RULE MAKING ACTIVITIES

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

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

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

Department of Civil Service

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-17-00006-A
Filing No. 453
Filing Date: 2018-05-11
Effective Date: 2018-05-30

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the July 26, 2017 issue of the Register, I.D. No. CVS-30-17-00006-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-17-00007-A
Filing No. 461
Filing Date: 2018-05-11
Effective Date: 2018-05-30

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify positions in the exempt class.

Text or summary was published in the July 26, 2017 issue of the Register, I.D. No. CVS-30-17-00007-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-17-00008-A
Filing No. 455
Filing Date: 2018-05-11
Effective Date: 2018-05-30

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the July 26, 2017 issue of the Register, I.D. No. CVS-30-17-00008-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-17-00009-A
Filing No. 454
Filing Date: 2018-05-11
Effective Date: 2018-05-30

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the July 26, 2017 issue of the Register, I.D. No. CVS-30-17-00009-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-17-00010-A
Filing No. 458
Filing Date: 2018-05-11
Effective Date: 2018-05-30

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete a position from and classify a position in the exempt class.
Text or summary was published in the July 26, 2017 issue of the Register, I.D. No. CVS-30-17-00010-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-17-00011-A
Filing No. 457
Filing Date: 2018-05-11
Effective Date: 2018-05-30

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the non-competitive class.
Text or summary was published in the July 26, 2017 issue of the Register, I.D. No. CVS-30-17-00011-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-17-00013-A
Filing No. 460
Filing Date: 2018-05-11
Effective Date: 2018-05-30

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete positions from and classify positions in the non-competitive class.
Text or summary was published in the July 26, 2017 issue of the Register, I.D. No. CVS-30-17-00013-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-17-00015-A
Filing No. 456
Filing Date: 2018-05-11
Effective Date: 2018-05-30

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the July 26, 2017 issue of the Register, I.D. No. CVS-30-17-00015-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-17-00016-A
Filing No. 462
Filing Date: 2018-05-11
Effective Date: 2018-05-30

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the July 26, 2017 issue of the Register, I.D. No. CVS-30-17-00016-P.

Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-17-00017-A
Filing No. 459
Filing Date: 2018-05-11
Effective Date: 2018-05-30

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the July 26, 2017 issue of the Register, I.D. No. CVS-30-17-00017-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-17-00019-A
Filing No. 463
Filing Date: 2018-05-11
Effective Date: 2018-05-30

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify a position in the exempt class.
Text or summary was published in the July 26, 2017 issue of the Register, I.D. No. CVS-30-17-00019-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-17-00020-A
Filing No. 464
Filing Date: 2018-05-11
Effective Date: 2018-05-30

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendices 1 and 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To delete positions from and classify positions in the exempt class and to delete positions from the non-competitive class.
Text or summary was published in the July 26, 2017 issue of the Register, I.D. No. CVS-30-17-00020-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-17-00021-A
Filing No. 465
Filing Date: 2018-05-11
Effective Date: 2018-05-30

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 2 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To add a subheading and to classify positions in the non-competitive class.
Text or summary was published in the July 26, 2017 issue of the Register, I.D. No. CVS-30-17-00021-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-17-00022-A
Filing No. 467
Filing Date: 2018-05-11
Effective Date: 2018-05-30

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:
Action taken: Amendment of Appendix 1 of Title 4 NYCRR.
Statutory authority: Civil Service Law, section 6(1)
Subject: Jurisdictional Classification.
Purpose: To classify positions in the exempt class.
Text or summary was published in the July 26, 2017 issue of the Register, I.D. No. CVS-30-17-00022-P.
Final rule as compared with last published rule: No changes.
Text of rule and any required statements and analyses may be obtained from: Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov
Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-30-17-00023-A
Filing No. 466
Filing Date: 2018-05-11
Effective Date: 2018-05-30

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

Action taken: Amendment of Appendices 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the July 26, 2017 issue of the Register, I.D. No. CVS-30-17-00023-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-33-17-00002-A
Filing No. 471
Filing Date: 2018-05-11
Effective Date: 2018-05-30

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the August 16, 2017 issue of the Register, I.D. No. CVS-33-17-00002-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-33-17-00003-A
Filing No. 469
Filing Date: 2018-05-11
Effective Date: 2018-05-30

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

Action taken: Amendment of Appendix 1 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

Purpose: To classify a position in the exempt class.

Text or summary was published in the August 16, 2017 issue of the Register, I.D. No. CVS-33-17-00003-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-33-17-00004-A
Filing No. 474
Filing Date: 2018-05-11
Effective Date: 2018-05-30

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the August 16, 2017 issue of the Register, I.D. No. CVS-33-17-00004-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-33-17-00005-A
Filing No. 472
Filing Date: 2018-05-11
Effective Date: 2018-05-30

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the August 16, 2017 issue of the Register, I.D. No. CVS-33-17-00005-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-33-17-00006-A
Filing No. 468
Filing Date: 2018-05-11
Effective Date: 2018-05-30

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the August 16, 2017 issue of the Register, I.D. No. CVS-33-17-00006-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-33-17-00007-A
Filing No. 470
Filing Date: 2018-05-11
Effective Date: 2018-05-30

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

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

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

Subject: Jurisdictional Classification.

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

Text or summary was published in the August 16, 2017 issue of the Register, I.D. No. CVS-33-17-00007-P.

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

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

Assessment of Public Comment
The agency received no public comment.

NOTICE OF ADOPTION

Jurisdictional Classification

I.D. No. CVS-33-17-00008-A
Filing No. 473
Filing Date: 2018-05-11
Effective Date: 2018-05-30

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

Action taken: Amendment of Appendices 1 and 2 of Title 4 NYCRR.

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

Subject: Jurisdictional Classification.

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

Text of final rule: Amend Appendix 2 of the Rules for the Classified Service, listing positions in the non-competitive class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by adding thereto the positions of Homeland Security Program Analyst 3 (5), Intelligence Analyst 1 (Information Systems) (4) and Intelligence Analyst 2 (Information Systems) (2), and by increasing the number of positions of Homeland Security Program Analyst 1 from 7 to 58 and Homeland Security Program Analyst 2 from 4 to 14; and

Amend Appendix 1 of the Rules for the Classified Service, listing positions in the exempt class, in the Executive Department under the subheading "Division of Homeland Security and Emergency Services," by increasing the number of positions of Special Assistant from 18 to 19.

Final rule as compared with last published rule: Nonsubstantive changes were made in Appendix 2.

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

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

Assessment of Public Comment
The agency received no public comment.

State Commission of Correction

REVISED RULE MAKING
NO HEARING(S) SCHEDULED

Inmate Confinement and Deprivation

I.D. No. CMC-44-17-00012-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 7075, sections 7004.7, 7005.12, 7006.9(d), 7025.5, 7028.6(c), 7040.4(f), (g), 7040.5(e) and (f); amendment of sections 7003.3(j)(6), 7006.7(c), 7006.9(a)(5), 7006.11(a), 7013.10(c), 7022.2(a), 7024.11, 7026.3, 7028.2(d), 7070.7(h) and (j) of Title 9 NYCRR.

Statutory authority: Correction Law, section 45(6) and (15)

Subject: Inmate confinement and deprivation.

Purpose: Require local correctional facilities to record, review and report inmate cell confinement and essential service deprivation.

Substance of revised rule (Full text is posted at the following State website: www.scoc.ny.gov): A new Part 7075 of Title 9 NYCRR is established that generally requires:

(a) disciplinary or administratively segregated inmates must be allowed out of their cells for a minimum of four (4) hours a day;

(b) disciplinary or administratively segregated inmates who are under eighteen (18) years of age or pregnant must be allowed out of their cells for a minimum of four (4) hours a day, exclusive of entitled exercise periods;

(c) a jail's chief administrative officer (CAO) may deny an inmate such four (4) hour period only when it would pose a threat to the safety, security or good order of the facility;

(d) any CAO determination to deny such four (4) hour period must be reviewed at least every seven (7) days;

(e) any disciplinary or administrative segregation of an inmate who is under 18 years of age, known to be pregnant, within eight (8) weeks of delivery or pregnancy outcome, mentally or physically disabled, or chronically mentally ill must be reviewed at intervals not to exceed seven (7) days, with such review to include consultation with appropriate facility health staff;

(f) essential services (any items or services guaranteed inmates by regulation, such as clothing, outdoor exercise, toiletries, books, bedding, religious services, etc.) may not be withheld as punishment;

(g) jail CAO may only deny an essential service where necessary to preserve the safety, security or good order of the facility;

(h) any CAO decision to withhold an essential service must be reviewed every seven (7) days; and

(i) any such CAO determination or review must be made in writing, shall state the specific reasons considered, and be maintained in a centralized record.

Existing SCOC jail regulations are amended to require the following:

(a) reporting of certain inmate cell confinement and essential service deprivation to SCOC;

(b) segregated inmates who are pregnant or under eighteen (18) years of age shall be entitled to two (2) hours of daily exercise;

(c) daily CAO review of any educational services denial or restriction; and

(d) cell plumbing may be turned off only when necessary for facility safety and security, but inmate must be allowed to flush the toilet and be provided access to a sink at two (2) hour intervals.

Revised rule compared with proposed rule: Substantial revisions were made in sections 7075.1, 7075.3, 7075.4(c), (f), 7013.10(c), 7040.4(g) and 7040.5(f).

Text of revised proposed rule and any required statements and analyses may be obtained from Deborah Slack-Bean, Senior Attorney, New York State Commission of Correction, Alfred E. Smith State Office Building, 80 S. Swan Street, 12th Floor, Albany, New York 12210, (518) 485-2346, email: Deborah.Slack-Bean@scoc.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

1. Statutory authority:

Subdivision (6) of section 45 of the Correction Law authorizes the Com-

mission to promulgate rules and regulations establishing minimum standards for the care, custody, correction, treatment, supervision, discipline, and other correctional programs for all person confined in the correctional facilities of New York State. Subdivision (15) of section 45 of the Correction Law allows the Commission to adopt, amend or rescind such rules and regulations as may be necessary or convenient to the performance of its functions, powers and duties.

2. Legislative objectives:

By vesting the Commission with this rulemaking and oversight authority, the Legislature intended the Commission to enact regulations that better enable the agency to identify and monitor local correctional facilities for misuse of inmate cell confinement or essential service deprivation.

3. Needs and benefits:

While New York State Correction Law provides jail administrators the discretion and authority to confine inmates as necessary for order and discipline, there exists no statutory or regulatory requirement that such determinations and their justification be documented, reviewed on a timely basis to assess if continuation is warranted, or reported to the New York State Commission of Correction (SCOC), as the jail oversight and regulatory entity. Consequently, SCOC's ability to sufficiently monitor and oversee such confinement, and deprivations of essential inmate services, is limited by an absence of regulations requiring jails to record, review and report this activity.

Recent, publicized civil rights actions, SCOC field work, and formal inmate grievances appealed to SCOC's Citizen's Policy and Complaint Review Council have revealed a prevalent misuse of solitary confinement and deprivation of essential services in county jails, particularly as applied to the 16 and 17-year-old inmate population. Such confinement has included the solitary segregation of inmates, for insufficient reasons and prolonged periods, that likely violate the Eighth and Fourteenth Amendments of the U.S. Constitution. Similar unlawful and unconstitutional inmate treatment has occurred in jails' improper deprivation of essential inmate services, such as access to health services, participation in compulsory educational services, the provision of clothing, bedding and toiletries, access to printed materials and publications, participation in outdoor exercise, and access to religious services and materials.

As a resolution, SCOC has developed local correctional facility regulations which provide segregated inmates a presumptive minimum of four (4) hours a day out of their cell and continuous access to all essential services. Segregated inmates under the age of eighteen (18) years, and segregated inmates who are known to be pregnant, are provided a presumptive minimum of four (4) hours a day out of their cell, exclusive of an entitled two (2) hours of recreation time. While the four (4) hour period and access to essential services may be denied when necessary to preserve facility safety and security, the regulations require the facility administration to record, review and report such determinations in a manner that allows for sufficient oversight by SCOC.

4. Costs:

a. Costs to regulated parties for the implementation of and continuing compliance with the rule: Minimal. Any determination by local correctional facility administrators to deny segregated inmates four (4) hours out-of-cell time, to segregate any inmate under the age of eighteen (18), or known to be pregnant, within eight (8) weeks of delivery or pregnancy outcome, mentally or physically disabled, or chronically mentally ill, or to deny an essential inmate service to any inmate must be made in writing, reviewed every seven (7) days, and in certain circumstances reported to SCOC. Consequently, compliance with the proposed rule would result only in minimal costs associated with such recordkeeping and reporting.

b. Costs to the agency, the state and local governments for the implementation and continuation of the rule: None. The regulation does not apply to state agencies or governmental bodies. As set forth above in subdivision (a), any additional costs to local governments would be minimal.

c. This statement detailing the projected costs of the rule is based upon the Commission's oversight and experience relative to the operation and function of a local correctional facility.

5. Local government mandates:

The regulation imposes a duty on local correctional facilities to provide segregated inmates a presumptive minimum of 4 hours a day out of their cell and continuous access to all essential services. While the 4 hour period and access to essential services may be denied when necessary to preserve facility safety and security, the regulations require the jail to record, review and report such determinations in a manner that allows for sufficient oversight.

6. Paperwork:

As set forth above, any determination by local correctional facility administrators to deny segregated inmates four (4) hours out-of-cell time, to segregate any inmate under the age of eighteen (18), or known to be pregnant, within eight (8) weeks of delivery or pregnancy outcome, mentally or physically disabled, or chronically mentally ill, or to deny an essential inmate service to any inmate must be made in writing, reviewed every seven (7) days, and in certain circumstances reported to SCOC.

7. Duplication:

The rule does not duplicate any existing State or Federal requirement.

8. Alternatives:

The alternative, not promulgating regulations requiring local correctional facilities to record, review and report determinations to subject inmates to cell confinement and deprive essential inmate services, was dismissed by SCOC due to the agency's immediate need to sufficiently monitor and oversee such confinement and deprivation.

9. Federal standards:

There are no applicable minimum standards of the federal government.

10. Compliance schedule:

Each local correctional facility is expected to be able to achieve compliance with the proposed rule immediately.

Revised Regulatory Flexibility Analysis

A regulatory flexibility analysis is not required pursuant to subdivision three of section 202-b of the State Administrative Procedure Act because the rule does not impose an adverse economic impact on small businesses or local governments. The proposed rule seeks only to establish regulations requiring local correctional facilities to record, review and report certain determinations to confine an inmate to a cell or deprive an inmate of essential services. Considering that such determinations are relatively infrequent, it will not have an adverse impact on small businesses or local governments, nor impose any additional significant reporting, record keeping, or other compliance requirements on small businesses or local governments.

Revised Rural Area Flexibility Analysis

A rural area flexibility analysis is not required pursuant to subdivision four of section 202-bb of the State Administrative Procedure Act because the rule does not impose an adverse impact on rural areas. The proposed rule seeks only to establish regulations requiring local correctional facilities to record, review and report certain determinations to confine an inmate to a cell or deprive an inmate of essential services. Considering that such determinations are relatively infrequent, it will not impose an adverse economic impact on rural areas, nor impose any additional significant record keeping, reporting, or other compliance requirements on private or public entities in rural areas.

Revised Job Impact Statement

A job impact statement is not required pursuant to subdivision two of section 201-a of the State Administrative Procedure Act because the rule will not have a substantial adverse impact on jobs and employment opportunities, as apparent from its nature and purpose. The proposed rule seeks only to establish regulations requiring local correctional facilities to record, review and report certain determinations to confine an inmate to a cell or deprive an inmate of essential services. As such, there will be no impact on jobs and employment opportunities.

