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.

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 a position in the exempt class.
Text or summary was published in the July 26, 2017 issue of the Register, I.D. No. CVS-30-17-00007-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-30-17-00015-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 1 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-30-17-00015-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 or 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 and 2 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-30-17-00019-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.
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 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-33-17-00004-A.
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-A.
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 exempt class.
Text or summary was published in the August 16, 2017 issue of the Register, I.D. No. CVS-33-17-00006-A.
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.
Jurisdictional Classification

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 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 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(b) 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.

Text 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 7040.8(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 local 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 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, published 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 to the U.S. Constitution. Similar to 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 for 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.
   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 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.4795) that would allow 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.4795) that would allow the use of solitary confinement―"only as a measure of last resort 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.

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.
added].” Arteaga v. State, 72 N.Y.2d 212, 217 (1989); see also Allah v. County of Suffolk, 90 A.D.2d 103, 236 (3d Dep’t 1983). Administrative 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. Berm. man, 37 N.Y.2d 42, 53 (1975); see also McNulty v. Chilund, 62 A.D.2d 682, 688 (3d Dep’t 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 reduce the agency’s ability to exercise its enforcement powers. Nonetheless, the Commission finds that the regulation serves to eliminate the requirement to confine inmates to a cell, or deprive inmates of essential services, is justified and documented, reviewed on a timely basis to assess if continuation is warranted, and reported to the Commission. Thereafter, the Commission’s position is to modify, amend or rescind, and such modifications 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. 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 extensive experience in 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 services deprivation. Several commenters 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 transitional inmate populations and more frequent interfacility 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(c), 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 1376(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 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

L.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 underlaying 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 361.9 to establish the Risk Adjustment mechanism 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 mechanism 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)(3) In addition, the 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 and those with relatively worse experience receive payment from that pool. The Federal Risk Adjustment program applied to New York’s small group health insurance market, 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.


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 [EXCEPT 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) 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.

(b) In certain respects, however, the calculations for the federal risk adjustment program do not take into account certain factors, resulting in unintended consequences for the small group health insurance market. The Department of Health and Human Services (HHS) has stated that it will continue to review the methodology in the future.

(c) 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.

(d) 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.

(e) 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.
(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, 1 D. No. 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

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 promulgate regulations for the purpose and provisions of the Insurance Law. The regulations 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, which 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 promulgate regulations 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. The rule will result in a more uniform and 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 federal risk adjustment policy consistent with the rule. The estimated cost 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 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 marketplace.

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 New York as CMS increases children included in the pool this year.

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.
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. Disposition: 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 is 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, on 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

Rural Area Flexibility Analysis

Assessment

1. Compliance schedule: The Department is promulgating this rule on an emergency basis 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 should not have an adverse impact on rural areas.

2. Reduction of 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.

3. 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.

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 expenses) 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 for the operation of the Comptroller's Office and the ongoing need to fund the operations of the Department without interruption.

**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 to 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 entities ("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 the fiscal year beginning on April 1, 2011, the total direct and indirect costs of operating the Banking Division for the fiscal year beginning on April 1, 2012. Total Operating Cost as defined by the Banking Division includes salaries and other overhead.

(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;

(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 examining and specialist personnel 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 the Industry 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 tools used to determine 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" 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 would 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 on 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 attributable to institutions subject 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-
Rule Making Activities

NYS Register/May 30, 2018

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

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 in engaging in banking and other regulated financial services in New York. The assessment requirements specifically provide 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. It is expected that the effect of this change may slightly reduce the proportion of mortgage banking industry assessments that is paid by entities that are small businesses.

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 large 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.

5. Economic and Technological Feasibility:

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 allocated to 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 anticipated to be minimal.

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 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 of Estimates/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 slightly with respect to assessments against the mortgage banking industry to include income derived from secondary market income and servicing income. This latter change in methodology had the effect of increasing the proportion of assessments against 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. However, 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 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.

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 the 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 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


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


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 renewal notices of non-commercial policies must continue to comply with existing notice requirements. This amendment also clarifies that 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(h) 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 the 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(e).

Section 60-2.2(e) 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 uninsured risk 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 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, 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.

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 policy providing liability insurance coverage 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.

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 be equal to 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.
Department of Health

PROPOSED RULE MAKING

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), 3620(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 record 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 amended law: (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.

This proposal would amend 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 programs pending determination of their CHRCs.

