 per sample. Initial monitoring requires one sample per outlet. The number of outlets will vary from building to building.

If lead is detected above 15 ppb at any potable water outlet, the outlet must be taken out of service and a remedial action plan must be developed to mitigate the lead contamination, at the school's expense. Remediation costs can vary significantly depending on the plumbing configuration and source of lead. The school will also incur minor costs for notification of the school community and local health department, posting the information on their website, and reporting electronically to the Department. Recently enacted legislation authorizes schools to receive State Aid through the State Education Department ("SED") to defray these costs.

Local health departments will also incur some administrative costs related to tracking local implementation, reviewing waiver applications, and compliance oversight. These activities will be eligible for State Aid through the Department's General Public Health Work program.

Cost to Private Parties:

There are no costs to private parties.

Economic and Technological Feasibility:

The technology for lead testing of drinking water is well-established. With respect to schools' costs of compliance, State Aid will be available through the State Education Department to ensure that compliance is feasible. Local health department activities will be eligible for State Aid through the Department's General Public Health Work program.

Minimizing Adverse Impact:

Any school that has already performed testing in compliance with these regulations, as far back as January 1, 2015, does not need to perform sampling again. Further, consistent with the requirements of PHL § 1110, if a school has performed testing that substantially complies with the regulations, the school may apply to the Department for a waiver, so that additional testing is not required. In either case, the requirement to report sample results, and other requirements, remain in place.

School buildings that are determined to be "lead-free," as defined in section 1417 of the Federal Safe Drinking Water Act, do not need to test their outlets. School will be required to make available on their website a list of all buildings that are determined to be lead-free.

Small Business and Local Government Participation:

Although small businesses were not consulted on these specific regulations, the dangers of lead in school drinking water has garnered significant local, state, and national attention. The New York State School Board Association (NYSSBA) requested a meeting with the Department to discuss the impacts of the enabling legislation. NYSSBA provided feedback on testing, prior monitoring, and other matters. The Department took this feedback into consideration when drafting the regulation. The Department will also conduct public outreach, and there will be an opportunity to comment on the proposed permanent regulations. The Department will review all public comments received.

Rural Area Flexibility Analysis

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

Job Impact Statement

The Department expects there to be a positive impact on jobs or employment opportunities. Some school districts will likely hire firms or individuals to assist with regulatory compliance. Schools impacted by this amendment will require the professional services of a certified laboratory to perform the analyses for lead, which will create a need for additional laboratory capacity.

Categories and Numbers Affected:

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

Regions of Adverse Impact:

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

Minimizing Adverse Impact:

Not applicable.

Assessment of Public Comment

The agency received no public comment.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Medicaid Reimbursement of Nursing Facility Reserved Bed Days for Hospitalizations

I.D. No. HLT-07-18-00002-P

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

Proposed Action: Amendment of section 505.9 of Title 18 NYCRR; and amendment of section 86-2.40 of Title 10 NYCRR.

Statutory authority: Social Services Law, sections 363-a and 365-a(2); Public Health Law, sections 201 and 206

Subject: Medicaid Reimbursement of Nursing Facility Reserved Bed Days for Hospitalizations.

Purpose: To make changes relating to reserved bed payments made by Medicaid to nursing facilities.

Substance of proposed rule (Full text is posted at the following State website:www.health.ny.gov/Laws & Regulations/Proposed Rulemaking): The proposed amendments would make changes to subdivision (d) of section 505.9 of 18 NYCRR and to paragraph (4) of subdivision (ac) of section 86-2.40 of 10 NYCRR, relating to reserved bed payments made by Medicaid to nursing facilities during periods when the facility is holding the bed of a patient while the patient is hospitalized or on leave of absence from the facility. The changes are necessary to conform Department regulations to recent amendments to Public Health Law (PHL) § 2808(25), which place limits on the availability of Medicaid reserved bed payments to nursing facilities to reserve a bed for Medicaid recipients who are 21 years of age or older. The proposed amendments also clarify that certain existing regulatory requirements are not affected by the revisions to PHL § 2808(25).

Section 505.9(d) of 18 NYCRR would be amended to: (a) provide that reserved bed payments for recipients age 21 and over who are temporarily hospitalized are only available with respect to recipients who are receiving hospice services in the facility; (b) clarify that the obligation of nursing facilities and other medical institutions to reserve the same bed in the same room, unless medically contraindicated, for a specified number of days during a Medicaid recipient's temporary absence is not dependent on the availability of a reserved bed payment from the Medicaid program; and (c) remove language incorrectly stating that Medicaid reserved bed payments for leaves of absence are only available if the leave is for therapeutic purposes.

Section 86-2.40(ac)(4) of 10 NYCRR would be amended, with respect to nursing facility patients who are 21 years of age or older, to provide that Medicaid reserved bed day payments: (a) for patients who are hospitalized, will be made only for patients who are receiving hospice services within the facility, will be paid at 50 percent of the Medicaid rate otherwise payable to the facility with regard to such days of care, and will be available for a total of 14 days in any 12-month period; and (b) for patients who are on a therapeutic or other leave of absence, will be paid at 95 percent of the Medicaid rate otherwise payable to the facility with regard to such days of care, and will be available for a total of 10 days in any 12-month period.

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

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

Public comment will be received until: April 16, 2018.

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

Regulatory Impact Statement

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law section 201(1)(v) provide that the Department is the single State agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, which shall be consistent with law, and as may be necessary to implement the State's Medicaid program. SSL section 365-a authorizes Medicaid coverage for specified medical care, services and supplies, together with such medical care, services and supplies as authorized in the regulations of the Department.

Legislative Objectives:

Chapter 57 of the Laws of 2017 recently amended Public Health Law (PHL) § 2808(25), which places limits on the availability of Medicaid payments to nursing facilities to reserve a bed for a Medicaid recipient 21 years of age or older who is temporarily absent from the facility. Generally, the amendments eliminated reserved bed payments for recipients age 21 and over who are temporarily hospitalized. However, it was not the intent of the Legislature or the Department to affect the availability of reserved bed payments for temporary hospitalizations with respect to recipients under age 21 or recipients receiving hospice services in the nursing facility.

Needs and Benefits:

The proposed amendments are necessary to conform Department regulations governing Medicaid's reserved bed policy with the changes made to PHL § 2808(25) by Chapter 57 of the Laws of 2017, and to provide clarity with respect to the scope and intent of those statutory revisions. The proposed amendments would make changes to paragraphs (1), (2), (6), and (7) of subdivision (d) of section 505.9 of 18 NYCRR.

Paragraph (1), which sets forth the general rule regarding reserved bed payments, would be amended to provide that Medicaid will not pay to reserve a bed for a recipient in a nursing facility who is 21 years of age or older and temporarily hospitalized unless the recipient is receiving hospice services in the facility.

Paragraph (2) would be amended to state the current policy on reserved bed payments for recipients age 21 and over, which is for the department to pay 95 percent of the Medicaid rate otherwise payable to the facility for a leave of absence and 50 percent of such rate for a temporary hospitalization. Language would be added to make clear that reserved bed payments for recipients age 21 and over who are temporarily hospitalized are only available with respect to recipients who are receiving hospice services in the facility.

Paragraphs (6) and (7) would be amended to add language emphasizing that the obligation of nursing facilities and other medical institutions to reserve the same bed in the same room, unless medically contraindicated, for a specified number of days during a Medicaid recipient's temporary absence is not dependent on the availability of a reserved bed payment from the Medicaid program. The current regulations clearly state that the obligation to reserve a bed for a Medicaid recipient is a condition of the provider's participation in the Medicaid program. However, certain regulated parties mistakenly interpreted the elimination of reserved bed payments, for certain recipients age 21 and over who are temporarily hospitalized, as also eliminating the requirement under section 505.9 to reserve the bed. The proposed amendments would make clear that the

obligation to reserve a bed for a Medicaid recipient is not contingent on the availability of reserved bed payments.

Paragraph (7) would also be amended to remove language incorrectly stating that Medicaid reserved bed payments for leaves of absence are only available if the leave is for therapeutic purposes. In fact, leaves of absence to visit family or friends can also qualify for reserved bed payments.

The proposed amendments would also make conforming changes to paragraph (4) of subdivision (ac) of section 86-2.40 of 10 NYCRR.

A new subparagraph (v) would be added to provide that reserved bed day payments for Medicaid recipients 21 years of age or older in nursing facilities who are hospitalized will be made: only with respect to patients who are receiving hospice services within the facility; at 50 percent of the Medicaid rate otherwise payable to the facility with regard to such days of care; and for up to a combined aggregate of 14 days for any 12-month period.

A new subparagraph (vi) would be added to provide that reserved bed day payments for Medicaid recipients 21 years of age or older in nursing facilities during a therapeutic or other leave of absence from the facility will be made: at 95 percent of the Medicaid rate otherwise payable to the facility with regard to such days of care; and for up to a combined aggregate of 10 days for any 12-month period.

Costs:

Costs to Regulated Parties:

The elimination of reserved bed day payments for those aged 21 and over in nursing facilities who are not receiving hospice services in the facility, will impose a varying cost to nursing facilities based on the volume and length of reserved bed days within their facilities. For nursing facilities reporting reserved bed days, 481 facilities out of 607 total, the average impact is estimated to be $33,409 annually. For specialty units reporting reserved bed days, 76 out of 89, the average impact is estimated to be $56,140 annually.

Costs to State Government:

There will be no additional costs to state government as a result of the proposed amendment.

Costs to Local Government:

There will be no additional costs to local government as a result of the proposed amendment.

Costs to the Department of Health:

There will be no additional costs to The Department as a result of the proposed amendment.

Local Government Mandate:

This amendment will not impose any program, service, duty, additional costs, or responsibility on any county, city, town, village, school district, fire district, or other special district.

Paperwork:

The proposed amendments would not increase paperwork requirements.

Duplication:

There are no duplicative or conflicting rules identified.

Alternatives:

The proposed amendments would conform the regulations to recent changes made to Public Health Law (PHL) § 2808(25) and to the legislative intent underlying such changes. Therefore no alternatives were considered.

Federal Standards:

The regulatory amendment exceeds the minimum requirements set out in 42 CFR 483.15 on patient admission, transfer, and discharge rights. This amendment exceeds those requirements due to the sensitive nature and complex needs of Medicaid beneficiaries within nursing facilities. Residents of nursing facilities are often elderly and/or severely disabled, present with two or more chronic conditions, or are afflicted with mental/cognitive impairments. When necessary hospitalizations occur, it is imperative the patients return to their place of residency in the same bed and the same room. Because certain regulated parties were misinterpreting the effect of the recent changes made to Public Health Law (PHL) § 2808(25) on the general obligation to reserve beds during temporary absences, it is necessary to clarify in the proposed amendments that the obligation to reserve a bed for a Medicaid recipient is not contingent on the availability of reserved bed payments.

Compliance Schedule:

Regulated parties should be able to comply with the proposed regulations when they become effective.

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

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

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Rate Rationalization – Intermediate Care Facilities for Persons with Developmental Disabilities

I.D. No. HLT-07-18-00014-P

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

Proposed Action: Amendment of Subpart 86-11 of Title 10 NYCRR.

Statutory authority: Social Services Law, section 363-a; Public Health Law, section 201(1)(v)

Subject: Rate Rationalization – Intermediate Care Facilities for Persons with Developmental Disabilities.

Purpose: Amend rate methodology effective 7/1/16 and include addition of an occupancy adjustment and revision to 4/1/15 2% compensation calculation.