Assessment of Public Comment

In all, the New York State Commission of Correction (hereinafter "Commission") received numerous formal comments from members of the public, advocacy groups, and members of the New York State Legislature.

A preponderance of the comments received expressed the same three opinions. First, that the proposed regulations are inadequate in that no duration limitations were set for inmate punitive or administrative segregation. Second, that the proposed regulations provide correctional facility administrators "excessive discretion" in imposing punitive or administrative segregation. Finally, the Commission was urged to reformulate the regulations to mirror, and that the New York State Legislature should adopt, the Humane Alternatives to Long-Term (HALT) Solitary Confinement Act (A.3080/S.4784), a bill currently pending in both the New York State Senate and Assembly, that establishes a maximum of 15 consecutive days in solitary confinement, prohibits the use of solitary confinement for inmates 21 and younger, and requires congregate programming for out-of-cell time. Similarly, a commenter urged that the proposed regulations be amended to align with another bill (A.1905A/S.5241) and a companion bill (A.1610/S.4795) that would allow the use of solitary confinement "only as a measure of last report for the minimum period of time needed to maintain order or discipline in a facility," and prohibit the use of solitary confinement on inmates under the age of 21, pregnant women and new mothers, inmates afflicted with a physical, developmental or mental disability, and other vulnerable populations.

Correction Law section 137(6), applicable to local correctional facilities by means of Correction Law section 500-k, permits correction officials to "keep any inmate confined in a cell or room … for such period as may be necessary for maintenance of order or discipline." The New York State Court of Appeals has held that the Correction Law thus gives correction officials "broad discretion in the formulation and implementation of policies relating to security and to the disciplining of inmates [emphasis

added].” Arteaga v. State, 72 N.Y.2d 212, 217 (1988); see also Allah v. Coughlin, 190 A.D.2d 233, 236 (3d. Dept. 1993). Administrative state agencies, such as the Commission, “can only promulgate rules to further the implementation of the law as it exists; they have no authority to create a rule out of harmony with the statute” being implemented. Jones v. Berman, 37 N.Y.2d 42, 53 (1975); see also McNulty v. Chinlund, 62 A.D.2d 682, 688 (3d Dept. 1978). Consequently, it has historically been the Commission’s position that the promulgation of regulations that otherwise limit the statutory authority granted exclusively to correction officials would exceed its enabling powers. Nonetheless, it is the Commission’s intention, by adopting the regulations, to ensure that determinations to confine inmates to a cell, or deprive inmates of essential services, are justified and documented, reviewed on a timely basis to assess if continuation is warranted, and reported to the Commission. Thereafter, the Commission’s ability to monitor and oversee such confinement, and the deprivations of essential inmate services, will be sufficient to identify and investigate potential abuses. Nevertheless, the revised rulemaking proposal has expanded the scope of the chief administrative officer’s seven day review of inmate segregation to include inmates “within eight (8) weeks of delivery or pregnancy outcome, mentally or physically disabled, or chronically mentally ill.”

Several received comments requested that the Commission should first hold a public hearing before promulgating the proposed regulations, and criticized the Commission for failing to first consult with recognized experts in the fields of corrections, health and mental health. Additionally, one commenter suggested that the Commission “has not provided an adequate basis to justify” the proposed regulation’s requirement that segregated inmates are provided a presumptive minimum of four (4) hours a day out of their cell. Each of the current members of the Commission has previously served as a county sheriff and have extensively served in other various law enforcement and correctional capacities. Additionally, the disciplines of medicine and psychiatry are well represented on the Commission’s Correctional Medical Review Board, which continues to serve as a vital point of reference to the Commission. Relying on this expertise and intimate knowledge of the day to day operations of a local correctional facility in New York State, the Commission finds that the regulation serves as an appropriate balance between the inmates’ well-being and the operational limitations of the facilities. Other commenters protested that the regulations are not applicable to state prisons. Due to the vast operational differences between state and local correctional facilities, the Commission maintains separate bodies of regulations for each. As compared to local correctional facilities, the authority of the New York State Department of Corrections and Community Supervision (DOCCS) to confine inmates to a cell is more stringently controlled by statute and judicial order, rendering the application of the present regulations to DOCCS facilities without benefit.

Several comments criticized that the regulations lacked specific, additional reporting requirements for inmate cell confinement and essential service deprivation, and also suggested that the proposed regulations should contain requirements that local correctional facilities issue public reports regarding the same. It should be noted that the Commission’s specific reporting requirements for local correctional facilities are not contained in the body of regulations, but rather published in the Reportable Incident Manual for County Jails and the New York City Department of Correction. By adding “deprivation/limitation of essential services” and “inmate cell confinement” as reportable incident categories in 9 NYCRR section 7022.2, the Commission is now able to establish various reporting requirements on these categories in the manual. To date, any required public reporting by local correctional facilities has been mandated by statute, and the Commission does not find a necessity for such additional regulation.

Similarly, several commenters suggested regulation to provide for required programming of confined inmates during their “out-of-cell” time. It must be noted that this body of regulations applies equally to all local correctional facilities throughout the State, of various resources, from the 6-bed jail in Hamilton County to the expansive facilities of the New York City Department of Correction on Rikers Island. This, coupled with the transient inmate populations and more frequent court appearances and visitation experienced by local correctional facilities, as compared to state prisons, makes such a requirement currently impractical.

With regard to specific provisions of the regulation, one comment expressed concern that facilities will confuse the provisions of section 7075.4(e), which set forth the requirements for denying minor and pregnant time outside his or her cell, with the provisions of section 7070.7(c), which set forth the permissible instances in which an eligible youth may be denied participation in educational services. As the regulations clearly set forth the required criteria that must be found in each type of determination, the Commission is confident local correctional facilities will be able to comprehend and correctly follow both regulations. Similarly, one comment suggested that provisions be added to the regulations that required health staff to assess inmates placed in segregated confinement. It should be noted that Correction Law section 137(6)(c) currently requires a daily examination of any inmate when confined to a cell in excess of 24 hours. With regard to weekly review of any segregated inmate under the age of eighteen (18) years, an inmate who is known by security, health or mental health personnel to be pregnant, within eight (8) weeks of delivery or pregnancy outcome, mentally or physically disabled, or chronically mentally ill, the revised rulemaking proposal now requires the chief administrative officer to first consult with the jail physician, facility medical director, or other qualified, knowledgeable facility health staff. The same commenter also suggested that the Commission amend its disciplinary rules to accommodate inmates with disabilities to ensure due process of law. The Commission views this as unnecessary, as 9 NYCRR § 7006.6(a) currently requires a facility to provide assistance to any inmate who “is non-English speaking, illiterate, or for any other reason is unable to prepare a defense.” With regard to the regulatory provisions allowing the facility chief administrative to render toilets and sinks nonfunctioning, one comment criticized the lack of a required review of any such determination. The Commission agrees that such review is necessary, and the revised rulemaking proposal requires a review and written determination to continue or cease the initial order at intervals not to exceed twenty-four (24) hours.

Lastly, three commenters requested an extension to the proposal’s public comment period, to “allow for a more complete analysis of the proposed regulations and to provide all stakeholders with a meaningful opportunity to review, submit comment, and assess what impacts the regulations would have on their respective facilities, staff and inmates.” Since publication of the regulatory proposal, members of the Commission’s administration met with officials from the New York State Sheriffs’ Association, as well as a number of county sheriffs, at which time a productive discussion of the proposed regulations, and the potential impact on facilities, was had. As a result, the Commission is confident that local correctional facility officials have had a sufficient period of time to review and assess the regulations, and Commission staff have answered, and will continue to answer, any questions and concerns.

Department of Financial Services

EMERGENCY RULE MAKING

Establishment and Operation of Market Stabilization Mechanisms for Certain Health Insurance Markets

I.D. No. DFS-18-17-00020-E
Filing No. 481
Filing Date: 2018-05-15
Effective Date: 2018-05-15

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

Action taken: Amendment of Part 361; and addition of section 361.9 to Title 11 NYCRR.

Statutory authority: Financial Law, sections 202, 302; Insurance Law, sections 301, 1109 and 3233

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

Specific reasons underlying the finding of necessity: Insurance Law § 3233 requires the Superintendent of Financial Services (“Superintendent”) to promulgate regulations to ensure an orderly implementation and ongoing operation of the open enrollment and community rating requirements in Insurance Law §§ 3231 and 4317, applicable to small groups and individual health insurance policies and contracts, including member contracts under Article 44 health maintenance organizations (“HMOs”) and Medicare Supplemental policies and contracts. The regulations may include mechanisms designed to share risks or prevent undue variations in issuer claims costs. Pursuant to this mandate, the Superintendent promulgated 11 NYCRR 361 (Insurance Regulation 146), under which the Department established risk adjustment for community rated small group and individual health insurance and Medicare Supplemental policies and contracts. Subsequently, the federal Affordable Care Act (“ACA”) required the Center for Medicare and Medicaid Services to administer a risk adjustment program for the individual and small group health insurance markets, but not for Medicare Supplemental policies and contracts. A state may establish its own risk adjustment program pursuant to 45 C.F.R.

§ 153.310(a)(1). In addition, a U.S. Health and Human Services interim final rule, dated May 11, 2016, invites states to examine local approaches under state legal authority to help ease the transition to new health insurance markets. See 81 Fed. Reg. at 29152. Starting with plan year 2014, the Superintendent suspended New York's risk adjustment program for individual and small group health insurance markets because of the ACA, and New York's individual and small group health insurance markets since have been subject only to the federal program.

This rule establishes a market stabilization pool for the small group health insurance market for the 2017 plan year to ameliorate a possible disproportionate impact that federal risk adjustment may have on insurers and HMOs (collectively, "carriers"), address the needs of the small group health insurance market in New York, and prevent unnecessary instability in the health insurance market.

Carriers soon will begin binding coverage for policies written outside of the health exchange. In addition, New York State of Health, the official health insurance marketplace, has set September 9, 2016 as the date by which carriers must commit to selling certain policies or contracts on the health exchange. In order to implement the rule for the 2017 plan year and to minimize market issues, it is imperative that this rule be promulgated on an emergency basis for the general welfare.

Subject: Establishment and Operation of Market Stabilization Mechanisms for Certain Health Insurance Markets.

Purpose: To allow for the implementation of a market stabilization pool for the small group health insurance market.

Text of emergency rule: The title of Part 361 is amended to read as follows:

ESTABLISHMENT AND OPERATION OF MARKET STABILIZATION MECHANISMS FOR [INDIVIDUAL AND SMALL GROUP] *CERTAIN* HEALTH INSURANCE [AND MEDICARE SUPPLEMENT INSURANCE] *MARKETS*

The title of Section 361.6 is amended to read as follows:

Section 361.6 Pooling of variations of costs attributable to high cost claims beginning in 2006 *through 2013* for individual and small group policies, other than Medicare supplement and Healthy New York policies.

Section 361.9 is added to read as follows:

Section 361.9 Market stabilization pools for the small group health insurance market for the 2017 plan year.

(a)(1) The superintendent has been assessing the federal risk adjustment program developed under the federal Affordable Care Act and its impact on the health insurance market in this State. In its simplest terms, the federal risk adjustment program requires that carriers whose insureds or members have relatively better loss experience pay into the risk adjustment pool and those with relatively worse experience receive payment from that pool. The broad purpose of the risk adjustment program is to balance out the experience of all carriers.

(2) In certain respects, however, the calculations for the federal risk adjustment program do not take into account certain factors, resulting in unintended consequences. The department has been working cooperatively with the Department of Health and Human Services and the Centers for Medicare and Medicaid Services (CMS) on risk adjustment. Recently, CMS has announced certain changes to the methodology. CMS has also stated that it will continue to review the methodology in the future.

(3) The federal risk adjustment program has led to a situation in which some carriers in this State are receiving large payments out of the risk adjustment program that are paid by other carriers. For many of these other carriers, the millions to be paid represent a significant portion of their revenue. The money transfers among carriers in this State under the federal risk adjustment program have been among the largest in the nation.

(4) CMS's changes and planned reviews are much appreciated and anticipated. The superintendent will continue to work with CMS and hopes that over time the federal risk adjustment program will be improved so that it fully meets its intended purposes. The federal risk adjustment methodology as applied in this State does not yet adequately address the impact of administrative costs and profit of the carriers and how this State counts children in certain calculations. These two factors are identifiable, quantifiable and remediable for the 2017 plan year in the small group market.

(5) This section applies only to risk adjustment experience in the small group health insurance market for the 2017 plan year to be applied to payments and receipts in 2018. The department will continue its review of the federal risk adjustment program and its impact on the individual and small group health insurance markets in this State. Among other issues, the department will continue to examine whether federal risk adjustment adequately accounts for demographic regional diversity in this State, as well as whether federal risk adjustment dissuades carriers from using networks and plan designs that seek to integrate care and deliver value. The superintendent will take all necessary and appropriate action to address the impact on both markets in the future.

(b)(1) The superintendent anticipates that the federal risk adjustment program will adversely impact the small group health insurance market in this State in 2017 to such a degree as to require a remedy. Several factors are expected to cause the adverse impact, including:

(i) the federal risk adjustment program results in inflated risk scores and payment transfers in this State because the calculation is based in part upon a medical loss ratio computation that includes administrative expenses, profits and claims rather than only using claims; and

(ii) the federal risk adjustment program results in inflated risk scores and payment transfers in this State because the program does not appropriately address this State's rating tier structure. For this State, the federal risk adjustment program alters the definition of billable member months to include a maximum of one child per contract in the billable member month count. This understatement of billable member month counts: (a) lowers the denominator of the calculation used to determine the statewide average premium and plan liability risk scores; (b) results in the artificial inflation of both the statewide average premium and plan liability risk scores; and (c) further results in inflated payments transfers through the federal risk adjustment program.

(2) Accordingly, if, for the 2017 plan year, the superintendent determines that the federal risk adjustment program has adversely impacted the small group health insurance market in the State and that amelioration is necessary, the superintendent shall implement a market stabilization pool for carriers participating in the small group health insurance market, other than for Medicare supplement insurance, pursuant to subdivision (e) of this section to ameliorate the disproportionate impact that the federal risk adjustment program may have on carriers, to address the unique aspects of the small group health insurance market in this State, and to prevent unnecessary instability for carriers participating in the small group health insurance market in this State, other than for Medicare supplement insurance.

(c) As used in this section, small group health insurance market means all policies and contracts providing hospital, medical or surgical expense insurance, other than Medicare supplement insurance, covering one to 100 employees.

(d) Following the annual release of the federal risk adjustment results for the 2017 plan year, the superintendent shall review the impact of the federal risk adjustment program established pursuant to 42 U.S.C. section 18063 on the small group health insurance market in this State for that plan year.