Section 1001.11(r) to provide that advanced home health aides in an adult home, or hospice programs pending determination of their CHRCs, may provide care as an "advanced home health aide," and included in the plan of care and continuously monitored by the supervising registered professional nurse.

Section 793.7(k) to provide that services must be provided by an aide with an appropriate training for 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 94 (Hospice Organization and Administration)

This proposal would amend 10 NYCRR Part 94 pertaining to advanced home health aides employed by EALRs and the supervision thereof by registered professional nurses. Specifically, this proposal would amend:

Section 1001.11(r) to provide that advanced home health aides shall participate in 18 hours of in-service education per year.

Text of proposed rule and any required statements and analyses may be obtained from: Katherine Ceralo, 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 (PHPHC) 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 PHPHC 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
provision will ensure that those entities make required CHRCs and that the Department will review the applications to ensure that they meet all statutory, regulatory, and operational requirements.

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 the law requiring CHRCs for adult homes, enriched housing programs, and hospice programs for adult health care 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 fingerprinting. The Division for Criminal Justice Services (Division) will process the fingerprint information back to the Department.

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 record, and if so, whether the history 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. The provider must notify the person that the criminal history information is the basis for such disapproval.

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, and hospice programs, and the supervisions thereof by registered professional nurses employed by home care agencies – meaning certified home health aides (CHHAs), licensed home health aides (LHCHAs), and hospice programs that train advanced home health aides, and being managed within existing resources.

The proposed changes are expected to have a financial benefit, as the costs to the Department of Health 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 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/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, hospice programs, and EALRs. The regulations will also reflect the implementation of tasks and services to be performed by advanced home health aides who are authorized to perform advanced tasks as set forth in Executive Law § 601-b and the Department’s requirement to perform certain tasks to be performed by advanced home health aides as set forth in Executive Law § 601-b.

The Department will review the information based on criteria in Executive Law § 845-b. The Department will advise the provider whether the applicant has a criminal record, and if so, whether the history 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. 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 Executive Law § 601-b. The regulations also reflect the implementation of tasks and services to be performed by advanced home health aides who are authorized to perform advanced tasks as set forth in Executive Law § 601-b.

The Department will review the information based on criteria in Executive Law § 845-b. The Department will advise the provider whether the applicant has a criminal record, and if so, whether the history 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. 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.
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.

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.

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

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
L.D. No. OMH-31-17-00001-A
Filing No. 480
Filing Date: 2018-05-14
Effective Date: 2018-05-30

Pursuant to Title 16 of the Laws of 1973, as amended by Chapter 306 of the Laws of 1985, the Department of Health issues this Notice of Adoption.

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

Economic Impact: Statutory authority: Mental Hygiene Law §§ 7.07, 7.09; 42 U.S.C. § 1396d(j)(5); 18 NYCRR § 507.6; 505.38. § 511.1 Background and Intent (a) Federal law requires states 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 examination, 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 is required to report 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, "crisis intervention" services do not constitute diagnosis, 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 over the New York 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 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, i.e., provider, family member(s), and the child and thereby puts the child and/or family member(s) at risk of experiencing immediate threat to self harm and/or harm to others.

(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 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) Non-licensed providers are defined as a system of care 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], Other Licensed Practitioner, and Community Psychiatric Supports & Treatment 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) improve and/or increase the culturally and linguistically competent;

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

(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.

(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 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) Non-licensed providers are defined as a system of care 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], Other Licensed Practitioner, and Community Psychiatric Supports & Treatment Services.

§ 511.4 Definitions 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, i.e., provider, family member(s), and the child and thereby puts the child and/or family member(s) at risk of experiencing immediate threat to self harm and/or harm to others.

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(e) Non-licensed providers are defined as a system of care 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], Other Licensed Practitioner, and Community Psychiatric Supports & Treatment Services.
Substantial revisions 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.

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**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

**Substantive revisions**

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.

**Substantive 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 use unspent funds previously allocated to the NY-Sun Initiative.

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: 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.

PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

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

I.D. No. PSC-22-18-00007-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 WP North Tower LLC to submeter electricity at 55 Bank Street, White Plains, New York 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, 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.

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 submeter electricity.

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: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Public comment will be received until: 60 days after publication of this notice.
PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED

Intention 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 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: Intention 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 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 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-0185SP1)

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. 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 recording 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/oss/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, the Department’s regulation contains guidance conflicting with current standards, specifically with current symbol, shape, and color requirements.

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.