Text of proposed rule: The section title and subparagraph (ii) of paragraph (3) of subdivision (b) of Section 86-11.6 are amended to read as follows:

86-11.6 Trend Factor,[and] Increases to Compensation *and Other Adjustments*

(ii) April 1, 2015 Increase. In addition to the compensation funding effective January 1, 2015, providers that operate ICFs/DD will receive a compensation increase targeted to direct support professional and clinical employees to be effective April 1, 2015. The compensation increase funding will be inclusive of associated fringe benefits. The April 1, 2015 direct support professionals compensation funding will be [the same, on an annualized basis, as that] *compounded on the amount* which was calculated for the January 1, 2015 compensation increase and will be an augmentation to the January 1, 2015 increase.

Subdivision (c) of Section 86-11.6 is added to read as follows:

(c) Occupancy Adjustment

(1) Definitions. As used in this section, the following terms shall have the following meanings:

(i) Occupancy Adjustment – An adjustment to the calculated daily rate of a Provider operating an ICF/DD to account for days when Medicaid billing cannot occur because an individual has passed away or has moved to another site.

(2) For the initial rate period beginning July 1, 2014 and thereafter, providers will receive an occupancy adjustment to the operating component of their rate for vacancy days. The occupancy adjustment percentage is calculated by dividing the agency's rate period service days by one-hundred percent of the agency's certified capacity. The certified capacity is calculated taking into account capacity changes throughout the year, multiplied by one-hundred percent of the year's days. This adjustment will begin on July 1, 2016 and be recalculated on an annual basis based on the previous year's experience. The occupancy adjustment calculation will be agency specific and will be the higher of the agency's actual occupancy percentage or at 95% occupancy. The occupancy percentage will be used to adjust the operating component of the rate for the rate year.

Subdivision (d) of Section 86-11.9 is amended to read as follows:

(d) April 1, 2015 increase. In addition to compensation funding effective January 1, 2015, the fees for specialized template population funding will revised to incorporate funding for a compensation increase to direct support professional and clinical employees to be effective April 1, 2015. The April 1, 2015 direct support compensation funding will be [the same, on an annualized basis, as that] *compounded on the amount* which was calculated for the January 1, 2015 compensation increase and will be an augmentation to the January 1, 2015 increase.

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

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

Public comment will be received until: April 16, 2018.

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

Regulatory Impact Statement

Statutory Authority:

Social Services Law (SSL) section 363-a and Public Health Law (PHL) section 201(1)(v) provide that the Department is the single state agency responsible for supervising the administration of the State's medical assistance ("Medicaid") program and for adopting such regulations, not inconsistent with law, as may be necessary to implement the State's Medicaid program.

Legislative Objective:

These proposed amendments further the legislative objectives embodied in section 363-a of the Social Services Law and section 201(1)(v) of the Public Health Law. The proposed amendment concerns the rate methodology for Intermediate Care Facilities for Persons with Developmental Disabilities (ICFs/DD). The amendment includes the addition of an occupancy adjustment, effective July 1, 2016 and revision to the calculation of the April 1, 2015 compensation funding for direct support professionals and clinical employees.

Needs and Benefits:

The amendment complies with changes required by the federal Centers for Medicare and Medicaid Services (CMS) subsequent to the adoption of the regulation. The amendment ensures ICF/DD providers have adequate resources to render quality services to individuals with developmental disabilities.

Costs:

There are no additional costs associated with this amendment. Rates are recalculated to account for days when providers are unable to bill due to vacancy (e.g., death of an individual, etc.).

Costs to the Agency and to the State and its Local Governments:

The proposed regulations will result in no additional costs to the State.

The amendment does not apply to the state as a provider of services.

There will be no savings or costs to local governments as a result of this amendment because pursuant to Social Services Law sections 365 and 368-a, either local governments incur no costs for these services or the State reimburses local governments for their share of the cost of Medicaid funded programs and services.

Costs to Private Regulated Parties:

This amendment is not expected to affect costs to private regulated parties.

Local Government Mandates:

There are no new requirements imposed by the rule on any county, city, town, village, school, fire or other special district.

Paperwork:

The amendment will not increase paperwork to be completed by providers.

Duplication:

The amendment does not duplicate any existing State or federal requirements that are applicable to services for persons with developmental disabilities.

Alternatives:

Since the change is mandated by Federal law, the Department did not consider any alternatives. Without this provision, providers would experience shortfall in their reimbursement level.

Federal Standards:

The amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

Compliance Schedule:

The amendment to the regulation is effective July 1, 2016. DOH expects to permanently adopt the regulations at the end of the public comment period.

Regulatory Flexibility Analysis

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

Rural Area Flexibility Analysis

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

Job Impact Statement

A Job Impact Statement is not being submitted for this proposed amendment because this amendment will not have a substantial adverse impact on jobs or employment opportunities.

The proposed amendment to the regulations amends the rate-setting methodology that was adopted in July 2014 and is in conformance with changes mandated by CMS after July 1, 2014. The proposed amendment changes the calculation of April 1, 2015 compensation funding for direct support professionals and clinical employees. In addition, an occupancy adjustment will be applied to the rate effective July 1, 2016.

The amendments are not expected to have any significant adverse impact on jobs and employment opportunities with providers.

New York State Joint Commission on Public Ethics

REVISED RULE MAKING NO HEARING(S) SCHEDULED

Comprehensive Lobbying Regulations

I.D. No. JPE-34-17-00003-RP

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

Proposed Action: Addition of Part 943 to Title 19 NYCRR.

Statutory authority: Executive Law, sections 94(1) and 9(c); Legislative Law, section 1-d(a)

Subject: Comprehensive lobbying regulations.

Purpose: To set forth comprehensive lobbying regulations that implement the provisions of the Lobbying Act.

Substance of revised rule (Full text is posted at the following State website: www.jcope.ny.gov): A new Part 943 is added which sets forth comprehensive lobbying regulations, including provisions relating to the following topics: definitions, statutory exceptions to lobbying, general provisions and restrictions relating to lobbying, direct and grassroots lobbying, procurement lobbying, reportable lobbying activity, and filing requirements.

Revised rule compared with proposed rule: Substantial revisions were made in sections 943.3(d)(3), (h), (p), 943.4(a)(1)(i), (2), (f), 943.5(b), (c)(1), (2), 943.6(a)(1), (2), (b)(2), (4), (c)(3), (4), (5), 943.7(c)(2), (d), (f)(2), 943.8(a)(4), (5)(v), (c)(2), (d), 943.9(h)(3)(i), (iii), (iv), (v), (j), 943.10(e)(1), (2), (g), (j)(9), (k)(2), (3), (l), (m), 943.11(d), (f)(7), (8), (i), 943.12(f)(4), (5), (6)(i), (ii), (11), (h), 943.13(f)(3), (g), 943.14(b)(1), (3), (5), (7), (11), (c)(1)(iii), (3), (4), (6) and (7).

Text of revised proposed rule and any required statements and analyses may be obtained from Carol C. Quinn, Deputy Director of Lobbying Guidance, Joint Commission on Public Ethics, 540 Broadway, Albany, NY 12207, (518) 408-3976, email: carol.quinn@jcope.ny.gov

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

Public comment will be received until: 30 days after publication of this notice.

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 are not submitted with this Notice of Revised Rulemaking because changes made to the last published rule do not necessitate revision to the previously published Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement.

Assessment of Public Comment

During the official public comment period, the New York State Joint Commission on Public Ethics ("Commission") received fifteen (15) written comments from multiple sources regarding the Commission's proposed regulation, which adds a new Part 943. The comments generally commend the Commission on its efforts to set forth clear and comprehensive Lobbying regulations and also raise issues for the Commission to consider. A more detailed assessment of public comment is posted on the Commission's website.

State Liquor Authority

PROPOSED RULE MAKING
HEARING(S) SCHEDULED

Municipal Notification Requirements for Temporary Beer and Wine Permit as Well as Catering Permit Applications for Large Events

I.D. No. LQR-07-18-00011-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 29; addition of new Parts 29 and 36 to Title 9 NYCRR.

Statutory authority: Alcoholic Beverage Control Law, sections 97, 98 and 99-e; State Administrative Procedures Act, section 201

Subject: Municipal notification requirements for Temporary Beer and Wine Permit as well as Catering Permit applications for large events.

Purpose: To establish municipal notification for Temporary Beer and Wine Permit as well as Catering Permit applications for large events.

Public hearing(s) will be held at: 10:00 a.m., April 18, 2018 at State Liquor Authority, 317 Lenox Ave., 4th Fl., New York, 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 (Full text is posted at the following State website: www.sla.ny.gov): The purpose of this proposed rulemaking, which concerns the issuance of Caterer's Permits and Temporary Beer, Wine and Cider Permits, is to conform current Part 29 with current Caterer's Permit practices (via repealing and replacing Part 29 in its entirety), and to add new part 36 to memorialize current Temporary Beer, Wine and Cider Permit practices as formal policy, and to add local municipal or police notifications for both (depending on location of event) for applications featuring 1,000 or more attendees.

The major changes to Part 29 include: clarifying who is eligible to obtain a Caterer's Permit and under what conditions; implementing a municipal or police notification requirement for permit applications for events featuring 1,000 or more attendees; establishing a requirement that applications for events featuring 1,000 or more attendees be made a minimum of 30 days prior to the event date absent a showing of good cause; memorializing current policy that Caterer's Permits are only issued for private events that are not open to the general public; memorializing current policy that the Authority exercises its discretion in issuing Caterer's Permits relative to any disciplinary history of the applicant, the nature of the event, the location of the event, whether the applicant has adequate security plans, whether the food to be provided is sufficient to satisfy the Authority that the sale of alcoholic beverages is intended to be incidental to and not the primary purpose of the event, or any other information that shows that issuance of the permit could create a risk to the public health and safety; establishing the policy that no more than four permits be issued to any on-premises licensee during any twelve-month period for events featuring 1,000 or more attendees; memorializing current policy that no more than four permits be issued for the same location during any twelve-month period absent a showing of good cause; memorializing current policy that any Alcoholic Beverage Control Law (ABCL) violations occurring at a permitted event will be held against the underlying on-premises license of the applicant; and memorializing current policy relative to review processes and time frames for disapproved applications.

Major elements of new Part 36 include: clarifying who is eligible to obtain a Temporary Beer, Wine and Cider Permit and under what conditions; memorializing current policy relative to timing of application filings and minimum time periods prior to proposed events; implementing a municipal or police notification requirement for permit applications for events featuring 1,000 or more attendees; establishing a requirement that applications for events featuring 1,000 or more attendees be made a minimum of 30 days prior to the event date absent a showing of good cause; establishing policies requiring acceptable proof of municipal or police notification for events featuring 1,000 or more attendees; memorializing current policy that only wine, beer, wine products and/or cider may be served under the rubric of a Temporary Beer, Wine and Cider Permit; memorializing current policy that a Temporary Beer, Wine and Cider Permit is only effective for a maximum of 24 consecutive hours and is subject to any county restrictions on hours of service; memorializing current policy that manufacturers and wholesaler may deliver alcoholic beverages to the site of the event and may also pick up unused product at the conclusion of the event; memorializing current policy that the Authority exercises its discretion in issuing Temporary Beer, Wine and Cider Permits Caterer's Permits relative to any disciplinary history of the applicant, the nature of the event, the location of the event, whether the applicant has adequate security plans, any risk to public health or safety; memorializing current policy that the permit must be displayed at all times during the event; memorializing current policy that with only minor exceptions no more than four permits be issued to the same location during any twelve-month period absent a showing of good cause; memorializing current policy that no permit be issued for any already licensed premises except for not-for-profit organizations; memorializing current policy that any Alcoholic Beverage Control Law (ABCL) violations occurring at a permitted event will be held against the underlying license of the applicant, if any; and memorializing current policy relative to review processes and time frames for disapproved applications.