(e) If, after reviewing the impact of the federal risk adjustment program on the small group health insurance market in this State for the 2017 plan year, including payment transfers, the statewide average premiums, and the ratio of claims to premiums, the superintendent determines that a market stabilization mechanism is a necessary amelioration, the superintendent shall implement a market stabilization pool in such market as follows:

(1) every carrier in the small group health insurance market that is designated as a receiver of a payment transfer from the federal risk adjustment program shall remit to the superintendent an amount equal to a uniform percentage of that payment transfer for the market stabilization pool. The uniform percentage shall be calculated as the percentage necessary to correct any one or more of the adverse market impact factors specified in subdivision (b)(1) of this section. The uniform percentage shall be determined by the superintendent based on reasonable actuarial assumptions and shall not exceed 30 percent of the amount to be received from the federal risk adjustment program;

(i) the superintendent shall send a billing invoice to each carrier required to make a payment into the market stabilization pool after the federal risk adjustment results are released pursuant to 45 CFR section 153.310(e);

(ii) each carrier shall remit its payment to the superintendent within ten business days of the later of its receipt of the invoice from the superintendent or receipt of its risk adjustment payment from the Secretary of the United States Department of Health and Human Services pursuant to 42 U.S.C. section 18063; and

(iii) payments remitted by a carrier after the due date shall include the amount due plus compound interest at the rate of one percent per month, or portion thereof, beyond the date the payment was due; and

(2) for the 2017 plan year:

(i) every carrier in the small group health insurance market that is designated as a payor of a payment transfer into the federal risk adjustment program shall receive from the superintendent an amount equal to the uniform percentage of that payment transfer, referenced in paragraph (1) of this subdivision, from the market stabilization pool;

(ii) the superintendent shall send notification to each carrier of the amount the carrier will receive as a distribution from the market stabilization pool after the federal risk adjustment results are released; and

(iii) the superintendent shall make a distribution to each carrier after receiving all payments from payors. However, nothing in this section shall preclude the superintendent from making a distribution prior to receiving all payments from payors.

(f) The superintendent may modify the amounts determined in subdivision (e) of this section to reflect any adjustments resulting from audits required under 45 CFR section 153.630.

(g) In the event the payments received by the superintendent pursuant to subdivision (e)(1) of this section are less than the amounts payable pursuant to subdivision (e)(2) of this section, the amount payable to each carrier pursuant to this section shall be reduced proportionally to match the funds available in the pool.

This notice is intended to serve only as a notice of emergency adoption. This agency intends to adopt the provisions of this emergency rule as a permanent rule, having previously submitted to the Department of State a notice of proposed rule making, I.D. No. DFS-18-17-00020-P, Issue of May 3, 2017. The emergency rule will expire July 13, 2018.

Text of rule and any required statements and analyses may be obtained from: Laura Evangelista, NYS Department of Financial Services, One State Street, New York, NY 10004, (212) 480-4738, email: Laura.Evangelista@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority: Financial Services Law §§ 202 and 302 and Insurance Law §§ 301, 1109, and 3233.

Financial Services Law § 202 establishes the office of the Superintendent of Financial Services ("Superintendent"). Financial Services Law § 302 and Insurance Law § 301, in material part, authorize the Superintendent to effectuate any power accorded to the Superintendent by the Financial Services Law, Insurance Law, or any other law, and to prescribe regulations interpreting the Insurance Law.

Insurance Law § 1109 subjects health maintenance organizations ("HMOs") complying with Public Health Law Article 44 to certain sections of the Insurance Law and authorizes the Superintendent to promulgate regulations effecting the purpose and provisions of the Insurance Law and Public Health Law Article 44.

Insurance Law § 3233 requires the Superintendent to promulgate regulations to assure an orderly implementation and ongoing operation of the open enrollment and community rating requirements in Insurance Law §§ 3231 and 4317, which may include mechanisms designed to share risks or prevent undue variations in insurer claims costs.

2. Legislative objectives: Insurance Law § 3233 requires the Superintendent to promulgate regulations to assure an orderly implementation and ongoing operation of the open enrollment and community rating requirements in Insurance Law §§ 3231 and 4317, applicable to small group and individual health insurance policies and contracts, including member contracts under Article 44 HMOs and Medicare Supplement policies and contracts. The regulations may include mechanisms designed to share risks or prevent undue variations in claims costs. A risk adjustment program is intended, in part, to reduce or eliminate premium differences between insurers and HMOs (collectively, "carriers") based solely on expectations of favorable or unfavorable risk selection.

Pursuant to this mandate, the Superintendent promulgated 11 NYCRR 361 (Insurance Regulation 146), under which the Department established risk adjustment for community rated small group and individual health insurance and Medicare Supplement policies and contracts. Subsequently, the federal Affordable Care Act ("ACA") required the Center for Medicare and Medicaid Services ("CMS") to administer a risk adjustment program for the individual and small group health insurance markets, but not for Medicare Supplement policies and contracts. A state may establish its own risk adjustment program pursuant to 45 C.F.R. § 153.310(a)(1). In addition, a U.S. Health and Human Services ("HHS") interim final rule, dated May 11, 2016, invites states to examine local approaches under state legal authority to help ease the transition to new health insurance markets. See 81 Fed. Reg. at 29152. Starting with policy year 2014, the Superintendent suspended New York's risk adjustment program for individual and small group health insurance markets because of the ACA, and New York's individual and small group health insurance markets since have been subject only to the federal program.

This rule accords with the public policy objectives that the Legislature sought to advance in Insurance Law § 3233 by establishing market stabilization pools for the small group health insurance market for the 2017 plan year to ameliorate a possible disproportionate impact that federal risk adjustment may have on carriers, address the unique aspects of the small group health insurance market in New York, and prevent unnecessary instability in the health insurance market.

3. Needs and benefits: In the early 1990s, the New York Legislature enacted Insurance Law § 3233 because it recognized the need for a mechanism to stabilize the health insurance markets and premium rates in New York so that premiums do not unduly fluctuate and carriers are reasonably protected against unexpected significant shifts in the number of insureds. More recently, the federal government recognized in the ACA that a federal risk adjustment mechanism would help provide affordable health insurance, reduce incentives for carriers to avoid enrolling less healthy people, and stabilize premiums in the individual and small group health insurance markets.

Prior to implementation of the ACA in 2014, the New York Department of Financial Services ("Department"), after consultation with carriers, concluded New York should use the federal risk adjustment program and the Superintendent suspended New York's risk adjustment program for the individual and small group health insurance markets. CMS conducted risk adjustment in 2014 and announced preliminary risk adjustment results for plan year 2015 in April 2016. These results have had a disproportionate impact on certain carriers in the New York market as a whole.

CMS has proposed changes to its programs and may make additional changes. The Superintendent will continue to work with CMS and hopes that by the 2018 plan year the federal risk adjustment program will be improved to better accomplish its intended purposes. However, the federal risk adjustment methodology does not yet adequately address the impact of administrative costs or profit of the carriers, or the manner in which New York counts children in certain calculations. These factors are identifiable, quantifiable and remediable for the 2017 plan year. The Superintendent anticipates that the federal risk adjustment program will adversely impact the small group health insurance market in this State in 2017 to such a degree as to require a remedy. Many factors are expected to cause the adverse impact, including:

(1) the federal risk adjustment program results in inflated risk scores and payment transfers in this State because the calculation is based in part upon a medical loss ratio computation that includes administrative expenses, profits and claims rather than only using claims; and

(2) the federal risk adjustment program results in inflated risk scores and payment transfers in this State because the program does not appropriately address this State's rating tier structure. For New York, the federal risk adjustment program alters the definition of billable member months to include a maximum of one child per contract in the billable member month count. This understatement of billable member month counts: (a) lowers the denominator of the calculation used to determine the statewide average premium and plan liability risk scores; (b) results in the artificial inflation of both the statewide average premium and plan liability risk scores; and (c) further results in inflated payments transfers through the federal risk adjustment program.

This rule authorizes the Superintendent to implement a market stabilization pool for the New York small group health insurance market if, after reviewing the impact of the federal risk adjustment program on this market for the 2017 plan year, the Superintendent determines that a market stabilization mechanism is a necessary amelioration.

The rule requires a carrier designated as a receiver of a payment transfer from the federal risk adjustment program to remit to the Superintendent an amount equal to a uniform percentage of that payment transfer for the market stabilization pool. The Superintendent will determine the uniform percentage based on reasonable actuarial assumptions, which may not exceed 30% of the amount to be received from the federal risk adjustment program. Department actuaries considered the fact that (1) the federal risk adjustment program calculates risk scores and payment transfers based in part upon a medical loss ratio computation that includes administrative expenses, profits, and claims, and (2) it does not appear to fully address New York's rating tier structure. The actuaries determined that up to 30% of the amount to be received from the federal risk adjustment program is the maximum amount that would be necessary for a payment transfer under this rule.

The market stabilization mechanism under the rule is distinct from the federal risk adjustment and will provide a more accurate representation of the state's market. The state mechanism would merely fine-tune the federal mechanism to address the needs of the New York market, not serve to undo the federal mechanism. It would not hinder or impede the ACA's implementation because the federal risk adjustment still would be performed. A carrier is able to comply with both the federal risk adjustment program and this state's market stabilization mechanism because the state risk adjustment would be implemented after the federal risk adjustment.

4. Costs: This rule imposes compliance costs on carriers that elect to issue policies or contracts subject to the rule. The costs are difficult to estimate and will vary from carrier to carrier depending on the impact of the federal risk adjustment program on the market, including federal payment transfers, statewide average premiums, and the ratio of claims to premiums.

The Department will incur costs for the implementation and continuation of this rule. Department staff are needed to review the impact that the federal risk adjustment program will have on the market. Furthermore, if the Superintendent implements a market stabilization pool, the Department must then send a billing invoice to each carrier required to make a payment into the pool, collect the payments, notify each carrier of the amount the carrier will receive from the market stabilization pool, and distribute the payments from the pool. However, the Department should be

able to absorb these costs in its ordinary budget. Under § 361.7 of the existing rule, the Superintendent also could hire a firm to administer the pool. The cost necessary to hire such a firm would have to be determined.

This rule does not impose compliance costs on state or local governments.

5. Local government mandates: This rule does not impose any program, service, duty, or responsibility upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: This rule requires carriers designated as receivers of a payment transfer from the federal risk adjustment program to remit a uniform percentage of that payment transfer to the Superintendent as determined by the Superintendent. The rule also requires the Superintendent to send a billing invoice to each carrier required to make a payment, collect the payments, notify each carrier of the amount the carrier will receive from the market stabilization pool, and make distributions from the pool to the carriers.

7. Duplication: This rule does not duplicate or conflict with any existing state or federal rules or other legal requirements. The rule supplements the federal risk adjustment mechanism under the ACA and merely serves to fine-tune that risk adjustment to meet the needs of the New York market.

8. Alternatives: The Department considered not establishing a market stabilization pool for the small group health insurance market for the 2017 plan year. However, the Department is concerned about the disproportionate impact that federal risk adjustment may have on carriers in the New York market and possible unnecessary instability in the health insurance market that would adversely impact insureds. As a result, the Department determined that it is necessary to establish a market stabilization pool for the small group health insurance market.

The Department also considered a cap of other than 30% of the amount to be received from the federal risk program, with regard to the uniform percentage of the payment transfer for the market stabilization pool under this rule. However, Department actuaries considered the fact that (1) the federal risk adjustment program calculates risk scores and payments transfers based in part upon a medical loss ratio computation that includes administrative expenses, profits, and claims, and (2) it does not appear to fully address New York's rating tier structure. The actuaries determined that up to 30% of the amount to be received from the federal risk adjustment program is the maximum amount that would be necessary for a payment transfer under this rule.

9. Federal standards: The rule does not exceed any minimum standards of the federal government for the same or similar subject areas. Rather, the amendment to the rule complements the federal risk adjustment program.

10. Compliance schedule: The Department is promulgating this rule on an emergency basis so that the Superintendent may establish a New York risk adjustment pool for plan year 2017 if the Superintendent determines that it will be necessary following CMS's annual release of the federal risk adjustment results for the 2017 plan year. If the Superintendent does establish the pool, carriers will have to comply in 2018.

Regulatory Flexibility Analysis

Small businesses: The Department of Financial Services finds that this rule will not impose any adverse economic impact on small businesses and will not impose any reporting, recordkeeping, or other compliance requirements on small businesses. The basis for this finding is that this rule is directed at insurers and health maintenance organizations ("HMOs") that elect to issue policies or contracts subject to the rule. Such insurers and HMOs do not fall within the definition of "small business" as defined by State Administrative Procedure Act § 102(8), because in general they are not independently owned and do not have fewer than 100 employees.

Local governments: The rule does not impose any impact, including any adverse impact, or reporting, recordkeeping, or other compliance requirements on any local governments. The basis for this finding is that this rule is directed at insurers and HMOs that elect to issue policies or contracts subject to the rule.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurers and health maintenance organizations ("HMOs") (collectively, "carriers") affected by this rule operate in every county in this state, including rural areas as defined by State Administrative Procedure Act § 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule imposes additional reporting, recordkeeping, and other compliance requirements by requiring carriers, including carriers located in rural areas, designated as receivers of a payment transfer from the federal risk adjustment program, to remit a uniform percentage of that payment transfer to the Superintendent of Financial Services ("Superintendent") as determined by the Superintendent. However, no carrier, including carriers in rural areas, should need to retain professional services to comply with this rule.

3. Costs: This rule imposes compliance costs on carriers that elect to issue policies or contracts subject to the rule, including carriers in rural areas. The costs are difficult to estimate and will vary from carrier to carrier depending on the impact of the federal risk adjustment program on the market, including federal payment transfers, statewide average premiums, and the ratio of claims to premiums. However, any additional costs to carriers in rural areas should be the same as for carriers in non-rural areas.

4. Minimizing adverse impact: This rule uniformly affects carriers that are located in both rural and non-rural areas of New York State. The rule should not have an adverse impact on rural areas.

5. Rural area participation: The Department of Financial Services ("Department") is promulgating this rule on an emergency basis because carriers soon will begin binding coverage for policies written outside of the health exchange. In addition, the New York State of Health, the official health insurance marketplace, has set September 9, 2016 as the date by which carriers must commit to selling certain policies or contracts on the health exchange. In order to implement the rule for the 2017 plan year and to minimize market issues, it is imperative that this rule be promulgated on an emergency basis. Carriers in rural areas will have an opportunity to participate in the rule making process when the proposed rule is published in the State Register and posted on the Department's website.

Job Impact Statement

This rule should not adversely impact jobs or employment opportunities in New York State. This rule authorizes the Superintendent of Financial Services ("Superintendent") to implement a market stabilization pool for the small group health insurance market if, after reviewing the impact of the federal risk adjustment program on this market, the Superintendent determines that a market stabilization mechanism is a necessary amelioration. This rule prudently ameliorates a possible disproportionate impact that federal risk adjustment may have on insurers and health maintenance organizations, addresses the needs of the small group health insurance market in New York, and prevents unnecessary instability in the health insurance market.

Assessment of Public Comment

The agency received no public comment.

EMERGENCY RULE MAKING

Assessment of Entities Regulated by the Banking Division of the Department of Financial Services

I.D. No. DFS-22-18-00004-E

Filing No. 476

Filing Date: 2018-05-14

Effective Date: 2018-05-14

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

Action taken: Addition of Part 501 to Title 3 NYCRR.

Statutory authority: Banking Law, section 17; Financial Services Law, section 206

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

Specific reasons underlying the finding of necessity: Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision (including examination) of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of in the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

Litigation commenced in June, 2011 challenged the methodology used by the Banking Department to assess mortgage bankers. On May 3, 2012, the Appellate Division invalidated this methodology for the 2010 State Fiscal Year, finding that the former Banking Department had not followed the requirements of the State Administrative Procedures Act.

In response to this ruling, the Department has determined to adopt this new rule setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

The emergency adoption of this regulation is necessary to implement the requirements of Section 17 of the Banking Law and Section 206 of the Financial Services Law in light of the determination of the Court and the ongoing need to fund the operations of the Department without interruption.

Subject: Assessment of entities regulated by the Banking Division of the Department of Financial Services.

Purpose: New Part 501 implements Section 17 of the Banking Law and Section 206 of the Financial Services Law and sets forth the basis for allocating all costs and expenses attributable to the operation of the Banking Division of the Department of Financial Services among and between any person or entity licensed, registered, incorporated or otherwise formed pursuant the Banking Law.