Text of proposed rule and any required statements and analyses may be obtained from: Paul Karamanol, Senior Attorney, State Liquor Authority, 80 South Swan Street, Suite 900, Albany, NY 12210, (518) 474-3114, email: paul.karamanol@sla.ny.gov

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

Statutory authority:

These proposed regulations concerning Temporary Beer and Wine Permits issued pursuant to Alcoholic Beverage Control Law ("ABCL") § 97 and Caterer's Permits issued pursuant to ABCL § 98 are being issued by the State Liquor Authority ("Authority") and would appear as new Parts 29 and 36 of Title 9, Subtitle B, of the New York Codes, Rules and Regulations (N.Y.C.R.R.) Existing Part 29 would be repealed and wholly replaced hereby.

These regulations are issued pursuant to the following:

ABCL § 97, which authorizes the Authority to issue Temporary Beer and Wine Permits to any person for a period not to exceed twenty-four consecutive hours and promulgate rules relative to same;

ABCL § 98, which authorizes the Authority to issue Caterer's Permits for the furnishing of food and alcoholic beverages at events for a period not to exceed twenty-four hours and promulgate rules relative to same;

ABCL § 99-e, which authorizes the Authority to promulgate certain rules relative to Temporary Beer and Wine Permits;

State Administrative Procedure Act § 201, which authorizes all agencies to adopt by rule additional procedures not inconsistent with statute.

Legislative objectives:

Changing the public policy underpinnings of the Alcoholic Beverage Control Law to be more business friendly where possible was recommended by the New York State Law Revision Commission in their 2009 Report on the Alcoholic Beverage Control Law and its Administration, which included recommendations of "supporting economic growth, job development, and the state's alcoholic beverage production industries and its tourism and recreation industry…provided that such activities do not conflict with the primary regulatory objectives of promoting the health, welfare and safety of the people of the state, and promoting temperance in the consumption of alcoholic beverages." In that effort, and in response to expressed concerns of various municipal officials, the authority hereby seeks to increase local municipal awareness of large functions or events being held in their jurisdictions by establishing municipal and police notification procedures for both Temporary Beer and Wine Permit applications for events featuring 1,000 or more attendees as well as Catering Permit applications for events featuring 1,000 or more attendees. This regulatory proposal would thus help the State Liquor Authority promote the health, welfare and safety of the people of New York by establishing municipal and police notification procedures for applicants for large events that are expected to draw 1,000 or more attendees.

Under this proposal, applicants for such large events would need to send notification to the police department of the municipality in which the event will be held, and in New York City, notice would also need to be sent to the community board with jurisdiction over the area in which the event will take place.

Needs and benefits:

These regulatory proposals will help modernize administration of the ABCL, increase transparency, and promote the health, welfare, and safety of the people of New York by establishing municipal and police notification procedures for both Temporary Beer and Wine Permit applications as

well as Catering Permit applications. It is current policy being codified here for the first time to require applications for Temporary Beer and Wine Permits as well as Catering Permits to be submitted to the Authority no less than 15 days prior to the event. Applications for both Temporary Beer and Wine Permits as well as Catering Permits will now be required by rule to be submitted no less than 15 days prior to the event absent a showing of good cause, and will now be required no less than 30 days prior to the event when a proposed event is expected to draw 1,000 or more attendees. Further, for large events expected to draw 1,000 or more attendees, applicants will be required to show proof they have notified the local municipal police department and New York City community board (if applicable) in whose jurisdiction the event is to take place. As a result, local municipalities will have an increased ability to plan for these large events and ensure public safety before, during and after same are held.

Costs:

We anticipate there will be some minimal costs associated with mailings for applications concerning 1,000 or more guests. There will be no increased costs to local municipal governments as a result of these proposals, to the contrary ensuring local municipalities have prior notification of large events in their jurisdiction by incorporating mandatory notifications into the permit application processes may very well result in better planning and decreased overtime costs for municipalities and police departments. Additionally, it is noted that certified mailing, while permissible, is not a requirement for applicants to comply with either proposal. There will be no increased costs to the authority as a result of these proposals since authority staff are already trained to utilize municipal notifications as part of several other licensing processes and will be able to seamlessly incorporate the proposed changes into both the Temporary Beer and Wine Permit and Catering Permit application processes. Due to the above, there will be no added costs to the authority, or to local governments as a result of the implementation of the proposed rule amendments, and there will be minimal costs to applicants for events with 1,000 or more guests.

Local government mandates:

None. Local governments are not required to respond to the notifications mandated by this proposal and therefore would not be negatively impacted by the proposed rule amendments. To the contrary, localities will now be receiving prior notification of large events to be held in their jurisdiction as part of the permitting process, thereby enabling planning on the part of municipal officials.

Paperwork:

The proposed rule amendments impose new paperwork requirements on applicants for Temporary Beer and Wine Permits for large events that are expected to draw one thousand or more attendees as well as for Catering Permits for large events that are expected to draw one thousand or more attendees in the form of a notification to be forwarded to local municipal or police authorities.

Duplication:

There is no federal equivalent or regulatory requirement for Temporary Beer and Wine Permits of Catering Permits. Local municipal officials and police do not have a veto over authority permit issuing powers, but would hereby be given the opportunity to be heard relative to any concerns they may have regarding any particular application for a large event during the permitting process.

Alternatives/federal standards:

There is no federal equivalent or regulatory requirement for Temporary Beer and Wine Permits of Catering Permits. There were no alternative proposals considered by the Authority prior to promulgating these proposals.

Compliance schedule:

The period of time the industry will require to enable compliance is likely to be negligible as the Authority will promulgate new applications and instruction forms to assist industry compliance with the proposals and have those forms available with the application via the Authority's website upon adoption of these proposals. The Authority expects to be compliant immediately upon adoption.

Regulatory Flexibility Analysis

Effect of rule:

The proposed repeal of existing Part 29 and addition of new Parts 29 and 36 of Title 9, Subtitle B of the New York Codes, Rules and Regulations (N.Y.C.R.R.) would affect the small fraction of the approximately 20,000 Catering Permit and Temporary Beer and Wine Permit applicants per year that are received by the State Liquor Authority and that pertain to events having 1,000 or more attendees.

Compliance requirements:

The proposed rule amendments would codify the current requirement that applicants for Catering Permits or Temporary Beer and Wine Permits file their applications no less than 15 days prior to the date of the event for which the permit is sought. However, for events having 1,000 or more attendees, applicants for Catering Permits or Temporary Beer and Wine Permits will be required to file their applications no less than 30 days prior to the date of the event and include as part of the application proof that they provided the local police and municipal officials with jurisdiction over the location of the event with advanced written notification. The notifications would need to be forwarded to the police department of the municipality in which the event is to take place, or if there is no police department then the local county sheriff's department must receive the notification. For events to be held in New York City, the community board with jurisdiction over the location where the event is to take place will receive the notification in addition to the NYPD. There would be no requirement that local governments or community boards participate in the application process or respond to the notice in any way, but they would now have an enhanced ability to do so if they chose to as a result of these proposed amendments.

Professional services:

No new professional services would be required to comply with the proposed rule amendments. Applicants for Catering Permits or Temporary Beer and Wine Permits will have the option of utilizing certified mail of the U.S. Postal Service as proof that the proper notification has been sent to the proper local municipal officials.

Compliance costs:

We do anticipate some minimal costs associated with mailings for applications concerning 1,000 or more guests, however the use of certified mail would merely be an option and not a requirement for certain applicants. There would be no compliance costs for local governments since they would not be required to participate in the application process or respond to the notice in any way, but would merely have an enhanced ability to do so if they chose to as a result of these proposed amendments.

Economic and technological feasibility:

Compliance with the proposed rule amendments by small businesses would be economically and technically feasible because the amendments would enable the Authority to promulgate standard forms and instructions detailing the notification process which would be seamlessly incorporated into current application processes. Compliance with the proposed rule amendments by local governments and community boards would be technically feasible because the amendments would mirror current municipal notification practices and requirements for other types of applications which they already comply and cooperate with.

Minimizing adverse impact:

Since the proposed municipal notification requirements would only apply to events where 1,000 or more persons are to be in attendance, there is expected to be no adverse impact to regulated small businesses. In addition, since the proposed municipal notification requirements would mirror pre-existing notification requirements currently utilized for other types of liquor license applicants, and since local governments would not be required to respond or participate in the application processes in any way, the proposed rule amendments would have no impact on local governments.

Small business and local government participation:

The Authority has not yet made any outreach efforts to solicit input from small businesses or local municipal officials in the drafting of these proposals.

Rural Area Flexibility Analysis

Types and estimated numbers of rural areas:

The proposed repeal of existing Part 29 and addition of new Parts 29 and 36 of Title 9, Subtitle B of the New York Codes, Rules and Regulations (N.Y.C.R.R.) would affect businesses throughout the state.

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

The proposed rule amendments would impose new municipal notification requirements on applicants for Temporary Beer and Wine Permits that are expected to draw 1,000 or more attendees as well as for Catering Permits for large events that are expected to draw 1,000 or more attendees in the form of a notice to be forwarded to local municipal or police authorities. The amendments would not impose any compliance requirements on local municipal governments, to the contrary, local municipalities would be better informed in advance of large gatherings and events in their jurisdictions. No new professional services would be needed to comply with the proposed rule amendments as certified mailing is an option for applicants but not a requirement.

Costs:

We do anticipate some minimal costs associated with certified mailings for applications concerning 1,000 or more guests, however the proposed rule amendments would not impose any initial capital costs or continuing compliance costs for the vast majority of regulated businesses. There would be no compliance costs for local governments since they would not be required to participate in the application process or respond to the notice in any way, but would merely have an enhanced ability to do so if they chose to as a result of these proposed amendments.

Minimizing adverse impact:

Since the proposed rule amendments would merely impose new munic-

ipal notification requirements on applicants for Temporary Beer and Wine Permits as well as for Catering Permits for large events that are expected to draw 1,000 or more attendees in the form of a notification to be forwarded to local municipal or police authorities, there is expected to be no adverse impact to rural areas.

Rural area participation:

The Authority has not yet made any outreach efforts to solicit input from rural area small businesses or municipal officials in the drafting of these proposals.

Job Impact Statement

The proposed repeal of existing Part 29 and addition of new Parts 29 and 36 of Title 9, Subtitle B of the New York Codes, Rules and Regulations (N.Y.C.R.R.) would increase local municipal awareness of large functions or events being held in their jurisdictions by establishing municipal and police notification procedures for both Temporary Beer and Wine Permit applications for events featuring 1,000 or more attendees as well as Catering Permit applications for events featuring 1,000 or more attendees. As a result, the proposed amendments will not have an adverse impact on jobs or employment opportunities. Because it is evident from the nature of the proposed amendments that they will have no impact on jobs or employment opportunities, no further steps were needed to ascertain those facts and none were taken by the Authority. Accordingly, a job impact statement is not required for any of the proposed amendments and none has been prepared.

Office for People with Developmental Disabilities

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Enrollment in Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for IDD

I.D. No. PDD-07-18-00001-EP

Filing No. 132

Filing Date: 2018-01-24

Effective Date: 2018-01-24

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

Proposed Action: Amendment of Subpart 635-11 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 13.07, 13.09(b), 13.15(a) and 16.00

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

Specific reasons underlying the finding of necessity: The emergency adoption of amendments that allow individuals to be enrolled into the Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD) plan, through certain parties, in situations where there is no other person to make that election for them, is necessary to protect the health, safety, and welfare of individuals who are eligible to receive enhanced care coordination services in the OPWDD system. FIDA-IDD plans provide enhanced care coordination for individuals who need coordination of both Medicare health benefits and developmental disability services funded by Medicaid. Persons who are unable to enroll themselves in a FIDA-IDD plan will be unfairly precluded from participation in this dual care coordination program.

The emergency amendments amend Title 14 NYCRR Subpart 635-11 to allow individuals, who lack capacity and a guardian, the ability to be enrolled in FIDA-IDD plans. The regulations must be filed on an emergency basis to ensure that individuals eligible for FIDA-IDD plans are not unfairly precluded from participation in cross-system care coordination that will meet their needs.

Subject: Enrollment in Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for IDD.

Purpose: To allow individuals to be enrolled in a FIDA-IDD plan when individuals are unable to enroll themselves.

Substance of emergency/proposed rule (Full text is posted at the following State website:https://opwdd.ny.gov/regulations_guidance/opwdd_regulations/proposed): OPWDD's emergency/proposed regulations allow individuals to be enrolled into the Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD) plan, through certain parties, in situations where there is no other person to make that election for them, is necessary to protect the health, safety, and welfare of individuals who are eligible to receive enhanced care coordination services in the OPWDD system.

The regulations specify rules concerning who can enroll beneficiaries or individuals in a Medicare Part D prescription drug plan or in a Medicare Advantage plan with prescription drug coverage and who can pursue grievances, complaints, exceptions and appeals in such plans.

The regulations specify that a complaint can be submitted to the quality improvement organization or to federal or state government regulatory agencies.

The regulations specify the definition of "act in the FIDA-IDD plan review process."

The regulations add the definitions of enroll and enrollment, FIDA-IDD and FIDA-IDD plan, party, and PDP.

The regulations specify that for the purposes of this section only, if the person's residential facility is operated by OPWDD, the CEO of the agency is the director of the DDSOO that operates the residential facility.

The regulations specify that if a CEO or designee enrolls a person into a PDP, he or she shall give written notice to, among others, the person's Medicaid service coordinator or other person identified as that person's care coordinator.

The regulations specify that if the agency or sponsoring agency does not agree with the request for a different PDP, the agency or sponsoring agency shall, among other things, inform the advocate or correspondent that he or she may appeal in writing to the DDRO director for the region within which the person's residential facility is located if the residential facility is not operated by OPWDD. The regulations also specify that if the person's residential facility is operated by OPWDD, then the notice shall inform the advocate or correspondent that he or she may appeal in writing to the director of the DDSOO that operates that residential facility.

The regulations create a new Section that deals with the FIDA-IDD enrollment and reviews for persons residing in a residential facility operated or certified by OPWDD or a family care home and a new section that deals with FIDA-IDD Plan enrollment and reviews for persons not residing in a residential facility or family care home.

The regulations specify that a person may enroll himself or herself into a FIDA-IDD Plan or appoint another party to enroll him or her. A person may act in the FIDA-IDD review process for himself or herself or appoint another party to act in the FIDA-IDD review process for him or her.

The regulations specify that if a person lacks the ability to choose a FIDA-IDD plan or act in the FIDA-IDD review process, a guardian lawfully empowered to enroll a person in a FIDA-IDD plan may enroll the person in a FIDA-IDD Plan or appoint another party to enroll the person.

The regulations specify that if an appointed party or guardian is unwilling or unavailable to enroll the person or act in the FIDA-IDD review process then an actively involved spouse, an actively involved parent, an actively involved adult child, an actively involved adult sibling, an actively involved adult family member, or the Consumer Advisory Board for the Willowbrook Class (only for class members it fully represents) may act in the FIDA-IDD review process or appoint another party to act in the FIDA-IDD review process.

The regulations specify that if the person resides in a residential facility the chief executive officer (CEO) of the agency operating the person's residential facility or sponsoring the family care home, or designee of the CEO, may enroll the person or act in the FIDA-IDD review process. If the person does not reside in a residential facility, the CEO (or designee) of the agency providing service coordination for the person, may enroll the person or act in the FIDA-IDD review process. If the CEO enrolls the person in the FIDA-IDD plan or acts in the FIDA-IDD review process, he or she shall give written notice of such enrollment to the person's correspondent or advocate, the person's Medicaid service coordinator, or other person identified as that person's care coordinator, or the director for the region encompassing the person's residence.

The regulations create a new Section that deals with other responsibilities and rights of agencies and sponsoring agencies regarding PDP enrollment and reviews.

The regulations specify that no CEO, officer, designee, or employee of an agency or sponsoring agency shall solicit, accept or receive from a PDP, pharmacy or contractor of a PDP or pharmacy, for personal use or benefit any payment, discount, or other remuneration in consideration of, or as a result of, enrolling the person in a PDP.

The regulations specify that no CEO, officer, designee, or employee of an agency or sponsoring agency shall charge, accept or receive payment

from the person, family, or anyone else for enrolling the person in a PDP, providing advice and assistance in choosing a PDP or for acting for the person in the Part D review process.

The regulations specify that when a CEO or designee is acting in the Part D review process, the CEO or designee may appoint a party outside of the agency to act in the Part D review process for the person.

The regulations specify that when a CEO or designee enrolls a person he or she shall choose a PDP based on the best interests of the person.

The regulations create a new Section that deals with other responsibilities and rights of CEOs and DDSOO and DDRO directors or designees regarding FIDA-IDD plan enrollment and reviews.

The regulations specify that no CEO, DDRO or DDSOO director or designee shall solicit, accept or receive from a FIDA-IDD plan operator, or an agent of the plan, for person use or benefit any payment, discount or other remuneration in consideration of, or as a result of, enrolling the person in a FIDA-IDD plan.

The regulations specify that no CEO, DDRO or DDSOO director or designee shall charge, accept or receive payment from the person, family or anyone else for enrolling the person in a FIDA-IDD plan, for providing advice, and assistance in choosing a FIDA-IDD plan or for acting for the person in the FIDA-IDD review process.

The regulations specify that when a CEO, or DDRO or DDSOO director is acting in the FIDA-IDD review process for a person, the director or designee may appoint a party outside of the agency to act in the FIDA-IDD review process for the person.

The regulations specify that when a CEO, or DDRO or DDSOO director or designee enrolls a person in a FIDA-IDD plan or acts in the FIDA-IDD review process for a person he or she shall act based on the best interests of the person.

The regulations specify nothing in this Subpart shall diminish or remove the authority of a physician to request a coverage determination or an expedited redetermination on behalf of a beneficiary.

This notice is intended: to serve as both a notice of emergency adoption and a notice of proposed rule making. The emergency rule will expire April 23, 2018.

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

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

Public comment will be received until: April 16, 2018.

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

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

Regulatory Impact Statement

1. Statutory Authority:

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

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

c. OPWDD has the authority to plan, promote, establish, develop, coordinate, evaluate, and conduct programs and services for prevention, diagnosis, examination, care treatment, rehabilitation, training, and research for the benefit of individuals with developmental disabilities and has the authority to take all actions necessary, desirable, or proper to implement the purposes of the Mental Hygiene Law and to carry out the purposes and objectives of OPWDD within available funding, as stated in the NYS Mental Hygiene Law Section 13.15(a).

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

2. Legislative Objectives: The emergency/proposed regulations further legislative objectives embodied in sections 13.07, 13.09(b), 13.15(a) and 16.00 of the Mental Hygiene Law. The regulations authorize certain parties to enroll individuals in the Medicare Prescription Drug Plans and Fully Integrated Duals Advantage Plans for Individuals with Intellectual and Developmental Disabilities (FIDA-IDD) when the individuals lack capacity to enroll themselves. FIDA-IDD plans provide enhanced care coordination for individuals who need coordination of both Medicare health benefits and Medicaid developmental disability services.

3. Needs and Benefits: The emergency/proposed regulations amend Title 14 NYCRR Part 635-11 to allow individuals to be enrolled in a FIDA-IDD plan, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity. Without such action, individuals would not have the opportunity to enroll in this program.

The emergency/proposed regulations also make ministerial amendments to the Part D enrollment and review process to capture OPWDD's current organizational structure.

The emergency/proposed regulations in 635-11.4 pertain to individuals who reside in a residential facility operated or certified by OPWDD, or a family care home. That section would allow a surrogate to enroll an individual in a FIDA-IDD plan or to participate in the FIDA-IDD plan review process, if that individual did not have the capacity to enroll himself or herself. The section sets forth a hierarchy of individuals that may serve as a surrogate for these purposes, which includes an actively involved spouse, parent, adult child, adult sibling, adult family member or the Consumer Advisory Board for the Willowbrook Class (for class members only). In all other situations, the CEO of the agency that operates the individual's residence may enroll an individual and act on their behalf in the FIDA-IDD plan review process. For individuals residing in a facility operated by OPWDD, the CEO of the agency is deemed to be the director of the Developmental Disabilities State Operations Office that encompasses the location of the residence. This section also places notification requirements on a CEO that enrolls an individual in a FIDA-IDD plan.

The emergency/proposed regulations in 635-11.5 pertains to those individuals not residing in an OPWDD-certified or operated residential facility or family care home. That section would also allow a surrogate to enroll an individual in a FIDA-IDD plan or to participate in the FIDA-IDD plan review process, if that individual did not have the capacity to enroll himself or herself. The section sets forth a hierarchy of individuals that may serve as a surrogate for these purposes, which includes an actively involved spouse, parent, adult child, adult sibling, adult family member, or the Consumer Advisory Board for the Willowbrook Class (for Class members only). In all other situations, the CEO of the agency that provides service coordination for the individual may enroll an individual and act on their behalf in the FIDA-IDD plan review process. This section would also impose notification requirements when a CEO enrolled an individual in a FIDA-IDD plan.

The emergency/proposed regulations in 635-11.7 adds rights and responsibilities of CEOs, DDSOO and DDRO directors and designees regarding FIDA-IDD plan enrollment and reviews.

4. Costs:

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

There is no anticipated impact on Medicaid expenditures as a result of the emergency/proposed regulations. The regulations merely allow individuals to be enrolled in a FIDA-IDD plan, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity.

These regulations will not have any fiscal impact on local governments, as the contribution of local governments to Medicaid has been capped. Chapter 58 of the Laws of 2005 places a cap on the local share of Medicaid costs and local governments are already paying for Medicaid at the capped level.

There are no anticipated costs to OPWDD in its role as a provider of services to comply with the new requirements. The emergency/proposed regulations may result in cost savings because individuals affected by the regulations will not have to seek guardianship to participate in the FIDA-IDD plan.

b. Costs to private regulated parties: There are no anticipated costs to regulated providers to comply with the emergency/proposed regulations. The amendments merely allow individuals to be enrolled in a FIDA plan, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity.

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

6. Paperwork: Providers will not experience an increase in paperwork as a result of the emergency/proposed regulations.

7. Duplication: The emergency/proposed regulations do not duplicate any existing State or Federal requirements on this topic.