Text of emergency rule: *Part 501*

BANKING DIVISION ASSESSMENTS

§ 501.1 Background.

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department ("Banking Department") and the New York State Insurance Department were consolidated on October 3, 2011 into the Department of Financial Services ("Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL. Effective October 3, 2011, assessments are governed by Section 206 of the FSL, provided that Section 17 of the BL continues to apply to assessments for the fiscal year commencing on April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (including, but not limited to, compensation, lease costs and other overhead costs) of the Department attributable to institutions subject to the BL are to be charged to, and paid by, such regulated institutions. These institutions ("Regulated Entities") are now regulated by the Banking Division of the Department. Under both Section 17 of the BL and Section 206 of the FSL, the Superintendent is authorized to assess Regulated Entities for its total costs in such proportions as the Superintendent shall deem just and reasonable.

The Banking Department has historically funded itself entirely from industry assessments of Regulated Entities. These assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This regulation sets forth the basis for allocating such expenses among Regulated Entities and the process for making such assessments.

§ 501.2 Definitions.

The following definitions apply in this Part:

(a) "Total Operating Cost" means for the fiscal year beginning on April 1, 2011, the total direct and indirect costs of operating the Banking Division. For fiscal years beginning on April 1, 2012, "Total Operating Cost" means (1) the sum of the total operating expenses of the Department that are solely attributable to regulated persons under the Banking Law and (2) the proportion deemed just and reasonable by the Superintendent of the other operating expenses of the Department which under Section 206(a) of the Financial Services Law may be assessed against persons regulated under the Banking Law and other persons regulated by the Department.

(b) "Industry Group" means the grouping to which a business entity regulated by the Banking Division is assigned. There are three Industry Groups in the Banking Division:

(1) The Depository Institutions Group, which consists of all banking organizations and foreign banking corporations licensed by the Department to maintain a branch, agency or representative office in this state;

(2) The Mortgage-Related Entities Group, which consists of all mortgage brokers, mortgage bankers and mortgage loan servicers; and

(3) The Licensed Financial Services Providers Group, which consists of all check cashers, budget planners, licensed lenders, sales finance companies, premium finance companies and money transmitters.

(c) "Industry Group Operating Cost" means the amount of the Total Operating Cost to be assessed to a particular Industry Group. The amount is derived from the percentage of the total expenses for salaries and fringe benefits for the examining, specialist and related personnel represented by such costs for the particular Industry Group.

(d) "Industry Group Supervisory Component" means the total of the Supervisory Components for all institutions in that Industry Group.

(e) "Supervisory Component" for an individual institution means the product of the average number of hours attributed to supervisory oversight by examiners and specialists of all institutions of a similar size and type, as determined by the Superintendent, in the applicable Industry Group, or the applicable sub-group, and the average hourly cost of the examiners and specialists assigned to the applicable Industry Group or sub-group.

(f) "Industry Group Regulatory Component" means the Industry Group Operating Cost for that group minus the Industry Group Supervisory Component and certain miscellaneous fees such as application fees.

(g) "Industry Financial Basis" means the measurement tool used to distribute the Industry Group Regulatory Component among individual institutions in an Industry Group.

The Industry Financial Basis used for each Industry Group is as follows:

(1) For the Depository Institutions Group: total assets of all institutions in the group;

(2) For the Mortgage-Related Entities Group: total gross revenues from New York State operations, including servicing and secondary market revenues, for all institutions in the group; and

(3) For the Licensed Financial Services Providers Group: (i.) for budget planners, the number of New York customers; (ii.) for licensed lenders, the dollar amount of New York assets; (iii.) for check cashers, the dollar amount of checks cashed in New York; (iv.) for money transmitters, the dollar value of all New York transactions; (v.) for premium finance companies, the dollar value of loans originated in New York; and (vi.) for sales finance companies, the dollar value of credit extensions in New York.

(h) "Financial Basis" for an individual institution is that institution's portion of the measurement tool used in Section 501.2(g) to develop the Industry Financial Basis. (For example, in the case of the Depository Institutions Group, an entity's Financial Basis would be its total assets.)

(i) "Industry Group Regulatory Rate" means the result of dividing the Industry Group Regulatory Component by the Industry Financial Basis.

(j) "Regulatory Component" for an individual institution is the product of the Financial Basis for the individual institution multiplied by the Industry Group Regulatory Rate for that institution.

§ 501.3 Billing and Assessment Process.

The New York State fiscal year begins April 1 and ends March 31 of the following calendar year. Each institution subject to assessment pursuant to this Part is billed five times for a fiscal year: four quarterly assessments (each approximately 25% of the anticipated annual amount) based on the Banking Division's estimated annual budget at the time of the billing, and a final assessment (or "true-up"), based on the Banking Division's actual expenses for the fiscal year. Any institution that is a Regulated Entity for any part of a quarter shall be assessed for the full quarter.

§ 501.4 Computation of Assessment.

The total annual assessment for an institution shall be the sum of its Supervisory Component and its Regulatory Component.

§ 501.5 Penalties/Enforcement Actions.

All Regulated Entities shall be subject to all applicable penalties, including late fees and interest, provided for by the BL, the FSL, the State Finance law or other applicable laws. Enforcement actions for nonpayment could include suspension, revocation, termination or other actions.

§ 501.6 Effective Date.

This Part shall be effective immediately. It shall apply to all State Fiscal Years beginning with the Fiscal Year starting on April 1, 2011.

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 August 11, 2018.

Text of rule and any required statements and analyses may be obtained from: George Bogdan, Esq., Department of Financial Services, One State Street, New York, New York 10004, (212) 480-4758, email: george.bogdan@dfs.ny.gov

Regulatory Impact Statement

1. Statutory authority

Pursuant to the Financial Services Law ("FSL"), the New York State Banking Department (the "Banking Department") and the New York State Insurance Department were consolidated, effective October 3, 2011, into the Department of Financial Services (the "Department").

Prior to the consolidation, assessments of institutions subject to the Banking Law ("BL") were governed by Section 17 of the BL; effective on October 3, 2011, assessments are governed by Section 206 of the Financial Services Law, provided that Section 17 continues to apply to assessments for the fiscal year which commenced April 1, 2011.

Both Section 17 of the BL and Section 206 of the FSL provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the BL are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division of the Department (the "Banking Division"). Under both statutes, the Superintendent is authorized to as-

sess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

In response to a court ruling, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012) ("Homestead"), that held that the Department should adopt changes to its assessment methodology for mortgage bankers through a formal assessment rule pursuant to the requirements of the State Administrative Procedures Act ("SAPA"), the Department has determined to adopt this new regulation setting forth the assessment methodology applicable to all entities regulated by the Banking Division for fiscal years beginning with fiscal year 2011.

2. Legislative objectives

The BL and the FSL make the industries regulated by the former Banking Department (and now by the Banking Division of the new Department) responsible for all the costs and expenses of their regulation by the State. The assessments have covered all direct and indirect expenses of the Banking Department, which are activities that relate to the conduct of banking business and the regulatory concerns of the Department, including all salary expenses, fringe benefits, rental and other office expenses and all miscellaneous and overhead costs such as human resource operations, legal and technology costs.

This reflects a long-standing State policy that the regulated industries are the appropriate parties to pay for their supervision in light of the financial benefits it provides to them to engage in banking and other regulated businesses in New York. The statute specifically provides that these costs are to be allocated among such institutions in the proportions deemed just and reasonable by the Superintendent.

While this type of allocation had been the practice of the former Banking Department for many decades, Homestead found that a change to the methodology for mortgage bankers to include secondary market and servicing income should be accomplished through formal regulations subject to the SAPA process. Given the nature of the Banking Division's assessment methodology - - the calculation and payment of the assessment is ongoing throughout the year and any period of uncertainty as to the applicable rule would be extremely disruptive - - the Department has determined that it is necessary to adopt the rule on an emergency basis so as to avoid any possibility of disrupting the funding of its operations.

3. Needs and benefits

The Banking Division regulates more than 250 state chartered banks and licensed foreign bank branches and agencies in New York with total assets of over $2 trillion. In addition, it regulates a variety of other entities engaged in delivering financial services to the residents of New York State. These entities include: licensed check cashers; licensed money transmitters; sales finance companies; licensed lenders; premium finance companies; budget planners; mortgage bankers and brokers; mortgage loan servicers; and mortgage loan originators.

Collectively, the regulated entities represent a spectrum, from some of the largest financial institutions in the country to the smallest, neighborhood-based financial services providers. Their services are vital to the economic health of New York, and their supervision is critical to ensuring that these services are provided in a fair, economical and safe manner.

This supervision requires that the Banking Division maintain a core of trained examiners, plus facilities and systems. As noted above, these costs are by statute to be paid by all regulated entities in the proportions deemed just and reasonable by the Superintendent. The new regulation is intended to formally set forth the methodology utilized by the Banking Division for allocating these costs.

4. Costs

The new regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division. Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities.

5. Local government mandates

None.

6. Paperwork

The regulation does not change the process utilized by the Banking Division to determine and collect assessments.

7. Duplication

The regulation does not duplicate, overlap or conflict with any other regulations.

8. Alternatives

The purpose of the regulation is to formally set forth the process employed by the Department to carry out the statutory mandate to assess and collect the operating costs of the Banking Division from regulated entities. In light of Homestead, the Department believes that promulgating this formal regulation is necessary in order to allow it to continue to assess all of its regulated institutions in the manner deemed most appropriate by the Superintendent. Failing to formalize the Banking Division's allocation methodology would potentially leave the assessment process open to further judicial challenges.

9. Federal standards

Not applicable.

10. Compliance schedule

The emergency regulations are effective immediately. Regulated institutions will be expected to comply with the regulation for the fiscal year beginning on April 1, 2011 and thereafter.

Regulatory Flexibility Analysis

1. Effect of the Rule:

The regulation does not have any impact on local governments.

The regulation simply codifies the methodology used by the Banking Division of the Department of Financial Services (the "Department") to assess all entities regulated by it, including those which are small businesses. The regulation does not increase the total costs assessed to the regulated industries or alter the allocation of regulatory costs between the various industries regulated by the Banking Division.

Indeed, the only change from the allocation methodology used by the Banking Department in the previous state fiscal years is that the regulatory costs assessed to the mortgage banking industry will be divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. The Department believes that this is a more appropriate basis for allocating the costs associated with supervising mortgage banking entities. It is expected that the effect of this change will be that larger members of the mortgage banking industry will pay an increased proportion of the total cost of regulating that industry, while the relative assessments paid by smaller industry members will be reduced.

2. Compliance Requirements:

The regulation does not change existing compliance requirements. Both Section 17 of the Banking Law and Section 206 of the Financial Services Law provide that all expenses (compensation, lease costs and other overhead) of the Department in connection with the regulation and supervision of any person or entity licensed, registered, incorporated or otherwise formed pursuant to the Banking Law are to be charged to, and paid by, the regulated institutions subject to the supervision of the Banking Division. Under both statutes, the Superintendent is authorized to assess regulated institutions in the Banking Division in such proportions as the Superintendent shall deem just and reasonable.

3. Professional Services:

None.

4. Compliance Costs:

All regulated institutions are currently subject to assessment by the Banking Division. The regulation simply formalizes the Banking Division's assessment methodology. It makes only one change from the allocation methodology used by the Banking Department in the previous state fiscal years. That change affects only one of the industry groups regulated by the Banking Division. Regulatory costs assessed to the mortgage banking industry are now divided among the entities in that group on a basis which includes income derived from secondary market and servicing activities. Even within the one industry group affected by the change, additional compliance costs, if any, are expected to be minimal.

5. Economic and Technological Feasibility:

All regulated institutions are currently subject to the Banking Division's assessment requirements. The formalization of the Banking Division's assessment methodology in a regulation will not impose any additional economic or technological burden on regulated entities which are small businesses.

6. Minimizing Adverse Impacts:

Even within the mortgage banking industry, which is the one industry group affected by the change in assessment methodology, the change will not affect the total amount of the assessment. Indeed, it is anticipated that this change may slightly reduce the proportion of mortgage banking industry assessments that is paid by entities that are small businesses.

7. Small Business and Local Government Participation:

This regulation does not impact local governments.

This regulation simply codifies the methodology which the Banking Division uses for determining the just and reasonable proportion of the Banking Division's costs to be charged to and paid by each regulated institution, including regulated institutions which are small businesses. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those that are small businesses.

Thereafter, the Banking Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Banking

Department changed its overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market and servicing activities. Litigation was commenced challenging this latter change, and in a recent decision, In the Matter of Homestead Funding Corporation v. State of New York Banking Department et al., 944 N.Y.S. 2d 649 (2012), the court determined that the Department should adopt a change to its assessment methodology for mortgage bankers through a formal assessment rule promulgated pursuant to the requirements of the State Administrative Procedures Act. The challenged change in methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants, including those which are small businesses.

Rural Area Flexibility Analysis

Types and Estimated Numbers: There are entities regulated by the New York State Department of Financial Services (formerly the Banking Department) located in all areas of the State, including rural areas. However, this rule simply codifies the methodology currently used by the Department to assess all entities regulated by it. The regulation does not alter that methodology, and thus it does not change the cost of assessments on regulated entities, including regulated entities located in rural areas.

Compliance Requirements: The regulation would not change the current compliance requirements associated with the assessment process.

Costs: While the regulation formalizes the assessment process, it does not change the amounts assessed to regulated entities, including those located in rural areas.

Minimizing Adverse Impacts: The regulation does not increase the total amount assessed to regulated entities by the Department. It simply codifies the methodology which the Superintendent has chosen for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution.

Rural Area Participation: This rule simply codifies the methodology which the Department currently uses for determining the just and reasonable proportion of the Department's costs to be charged to and paid by each regulated institution, including regulated institutions located in rural areas. The overall methodology was adopted in 2005 after extensive discussion with regulated entities and industry associations representing groups of regulated institutions, including those located in rural areas. It followed the loss of several major banking institutions that had paid significant portions of the former Banking Department's assessments.

Thereafter, the Department applied assessments against all entities subject to its regulation. In addition, for fiscal 2010, the Department changed this overall methodology slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market income and servicing income. This latter change was challenged by a mortgage banker, and in early May, the Appellate Division determined that the latter change should have been made in conformity with the State Administrative Procedures Act. The challenged part of the methodology had the effect of increasing the proportion of assessments against the mortgage banking industry paid by its larger members, while reducing the assessments paid by smaller participants.

Job Impact Statement

The regulation is not expected to have an adverse effect on employment.

All institutions regulated by the Banking Division (the "Banking Division") of the Department of Financial Services are currently subject to assessment by the Department. The regulation simply formalizes the assessment methodology used by the Banking Division. It makes only one change from the allocation methodology used by the former Banking Department in the previous state fiscal years.

That change affects only one of the industry groups regulated by the Banking Division. It somewhat alters the way in which the Banking Division's costs of regulating mortgage banking industry are allocated among entities within that industry. In any case, the total amount assessed against regulated entities within that industry will remain the same.

EMERGENCY/PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Supplementary Uninsured/Underinsured Motorists Insurance

I.D. No. DFS-22-18-00002-EP
Filing No. 475
Filing Date: 2018-05-11
Effective Date: 2018-05-11

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

Proposed Action: Amendment of Subpart 60-2 (Regulation 35-D) of Title 11 NYCRR.

Statutory authority: Financial Services Law, sections 202, 302; Insurance Law, sections 301 and 3420(f)(2-a)

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

Specific reasons underlying the finding of necessity: On December 18, 2017, Governor Andrew M. Cuomo signed into law chapter 490 of the Laws of 2017, which added a new Insurance Law § 3420(f)(2-a). On April 18, 2018, Governor Cuomo signed into law chapter 15 of the Laws of 2018, which amended chapter 490.