8. Alternatives: OPWDD did not consider any other alternatives to the emergency/proposed regulations. The regulations are necessary to allow individuals to be enrolled in a FIDA plan, through certain parties, in situations where there is no other to make that election for them, such as lack of a guardian or incapacity.

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

10. Compliance Schedule: OPWDD is planning to adopt the emergency/

proposed amendments as soon as possible within the timeframes mandated by the State Administrative Procedure Act. The proposed regulations were discussed with and reviewed by representatives of providers in advance of this proposal. OPWDD expects that providers will be in compliance with the emergency/proposed requirements at the time of their effective date.

Regulatory Flexibility Analysis

A regulatory flexibility analysis for small businesses and local governments is not being submitted because these amendments will not impose any adverse economic impact or reporting, record keeping or other compliance requirements on small businesses. There are no professional services, capital, or other compliance costs imposed on small businesses as a result of these amendments.

The emergency/proposed regulations amend Title 14 NYCRR Subpart 635-11 to allow individuals to be enrolled in a FIDA-IDD plan, through certain parties, in situations where there is no other person to make that election for them, such as lack of a guardian or incapacity. The amendments will not result in costs or new compliance requirements for regulated parties and consequently, the amendments will not have any adverse effects on providers of small business and local governments.

Rural Area Flexibility Analysis

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

The emergency/proposed regulations amend Title 14 NYCRR Subpart 635-11 to allow individuals to be enrolled in a FIDA-IDD plan, through certain parties, in situations where there is no other person to make that election for them, such as lack of a guardian or incapacity. OPWDD expects that providers will be in compliance with the emergency/proposed requirements at the time of their effective date. The amendments will not result in costs or new compliance requirements for regulated parties and consequently, the amendments will not have any adverse effects on providers in rural areas and local governments.

Job Impact Statement

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

The emergency/proposed regulations amend Title 14 NYCRR Subpart 635-11 to allow individuals to be enrolled in a FIDA-IDD plan, through certain parties, in situations where there is no other person to make that election for them, such as lack of a guardian or incapacity. The amendments will not result in costs, including staffing costs, or new compliance requirements for providers and consequently, the amendments will not have a substantial impact on jobs or employment opportunities in New York State.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Adult Sibling Update

I.D. No. PDD-07-18-00008-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 Parts 624 and 633 of Title 14 NYCRR.

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

Subject: Adult Sibling Update.

Purpose: Add adult sibling to the list of qualified persons available, pursuant to Mental Hygiene Law section 33.16(a)(6).

Text of proposed rule: • Existing subparagraph 624.6(f)(2)(i) is amended as follows:

(i) if the guardian, parent, spouse,[or] adult child*, or adult sibling* is the alleged abuser;

• Existing subparagraph 624.6(f)(2)(ii) is amended as follows:

(ii) if there is written advice from the guardian, parent, spouse,[or] adult child*, or adult sibling* that he or she objects to receiving such notification. The notice must then be provided to another party who is a guardian, parent, spouse or adult child, if one exists; or

• Existing subparagraph 624.6(f)(2)(iii) is amended as follows:

(iii) if the person receiving services is a capable adult who objects to such notification being made. If the capable adult objects to notification of all parties (guardian, parent, spouse,[or] adult child*, or adult sibling*), the capable adult must be provided the notice described in this subdivision.

• Existing paragraph 624.6(f)(6) is amended as follows:

(6) If the person does not have a guardian, parent, spouse,[or] adult child*, or adult sibling*, or if such parties are not reasonably available, or if there is written advice that such parties do not want to be notified; the agency must provide notice to the following parties in the manner (and subject to the same limitations) specified in this subdivision:

• Existing subdivision 624.8(b) is amended as follows:

(b) Eligible requestors. Persons receiving services or who formerly received services, and guardians, parents, spouses,[and] adult children*, or adult siblings* of such persons, pursuant to paragraph (a)(6) of section 33.16 of the Mental Hygiene Law, are eligible to request the release of records as established by this section, subject to the following restrictions:

• Existing subdivision 633.99(bo) is amended as follows:

(bo) Party, qualified. For the purposes of this Part, any properly identified person; committee for an incompetent person appointed pursuant to article 78 of the Mental Hygiene Law; guardian appointed pursuant to article 81 of the Mental Hygiene Law; or a parent or guardian of a person under the age of 18 appointed pursuant to article 17 of the Surrogate's Court Procedure Act, or other legally appointed guardian of a person under the age of 18; or a guardian of a person appointed pursuant to article 17-A of the Surrogate's Court Procedure Act; or a parent, spouse,[or] adult child*, or adult sibling* of an adult person who may be qualified to request access because the parent, spouse [or] adult child*, or adult sibling* is authorized pursuant to law, rule or regulation to provide consent and has consented, or is being requested to provide consent for care and treatment.

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

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

Public comment will be received until: 60 days after publication of this notice.

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

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

Consensus Rule Making Determination

OPWDD is updating language in Title 14 NYCRR Parts 624 and 633 by adding adult sibling to the list of qualified persons entitled to access clinical records, pursuant to the amended definition of qualified person in Mental Hygiene Law Section 33.16(a)(6).

OPWDD has determined that due to the nature and purpose of the amendment, no person is likely to object to the rule as written.

Job Impact Statement

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

The proposed regulations update 14 NYCRR Parts 624 and 633 by adding adult sibling to the list of qualified persons available, pursuant to the definition of qualified person in Mental Hygiene Law Section 33.16(a)(6). The amendments will not result in costs, including staffing costs, or new compliance requirements for providers and consequently, the amendments will not have a substantial impact on jobs or employment opportunities in New York State.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Advocacy Organization Definition Update

I.D. No. PDD-07-18-00013-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 section 676.12(ab) of Title 14 NYCRR.

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

Subject: Advocacy Organization Definition Update.

Purpose: To redefine the advocacy organizations listed under section 676.12(ab).

Text of proposed rule: Existing subdivision 676.12(ab) is amended as follows:

(ab) Recognized advocate for a person with developmental disabilities. A person or organization recognized, appointed, or otherwise authorized by a voluntarily or State operated facility, program or agency, or by an appropriate court, a family physician, a primary or secondary health care facility, or by an established advocacy organization or committee such as the Mental Hygiene Legal Service (MHLS), Consumer Advisory Board (CAB), or[the Protection and Advocacy System for Developmental Disabilities, Inc. (PASDD)] *the independent agency designated by State or Federal law to conduct the protection and advocacy programs for individuals*. Such a recognized advocate shall represent the rights, welfare and interests of the person with developmental disabilities as if they were the advocate's own rights, welfare and interests. The advocate attempts to facilitate the person's access to appropriate services and programs; and works to ensure that the care provided the person for whom the advocate is interested, is of the highest quality.

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

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

Public comment will be received until: April 16, 2018.

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

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

Consensus Rule Making Determination

In conformance with Mental Hygiene Law, OPWDD is updating existing regulations in Title 14 NYCRR 676.12(ab) to change the reference from "the Protection and Advocacy System for Developmental Disabilities, Inc. (PASDD)", to instead read "the independent agency designated by State or Federal law to conduct the protection and advocacy programs for individuals."

OPWDD has determined that due to the nature and purpose of the amendments no person is likely to object to the rule as written.

Job Impact Statement

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

The proposed regulation updates existing regulations in Title 14 NYCRR 676.12(ab) change the reference from "the Protection and Advocacy System for Developmental Disabilities, Inc. (PASDD), to instead read "the independent agency designated by State or Federal law to conduct the protection and advocacy programs for individuals." The amendment makes a technical change that will not result in any increased costs (including staffing costs) or compliance activities. Consequently, the proposed regulation will not have a substantial adverse impact on jobs or employment opportunities.

Public Service Commission

NOTICE OF ADOPTION

Electric Metering Equipment

I.D. No. PSC-34-14-00009-A

Filing Date: 2018-01-24

Effective Date: 2018-01-24

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

Action taken: On 1/18/18, the PSC adopted an order approving Quadlogic Controls Corporation's (QLC) petition to use the QLC S10N electric meter in residential electric submetering applications in New York State.

Statutory authority: Public Service Law, sections 30-53, 67(1) and (4)

Subject: Electric metering equipment.

Purpose: To approve QLC's petition to use the QLC S10N electric meter in New York State.

Substance of final rule: The Commission, on January 18, 2018, adopted an order approving Quadlogic Controls Corporation's (QLC) petition to use the QLC S10N electric meter in residential electric submetering 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.

(14-E-0326SA1)

NOTICE OF ADOPTION

Electric Metering Equipment

I.D. No. PSC-07-16-00016-A

Filing Date: 2018-01-24

Effective Date: 2018-01-24

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

Action taken: On 1/18/18, the PSC adopted an order approving ElectroIndustries/GaugeTech, Inc.'s (EIG) petition to use the EIG Shark 200 electric meter in residential electric submetering applications in New York State.

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

Subject: Electric metering equipment.

Purpose: To approve EIG's petition to use the EIG Shark 200 electric meter in New York State.

Substance of final rule: The Commission, on January 18, 2018, adopted an order approving ElectroIndustries/GaugeTech, Inc.'s (EIG) petition to use the EIG Shark 200 electric meter in residential electric submetering 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.

(16-E-0024SA1)

NOTICE OF ADOPTION

Electric Metering Equipment

I.D. No. PSC-34-17-00018-A

Filing Date: 2018-01-24

Effective Date: 2018-01-24

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

Action taken: On 1/18/18, the PSC adopted an order approving Arteche USA's (Arteche) petition to use the Arteche UCE-7, URJ-17 and CRB-17 transformers in residential electric submetering applications in New York State.

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

Subject: Electric metering equipment.

Purpose: To approve Arteche's petition to use the Arteche UCE-7, URJ-17 and CRB-17 transformers in New York State.

Substance of final rule: The Commission, on January 18, 2018, adopted an order approving Arteche USA's (Arteche) petition to use the Arteche UCE-7 and URJ-17 voltage transformers and the CRB-17 current transformer in residential electric submetering 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.

(17-E-0292SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Accuracy and Reasonableness of National Grid's Billing for Certain Interconnection Upgrades

I.D. No. PSC-07-18-00015-P

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

Proposed Action: The Commission is considering a petition, filed by Albany Engineering Corporation (AEC) on December 28, 2017, requesting that the Commission resolve a dispute over the accuracy and reasonableness of National Grid invoices.

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

Subject: Accuracy and reasonableness of National Grid's billing for certain interconnection upgrades.

Purpose: To consider AEC's petition requesting resolution of their billing dispute with National Grid.

Substance of proposed rule: The Public Service Commission is considering a petition filed by Albany Electric Corporation (AEC) on December 28, 2017. AEC's petition requests that the Commission resolve a billing dispute regarding costs and labor assessed by Niagara Mohawk Power Corporation d/b/a National Grid for certain system upgrades required to complete the interconnection of the Stuyvesant Falls Hydroelectric Station following its recommissioning. The full text of the petition may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. 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: April 15, 2018.

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.

(17-E-0813SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Notice of Intent to Submeter Electricity

I.D. No. PSC-07-18-00016-P

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

Proposed Action: The Commission is considering the notice of intent of Silo Ridge Condo Association to submeter electricity at 5021 Route 44, Anemia, New York.

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

Subject: Notice of intent to submeter electricity.

Purpose: To consider the notice of intent of Silo Ridge Condo Association to submeter electricity.