Insurance Law § 3420(f)(2-a) requires an insurer that issues a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, to provide supplemental uninsured/underinsured motorists (SUM) insurance coverage for bodily injury, in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability insurance policy, unless the first named insured declines the SUM insurance or selects a lower amount of coverage through a written, signed waiver. Insurance Law § 3420(f)(2-a)(B) requires an insurer to provide an insured with a written notice advising that the insurer must provide SUM limits equal to the bodily injury liability insurance limits of coverage provided under the policy unless a first named insured declines the SUM coverage or selects a lower amount of coverage through a written waiver signed by the first named insured.

Because of the changes to the law, the required notices provided by insurers pursuant to Insurance Regulation 35-D must be modified with respect to new non-commercial motor vehicle insurance policies issued on and after June 16, 2018. This amendment changes the notice requirements going forward for such policies and clarifies that all commercial and renewals of non-commercial policies must continue to comply with existing notice requirements. The amendment also clarifies how the new law applies to transportation network company policies with respect to SUM coverage.

Insurers need to immediately make changes to their procedures to ensure that proper notices are provided as of the effective date of the law for the protection of the public. Accordingly, it is necessary to promulgate the rules on an emergency basis for the furtherance of the general welfare.

Subject: Supplementary Uninsured/Underinsured Motorists Insurance.

Purpose: To conform 11 NYCRR 60-2 to new Insurance Law section 3420(f)(2-a).

Substance of emergency/proposed rule (Full text is posted at the following State website:https://www.dfs.ny.gov/legal/ regulations.htm): The following sections are amended or added:

Section 60-2.0 is amended to expand the preamble, set forth the applicability of the Subpart, and add definitions.

Section 60-2.1(e) is amended to provide an exception as set forth in section 60-2.1(f) and to move language in section 60-2.1(e)(4) to new section 60-2.1(h).

Section 60-2.1(f) is re-lettered as section 60-2.1(g), and a new section 60-2.1(f) is added to provide that, with regard to a motor vehicle liability insurance policy originally entered into, on, or after June 16, 2018, other than a commercial risk insurance policy, an insurer must provide supplementary uninsured/underinsured motorists ("SUM") limits in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability insurance policy, unless a first named insured declines the SUM coverage or selects a lower amount of coverage through a written waiver signed by the first named insured, subject to the requirements of Insurance Law section 3420(f)(2-a)(B); provided, however, that the insurer may require the insured's SUM coverage limit to be equal to the insured's bodily injury liability insurance limit under the policy.

This section also states that a first named insured's written, signed waiver declining SUM coverage, or selecting a lower amount of SUM coverage, will apply to all subsequent renewals of coverage and to all policies or endorsements that extend, change, supersede, or replace an existing policy issued to the first named insured, unless changed in writing by a first named insured. Whenever SUM coverage is declined, the policy must provide the mandatory uninsured motorists ("UM") coverage required by Insurance Law section 3420(f)(1). The insurer, on subsequent renewals, must provide to the insured the applicable notice required by section 60-2.2(a).

Section 60-2.1(g) adds a reference to subdivision (f) and states that an insurer providing coverage in satisfaction of the financial responsibility requirements of Vehicle and Traffic Law ("VTL") Article 44-B must, if the policy provides liability coverage as required by VTL section 1693(2): (1) offer SUM coverage as provided in section 60-2.1(e) under an insurance policy, other than an insurance policy described in section 60-2.1(g)(2), while the driver is logged onto the transportation network company's ("TNC's") digital network but is not engaged in a TNC prearranged trip;

or (2) provide SUM coverage as provided in section 60-2.1(f) under an insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, while the driver is logged onto the TNC's digital network but is not engaged in a TNC prearranged trip.

Section 60-2.2(a)(1) is amended to require that every insurer writing motor vehicle liability insurance that satisfies the requirements of VTL Article 6 or 8, with respect to all new and renewal policies, provide a written notice in concise language that includes, for the initial written notice, with regard to a motor vehicle liability insurance policy originally entered into on or after June 16, 2018 other than a commercial risk insurance policy: (1) a statement that the insurer must provide SUM limits in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability policy unless a first named insured declines the SUM coverage or selects a lower amount of coverage through a written waiver signed by the first named insured, subject to the requirements of Insurance Law section 3420(f)(2-a)(B), provided, however, if the insurer requires that the SUM coverage limit be equal to the policy's bodily injury liability insurance limit, then the written waiver must only provide for the first named insured's option to decline SUM coverage under the policy; and (2) a statement that the first named insured's written, signed waiver declining SUM coverage or selecting a lower amount of SUM coverage will apply to all subsequent renewals of coverage and to all policies or endorsements that extend, change, supersede, or replace an existing policy issued to the first named insured, unless changed in writing by a first named insured.

Section 60-2.2(a)(2) is amended in a similar manner as section 60-2.2(a)(1) with regard to every insurer writing motor vehicle liability insurance providing liability insurance coverage in satisfaction of the financial responsibility requirements of VTL Article 44-B.

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 August 8, 2018.

Text of rule and any required statements and analyses may be obtained from: Paul Zuckerman, New York State Department of Financial Services, One State Street, 20th Floor, New York, NY 10004, (212) 480-5286, email: Paul.Zuckerman@dfs.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.

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: Financial Services Law sections 202 and 302 and Insurance Law sections 301 and 3420(f)(2-a).

Financial Services Law section 202 establishes the office of the Superintendent of Financial Services ("Superintendent").

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

Insurance Law section 3420(f)(2-a) requires an insurer that issues a motor vehicle liability insurance policy, other than a commercial risk insurance policy, insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any natural person arising out of the ownership, maintenance and use of a motor vehicle, by the insured, where the policy is originally entered into on or after June 16, 2018, to provide supplementary uninsured/underinsured motorists ("SUM") insurance coverage for bodily injury, in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability insurance policy, unless the first named insured declines the SUM insurance or selects a lower amount of coverage through a written, signed waiver. However, the insurer may require that the insured's SUM coverage limit equal the insured's bodily injury liability insurance limit under the policy.

2. Legislative objectives: On December 18, 2017, Governor Andrew M. Cuomo signed into law chapter 490 of the Laws of 2017, which added a new Insurance Law section 3420(f)(2-a). On April 18, 2018, Governor Cuomo signed into law chapter 15 of the Laws of 2018, which amended chapter 490. Insurance Law section 3420(f)(2-a) requires an insurer that issues a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, to provide SUM insurance coverage for bodily injury, in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability insurance policy, unless the first named insured declines the SUM insurance or selects a lower amount of coverage through a written, signed waiver. However, the insurer may require that the insured's SUM coverage limit equal the insured's bodily injury liability insurance limit under the policy.

Insurance Law section 3420(f)(2-a)(B) requires an insurer to provide an insured with a written notice advising that the insurer must provide SUM limits equal to the bodily injury liability insurance limits of coverage provided under the policy unless a first named insured declines the SUM coverage or selects a lower amount of coverage through a written waiver signed by the first named insured.

This rule accords with the public policy objectives that the Legislature sought to advance in Insurance Law section 3420(f)(2-a) by updating Subpart 60-2 to comply with chapters 490 and 15.

3. Needs and benefits: Chapter 490 of the Laws of 2017 added a new Insurance Law section 3420(f)(2-a) and chapter 15 of the Laws of 2018 made amendments thereto. Insurance Law section 3420(f)(2-a) requires an insurer that issues a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, to provide SUM insurance coverage for bodily injury, in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability insurance policy, unless the first named insured declines the SUM insurance or selects a lower amount of coverage through a written, signed waiver. This rule amends Subpart 60-2 to comply with chapters 490 and 15. The rule also clarifies which policies are commercial risk policies and which are not, as well as how the law applies to transportation network company policies.

4. Costs: This rule may impose compliance costs on insurers because an insurer must provide a written notice to insureds covered under a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, regarding SUM coverage, consistent with Insurance Law section 3420(f)(2-a)(B), and likely will need to draft a waiver form. The Department has not estimated the cost to insurers for developing the new notice and waiver. However, these requirements are a consequence of chapters 490 and 15, which impose the written notice and waiver requirements. Moreover, the insurer is already required under the law and Subpart 60-2 to provide a notice when issuing the policy. Therefore, once the notice is revised there should be no additional costs incurred. With respect to renewal policies, existing requirements continue without change and the rule imposes no additional costs on insurers for renewal policies.

The Department of Financial Services will not incur costs for the implementation and continuation of this rule. This rule does not impose compliance costs on any local government.

5. Local government mandates: This rule does not impose any program, service, duty, or responsibility upon a county, city, town, village, school district, fire district, or other special district.

6. Paperwork: An insurer may incur additional paperwork because an insurer must provide a written notice to insureds covered under a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, regarding SUM coverage, consistent with Insurance Law section 3420(f)(2-a)(B), and likely will need to draft a waiver form. However, the insurer is already required under the law and Subpart 60-2 to provide a notice; therefore, this amendment creates no additional requirement. Moreover, this amendment is a consequence of chapters 490 and 15, which impose the written notice and waiver requirements.

7. Duplication: This rule does not duplicate, overlap, or conflict with any existing state or federal rules or other legal requirements.

8. Alternatives: There were no significant alternatives to consider.

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

10. Compliance schedule: Chapters 490 and 15 take effect on June 16, 2018. The Superintendent is promulgating these regulations on an emergency basis to facilitate the orderly implementation of the new law.

Regulatory Flexibility Analysis

1. Effect of the rule: On December 18, 2017, Governor Andrew M. Cuomo signed into law Chapter 490 of the Laws of 2017, which added a new Insurance Law Section 3420(f)(2-a). On April 18, 2018, Governor Cuomo signed into law Chapter 15 of the Laws of 2018, which amended Chapter 490. Insurance Law Section 3420(f)(2-a) requires an insurer that issues a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, to provide supplementary uninsured/underinsured motorists ("SUM") insurance coverage for bodily injury, in an amount equal to the bodily injury liability insurance limits of coverage provided under the motor vehicle liability insurance policy, unless the first named insured declines the SUM insurance or selects a lower amount of coverage through a written, signed waiver. However, the insurer may require that the insured's SUM coverage limit equal the insured's bodily injury liability insurance limit under the policy.

Insurance Law Section 3420(f)(2-a)(B) requires an insurer to provide an insured a written notice advising that the insurer must provide SUM limits equal to the bodily injury liability insurance limits of coverage provided under the policy unless a first named insured declines the SUM coverage or selects a lower amount of coverage through a written waiver signed by the first named insured.

This rule reflects the amendments to the Insurance Law by Chapters 490 and 15. As such, it should not affect local governments.

Industry asserts that certain domestic insurers, in particular co-operative insurers and mutual insurers, subject to the rule are small businesses. However, the law, rather than the rule, imposes the written notice and waiver requirements. The rule cannot vary a requirement imposed by law.

2. Compliance requirements: No local government must undertake any reporting, recordkeeping, or other affirmative acts to comply with the rule because the rule does not apply to any local government. An insurer that is a small business affected by this rule, if any, may be subject to reporting, recordkeeping, or other compliance requirements because the insurer must provide a written notice to insureds covered under a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, regarding SUM coverage, consistent with Insurance Law Section 3420(f)(2-a)(B), and likely will need to draft a waiver form. However, this is a consequence of Chapters 490 and 15, which impose the written notice and waiver requirements.

3. Professional services: No local government will need professional services to comply with this rule because the rule does not apply to any local government. No insurer that is a small business affected by the rule, if any, should need to retain professional services to comply with this rule.

4. Compliance costs: No local government will incur any costs to comply with this rule because the rule does not apply to any local government. An insurer that is a small business affected by this rule, if any, may incur additional compliance costs because the insurer must provide a written notice to insureds covered under a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, regarding SUM coverage, consistent with Insurance Law Section 3420(f)(2-a)(B), and likely will need to draft a waiver form. The Department of Financial Services ("Department") has not estimated the cost to insurers for developing the new notice and waiver. However, these requirements are a consequence of Chapters 490 and 15, which impose the written notice and waiver requirements. Moreover, the insurer is already required under the law and Subpart 60-2 to provide a notice when issuing the policy. Therefore, once the notice is revised there should be no additional costs incurred. With respect to renewal policies, existing requirements continue without change and the rule imposes no additional costs on insurers for renewal policies.

5. Economic and technological feasibility: This rule does not apply to any local government; therefore, no local government should experience any economic or technological impact because of the rule. No insurer that is a small business affected by this rule, if any, should experience any economic or technological impact because of the rule. Furthermore, this rule merely implements Chapters 490 and 15, which impose written notice and waiver requirements regarding SUM coverage.

6. Minimizing adverse impact: There will not be an adverse impact on any local government because the rule does not apply to any local government. This rule should not have an adverse impact on an insurer that is a small business affected by the rule, if any, because the rule uniformly affects all insurers that are subject to the rule and merely implements Chapters 490 and 15, which impose written notice and waiver requirements regarding SUM coverage.

7. Small business and local government participation: Small businesses and local governments will have an opportunity to participate in the rulemaking process when the notice of emergency adoption and proposed rulemaking is published in the State Register and posted on the Department's website.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas: Insurers affected by this rule operate in every county in this state, including rural areas as defined by State Administrative Procedure Act Section 102(10).

2. Reporting, recordkeeping and other compliance requirements; and professional services: The rule imposes additional reporting, recordkeeping, and other compliance requirements because an insurer, including an insurer in a rural area, must provide a written notice to insureds covered under a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, regarding supplementary uninsured/underinsured motorists ("SUM") insurance coverage, consistent with Insurance Law Section 3420(f)(2-a)(B), and likely will need to draft a waiver form. However, this is a consequence of Chapters 490 of the Laws of 2017 and Chapter 15 of the Laws of 2018, which impose the written notice and waiver requirements.

An insurer in a rural area should not need to retain professional services to comply with this rule.

3. Costs: The rule may result in additional costs to insurers, including insurers located in rural areas, because an insurer must provide a written notice to insureds covered under a motor vehicle liability insurance policy originally entered into on or after June 16, 2018, other than a commercial risk insurance policy, regarding SUM coverage, consistent with Insurance Law Section 3420(f)(2-a)(B), and likely will need to draft a waiver form. The Department of Financial Services ("Department") has not estimated the cost to insurers for developing the new notice and waiver. However, these requirements are a consequence of Chapters 490 and 15, which impose the written notice and waiver requirements. Moreover, the insurer is already required under the law and 11 NYCRR Subpart 60-2 to provide a notice when issuing the policy. Therefore, once the notice is revised there should be no additional costs incurred. With respect to renewal policies, existing requirements continue without change and the rule imposes no additional costs on insurers for renewal policies.

4. Minimizing adverse impact: This rule uniformly affects insurers located in both rural and non-rural areas of New York State. The rule should not have an adverse impact on rural areas.

5. Rural area participation: Insurers in rural areas will have an opportunity to participate in the rule-making process when the notice of emergency adoption and proposed rulemaking are published in the State Register and posted on the Department's website.

Job Impact Statement

This rule should not adversely impact jobs or employment opportunities in New York State. The amendment merely conforms the rule to Chapter 490 of the Laws of 2017 and Chapter 15 of the Laws of 2018, which added and amended, respectively, new Insurance Law Section 3420(f)(2-a).

Department of Health

PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

Criminal History Record Checks and Advanced Home Health Aides

I.D. No. HLT-22-18-00010-P

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

Proposed Action: Amendment of Parts 402, 403, 700, 763, 765, 766, 793, 794 and 1001 of Title 10 NYCRR.