Substance of proposed rule: The Commission is considering the notice of intent of Silo Ridge Condo Association (Owner) filed on December 18, 2017, to submeter electricity at 5021 Route 44, Anemia, New York, located in the service territory of New York State Electric and Gas Corporation (NYSEG). By stating its intent to submeter electricity, Silo Ridge Condo Association has requested authorization to take electric service from NYSEG and then distribute and meter that electricity to tenants. Submetering of electricity to residential tenants is allowed so long as it complies with the protections and requirements of the Commission's regulations at 16 NYCRR Part 96. The full text of the notice of intent may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. 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: April 15, 2018.

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.

(17-E-0792SP1)

Department of State

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Cease and Desist Zone for the Incorporated Village of Chestnut Ridge, NY

I.D. No. DOS-07-18-00010-P

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

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

Statutory authority: Real Property Law, section 442-h

Subject: Cease and desist zone for the Incorporated Village of Chestnut Ridge, NY.

Purpose: To adopt a cease and desist zone for the Incorporated Village of Chestnut Ridge, NY.

Text of proposed rule: § 175.17 Prohibitions in relation to solicitation and unlawful discriminatory practice

(a)

(1) No broker or salesperson shall induce or attempt to induce an owner to sell or lease any residential property or to list same for sale or lease by making any representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, age, sex, sexual orientation, disability, gender identity, military status, familial status or any other protected category under any Federal, State or local law applicable to the activities of real estate licensees in New York State.

(2)

(i) No licensed real estate broker or salesperson shall solicit the sale, lease, or the listing for sale or lease of residential property after such licensee has received written notice from an owner thereof that such owner or owners do not desire to sell, lease, or list such property.

(ii) Notice provided under the provisions of this subdivision to a real estate broker shall constitute notice to all associate brokers and salespersons who are employed by the real estate broker.

(3)

(i) No licensed real estate broker or salesperson shall solicit the sale, lease, or the listing for sale or lease of residential property from an owner of residential property located in a designated cease-and-desist zone if such owner has filed a cease-and-desist notice with the Department of State indicating that such owner or owners do not desire to sell, lease, or list their residential property and do not desire to be solicited to sell, lease, or list their residential property.

(ii) The following geographic areas are designated as cease-and-desist zones, and, unless sooner redesignated, the designation for the following cease-and-desist zones shall expire on the following dates:

Zone	Expiration Date
County of Bronx	October 1, 2022

Within the County of Bronx as follows:
The sections of the area of land in the County of Bronx, City of New York, within the neighborhood commonly referred to as Country Club, and more specifically bounded by and described as follows:
All the land west of the Eastchester Bay south of Griswold Avenue to Bruckner Expressway; thence southerly along the Bruckner Expressway/ Throgs Neck Expressway to Layton Avenue; then easterly to the Eastchester Bay.

Zone	Expiration Date
County of Queens	October 1, 2022

Within the County of Queens as follows:
The sections of the area of land in the County of Queens, City of New York, within the neighborhood commonly referred to as College Point, and more specifically bounded by and described as follows:
Beginning at the intersection of interstate 678 and the East River; thence southerly along interstate 678 to the intersection of interstate 678 and 14th Avenue; thence westerly along 14th Avenue to College Point Boulevard; thence southerly along College Point Boulevard to 28th Avenue; thence westerly to Flushing Bay; thence northeasterly along Flushing Bay and the East River to the point of the beginning.
The sections of the area of land in the County of Queens, City of New York, within the neighborhoods commonly referred to as: Bay Side, Bay Terrace and Murray Hill, and more specifically bounded by and described as follows:
Beginning at the intersection of the Cross Island Parkway and 149th Street; thence southerly along 149th Street to 46th Avenue; thence easterly along 46th Avenue and continuing along Hollis Court Boulevard to interstate 495; thence easterly along interstate 495 to the Cross Island Parkway; thence northerly along the Cross Island Parkway to the point of the beginning.

Zone	*Expiration Date*
County of Rockland	*July 1, 2023*

Within the County of Rockland as follows:
The area of land situated in the County of Rockland that currently comprises the Incorporated Village of Chestnut Ridge in its entirety. The Village of Chestnut Ridge is more specifically located within the Town of Ramapo, north of the State of New Jersey and the Town of Orangetown; east of the Village of Airmont; south of the Village of Spring Valley; and west of the Towns of Clarkstown and Orangetown.

(iii) The names and addresses of owners who have filed a cease-and-desist notice with the Department of State shall be compiled according to the street address for each cease-and-desist zone. Following the first compilation of a list, the list shall be revised and updated annually on or before December 31st. Individual lists shall be identified by geographic area and year.

(iv) A copy of each cease-and-desist list shall be available for inspection at the following offices of the Department of State:

Department of State
Division of Licensing Services
99 Washington Avenue
Albany, New York 12231-0001

Department of State
Division of Licensing Services
State Office Building Annex
164 Hawley Street
Binghamton, New York 13901-4053

Department of State
Division of Licensing Services
65 Court Street
Buffalo, New York 14202-3471

Department of State
Division of Licensing Services
Hughes State Office Building
Syracuse, New York 13202-1428

Department of State
Division of Licensing Services
State Office Building Veterans Memorial Highway
Hauppauge, New York 11788-5501

Department of State
Division of Licensing Services
123 William Street
New York, New York 10038-3804

(v) The cost of each list compiled pursuant to this subdivision shall be $10 and shall be available upon written request to the following address:

Department of State
Division of Licensing Services
123 William Street
New York, New York 10038-3804

(vi) The original cease-and-desist notice shall be filed with the Department of State's Division of Licensing Services at 123 William Street, New York, New York 10038-3804, and shall be available for public inspection and copying upon written request and appointment.

(vii) For the purposes of Real Property Law, section 441-c, it shall not be a demonstration of untrustworthiness or incompetence for a licensee to solicit an owner who had filed a cease-and-desist notice with the Department of State if the owner's name and address do not appear on the current cease-and-desist list compiled by the Department of State pursuant to subparagraph (iii) of this paragraph.

(4)

(i) For the purposes of this subdivision, solicitation shall mean an attempt to purchase or rent or an attempt to obtain a listing of property for sale, for rent or for purchase. Solicitation shall include but not be limited to use of the telephone, mails, delivery services, personal contact or otherwise causing any solicitation, oral or written, direct or by agent:

(a) to be delivered or presented to the owner or anyone else at the owner's home address;

(b) to be left for the owner or anyone else at the owner's home address; or

(c) to be placed on any vehicle, structure or object located on the owner's premises.

(ii) Solicitation shall not include classified advertising in regularly printed periodicals that are not primarily real estate related; advertisements placed in public view if they are not otherwise in violation of this subdivision; or radio and television advertisements.

(5) For the purposes of this subdivision, residential property shall mean one-, two- or three-family houses, including a cooperative apartment or condominium.

(b) No real estate broker or salesperson shall engage in an unlawful discriminatory practice, as proscribed by any Federal, State or local law applicable to the activities of real estate licensees in New York State. A finding by any Federal, State or local agency or court of competent jurisdiction that a real estate broker or salesperson has engaged in unlawful discriminatory practice in the performance of licensed real estate activities shall be presumptive evidence of untrustworthiness and will subject such licensee to discipline, including a proceeding for revocation. Nothing herein shall limit or restrict the department from otherwise exercising its authority pursuant to section 441-c of the Real Property Law.

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

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

Public comment will be received until: April 16, 2018

Regulatory Impact Statement

1. Statutory authority:

Section 442-h(3)(a) of the New York Real Property Law ("NY RPL") provides that the Secretary of State (the "Secretary") may adopt a rule establishing a cease-and-desist zone if the Secretary determines that some homeowners within a defined area are subject to intense and repeated

solicitations by real estate brokers, salespersons or other persons regularly engaged in the trade or business of buying and selling real estate. Upon the establishment of such a zone, the law provides that any homeowner located within the zone may file with the Secretary a statement of desire not to be solicited and may request that the homeowner's property be included on a list commonly referred to within the real estate industry as a "cease-and-desist list". Thereafter, the Secretary shall publish a list of names and addresses of the persons who have filed the statement. Once the list is published, brokers, salespersons and other persons regularly engaged in the trade or business of buying and selling real estate are prohibited from soliciting persons on that list.

2. Legislative objectives:

Section 442-h was enacted to protect homeowners within specific areas from intense and repeated solicitations, which were often accompanied by implications that property values will be decreasing due to changes taking place within the community. These changes were often attributed to persons of different ethnic, social or religious backgrounds moving into specific neighborhoods in greater numbers. In a case upholding the law against a challenge brought against the creation of a cease-and-desist list, the Second Circuit Court of Appeals further explained that the objectives advanced by such lists also include protecting the privacy of homeowners. Anderson v. Treadwell, 294 F.3d 453 (2d Cir. 2002). In Anderson, the court held, inter alia, that "[t]he homeowners' privacy interest is 'substantial' within the meaning of Central Hudson. The Supreme Court has declared that protecting the 'well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society.' .... The Court has observed that '[e]ven solicitation that is neither fraudulent nor deceptive may be pressed with such frequency or vehemence as to intimidate, vex, or harass the recipient....[P]rotection of the public from these aspects of solicitation is a legitimate and important state interest.'. As the District Court noted, the Secretary asserts such a situation here, stating that many homeowners feel 'harassed, overwhelmed, threatened, and offended by the extensive telephonic, mail, flyers, and personal direct solicitation they receive.' Accordingly, the interest in protecting homeowners from such harassing solicitations is a substantial state interest." Anderson, 461–62 (internal quotation marks omitted). Therefore, cease-and-desist lists are also intended to protect homeowners from unwanted solicitations which are intense and repeated so as to offend the well-being, tranquility, and privacy of the home.

After holding a well-attended public hearing in Rockland County, and receiving evidence from many homeowners, the Secretary has found that homeowners within the Incorporated Village of Chestnut Ridge, County of Rockland are subject to the types of solicitations that Section 442-h and cease-and-desist lists are intended to guard against. This rule, therefore, furthers the legislative intent and advances the policies sought by enacting Section 442-h.

3. Needs and benefits:

The Department held a public hearing on September 21, 2016 in Rockland County to explore whether some members of the public in the community have been subjected to intense and repeated solicitation by real estate professionals or others regularly engaged in the buying and selling of real estate. Many homeowners urged the Secretary to establish a cease-and-desist list due to the amount and the intensity of the solicitations received, and the harassment felt by the homeowners as a result.

During the public hearing, and continuing for several months thereafter, the Department gathered significant numbers of mailed solicitations from residents. Speakers provided examples of frequent telephone calls, unwanted mail and flyers, and door-to-door solicitations as intrusive and unwanted solicitation practices by members of the real estate industry.

A 44 year- resident of the Village described that the solicitations in the community have become so intense that: "it has been almost like a living hell in my home." According to this owner, the solicitors have gone so far as to solicit her family members in an effort to induce her to list her home.

Testimony from another long-term resident of 51 years describes similar unwanted solicitations, including an incident where a solicitor entered the interior of her home without consent. In this instance, the homeowner reported that she had to contact the police, but she never heard anything further about it.

Several residents testified to receiving multiple solicitations on a daily basis, having vehicles parked in front of their home and then being stopped as they went about their private routines only to be solicited.

This proposal therefore satisfies the important legislative objective of protecting homeowners from unwanted, repeated and intense solicitations, and is reasonably tailored to fit just those communities which have demonstrated a need for a cease-and-desist list. Accordingly, this rule will provide those homeowners who do not wish to be solicited with an effective and practical means of so notifying real estate professionals.