Statutory authority: Public Health Law, sections 2899-a(4), 3602(17), 3612(5) and 4010(4); Executive Law, section 845-b(12)

Subject: Criminal History Record Checks and Advanced Home Health Aides.

Purpose: This rule will implement statutory changes related to criminal history records checks and advanced home health aides.

Substance of proposed rule (Full text is posted at the following State website: www.health.ny.gov/Laws & Regulations/Proposed Rulemaking): This proposal would amend various provisions within Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) to reflect the enactment of legislation: (1) requiring criminal history record checks (CHRCs) for adult homes, enriched housing programs, and residences for adults licensed pursuant to Article 7 of the Social Services Law (SSL); (2) requiring CHRCs for hospice programs certified pursuant to Article 40 of the Public Health Law (PHL); (3) authorizing the performance of advanced tasks by advanced home health aides supervised by registered professional nurses employed by home care services agencies, hospice programs, and enhanced assisted living residences (EALRs); (4) requiring the inclusion of information related to workers employed by hospice programs in the Home Care Worker Registry (Registry); and (5) requiring the inclusion of information related to the training and testing of advanced home health aides in the Registry.

Part 402 (Criminal History Record Check)

This proposal would amend 10 NYCRR Part 402 to provide for CHRCs for individuals employed by adult homes, enriched housing programs, residences for adults, and hospice programs. Specifically, this proposal would amend:

- Section 402.1 to update the statement of legislative requirements related to CHRCs to refer to adult homes, enriched housing programs, and residences for adults, consistent with Chapters 60 and 94 of the Laws of 2014, and hospice programs, consistent with Chapter 471 of the Laws of 2016 and Chapter 206 of the Laws of 2017;
- Section 402.2, which identifies the entities to which Part 402 is applicable, to include adult homes, enriched housing programs, residences for adults, and hospice programs;
- Section 402.3 to: (1) expand the definition of "employee in direct care or supervision" to include each unlicensed person employed by or used by an adult home, enriched housing program, or residences for adult who

provides face-to-face care or has physical access to resident living quarters; (2) expand the definition of "employee in direct care or supervision" to include unlicensed persons employed by or used by a hospice program to provide face-to-face care; and (3) expand the definition of "provider" to include any adult home, enriched housing program, residence for adults, or hospice program;

• Section 402.4 to include provisions for the supervision of temporary employees by adult homes, enriched housing programs, residences for adults, or hospice programs pending determination of their CHRCs;

• Section 402.9 to require documentation of supervision of temporary employees by adult homes, enriched housing programs, residences for adults, and hospice programs; and

• Section 402.10 to authorize reimbursement for adult homes, enriched housing programs, residences for adults, and hospice programs for the costs of securing CHRCs of prospective employees.

Part 403 (Home Care Services Worker Registry)

This proposal would amend 10 NYCRR Part 403 to add workers employed by hospice programs and home health aides and advanced home health aides employed by EALRs to the Registry and to indicate in the Registry when individuals are qualified to work as advanced home health aides. Specifically, this proposal would amend:

• Section 403.1 to include advanced home health aides within the list of workers and to include EALRs and hospice programs within the list of entities to which Part 403 is applicable;

• Section 403.2 to define an "Advanced Home Health Aide" as a certified home health aide who has met all requirements pursuant to Education Law § 6908(2) and is listed in the Registry; and

• Section 403.5 to prohibit home care services entities from permitting advanced home health aides to provide advanced home health aide services unless they are listed in the Registry.

Part 700 (State Hospital Code – General Provisions)

This proposal would amend 10 NYCRR § 700.2 to define an "advanced home health aide" as a certified home health aide who is qualified to carry out advanced tasks, subject to supervision by a registered professional nurse, and is listed in the Registry, and to add other references to advanced home health aides where appropriate.

Part 763 (Certified Home Health Agencies, Long Term Home Health Care Programs and AIDS Home Care Programs Minimum Standards)

This proposal would amend 10 NYCRR Part 763 to set forth provisions pertaining to advanced home health aides employed by certified home health agencies (CHHAs) and long term home health care programs (LTHHCPs) and the supervision thereof by registered professional nurses. Specifically, this proposal would amend:

• Section 763.2, which lists the rights of patients served by CHHAs/LTHHCPs, to provide that a patient has the right to refuse the provision of advanced tasks by an advanced home health aide, in which case the CHHA/LTHHCP must ensure that such tasks are provided by a registered professional nurse;

• Section 763.4 to set forth requirements for CHHAs/LTHHCPs pertaining to the supervision of advanced home health aides;

• Section 763.7 to set forth requirements for CHHAs/LTHHCPs pertaining to reports made by advanced home health aides to supervising registered professional nurses; and

• Section 763.13 to set forth requirements for CHHAs/LTHHCPs pertaining to in-service education for advanced home health aides.

Part 765 (Approval and Licensure of Home Care Services Agencies)

This proposal would amend 10 NYCRR § 765.2-1, which provides that home care services agencies must obtain approval by the Public Health and Health Planning Council and be issued a license pursuant to PHL Article 36, to include a reference to advanced home health aides.

Part 766 (Licensed Home Care Services Agencies – Minimum Standards)

This proposal would amend 10 NYCRR Part 766 to set forth provisions pertaining to advanced home health aides employed by licensed home care services agencies (LHCSAs) and the supervision thereof by registered professional nurses. Specifically, this proposal would amend:

• Section 766.1, which lists the rights of patients served by LHCSAs, to provide that a patient has the right to refuse the provision of advanced tasks by an advanced home health aide, in which case the LHCSA must ensure that such tasks are provided by a registered professional nurse;

• Section 766.2(b) to include "advanced home health aide services" in the list of services that constitute "health care services;"

• Section 766.4 to provide that a LHCSA must ensure that there is an order for advanced home health aide services from the patient's authorized practitioner;

• Section 766.5(c)(4) to set forth requirements for the clinical supervision of advanced home health aides by supervising registered professional nurses;

• Section 766.6(a)(6) and (7) to provide for reports by advanced home health aides to supervising registered professional nurses; and

• Section 766.11 to: (1) provide that LHCSAs must ensure that qualifications for advanced home health aides, as set forth in 700.2, are satisfied; and (2) require that advanced home health aides participate in 18 hours of in-service education each year.

Part 793 (Hospice Patient/Family Care Services)

This proposal would amend Part 793 to set forth provisions related to services provided by advanced home health aides supervised by registered professional nurses employed by hospice programs. Specifically, this proposal would amend:

• Section 793.1 to reflect that a patient of a hospice program has the right to refuse the provision of advanced tasks by an advanced home health aide, in which case the hospice program must ensure that such tasks are provided by a registered professional nurse;

• Section 793.7(k) to provide that services must be provided by an aide with appropriate training which, in the case of an advanced home health aide, means a training program as required by section 700.2(b)(54);

• Section 793.7(l) to provide that services provided by an advanced home health aide must be ordered by a physician, assigned by the supervising registered professional nurse, and included in the plan of care and consistent with training and advanced tasks permitted to be performed by advanced home health aides; and

• Section 793.7(o) to include within the responsibilities of a hospice program the supervision of an advanced home health aide by a registered professional nurse.

Part 794 (Hospice Organization and Administration)

This proposal would amend 10 NYCRR Part 794 pertaining to advanced home health aides employed by hospice programs and the supervision thereof by registered professional nurses. Specifically, this proposal would amend section 794.3(k) to provide that, at a minimum, advanced home health aides shall participate in 18 hours of in-service education per year.

Part 1001 (Assisted Living Residences)

This proposal would amend 10 NYCRR Part 1001 to set forth provisions pertaining to advanced home health aides employed by EALRs and the supervision thereof by registered professional nurses. Specifically, this proposal would amend:

• Section 1001.8(b)(2) to reflect that a resident of an EALR has the right to refuse the provision of advanced tasks by an advanced home health aide, in which case the operator must ensure that such tasks are provided by a registered professional nurse; and

• Section 1001.11(r) to provide that advanced home health aides in an EALR must be listed on the Registry, trained, and supervised by registered professional nurses.

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceroalo, DOH, Bureau of Program 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: 60 days after publication of this notice.

Regulatory Impact Statement

Statutory Authority:

This proposal will implement amendments to Public Health Law (PHL) Article 28-E requiring certain providers licensed by the Department of Health (Department) to request criminal history record checks (CHRCs) of prospective employees in conformance with Executive Law § 845-b. PHL § 2899-a(4) requires the Commissioner of Health (Commissioner) to promulgate regulations implementing PHL Article 28-E, and Executive Law § 845-b(12) requires the Department to promulgate regulations to implement criminal history information requests.

This proposal also will implement Chapter 471 of the Laws of 2016, which authorized advanced home health aides to perform advanced tasks under the supervision of registered professional nurses employed by home care services agencies, hospice programs, and enhanced assisted living residences (EALRs). PHL § 3602(17), added by Chapter 471, requires the Commissioner to issue regulations pertaining to advanced home health aides.

PHL § 3612(5) authorizes the Public Health and Health Planning Council (PHHPC) to adopt and amend regulations pertaining to certified home care services agencies and long term home health care programs approved pursuant to PHL Article 36, subject to approval of the Commissioner. PHL § 4010(4) authorizes PHHPC to adopt and amend regulations for hospice providers approved pursuant to PHL Article 40, subject to approval of the Commissioner.

Legislative Objectives:

PHL Article 28-E requires "providers" to request that the Department conduct a CHRC of each "prospective employee." PHL § 2899(3) provides that an "employee'' means any person to be employed or used by a "provider" to provide "direct care or supervision" to patients or residents. Individuals licensed under Education Law Title 8 (various health care

professionals) or PHL Article 28-D (nursing home administrators) or who are volunteers are excluded from the definition of "employee." A "prospective employee," as defined by PHL § 2899(5), is an individual who files an employment application and the provider expects to hire as an employee.

Chapters 60 and 94 of the Laws of 2014 amended PHL § 2899(6) to include within the definition of "provider" adult homes, enriched housing programs, and residences for adults licensed under Social Services Law (SSL) Article 7. SSL § 461-t similarly states that these entities must request CHRCs of their prospective direct care employees. PHL § 2899(10) was also amended to permit such employees to be temporarily approved to work pending the results of their CHRCs under the condition that the provider conducts direct observation and evaluation of the employee.

The definition of "provider" in PHL § 2899(6) was again expanded by Chapter 471 of the Laws of 2016 to include hospice programs certified under PHL Article 40 with respect to employees hired on or after April 1, 2018. Chapter 206 of the Laws of 2017 amended PHL § 2899(10) to permit these employees to be temporarily approved to work pending the results of their CHRCs under the direct observation and evaluation of the provider.

Chapter 471 also added Education Law § 6908(2) to permit advanced tasks to be performed by advanced home health aides with appropriate training and under supervision by registered professional nurses employed by home care services agencies, hospice programs, and EALRs. Regulations issued by the State Education Department in consultation with the Department will specify the types of advanced tasks that can be performed by advanced home health aides and set forth the qualifications, training and competency requirements for advanced home health aides. This proposal will implement other provisions of the law by amending regulations applicable to home care services agencies, hospice programs, and EALRs to address the supervision of advanced home health aides.

These provisions will further the statutory goal of enabling more people to live in home and community based settings and provide support to family caregivers and their loved ones. See Built to Lead, 2016 State of the State, Governor Andrew M. Cuomo, at https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2016_State_of_the_State_Book.pdf (p. 271-72).

Needs and Benefits:

The proposed changes to Part 402 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) will implement laws requiring CHRCs for adult homes, enriched housing programs, residences for adults, and hospice programs. As reflected in the regulations, these entities must request that the Department obtain criminal history information from the Division of Criminal Justice Services and a national criminal history check from the Federal Bureau of Investigation (FBI) concerning each prospective unlicensed employee who will provide direct care or supervision. Before such employees can begin working, they must consent to a digital scan of their fingerprints, which will be electronically transmitted to the Division of Criminal Justice Services (Division) for processing. The Division will subsequently provide criminal history information back to the Department.

Consistent with PHL Article 28-E, the Department will then review the information based on criteria in Executive Law § 845-b. The Department will advise the provider whether the applicant has a criminal history, and, if so, whether the history is of such a nature that the Department disapproves eligibility for employment. The individual will have 30 days to provide rehabilitation documentation in support of their application before the Department makes a final disapproval determination. In some cases, a person may have a criminal background, but any convictions may not rise to the level requiring disapproval of eligibility for employment based on Executive Law § 845-b criteria. In other cases, there may be open charges that, if they resulted in a conviction, would result in denials, and the Department will hold such applications in abeyance until the charges are resolved.

Individuals are afforded an opportunity to explain, in writing, why their eligibility for employment should not be disapproved before the Department makes its final determination disapproving eligibility for employment. If the Department makes a final determination disapproving eligibility, the provider must notify the person that the criminal history information is the basis for such disapproval.

The proposed regulations set forth certain responsibilities of providers in implementing the CHRC requirements. Providers also must ensure that prospective employees who will be subject to the CHRC requirement are notified of the provider's right to request their criminal history information, and that they have the right to obtain, review, and seek correction of such information in accordance with regulations of the Division or, with regard to federal criminal history information, to seek correction of information with the FBI.

This proposal will also implement PHL § 3602(17), added by Chapter 471 of the Laws of 2016, defining advanced home health aides as home health aides who are authorized to perform advanced tasks as set forth in Education Law § 6908(2). The regulations also reflect the inclusion of hospice programs and EALRs in the definition of "home care services entity" set forth in PHL § 3613(1)(a) for purposes of the Home Care Services Worker Registry (Registry). PHL § 3613(9) provides that the Department must indicate within the Registry when a home health aide is qualified to serve as an advanced home health aide because he or she has satisfied all applicable training and competency requirements. Accordingly, this proposal will amend 10 NYCRR Part 403 to add advanced home health aides, advanced home health aide training programs, EALRs, and hospice programs to the Registry.

This proposal further will amend Part 700 to define an "advanced home health aide" as a certified home health aide who has met all requirements to perform advanced tasks and is listed in the Registry. Parts 763, 766, 793, 794, and 1001 also will be amended to reflect requirements related to advanced home health aides and the supervisions thereof by registered professional nurses employed by home care agencies – meaning certified home health agencies (CHHAs), long term home health care programs (LTHHCPs), and licensed home care services agencies (LHCSAs) – as well as EALRs and hospice programs.

COSTS:

Costs to Private Regulated Parties:

The proposed regulatory changes related to CHRCs would apply to adult homes, enriched housing programs, residences for adults, and hospice programs. As explained above, when such an entity determines to hire or otherwise use an individual who is unlicensed and will have access to patients or residents or their living quarters, it must request a CHRC pursuant to PHL Article 28-E. The entity must include with the request a fee, currently $99. Of this amount, $75 covers the fee established by the Division for processing a State criminal history record check and $12.00 is for a national criminal history record check. Further, obtaining the fingerprints used for CHRC requests, which is accomplished through a vendor, costs approximately $12.00 per individual. Pursuant to PHL § 2899-a(9)(a) and as reflected in the proposed amendments to 10 NYCRR § 402.10, providers will be reimbursed for such fees and costs when funds are appropriated in the state budget.

The proposed regulatory changes related to advanced home health aides apply to home care services agencies (CHHAs, LTHHCPs, and LHCSAs), EALRs, and hospice programs only to the extent they desire to use such aides. The registered professional nurses who supervise advanced home health aides will spend additional time carrying out the supervisory obligations set forth in the law and proposed regulations, but to some extent this will be offset by the ability to use such aides to carry out many of the tasks that otherwise would be carried out directly by the nurses.