4. Costs:

A. Costs to regulated parties:

Parties affected by this rule include licensed real estate brokers and salespeople, as well as other persons regularly engaged in the trade or business of buying and selling real estate. The Department will make available cease-and-desist lists on its website, at no cost. The Department will also offer "cease-and-desist lists" for $10.00 per copy, in accordance with NY RPL § 442-h and 19 NYCRR § 175.17. The Department expects that most professionals will obtain the cease-and-desist lists from the Department's website at no cost.

If a professional uses the telephone, delivery services or personal contact to solicit residential listings, there may be additional time spent checking the cease-and-desist list to avoid contact with any person who may be on the list. There is, of course, a cost associated with that expenditure of the time taken to check the list. On the other hand, there may be some savings resulting from the elimination of unproductive calls or deliveries. Whether there is a net cost or savings will depend on the circumstances and practices of each business.

B. Costs to the Department of State:

The costs for printing and mailing are unknown, in part because it is unknown how many prints are required; it is expected that most business will obtain the cease-and-desist lists from the Department's website. For those few who want to purchase a paper copy, the Department will likely print a copy, on a per order basis, on existing equipment and using existing resources. The Department anticipates that any costs associated with this rule will be minimal, and may be defrayed by the required $10.00 fee for paper copy requests. Existing staff will be utilized to update and maintain the cease-and-desist lists.

5. Local government mandates:

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

6. Paperwork:

Homeowners who do not want to be solicited will have to file an owner's statement with the Department. The owner's statement will indicate the owner's desire not to be solicited and will set forth the owner's name and the address of the property located within the cease-and-desist zone. The Department will provide homeowners with a standard form, although use of the form is not mandatory. Owner's statement forms will be provided to community leaders for distribution to their constituents. In addition, owner's statement forms will be available from the Department on request. Owners will also be able to fill out a statement electronically on the Department's website.

The Department will prepare a cease-and-desist list containing the names and addresses of all of the homeowners who filed an owner's statement. The list will be available, at no cost, on the Department's website. The list will also be sold to the public, including real estate professionals. The price will be $10 per copy. Besides requests for copies of the cease-and-desist lists that must be submitted by mail, there are no paperwork requirements as a result of this rule.

7. Duplication:

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

8. Alternatives:

The Department did not identify any alternative that would provide relief for homeowners and, at the same time, be less restrictive and less burdensome on the solicitation activities. Consideration was given to the adoption of a non-solicitation order pursuant to NY RPL section 442-h(2)(a). However, the Department concluded that creation of a cease and desist zone could provide homeowners with relief from intense and repeated solicitation without imposing the more restrictive and burdensome regulation of a non-solicitation order, which would, among other things, prohibit all direct solicitation activities within the non-solicitation zone. Consideration was also given to expanding the proposed zone to neighboring villages and towns, but the Department determined that the record was not developed sufficiently to support such increased zones.

The Department also considered not establishing a zone for the Village. It was determined, however, that to do so would have resulted in homeowners in the affected areas continuing to be subject to unwanted intense and repeated solicitations to sell their homes. The Department found such a result to be contrary to the best interests of the State and would not further the legislative objective of protecting homeowners.

9. Federal standards:

There are no applicable Federal standards directly relating to this rulemaking.

10. Compliance schedule:

The rule will become effective on July 1, 2018; thereafter, a cure period will be in place for 90 days after adoption of the final rule. These timeframes will allow sufficient time for homeowners to file their owner's statements with the Department and for those impacted by the regulation to comply with this proposed regulation.

Regulatory Flexibility Analysis

1. Effect of rule:

This rule would create a cease and desist zone to permit homeowners

within the Incorporated Village of Chestnut Ridge, Rockland County to file an Owner's Statement with the Department of State indicating that they do not wish to be solicited to sell or list their property for sale. Real estate licensees, and those regularly engaged in the business of buying or selling property, would then be prohibited from soliciting a property listing from those residents. The defined cease and desist zone would be limited to the Incorporated Village of Chestnut Ridge, Rockland County.

This rule will apply to all real estate licensees and those regularly engaged in the business of buying or selling property, but would primarily affect the approximate 2,147 real estate licensees in Rockland County who do business in the Village of Chestnut Ridge. Many of these licensees are small businesses or are associated with small businesses. Real estate brokers and salespersons will remain free, however, to solicit listings from those residents in the defined zone who have not filed Owner's Statements with the Department of State, and to participate in regulated transactions within the zone. Considering the past creation of other cease and desist zones the Department does not anticipate that the solicitation limitations will place an undue financial burden or impose a hardship on real estate brokers and salespersons.

The rule does not apply to local governments.

2. Compliance requirements:

The Department of State publishes and makes available a list of residents within a cease and desist zone who have notified the Department that they do not wish to be solicited by real estate professionals. These cease and desist lists are made available to any member of the public and are available electronically at no cost. To comply with the rule, these businesses need only refer to the list prior to soliciting listings from homeowners within the defined cease and desist zone.

3. Professional services:

Small businesses will not need professional services in order to comply with this rule.

4. Compliance costs:

Small businesses will not incur any significant compliance costs associated with this rule. The Department publishes cease-and-desist lists on its website at no cost. Businesses who desire a hard copy of the lists may notify the Department and receive a copy of the lists by mail for a cost of $10.00.

5. Economic and technological feasibility:

The Department has determined that it will be economically and technologically feasible for small businesses to comply with this rule. There have been cease-and-desist lists in past years and the Department finds no reason to believe the businesses will not be able to comply with these requirements again. Additionally, two recent zones were established in Bronx and Queens Counties, and the Department has not received any evidence that compliance with these requirements is unfeasible.

6. Minimizing adverse impact:

The Department did not identify any alternative that would provide relief for homeowners and, at the same time, be less restrictive and less burdensome on solicitation activities. Consideration was given to the adoption of a non-solicitation order pursuant to NY RPL section 442-h(2)(a). However, the Department concluded that creation of a cease and desist zone could provide homeowners with relief from intense and repeated solicitation without imposing the more restrictive and burdensome regulation of a non-solicitation order, which would, among other things, prohibit all direct solicitation activities within the non-solicitation zone. Consideration was also given to expanding the proposed zone to neighboring villages and towns, but the Department determined that the record was not developed sufficiently to support such increased zones.

The Department also considered not establishing a zone for the Village. It was determined, however, that to do so would have resulted in homeowners in the affected areas continuing to be subject to unwanted intense and repeated solicitations to sell their homes. The Department found such a result to be contrary to the best interests of the State and would not further the legislative objective of protecting homeowners.

7. Small business participation:

On September 21, 2016 the Department held a well-attended public hearing in Rockland County to determine, in part, whether communities within that county have suffered repeated and intense solicitations warranting this proposed rulemaking. The hearing was publicized in advance and was open to all interested parties, including small businesses represented by licensed brokers. Representatives of local community boards, State and local elected officials, homeowners, and real estate professionals also attended and participated in the process.

The Department kept the hearing record open in order to permit individuals and businesses to submit written testimony and evidence following the public hearing. Further, the Department will continue its outreach after the rule is formally proposed as a Notice of Proposed Rule Making in the State Register. The publication of the rule in the State Register will provide additional notice to interested parties. Additional comments will be received and considered by the Department.

8. Compliance:

The proposed cease-and-desist list would be effective on July 1, 2018, but the Department is providing a cure period for those impacted by the rule to comply. This time will also be used to allow homeowners sufficient time to file their owner's statements with the Department.

9. Cure period:

The Department is providing a cure period of 90 days following publication of the Notice of Adoption to permit those impacted to obtain any lists published by the Department and to adjust their business practices accordingly. After 90 days, any business or individual subject to this rule who solicits a homeowner that has filed a statement with the Department will be subject to appropriate action pursuant to Article 12-A of the New York Real Property Law and the regulations promulgated thereunder.

Rural Area Flexibility Analysis

1. Effect of the rule:

This rule does not apply to rural areas and, rather, applies only to a defined geographic area within Rockland County (i.e., the Incorporated Village of Chestnut Ridge).

2. Compliance requirements:

This rule, which applies only in the Village of Chestnut Ridge, does not impose any reporting or recordkeeping requirements on businesses located within rural areas.

3. Professional services:

Professional services are not needed to comply with this rule.

4. Compliance costs:

The rule does not impose any costs on rural areas.

5. Minimizing adverse impact:

Insofar as the rule does not impose any costs on rural areas, no alternatives to minimize adverse impacts were considered by the Department of State.

6. Rural area participation:

Insofar as the rule does not apply in rural areas, rural area participation was not solicited by the Department of State.

Job Impact Statement

As is evident by the nature of this rulemaking, this proposal will not have a substantial adverse impact on jobs and employment opportunities. The rule merely prohibits real estate professionals from soliciting real estate listings from residents of a defined geographic zone who have notified the Department of State that they do not wish to be solicited. Real estate professionals will remain free to solicit other residents within the defined zone and engage in real estate transactions within and outside of the defined geographic area. Similar rules have been promulgated in the past without adversely impacting job opportunities. Accordingly, for the reasons expressed above, this rule will not adversely impact jobs and employment opportunities.

State University of New York

NOTICE OF ADOPTION

College Fees

I.D. No. SUN-49-17-00004-A

Filing No. 134

Filing Date: 2018-01-25

Effective Date: 2018-02-14

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

Action taken: Amendment of section 302.3 of Title 8 NYCRR.

Statutory authority: Education Law, section 355(2)(d) and (h)

Subject: College fees.

Purpose: To amend the College fees at SUNY's four university centers, as approved as part of the Broad Based Fee review process.

Text or summary was published in the December 6, 2017 issue of the Register, I.D. No. SUN-49-17-00004-EP.

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

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, Albany, New York 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Assessment of Public Comment

The agency received no public comment.

Urban Development Corporation

EMERGENCY RULE MAKING

Life Sciences Initiative Program

I.D. No. UDC-07-18-00003-E

Filing No. 133

Filing Date: 2018-01-24

Effective Date: 2018-01-24

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

Action taken: Addition of Part 4255 to Title 21 NYCRR.

Statutory authority: Urban Development Corporation Act, sections 5(4), 9-c, 16-aa; L. 2017, ch. 58, part TT

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

Specific reasons underlying the finding of necessity: Regulatory action is needed immediately to implement the statutory changes contained in Part TT of Chapter 58 of the Laws of 2017. The emergency rule implements the Capital Assistance component of the Life Sciences Initiative Program as well as the second component of the Program, the New York Fund for Innovation in Research and Scientific Talent (“NYFIRST”) Program.

The Capital Assistance component is designed to attract new life sciences technologies to New York State, promote critical public and private sector investment in emerging life sciences fields in New York State and create and expand life sciences related businesses and employment. It also includes securing established accelerator firms to facilitate the creation and implementation of a statewide Bio-accelerator initiative. The Bio-accelerator will provide scientists with entrepreneurial training, access to venture capital and a network of mentors to help expedite the translation of their scientific insights into commercially viable products. In addition, the Capital Assistance program allows for the establishment of a collaboration among three upstate research institutions to accelerate the pathway from discovery research to commercialization.

NYFIRST is intended to encourage the recruitment and retention of exceptional life science researchers and world-class talent at the state’s medical schools to accelerate translational research by supporting the establishment or upgrading of their laboratories.