Costs to Local Government:

The proposed changes are not expected to impose any costs upon local governments, unless they operate one of the afore-referenced entities. In such cases, the impact will be the same as for regulated parties, discussed above.

Costs to the Department of Health:

The proposed regulations will not impose costs upon the Department in addition to any imposed as a result of the statutory changes enacted with respect to CHRCs and advanced home health aides. Additional work by Department staff that process CHRC requests or participate in regulatory activities involving adult homes, enriched housing programs, residences for adults, home care services agencies, or hospice programs, is being managed within existing resources.

Costs to Other State Agencies:

Due to the legislative enactments reflected in this proposal, the volume of CHRC requests fulfilled by the Division will be higher but should be managed within existing resources. Similarly, the State Education Department, in consultation with the Department of Health, will approve programs that train advanced home health aides, which is expected to be managed within existing resources.

Local Government Mandates:

The proposed regulations do not impose any new mandates on local governments, except where they operate local providers such as a home care services agency or a hospice program. In such cases, the impact will be the same as for regulated parties, discussed above.

Paperwork:

Consistent with the statutory provisions, the proposed regulations will require the completion of additional paperwork by adult homes, enriched housing programs, residences for adults, and hospice programs that request CHRCs. For example, providers will need to complete and submit a form to notify the Department of a prospective employee needing to be fingerprinted. A provider may also be asked to submit information not known to the Department to assist the Department in vetting and perfecting the criminal history of a prospective employee. Further, providers will need to document the supervision of employees that they temporarily approve to work pending the results of the CHRC.

Home care service agencies, EALRs, and hospice programs are already required to establish written policies and procedures related to various operational requirements, including the training and supervision of employees. Therefore, although additional paperwork will be required to ensure that advanced home health aides are properly trained and supervised, this type of documentation should be familiar to these providers. Accessing the Registry is new for EALRs and hospice programs, but the Department has and will continue to make training and assistance available to guide them through these changes.

Duplication:

This rule does not duplicate any other law, rule or regulation.

Alternatives:

There are no alternatives to this proposal, which is necessary to implement legislative enactments expanding the provider types subject to the CHRC program and authorizing the use of advanced home health aides.

Federal Standards:

The proposed regulations do not duplicate or conflict with any federal regulations.

Compliance Schedule:

The regulations will be effective upon publication of a Notice of Adoption in the New York State Register.

Regulatory Flexibility Analysis

Effect of Rule:

To the extent this proposal implements statutory requirements related to criminal history record checks (CHRCs), it will be applicable to adult homes, enriched housing programs, residences for adults, and hospice programs. The provisions of the proposal related to advanced home health aides will apply to certified home health agencies (CHHAs), long term care home health care programs (LTHHCPs), or licensed home care services agencies (LHCSAs), hospice programs, or enhanced assisted living residences (EALRs) that choose to use advanced home health aides. Any of these entities, depending on their size, could constitute a small business. This proposal will only impact local governments if they operate one of these entities.

Compliance Requirements:

This proposal will require adult homes, enriched housing programs, residences for adults, and hospice programs to request CHRCs pursuant to PHL Article 28-E whenever they determine to hire or otherwise use unlicensed individuals who provide direct care or supervision to patients or residents. Consistent with the statutory provisions, compliance with the proposed regulations will require the completion of additional paperwork by these entities; for example, by completing a form that notifies the Department of a prospective employee who needs to be fingerprinted. A provider may also be asked to submit information not known to the Department to assist the Department in vetting and perfecting the criminal history of a prospective employee. Further, providers will need to document the supervision of employees that they temporarily approve to work pending the results of the CHRC.

The proposed regulatory changes related to advanced home health aides are applicable to home care services agencies (meaning CHHAs, LTHHCPs, and LHCSAs), EALRs, and hospice programs only to the extent they desire to use such aides under the supervision of registered professional nurses they employ. The registered professional nurses who supervise advanced home health aides will spend additional time carrying out the supervisory obligations set forth in the law and proposed regulations, but to some extent this will be offset by the ability to use such aides to carry out many of the tasks that otherwise would be carried out directly by the nurses.

Home care service agencies, EALRs, and hospice programs are already required to establish written policies and procedures related to various operational requirements, including the training and supervision of employees. Therefore, although additional paperwork will be required to ensure that advanced home health aides are properly trained and supervised, this type of documentation should be familiar to these providers. Accessing the Registry is new for EALRs and hospice programs, but the Department has and will continue to make training and assistance available to guide them through these changes.

Professional Services:

The CHRC provisions of this proposal are not expected to require any additional use of professional services. The proposed regulatory changes related to advanced home health aides are applicable to home care services agencies (meaning CHHAs, LTHHCPs, and LHCSAs), EALRs, and hospice programs only to the extent they desire to use such aides, in which case they must ensure that the aides are supervised by registered professional nurses. The registered professional nurses who supervise advanced home health aides will spend additional time carrying out the supervisory obligations set forth in the law and proposed regulations, but to some extent this will be offset by the ability to use such aides to carry out many of the tasks that otherwise would be carried out directly by the nurses.

Compliance Costs:

Entities submitting CHRC requests must submit a fee, currently $99, together with a CHRC request, and will incur costs of approximately $12.00 per individual for obtaining the fingerprints. Pursuant to PHL § 2899-a(9)(a), and as reflected in the proposed amendments to 10 NYCRR § 402.10, providers will be reimbursed for such fees and costs when funds are appropriated in the state budget.

If CHHAs, LTHHCPs, LHCSAs, EALRs, and hospice programs choose to use advanced home health aides, they must do so under the supervision of registered professional nurses they employ. The registered professional nurses will spend additional time carrying out the supervisory obligations set forth in the law and proposed regulations, but to some extent this will be offset by the ability to use such aides to carry out many of the tasks that otherwise would be carried out directly by the nurses.

Economic and Technological Feasibility:

This proposal is economically and technically feasible. As indicated above, providers will be reimbursed for fees and costs associated with the CHRC requirements. Providers that can and choose to use advanced home health aides must do so under the supervision of registered professional nurses. It is expected that in many cases the additional time spent by the registered professional nurses in supervising the advanced home health aides will be offset by the ability to use such aides to carry out many of the tasks that otherwise would be carried out directly by the nurses.

Minimizing Adverse Impact:

There are no alternatives to the proposed regulations, which are consistent with the statutory provisions regarding CHRCs and advanced home health aides enacted by Chapters 60 and 94 of the Laws of 2014, Chapter 471 of the Laws of 2016, and Chapter 206 of the Laws of 2017.

Small Business and Local Government Participation:

Development of these regulations included input from organizations including those whose members include providers that constitute small businesses or are operated by local governments.

Cure Period:

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

Rural Area Flexibility Analysis

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

Job Impact Statement

No job impact statement is required pursuant to § 201-a(2)(a) of the State Administrative Procedure Act. No adverse impact on jobs and employment opportunities is expected as a result of these proposed regulations.

Office of Mental Health

NOTICE OF ADOPTION

Early Periodic Screening, Diagnostic and Treatment Services for Children

I.D. No. OMH-31-17-00001-A

Filing No. 480

Filing Date: 2018-05-14

Effective Date: 2018-05-30

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

Action taken: Amendment of Part 511 of Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 7.07 and 7.09

Subject: Early Periodic Screening, Diagnostic and Treatment Services for Children.

Purpose: To promote the expansion of behavioral health services for children and youth under 21 years of age.

Text of final rule: (Statutory authority: Mental Hygiene Law §§ 7.07, 7.09; 42 U.S.C. § 1396d(r)(5); 18 NYCRR § [507.6] *505.38*)

§ 511.1 Background and Intent

(a) Federal law requires state Medicaid programs to offer Early and

Periodic Screening, Diagnostic and Treatment to all Medicaid-eligible children under age 21. Commonly referred to as "EPSDT," these services are designed to support childhood growth and development to ensure that children in low income families receive the comprehensive and preventive health and behavioral health services they need. EPSDT services include appropriate preventive, dental, health, behavioral health, developmental and specialty services.

(b) Within the scope of EPSDT benefits under the federal Medicaid law, states are required to cover any service that is medically necessary "to correct or ameliorate a defect, physical or mental illness, or a condition identified by screening" and which are recommended by a Licensed Practitioner of the Healing Arts. Thus, EPSDT requires states not only to screen and diagnose health and mental health illnesses or conditions in low income children, but they must ensure children are provided treatment as well.

(c) New York State has obtained an amendment to its Medicaid State Plan that authorizes the provision of six new children's behavioral health and health services under the EPSDT benefit. When recommended by a Licensed Practitioner of the Healing Arts, these six services will be made available to any child eligible for Medicaid who meets relevant medical necessity criteria, and include:

(1) Crisis Intervention Services: services designed to interrupt and/or ameliorate a behavioral health crisis *through the provision of support to an individual who may be experiencing a mental health crisis, and subsequently connecting such individual to appropriate resources. For purposes of this Part, provision of this services does not connote examination, diagnosis, care, treatment, rehabilitation, or training of a person with mental illness and thus does not constitute a nonresidential service requiring licensure under Mental Hygiene Law Section 31.02*;

(2) Community Psychiatric Supports & Treatment: interventions intended to achieve identified goals or objectives as set forth in a treatment/recovery plan;

(3) Family Peer Support Services: formal and informal services provided to families of a child experiencing social, emotional, developmental, medical, substance use, and/or behavioral challenges in their home, school, placement, and/or community;

(4) Youth Peer Support and Training: formal and informal services and supports to ensure engagement and active participation of youth in the treatment planning and implementation process;

(5) Other Licensed Practitioners: service provided by a non-physician behavioral health practitioner operating within a licensed children's mental health agency, who is licensed in New York and is operating within a scope of practice defined in New York State law in any setting permissible under such law, including community based settings; and

(6) Psychosocial Rehabilitation Services: task-oriented services designed to compensate for or eliminate functional deficits and interpersonal and/or behavioral health barriers associated with behavioral health needs.

(d) This Part is intended to establish standards applicable to providers of mental health services licensed or operated by the Office of Mental Health that wish to be designated, or have been designated, as a provider of EPSDT [Crisis Intervention Services], Other Licensed Practitioners, and Community Psychiatric Supports and Treatment Services.

(e) This Part also establishes standards applicable to non-licensed providers of mental health services that receive funding or have a contract from the Office that wish to be designated, or have been designated, as a provider of any of the following EPSDT services: *Crisis Intervention Services,* Family Peer Support Services, or Youth Peer Support and Training and Psychosocial Rehabilitation Services.

§ 511.2 Legal base

(a) Section 7.07(a) of the Mental Hygiene Law charges the Commissioner of Mental Health with the responsibility for assuring the development of comprehensive plans, programs, and services in areas of research, prevention, care, treatment, rehabilitation, education, and training of persons with mental illness.

(b) Section 7.07(c) of the Mental Hygiene Law gives the Commissioner of Mental Health the responsibility for seeing that persons with mental illness are provided with care and treatment, and that such care, treatment, and rehabilitation is of high quality and effectiveness.

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

(d) 42 U.S.C. § 1396d(r)(5) requires States to provide all medically necessary services that could be available under Medicaid to correct or ameliorate physical and mental illnesses and conditions that are detected in Medicaid-eligible children.

(e) 18 NYCRR § [507.6] *505.38* establishes standards for the designation of qualified providers by the Department of Health to deliver EPSDT services under the New York State Medicaid program.

§ 511.3 Applicability

(a) The provisions of this Part are applicable to all providers of mental health services licensed or operated by the Office of Mental Health that are seeking or have obtained designation from the Office to offer EPSDT [Crisis Intervention Services], Other Licensed Practitioner, and Community Psychiatric Supports & Treatment Services.

(b) This Part applies to non-licensed providers of mental health services that received funding or have a contract from the Office that are seeking or have obtained designation from the Office to offer EPSDT *Crisis Intervention Services*, Family Peer Support Services, Youth Peer Support and Training, and Psychosocial Rehabilitation Services.

§ 511.4 Definitions. For purposes of this Part:

(a) Child means a person no more than 21 years of age.

(b) Crisis Event means an acute psychological/emotional change a child or family member is experiencing which results in a marked increase in personal distress and which exceeds the abilities and the resources of those involved (e.g., provider, family member) to effectively resolve it.

(c) Cultural and linguistic competence means the ability of health care providers and health care organizations to understand and respond effectively to the cultural and language needs brought by a patient to a health care or behavioral health care encounter.

(d) EPSDT means the Federal Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit, which is a primary component of New York State's Medicaid program for children and adolescents. It affords a comprehensive array of preventive health care and treatments for Medicaid recipients from birth up until age 21 years.

(e) Family means a child's primary caregiving unit, and is inclusive of a wide diversity of primary caregiving units such as birth, foster, adoptive, grandparents, siblings, other kinship caregivers, or a self-created unit of people with significant attachment to one another.

(f) Licensed Practitioner of the Healing Arts (LPHA) means the following professional staff:

(1) Marriage and Family Therapist, which means an individual who is currently licensed as a Marriage and Family Therapist by the New York State Education Department;

(2) Mental Health Counselor, which means an individual who is currently licensed as a Mental Health Counselor by the New York State Education Department;

(3) Nurse Practitioner, which means an individual who is currently certified as a Nurse Practitioner by the New York State Education Department;

(4) Nurse Practitioner in psychiatry, which means an individual who is currently certified as a Psychiatric Nurse Practitioner by the New York State Education Department. For purposes of this Part, nurse practitioner in psychiatry shall have the same meaning as psychiatric nurse practitioner, as defined by the New York State Education Department;

(5) Physician, which means an individual who is currently licensed as a Physician by the New York State Education Department or possesses a permit from the New York State Education Department;

(6) Physician's Assistant, which means an individual who is currently registered as a Physician Assistant or a Specialist's Assistant by the New York State Education Department;

(7) Psychiatrist, which means an individual who is currently licensed as a Physician by the New York State Education Department and who is certified by, or eligible to be certified by, the American Board of Psychiatry and Neurology;

(8) Psychoanalyst, which means an individual who is currently licensed as a Psychoanalyst by the New York State Education Department;

(9) Psychologist, which means an individual who is currently licensed as a Psychologist by the New York State Education Department;

(10) Registered Professional Nurse, which means an individual who is currently licensed as a Registered Professional Nurse by the New York State Education Department; and

(11) Social Worker, which means an individual who is currently licensed as a Master Social Worker or Clinical Social Worker by the New York State Education Department.

(g) Office means the Office of Mental Health.

(h) State Agencies means and includes the New York State Office of Mental Health, the New York State Department of Health, the New York State Office of Children and Family Services, and the New York State Office of Alcoholism and Substance Abuse Services.

§ 511.5 Designation Process

(a) Providers of mental health services must receive prior approval by written designation of the Office to provide any or all of the following EPSDT services:

(1) Crisis Intervention services are available to a child or a member of his/her family who is experiencing a behavioral health crisis event, and are designed to:

(i) interrupt and/or ameliorate the crisis event;

(ii) include an assessment that is culturally and linguistically competent;

(iii) result in immediate crisis resolution and de-escalation; and

(iv) result in the development of a crisis plan.

(2) Community Psychiatric Support and Treatment services, which include interventions intended to achieve identified goals or objectives as set forth in a treatment/recovery plan.

(3) Family Peer Support services, which include formal and informal services to families of a child experiencing social, emotional, developmental, medical, substance use, and/or behavioral challenges in their home, school, placement, and/or community.

(4) Other Licensed Practitioner services, which include services provided by the following professionals, operating within a licensed children's mental health agency, if currently licensed by State of New York to prescribe, diagnose, and/or treat individuals with a physical, mental illness, substance use disorder, or functional limitations at issue, provided such professionals are operating within their respective scope of practice and in a setting permitted under New York State law, including community settings:

(i) Licensed Psychoanalyst;

(ii) Licensed Clinical Social Worker;

(iii) Licensed Marriage & Family Therapist;

(iv) Licensed Mental Health Counselor; or

(v) Licensed Master Social Worker under the supervision or direction of a Licensed Clinical Social Worker, a Licensed Psychologist, or a Psychiatrist.

(5) Psychosocial Rehabilitation services, which are task-oriented services designed to restore, compensate for, or eliminate functional deficits and interpersonal and/or behavioral health barriers associated with behavioral health needs.

(6) Youth Peer Support and Training services are formal and informal services and supports to ensure engagement and active participation of youth in the treatment planning and implementation process.

(b) Requests for designation to provide EPSDT services shall be made in a form and format established by the Office.

(c) To be eligible for designation, the applicant must:

(1) be enrolled in the Medicaid program prior to commencing service delivery;

(2) have a demonstrated history of compliance with applicable federal and state laws and regulations governing the provision of mental health services; and

(3) satisfy requisite criteria identified in the New York State Plan Amendment Designation Application and the standards of care identified in the Children's Health and Behavioral Health Services Transformation Medicaid State Plan Provider Manual.

(d) The Office shall provide its designation in writing, which shall identify the services such designation authorizes the provider to deliver. The provider of services must retain a copy of the approval document and shall make it available for inspection upon request of the Office.

(e) Failure to adhere to the requirements set forth in this Part, or any other applicable laws or regulations relevant to the provision of health or behavioral health services, may be grounds for revocation of designation. In the event that the Office determines that designation must be revoked, it will notify the provider of its decision in writing. The provider may request an informal administrative review of such decision.

(1) The provider must request such review in writing within 14 days of the date it receives notice of revocation of designation to provide EPSDT services to the Commissioner or designee. The request shall state specific reasons why the provider considers the revocation of approval incorrect and shall be accompanied by any supporting evidence or arguments.

(2) The Commissioner or designee shall notify the provider, in writing, of the results of the informal administrative review within 14 days of receipt of the request for review. Failure of the Commissioner or designee to respond within that time shall be considered confirmation of the revocation.

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

(4) A provider whose designation has been revoked pursuant to this Section may be considered again for designation at the discretion of the Office, in consultation with the State Agencies.

§ 511.6 Guidelines

The Office shall develop guidelines to assist providers in complying with the provisions of this Part and in delivering EPSDT services. The Office shall post such guidelines on its public website.

§ 511.7 Incorporation by reference.

The provisions of the Children's Health and Behavioral Health Services Transformation Medicaid State Plan Provider Manual which have been incorporated by reference in this Part, have been filed in the Office of the Secretary of State of the State of New York, the publication so filed being the document entitled: Children's Health and Behavioral Health Services Transformation Medicaid State Plan Provider Manual, published in March, 2016, and any subsequent updates. This document incorporated by reference may be examined at the Office of the Department of State, 99 Washington Ave, Albany, NY 12231 or obtained from the Office of Mental Health Records Access Officer, 44 Holland Avenue; Albany, NY 12229.

Final rule as compared with last published rule: Substantial revisions were made in sections 511.1(d), (e), 511.3(a) and (b).

Text of rule and any required statements and analyses may be obtained from: Kelly Grace, Senior Attorney, New York State Office of Mental Health, 44 Holland Avenue, (518) 472-6945, email: kelly.grace@omh.ny.gov

Revised Regulatory Impact Statement

A revised regulatory impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Regulatory Flexibility Analysis

A revised regulatory flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Rural Area Flexibility Analysis

A revised rural area flexibility analysis is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Revised Job Impact Statement

A revised job impact statement is not submitted with this notice because the rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

Assessment of Public Comment

The agency received no public comment.

Public Service Commission

NOTICE OF ADOPTION

Transfer of Control

I.D. No. PSC-51-17-00014-A

Filing Date: 2018-05-15

Effective Date: 2018-05-15

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

Action taken: On 5/15/18, an order was adopted denying Time Warner Cable Northeast LLC's (Time Warner) petition for a transfer of the systems, franchises and facilities from Hamilton County Cable T.V. Inc. (HCC) to Time Warner.

Statutory authority: Public Service Law, section 222

Subject: Transfer of control.

Purpose: To deny Time Warner's petition for the transfer of substantially all assets of HCC to Time Warner.

Substance of final rule: On May 15, 2018, an order was adopted denying Time Warner Cable Northeast LLC's (Time Warner) petition for the transfer of the systems, franchises and facilities from Hamilton County Cable T.V., Inc. to Time Warner for the provision of cable service in the Towns of Wells, Lake Pleasant, Indian Lake, and Johnsburg in Hamilton County and the Village of Speculator in Delaware County, 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-V-0733SA1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Use of Unspent Funds Previously Allocated to the NY-Sun Initiative for Years 2014 and 2015

I.D. No. PSC-22-18-00005-P

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

Proposed Action: The Commission is considering NYSERDA's petition requesting that the Commission determine that unspent Renewable Portfolio Standard (RPS) funds allocated to the NY-Sun Initiative in 2013 for years 2014 and 2015 remain available to NY-Sun.

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

Subject: Use of unspent funds previously allocated to the NY-Sun Initiative for years 2014 and 2015.

Purpose: To efficiently encourage the preservation of environmental values and the conservation of natural resources.

Substance of proposed rule: The Public Service Commission is considering the Revised Petition for Clarification Regarding Order Approving Phase 2 Implementation Plan in Clean Energy Standard Proceeding, filed by the New York State Energy Research and Development Authority (NYSERDA) on May 9, 2018 regarding funds allocated to NY-Sun. NYSERDA explains that the Commission's December 2013 Order Authorizing the Redesign of the Solar Photovoltaic Programs and the Reallocation of Main Tier Unencumbered Funds allocated certain Renewable Portfolio Standard (RPS) funds to the NY-Sun Initiative, while the Commission's January 2016 Order Authorizing the Clean Energy Fund (CEF) Framework specified uses for uncommitted/unspent RPS funds that did not include NY-Sun. NYSERDA explains that RPS funds allocated to NY-Sun have become uncommitted since the issuance of the 2016 CEF Order and requests that the Commission determine that unspent RPS funds allocated to the NY-Sun Initiative in 2013 for years 2014 and 2015 remain available to NY-Sun. The full text of the petition and the full record of the proceeding 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 action 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: 60 days after publication of this notice.

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

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

(14-M-0094SP10)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Intent to Submeter Electricity and Requested Waiver of the Energy Audit Requirement

I.D. No. PSC-22-18-00006-P

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

Proposed Action: The Commission is considering the notice of intent of WP North Tower LLC to submeter electricity at 55 Bank Street, White Plains, New York and request for waiver of 16 NYCRR section 96.5(k)(3).

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: Intent to submeter electricity and requested waiver of the energy audit requirement.

Purpose: To ensure adequate submetering equipment, consumer protections, and energy efficiency protections are in place.

Substance of proposed rule: The Commission is considering the notice of intent of WP North Tower LLC, filed January 16, 2018, to submeter electricity at 55 Bank Street, White Plains, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison). By stating its intent to submeter electricity, WP North Tower LLC has requested authorization to take electric service from Con Edison 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 in 16 NYCRR Part 96. The Commission is also considering the Owner's request for a waiver of 16 NYCRR § 96.5(k)(3), which requires proof that an energy audit has been conducted when 20 percent or more of the residents receive income-based housing assistance. The full text of the notice of intent, waiver request and the full record of the proceeding 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 action 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: 60 days after publication of this notice.

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

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

(18-E-0024SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Intent to Submeter Electricity

I.D. No. PSC-22-18-00007-P

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

Proposed Action: The Commission is considering the notice of intent of Red Apple Surf Realty III to submeter electricity at 3514 Surf Avenue, Brooklyn, New York.

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

Subject: Intent to submeter electricity.

Purpose: To ensure adequate submetering equipment and consumer protections are in place.

Substance of proposed rule: The Commission is considering the notice of intent of Red Apple Surf Realty III (Owner), filed on March 21, 2018, to submeter electricity at 3514 Surf Avenue, Brooklyn, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison). By stating its intent to submeter electricity, Red Apple Surf Realty III has requested authorization to take electric service from Con Edison 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 in 16 NYCRR Part 96. The full text of the notice of intent and the full record of the proceeding 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 action 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: 60 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(18-E-0185SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Intent to Submeter Electricity

I.D. No. PSC-22-18-00008-P

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

Proposed Action: The Commission is considering the notice of intent of Madison 30 31 Owner LLC to submeter electricity at 15 East 30th Street, New York, New York.

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

Subject: Intent to submeter electricity.

Purpose: To ensure adequate submetering equipment and consumer protections are in place.

Substance of proposed rule: The Commission is considering the notice of intent of Madison 30 31 Owner LLC (Owner), filed March 28, 2018, to submeter electricity at 15 East 30th Street, New York, New York, located in the service territory of Consolidated Edison Company of New York, Inc. (Con Edison). By stating its intent to submeter electricity, Madison 30 31 Owner LLC, has requested authorization to take electric service from Con Edison 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 and the full record of the proceeding 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 action 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: 60 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(18-E-0196SP1)

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Expand the SmartCharge New York Program to Include Medium-Duty and Heavy-Duty Electric Vehicles

I.D. No. PSC-22-18-00009-P

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

Proposed Action: The Commission is considering a petition filed by Consolidated Edison Company of New York, Inc. regarding expanding eligibility for its SmartCharge New York Electric Vehicle charging program.

Statutory authority: Public Service Law, section 66(1)

Subject: Expand the SmartCharge New York Program to include medium-duty and heavy-duty electric vehicles.

Purpose: To ensure just and reasonable rates in the context of charging electric vehicles, including incentivizing off-peak charging.

Substance of proposed rule: The Commission is considering a petition filed on March 1, 2018, by Consolidated Edison Company of New York, Inc. to expand its SmartCharge New York light-duty Electric Vehicle charging program to also include medium-duty and heavy-duty electric vehicles, including buses. The Company proposes to incentivize off-peak charging for these vehicles and does not anticipate this vehicle expansion would result in funding needs beyond those already established under the current EV program. 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 action 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: 60 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement
Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.
(16-E-0060SP6)

Department of Transportation

NOTICE OF WITHDRAWAL

Preservation of Consistency with 49 CFR Safety Regulations Applicable to Commercial Motor Carriers in New York State

I.D. No. TRN-08-18-00001-W

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

Action taken: Notice of proposed rule making, I.D. No. TRN-08-18-00001-P, has been withdrawn from consideration. The notice of proposed rule making was published in the *State Register* on February 21, 2018.

Subject: Preservation of consistency with 49 CFR safety regulations applicable to commercial motor carriers in New York State.

Reason(s) for withdrawal of the proposed rule: Public comment received in opposition to incorporation of the Part 395 Federal ELD rules into 17 NYCRR Part 820.

Public comment:

One comment was submitted in opposition to the requirement of transitioning to recordation of driver hours of service via utilization of electronic logging devices (ELD) in commercial motor vehicles (see, 49 CFR Part 395).

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Electric Powered Motor Vehicle Equipment

I.D. No. TRN-22-18-00001-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 repeal section 720.9 of Title 17 NYCRR.

Statutory authority: Transportation Law, section 14(18)

Subject: Electric powered motor vehicle equipment.

Purpose: To repeal section 720.9.

Substance of proposed rule (Full text is posted at the following State website: https://www.dot.ny.gov/divisions/operating/osss/bus/inspection): 17 NYCRR 720.9 was added upon publication in the State Register on 5/19/1999. A key component of the regulations is continuing

compliance with federal standards as set forth in Federal Motor Vehicle Safety Standards (FMVSS) in 49 CFR Part 571. Other states have either updated their regulations to meet these standards, or have no regulations that address this topic. New York is the only state that has not, at a minimum, updated its regulation(s) to meet federal standards set forth in the National School Transportation Specifications and Procedures – 2010 edition. As this segment of the industry has evolved greatly since 1999, the Department's current section 720.9 regulation has been rendered obsolete. FMVSS Sec 571.301 has been updated as recently as 2011. The Department's regulation does not reference FMVSS Sec 571.305, which specifically sets standards for Electric-Powered Vehicles: Electrolyte Spillage and Electrical Shock Protection; this standard was updated as recently as September of 2017. In current form, 17 NYCRR 720.9 conflicts with FMVSS and with National Highway Traffic and Safety Administration's Highway Safety Guidelines and may cause undue increase in operation or production costs for manufacturers. The proposed repeal of 17 NYCRR 720.9 is a deregulatory action which imposes no costs and will provide more flexibility to manufacturers to use modern electrical safety designs to produce electric vehicles and to introduce new technologies to the U.S. market.

Following is a summary of the subject matter of section 720.9 broken out by subdivision:

17 NYCRR 720.9(a) – Defines commonly used terms related to this topic. Compared with current definitions set forth in FMVSS Sec 571.305, the Department's regulation does not contain many of the definitions currently in use. The definitions that it does contain have language that conflicts with the current FMVSS definitions.

17 NYCRR 720.9(b) – Provides guidelines for identification of electrical hazards on any door, cover or panel that provides access to high voltage areas. When compared to current guidelines set forth in FMVSS Sec 571.305, the Department's regulation contains guidance conflicting with current standards, specifically with current symbol, shape, and color requirements.

17 NYCRR 720.9(c) – Provides guidelines for equipment required for electric and hybrid-electric buses. These guidelines are predicated on the vehicle meeting the definitions set forth in 17 NYCRR 720.9(a). As stated previously, said definitions do not meet current regulatory definitions in FMVSS Sec 571.305.

17 NYCRR 720.9(d) – Provides guidelines for batteries and battery compartments with respect to crash worthiness which conflict with current FMVSS standards. These guidelines require design and construction of battery compartments to meet standards for which no testing instruction or specifications have been illustrated for manufacturers to follow.

17 NYCRR 720.9(e) – Provides guidelines for requirements of electric propulsion circuits. These guidelines conflict with current regulatory standards as set forth in FMVSS Sec 571.305.

17 NYCRR 720.9(f) – Provides guidelines for drive range selectors. No current regulatory requirement exists in the federal standards.

17 NYCRR 720.9(g) – Provides guidelines for electric overload protection. No current regulatory requirement exists in the federal standards.

17 NYCRR 720.9(h) – Provides guidelines for regenerative braking systems. No current regulatory requirement exists in the federal standards.

17 NYCRR 720.9(i) – Provides requirements for back-up alarms. No current regulatory requirement exists in the federal standards.

Text of proposed rule and any required statements and analyses may be obtained from: Alan Black, Legal Assistant 2, NYSDOT, 50 Wolf Road, Albany, NY 12232, (518) 485-9953, email: alan.black@dot.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.

Consensus Rule Making Determination

Per SAPA section 102(11)(a), "Consensus rule" means a rule proposed by an agency for adoption on an expedited basis pursuant to the expectation that no person is likely to object to its adoption because it merely (a) repeals regulatory provisions which are no longer applicable to any person. NYSDOT has determined that no person is likely to object to repeal of 17 NYCRR Section 720.9, which was adopted in 1999 to establish requirements for the safe introduction and operation of electric and hybrid-electric buses placed in passenger service. Due to the progress of the subject technology since the 1999 rule adoption, the regulatory provisions in Section 720.9 are deemed obsolete.

Job Impact Statement

The policy objective of repealing 17 NYCRR Section 720.9 is the removal of obsolete provisions from the safety regulations enforced by the Department. No job impacts are anticipated due to this action.