The rule creates the administrative procedures of the program. It is critical to implement this program immediately because life science companies interested in locating or expanding their activities in New York state are approaching UDC in an effort to access funding for their proposed projects. By waiting for the standard rulemaking process to unfold, the State risks losing important economic development opportunities to states with competing life sciences incentive programs.

Subject: Life Sciences Initiative Program.

Purpose: Implement Capital Assistance and NYFIRST components of the Life Sciences Initiatives program.

Substance of emergency rule (Full text is posted at the following State website: www.esd.ny.gov): 21 NYCRR Part 4255 is hereby created and summarized as follows:

21 NYCRR Part 4255 begins by summarizing the purpose of the Life Sciences Initiative, namely to nurture, grow and retain new life sciences companies in New York State, attract existing companies from outside New York State, promote critical public and private sector investment in emerging life sciences fields in the State, and create and expand life sciences related businesses and employment.

Next, the regulation explains that the Initiative currently has two components – 1) the Capital Assistance component which endeavors to attract new life sciences technologies to the State, promote critical public and private sector investment in emerging life sciences fields in New York and create and expand life sciences related businesses and employment throughout the State; and 2) the New York Fund for Innovation In Research and Scientific Talent (“NYFIRST”) which is intended to encourage the recruitment and retention of exceptional life science researchers and world-class talent at the State’s medical schools to accelerate translational research by supporting the establishment or upgrading of their laboratories.

The regulation then (in 21 NYCRR 4255.2) begins by establishing relevant definitions for the first component, the Capital Assistance program. Key definitions include “life science entity” and “life science economic development benefits.”

The regulation next clarifies that the Capital Assistance component makes available financial assistance in the form of grants or loans, or a combination of such assistance, or contracts for services in the Corporation’s discretion, for use by life sciences entities for eligible uses.

Next, the application process is described in detail. Importantly, applications may include a request for funding for single or multiple life sciences projects or activities. The Corporation may issue a request for proposals for contracts for services in lieu of an application where it deems it appropriate.

Next, the Corporation’s evaluation process for the Capital Assistance component of the Program is described in detail. It includes a review (1) of the financial condition of the entity undertaking the project, including its profitability or potential to generate profits; liquidity; ability to service debt and its leverage ratio; (2) of the management experience, ability and relevant knowledge and the relevant entity’s general ability to carry out the project; (3) of satisfactory credit references; (4) of the absence of state or local tax judgments (5) of whether the applicant clearly demonstrates how the proposal will result in life sciences economic development benefits and the likelihood that the project will result in life sciences economic development benefits to the State; (6) of the availability of other sources of funding, including offers of assistance from locations outside of the State, including the federal government, and the amount of private financing leveraged by Program funds; and (7) whether there is any other economic development assistance available as an incentive for the location of the proposed project outside the State.

The regulation then covers eligible uses of the Capital Assistance Component which include: new construction, renovation or leasehold improvements; the acquisition or leasing of land, buildings, machinery and equipment; working capital, including, without limitation, workforce development; feasibility or planning studies related to the development of commercial life sciences in the State; and contracts for services to support New York life sciences’ ecosystem.

In contrast, institutions that are exclusively health care providers and/or requests for the purchase of equipment associated with standard healthcare delivery are not eligible for Capital Assistance Program funding.

The first half of the regulation concludes by discussing the reporting requirements for applicants. It requires the submission of an annual report satisfactory to the Corporation on the operation and accomplishments of the project including, without limitation, a description of the activities undertaken, the economic impact of the project, the number and amount of other sources of funding for the project including federal funds, jobs employing full time permanent employees created and retained, and the average salary of such jobs.

21 NYCRR 4255.3 covers the second component of the Initiative, the newly created New York Fund for Innovation in Research and Scientific Talent (“NYFIRST”) Program. It begins by describing the purpose of this component. It is intended to encourage the recruitment and retention of prominent life science researchers and world-class talent at the state’s medical schools to accelerate translational research by supporting the establishment or upgrading of their laboratories. Further, the Program is intended to: (1) increase the number of patent applications and patentable discoveries at medical schools; (2) increase the number of patents licensed from these schools; and (3) increase the recruitment/retention rate of medical school faculty focused on translational research.

Next, the regulation lays out key definitions of this component including “life sciences economic development benefits” and “translational research.”

The regulation then describes the core requirements of the program. It states that the NYFIRST Program is a grant program with a maximum grant amount for any eligible project of $1 million. It requires grantees to provide $2 of matching funds for every $1 of NYFIRST Program assistance. The Match the grantee provides may be cash, including federal assistance, or in-kind services. Program grant funds will be disbursed on a semiannual reimbursement basis. Grantees shall submit quarterly invoices and supporting documentation satisfactory to the Corporation, as work is performed and costs incurred.

Next, the regulation discusses eligibility criteria for the NYFIRST program. Program grants may be awarded to create new laboratory space or to upgrade existing laboratory space at recipient institutions to attract and retain principal investigator(s) to head such laboratories and engage in translational research. The Corporation will make no more than one award per applicant per year. Next, the regulation identifies specific requirements that the scientific talent recruited or retained to head these laboratories must possess including, but not limited to, a demonstrable record of translational research with clear potential for commercialization and research focusing on the development of an innovative solution for an identified healthcare-related problem, with the potential to result in significant life sciences economic development benefits in New York State.

The regulation next covers specifics of the application and the evaluation process for NYFIRST grants. The specific selection criteria are delineated in the regulation. Importantly, the Corporation intends to make Program grant awards through a competitive grant solicitation to qualifying Applicants, once annually for up to three years or until the funds under this Program are fully committed.

Eligible uses for the funds are then discussed. Program grants must be used for capital expenses directly related to the project including, but not limited to, 1) costs relating to the design, acquisition, construction, reconstruction and rehabilitation of laboratory space; 2) the purchase of equipment; and 3) other capitalizable expenses.

The regulation concludes by reminding applicants that the Corporation will establish periodic reporting requirements for Program grantees to provide information to the Corporation so that the Corporation may accomplish its statutory reporting obligations. Failure by a grantee to provide the required information in a manner that is timely and otherwise satisfactory to the Corporation may subject the grantee to full or partial recapture of their grant.

The full text of the regulations is available at: www.esd.ny.gov

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt this emergency rule as a permanent rule and will publish a notice of proposed rule making in the *State Register* at some future date. The emergency rule will expire April 23, 2018.

Text of rule and any required statements and analyses may be obtained from: Thomas P. Regan, New York State Urban Development Corporation, 625 Broadway, Albany, NY 12245, (518) 292-5123, email: thomas.regan@esd.ny.gov

Regulatory Impact Statement

STATUTORY AUTHORITY:

Part TT of Chapter 58 of the Laws of 2017 requires the New York State Urban Development Corporation ("UDC") to establish criteria for the Life Sciences Initiatives Program via rulemaking.

LEGISLATIVE OBJECTIVES:

The rulemaking accords with the public policy objectives the Legislature sought to advance since it implements both the Capital Assistance component of the Life Sciences Initiative Program as well as the second component of the Program, the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program.

NEEDS AND BENEFITS:

The Capital Assistance component is designed to attract new life sciences technologies to New York State, promote critical public and private sector investment in emerging life sciences fields in New York State and create and expand life sciences related businesses and employment. It also includes securing established accelerator firms to facilitate the creation and implementation of a statewide Bio-accelerator initiative. The Bio-accelerator will provide scientists with entrepreneurial training, access to venture capital and a network of mentors to help expedite the translation of their scientific insights into commercially viable products. In addition, the Capital Assistance program allows for the establishment of a collaboration among three upstate research institutions to accelerate the pathway from discovery research to commercialization.

In addition, NYFIRST is intended to encourage the recruitment and retention of exceptional life science researchers and world-class talent at the state's medical schools to accelerate translational research by supporting the establishment or upgrading of their laboratories.

The rule creates the administrative procedures of the Life Sciences Initiative program. It is critical to implement this program immediately because life science companies interested in locating or expanding their activities in New York state are approaching UDC in an effort to access funding for their proposed projects. By waiting for the standard rulemaking process to unfold, the State risks losing important economic development opportunities to states with competing life sciences incentive programs.

COSTS:

A. Costs to private regulated parties: None. There are no regulated parties in the Life Sciences Initiaitve Program, only voluntary participants.

B. Costs to the agency, the state, and local governments: UDC does not anticipate substantial extra costs associated with running the program outlined in this rulemaking. The program appropriation makes funding available for the Corporation's administrative costs. There is no additional cost to local governments.

C. Costs to the State government: The money to fund this grant program is part of the Governor's $320 million Life Sciences Initiative passed in FY 2018 budget. The Corporation believes the costs of this program will be offset by the positive economic impact of the program.

LOCAL GOVERNMENT MANDATES:

None. Local governments are not eligible to participate in the Life Sciences Initiatives Program.

PAPERWORK:

The emergency rule will require applicants to fill out an application to participate in the Life Sciences Capital Assistance program and the NYFIRST program. These applications will require applicants to provide certain business financial information to the Corporation. In addition, the Capital Assistance component requires applicant to submit an annual report to the Corporation while the NYFIRST program requires periodic reporting as well. Under NYFIRST, quarterly invoices are required to be submitted prior to the Corporation disbursing grant payments on a semiannual basis.

DUPLICATION:

The emergency rule conforms to provisions of section 16-aa of the New York State Urban Development Corporation Act and does not otherwise duplicate any state or federal statutes or regulations.

ALTERNATIVES:

No alternatives were considered with regard to implementing this rulemaking.

FEDERAL STANDARDS:

There are no federal standards with regard to the Life Sciences Initiatives Program. Therefore, the emergency rule does not exceed any Federal standard.

COMPLIANCE SCHEDULE:

The period of time the state needs to assure compliance is negligible.

Regulatory Flexibility Analysis

The Life Sciences Initiative is composed of the Capital Assistance Program and the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program which are both statewide grant programs. Although there are small businesses in New York State that are eligible to participate in the program, participation by the businesses is entirely at their discretion. The emergency rule will not have a substantial adverse economic impact on small businesses and local governments. On the contrary, because the rule creates a grant program designed to attract business and jobs to New York State, it will have a positive economic impact on the State. Accordingly, a regulatory flexibility analysis for small business and local governments is not required and one has not been prepared.

Rural Area Flexibility Analysis

The Life Sciences Initiative is composed of the Capital Assistance Program and the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") Program, both of which are statewide programs. Although there are businesses in rural areas of New York State that are eligible to participate in the programs, participation by the businesses is entirely at their discretion. The emergency rule imposes no additional reporting, record keeping or other compliance requirements on public or private entities in rural areas. Therefore, the emergency rule will not have a substantial adverse economic impact on rural areas or reporting, record keeping or other compliance requirements on public or private entities in such rural areas. Accordingly, a rural area flexibility analysis is not required and one has not been prepared.

Job Impact Statement

The proposed rule relates to both the Capital Assistance component and the New York Fund for Innovation in Research and Scientific Talent ("NYFIRST") component of the Life Sciences Initiative Program. This Program will enable New York State to provide financial assistance to life sciences companies that commit to create or retain jobs and/or to make significant capital investment in the State. This Program, given its design and purpose, will have a substantial positive impact on job retention and creation, and employment opportunities. Because this rule will authorize the Corporation to immediately begin offering financial incentives to life sciences businesses that commit to creating or retaining jobs, it will only have a positive impact on job and employment opportunities. Accordingly, a job impact statement is not required and one has not been prepared.